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12 Attorneys for Plaintiffs

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

16 DAVID YASTRAB, JOHN KELLER,  
17 DANIEL ARELLANO, PENELOPE SHAW,  
EVELYN CORTEZ, STANLEY WILLIAMS  
18 and MICHAEL ROBINS, Individually and on  
Behalf of All Others Similarly Situated,

19 Plaintiffs,

20 vs.

21 APPLE INC.,

22 Defendant.  
23

) Case No. 5:14-cv-01974-EJD

) CLASS ACTION

) 1. Violations of the Consumers Legal  
) Remedies Act, California Civil Code §1750 *et*  
) *seq.*;

) 2. Violations of the Unfair Competition Law,  
) California Business and Professions Code  
) §17200 *et seq.*;

) 3. Breach of Express Warranty;  
) 4. Intentional Misrepresentation; and  
) 5. Negligent Misrepresentation

24 DEMAND FOR JURY TRIAL  
25  
26  
27  
28

1 Plaintiffs David Yastrab, John Keller, Daniel Arellano, Penelope Shaw, Evelyn Cortez,  
2 Stanley Williams and Michael Robins (“Plaintiffs”), individually and on behalf of all others  
3 similarly situated, brings this Class Action Complaint against defendant Apple Inc. (“Apple” or  
4 “Defendant”), and alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This is a consumer class action brought by Plaintiffs on behalf of themselves and all  
7 others similarly situated who acquired, in the United States and its territories and its protectorates,  
8 Apple’s iPhone 4, iPhone 4s and iPhone 5 (collectively, the “iPhones”) whose iPhones were  
9 essentially rendered obsolete due to reduced functionality following iOS<sup>1</sup> operating system updates.

10 2. Apple debuted the iPhone in 2007.<sup>2</sup> Since the first generation iPhone, Apple has  
11 released a new iPhone model every year: the iPhone 3G in 2008, the 3GS in 2009, the 4 in 2010, the  
12 4s in 2011, the 5 in 2012, the iPhone 5c and 5s in 2013<sup>3</sup> and the iPhone 6 and 6 Plus in 2014.<sup>4</sup> All of  
13 Apple’s iPhones have been marketed and sold as “smartphones,”<sup>5</sup> capable of utilizing a Wi-Fi  
14 connection. As smartphones, the ability to connect to the internet via a Network or Wi-Fi  
15 connection is necessary for users to have access to all of the applications, known as “apps,” and  
16 features of the iPhone.

17 3. Every iPhone is equipped with a mobile operating system called iOS, which,  
18 according to Apple, is the “foundation of iPhone, iPad, and iPod touch.”<sup>6</sup> iOS consists of a  
19 collection of apps, that allow users to utilize all of the features of Apple products.

20 \_\_\_\_\_  
21 <sup>1</sup> iOS is “the software that controls all the basics of your gadget, including the look, feel,  
22 settings and hardware.” <http://www.cnn.com/2013/09/18/tech/mobile/ios-7-upgrade-faq/> (last  
23 visited April 13, 2015)

24 <sup>2</sup> <http://money.cnn.com/gallery/technology/2013/09/26/apple-iphone-timeline.fortune/2.html>  
25 (last visited April 13, 2015)

26 <sup>3</sup> [http://money.cnn.com/gallery/technology/2013/09/26/apple-iphone-timeline.fortune/  
27 index.html](http://money.cnn.com/gallery/technology/2013/09/26/apple-iphone-timeline.fortune/index.html) (last visited April 13, 2015)

28 <sup>4</sup> <http://www.apple.com/live/2014-sept-event/> (last visited April 13, 2015)

<sup>5</sup> A “smartphone” is “a cellular phone that performs many of the functions of a computer,  
typically having a touchscreen interface, Internet access, and an operating system capable of running  
downloaded applications.” [http://www.oxforddictionaries.com/us/definition/american\\_english/  
smartphone](http://www.oxforddictionaries.com/us/definition/american_english/smartphone) (last visited April 9, 2015)

<sup>6</sup> <https://www.apple.com/ios/what-is/> (last visited April 13, 2015)

1           4.       Since the iPhone was first released there have been many versions of iOS, the most  
 2 recent being iOS 8, which Apple called “[t]he biggest iOS release ever.”<sup>7</sup> Apple has continuously  
 3 released updates to iOS since the very first iPhone. The first iOS update, iOS 1.1.1, was released a  
 4 mere three months after the original iPhone was released.<sup>8</sup> iOS 1.1.1 added the iTunes Wi-Fi Music  
 5 Store. iOS’s function was to give users the ability to download music directly to their iPhones.<sup>9</sup>  
 6 Since iOS 1.1.1, Apple has released numerous iOS updates, all of which purport to add new features  
 7 to iPhones. More importantly, the iOS updates often include bug fixes or patches, as well as security  
 8 updates. Indeed, according to Apple, since January 2013, *eighteen* security updates were part of  
 9 updates to previous iOS versions.<sup>10</sup>

10           5.       Upon the release of a new version of iOS, users are prompted to download the newest  
 11 iOS onto their device via a message from Apple.<sup>11</sup> A true and correct representation of the alert  
 12 received by users to download iOS 7 appears below:



24 <sup>7</sup> <https://www.apple.com/ios/> (last visited April 13, 2015)

25 <sup>8</sup> <http://www.theverge.com/2011/12/13/2612736/ios-history-iphone-ipad> (last visited April 13, 2015)

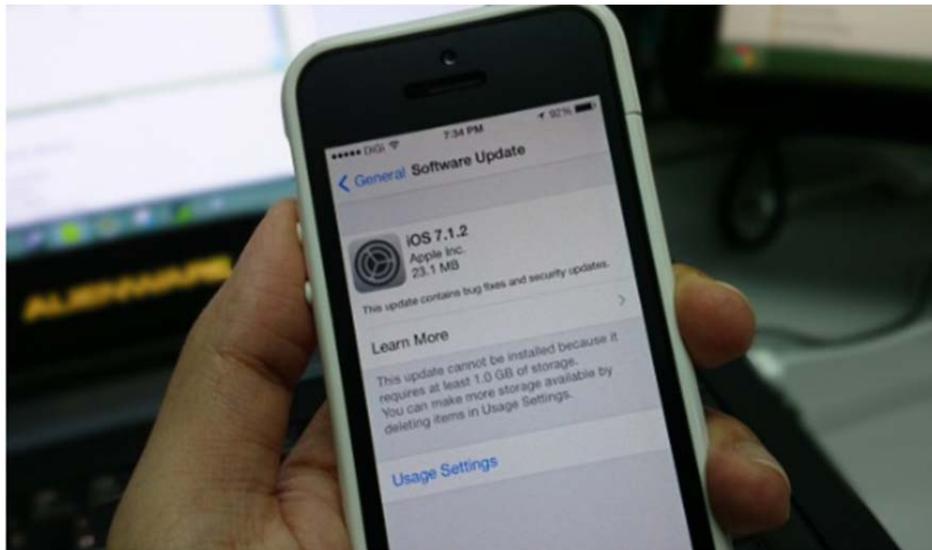
26 <sup>9</sup> Id.

27 <sup>10</sup> <https://support.apple.com/en-us/HT201222> (last visited April 15, 2015)

28 <sup>11</sup> <https://www.apple.com/ios/what-is/> (last visited April 13, 2015)

1           6.       Users have experienced vastly reduced functionality of their iPhones, including, most  
 2 notably, Wi-Fi and Bluetooth connectivity issues, after downloading iOS updates onto their iPhones.  
 3 For example, as alleged herein, the Wi-Fi and Bluetooth connectivity issues experienced by users  
 4 (the “Grayed Out Issue”) appears to be most prevalent for iPhone 4s users after they download iOS  
 5 7.<sup>12</sup> The stripping of the Wi-Fi capabilities of the iPhones essentially rendered the devices obsolete,  
 6 because users were no longer able to utilize the benefits that a Wi-Fi enabled iPhone has access to.  
 7 These features are described more fully below in ¶62, and include not having to expend as much data  
 8 and battery power, faster connection speeds, the ability to connect to the internet in areas where a  
 9 Network connection is unavailable, and others.<sup>13</sup>

10           7.       Apple encourages users to download iOS updates by specifically stating, for example,  
 11 that the update “contains bug fixes and security updates[,]” as was the case with iOS 7.1.2, depicted  
 12 below:<sup>14</sup>



22  
 23  
 24 <sup>12</sup> <http://www.copytrans.net/blog/how-to-fix-iphone-wifi-connectivity-issues/> (last visited April  
 25 13, 2015) (stating: “This is by far the most common iPhone WiFi connectivity problem. The issue is  
 especially widespread on iPhone 4S devices but users having the iPhone 4 and iPhone 5 have also  
 been known to experience the issue.”)

26 <sup>13</sup> <http://smallbusiness.chron.com/advantages-using-wifi-smartphone-71651.html> (last visited  
 27 April 29, 2015)

28 <sup>14</sup> <http://www.techattack.my/16412/apple-releases-ios-7-1-2-minor-bug-fixes-security-updates/>  
 (last visited April 29, 2015)

1 8. Without upgrading, iPhone users have no choice but to continue to deal with  
2 problematic iPhones due to errors in the previous iOS. iOS upgrades often add vital security updates  
3 and bug fixes necessary for the iPhones to properly function. As alleged in more detail below, users  
4 essentially were forced to make a “choice” between leaving their personal data susceptible to  
5 hackers and identity thieves, or upgrade their iOS software which remedies serious security breaches  
6 in their then-current software. In essence, no reasonable consumer, including Plaintiffs, would leave  
7 their iPhone vulnerable to security breaches by not upgrading to new iOS versions.

8 9. Effectively, Apple forced the obsolescence of Plaintiffs’ and Class members’  
9 iPhones.

10 10. Apple refused to offer Plaintiffs, and members of the Class who experienced the  
11 Grayed Out Issue, an acceptable remedy, other than to purchase a new or refurbished iPhone – often  
12 the same iPhone 4s model they owned and used without issues prior to the upgrade.

13 11. The iPhone 4s was the fifth generation in a line of touchscreen based smartphones  
14 designed, developed and marketed by Apple. The iPhone 4s pre-sold over one million units and sold  
15 over four million units just three days after it first launched on October 14, 2011.<sup>15</sup>

16 12. When the iPhone 4s first launched, it came standard with iOS 5.0. According to  
17 Apple, iOS 6, 7 and 8 were and are all compatible with the iPhone 4s, however after upgrading to  
18 iOS 7, Plaintiffs and members of the Class experienced the Grayed Out Issue. iOS 7 was a platform  
19 for over a million mobile apps, iCloud,<sup>16</sup> and includes security features that prevent unauthorized  
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25 <sup>15</sup> [https://www.apple.com/pr/library/2011/10/17iPhone-4S-First-Weekend-Sales-Top-Four-](https://www.apple.com/pr/library/2011/10/17iPhone-4S-First-Weekend-Sales-Top-Four-Million.html)  
26 [Million.html](https://www.apple.com/pr/library/2011/10/17iPhone-4S-First-Weekend-Sales-Top-Four-Million.html) (last visited April 13, 2015)

27 <sup>16</sup> <https://www.apple.com/ios/what-is/> (last visited April 18, 2014) (stating: “iCloud stores your  
28 music, photos, apps, mail, contacts, calendars, documents, and more and wirelessly pushes them to  
all your devices. So if you buy a song, take a photo, or edit a calendar event on your iPad, iCloud  
makes sure it appears on your Mac, iPhone, and iPod touch, too.”)

1 access to Apple devices.<sup>17</sup> The iPhone 4s was sold in black or white, 8, 16, 32 or 64 GB models and  
2 is available for use on AT&T, Verizon, T-Mobile and Sprint networks.<sup>18</sup>

3 13. The iPhone 4s and its predecessor, the iPhone 4, shared the same stainless steel body-  
4 type, but were distinguished by the addition of Siri and iCloud in the iPhone 4s. Siri is speech-  
5 recognition software that comes standard on every iPhone 4s and later. It allows users to verbally  
6 give their iPhones commands and tasks to complete. Because Siri is purportedly capable of both  
7 speech input and output, it can purportedly “speak” back to its user. For example, if you ask Siri to  
8 add an item to your personal calendar, it is programmed to make the addition to your calendar and  
9 verbally confirms that the task is completed.<sup>19</sup>

10 14. A true and correct depiction of Apple’s representation of how Siri replies to iPhone  
11 users’ voice commands appear below:<sup>20</sup>



23 <sup>17</sup> Security features in iOS protect devices by, for example, encrypting iMessages and other  
24 communications and setting up a passcode, which automatically encrypts and protects users e-mail  
25 from third-party apps on the same device. <https://www.apple.com/ios/what-is/> (last visited April 18,  
26 2014)

25 <sup>18</sup> <http://store.apple.com/us/iphone/family/iphone/compare> (last visited April 18, 2014)

26 <sup>19</sup> Apple has been sued for engaging in misleading and deceptive advertising related to the  
27 iPhone 4s’s Siri feature. See [http://www.cbsnews.com/news/apple-sued-by-iphone-4s-users-over-](http://www.cbsnews.com/news/apple-sued-by-iphone-4s-users-over-siri/)  
28 [siri/](http://www.cbsnews.com/news/apple-sued-by-iphone-4s-users-over-siri/) (last visited May 7, 2015).

28 <sup>20</sup> <http://www.apple.com/ios/siri/> (last visited April 18, 2014)

1           15.     Like most apps, Siri requires either a Wi-Fi or Network connection. When using a  
2 Wi-Fi connection for features like Siri, users do not risk incurring overage charges as a result of  
3 exceeding the allotted data in a data plan purchased by a user’s cellular network, like Verizon, Sprint  
4 or AT&T (herein after “Network” or “Network connection”).

5           16.     In addition to Siri, the iPhone 4s originally came equipped with iOS 5. According to  
6 Apple, iOS 5 was the first version of iOS to introduce iCloud, described by Apple as “a  
7 breakthrough set of free new cloud services that work seamlessly with applications on your  
8 iPhone®, iPad®, iPod touch®, Mac® or PC to automatically and wirelessly store your content in  
9 iCloud and automatically and wirelessly push it to all your devices.”<sup>21</sup>

10           17.     Apple prominently featured iCloud in many iPhone advertising campaigns. iCloud is  
11 purportedly able to save or backup data to the cloud, such as photos, videos, purchased music,  
12 movies, apps, books, TV shows, device settings, ringtones and other features. iCloud allows users to  
13 access data stored on the cloud on any Apple device, regardless of the device the information was  
14 originally stored on.

15           18.     iCloud is a feature on all iOS versions<sup>22</sup> beginning with iOS 5 ,and including iOS 7  
16 and 8. As stated by Apple, regardless of whether an iPhone is equipped with iOS 5 or later, iCloud  
17 can only wirelessly backup data when the iPhone is locked, connected to a power source and Wi-Fi  
18 is turned on and connected.<sup>23</sup> iCloud is unable to backup data on a Network connection alone, and  
19 can only do so via a Wi-Fi connection.

20           19.     Below is a true and accurate representation of the iPhone’s Storage & Backup screen,  
21 which states that iCloud backups occur when the device is “plugged in, locked, and connected to Wi-  
22 Fi”:

23  
24  
25  
26 <sup>21</sup> <http://www.apple.com/pr/library/2011/06/06Apple-Introduces-iCloud.html> (last visited April  
18, 2014)

27 <sup>22</sup> <http://support.apple.com/kb/HT4759> (last visited April 13, 2015)

28 <sup>23</sup> [http://support.apple.com/kb/PH12519?viewlocale=en\\_US](http://support.apple.com/kb/PH12519?viewlocale=en_US) (last visited April 18, 2014)



20. Apple unveiled iOS 7 on June 10, 2013. The update was described by Apple as “the most significant iOS update since the original iPhone[.]”<sup>24</sup> iOS 7, which could only be downloaded wirelessly via a Wi-Fi connection, changed the entire look of iPhone’s interface and added hundreds of new features, some of which include: “Control Center, Notification Center, improved Multitasking, AirDrop®, enhanced Photos, Safari®, Siri® and . . . iTunes Radio™, a free Internet radio service based on the music you listen to on iTunes®.”<sup>25</sup>

21. Purportedly, iOS 7 added new apps and dramatically increased the efficiency and performance of apps.<sup>26</sup> As of January 2014, there were over one million apps available for download to iPhone, iPad and iPod touch.<sup>27</sup> While some apps may be downloaded using data from a data plan purchased by a user’s cellular Network, large apps cannot be downloaded wirelessly over a Network connection, and must be downloaded over a properly operating Wi-Fi network. For example, system updates, like iOS 7, cannot be downloaded wirelessly over a Network connection, only a Wi-Fi connection.<sup>28</sup>

22. Although previous iPhones had Bluetooth, the iPhone 4s was the first equipped with Bluetooth 4.0. According to Apple, Bluetooth allows users to “[e]xchange or synchronize data between Bluetooth enabled computers and devices”, “[u]se a Bluetooth enabled wireless keyboard or

<sup>24</sup> <http://www.apple.com/pr/library/2013/06/10Apple-Unveils-iOS-7.html> (last visited April 13, 2015)

<sup>25</sup> Id.

<sup>26</sup> <https://www.apple.com/pr/library/2014/01/07App-Store-Sales-Top-10-Billion-in-2013.html> (last visited April 13, 2015)

<sup>27</sup> Id.

<sup>28</sup> <http://www.cnet.com/how-to/how-to-install-ios-7/> (last visited April 13, 2015)

1 mouse”, “[c]onnect wirelessly to a Bluetooth compatible printer, headset, headphones, or speakers”,  
2 and “[s]hare your internet connection with other Bluetooth enabled devices.”<sup>29</sup> Mike Foley,  
3 executive director of the Bluetooth Special Interest Group, commented on the new Bluetooth  
4 technology available on the iPhone 4s: “It enables an entirely new class of product into the Bluetooth  
5 world.”<sup>30</sup>

6 23. Defendant’s advertising and marketing campaigns for the iPhones were, and are,  
7 designed to induce consumers to acquire or purchase the iPhones over other smartphone devices  
8 because of their Bluetooth and Wi-Fi connection capabilities, large library of apps, iCloud and Siri –  
9 all of which require a Network connection or Wi-Fi connection to operate. For instance, while users  
10 may access some features of iCloud without a Wi-Fi connection, in order to backup and save new  
11 data to iCloud, the iPhone must be connected to a Wi-Fi connection, locked and plugged into a  
12 power source.<sup>31</sup>

13 24. In its promotions for iPhones, Defendant highlighted the iPhones’ ability to download  
14 new generations of iOS, (*e.g.* iOS 7). With each update, users receive the same software as the most  
15 recent iPhone model, which almost always includes new and advanced features. According to  
16 Apple, “because iOS 7 is engineered to take full advantage of the advanced technologies built into  
17 Apple hardware, your devices are always years ahead – from day one to day whenever.”<sup>32</sup>

18 25. Apple routinely advertised its iOS updates for at least the past five years, and  
19 continues to today. This practice has led Apple customers, including Plaintiffs in this case, to expect  
20 that iOS updates will be continuously offered, will add new features, cure bug defects, and/or  
21 remedy security issues on their iPhones. Apple has reinforced this belief by, for example, stressing  
22 to users that the iPhones will “get[] better with every iOS update.” *See* Exhibit A. For example, in  
23 promoting the then-new iOS 4 for the iPhone 3G and 3GS, Apple stated on its website that: “[t]he  
24

25 <sup>29</sup> <http://support.apple.com/kb/HT3039> (last visited April 13, 2015)

26 <sup>30</sup> [http://reviews.cnet.com/8301-19512\\_7-20116316-233/bluetooth-4.0-what-is-it-and-does-it-matter/](http://reviews.cnet.com/8301-19512_7-20116316-233/bluetooth-4.0-what-is-it-and-does-it-matter/) (last visited April 13, 2015)

27 <sup>31</sup> [http://support.apple.com/kb/PH12519?viewlocale=en\\_US](http://support.apple.com/kb/PH12519?viewlocale=en_US) (last visited April 13, 2015)

28 <sup>32</sup> <https://www.apple.com/ios/what-is/> (last visited April 18, 2014)

1 free iOS 4 Software Update brings over 100 amazing new features to your iPhone.” Exhibit B. *See*  
2 *also* Exhibit C (touting new features for iOS 4.2); Exhibit D (regarding iOS 4.3, “[t]he world’s most  
3 advanced mobile operating system keeps getting better. Download the free iOS 4.3 Software Update  
4 and get new features that let you do even more with your iPhone, iPad and iPod touch. The software  
5 update is free. It’s easy. And you can download it right now.”). As alleged in more detail below,  
6 Plaintiff Yastrab, and others, viewed these and other representations prior to purchasing their  
7 iPhones. *See* ¶¶71, 74, 75, 76, 77, 78 and 79.

8         26. Apple has continued this promotional practice with its latest iOS upgrade, iOS 8.  
9 Apple claims iOS 8 is compatible with iPhone 4s, iPhone 5, iPhone 5c, iPhone 5s, iPhone 6 and  
10 iPhone 6 Plus.<sup>33</sup> Indeed, on Apple’s website, Apple advertises the iPhone’s easy update feature and  
11 states that Apple will alert its customers as soon as an iOS update becomes available so that  
12 customers “won’t miss out on all the amazing features in new updates.” Exhibit E. Just as with  
13 previous iOS updates, iOS 8 adds a multitude of new features to compatible devices, such as iCloud  
14 Drive, Family Sharing, new health and fitness applications and many others.<sup>34</sup> As Apple boasts on  
15 its website, after downloading iOS 8 “[y]ou’ll notice major new capabilities in the features you use  
16 every day. And completely new features the let you do things you didn’t realize you wanted to  
17 do.”<sup>35</sup>

18         27. The ability to update the iPhones’ iOS platform is a major draw for consumers  
19 because every iOS update is supposed to add new features and improve older software. For  
20 example, when users downloaded iOS 7, not only did their devices inherit new apps and features,  
21 iPhone’s interface was redesigned to a “simpler, more useful, and more enjoyable” interface.<sup>36</sup> In  
22 addition, iOS 7 added iTunes radio and an updated photos app which allows users to add filters to  
23  
24

25 \_\_\_\_\_  
26 <sup>33</sup> <https://www.apple.com/ios/whats-new/> (last visited March 27, 2015)

27 <sup>34</sup> <https://www.apple.com/ios/whats-new/> (last visited March 27, 2015)

28 <sup>35</sup> <https://www.apple.com/ios/whats-new/design/> (last visited March 27, 2015)

<sup>36</sup> <https://www.apple.com/ios/design/> (last visited April 18, 2014)

1 photos and auto-enhance, rotate, correct red-eye, crop a panorama photo and share photos. iOS 7  
2 also added a Control Center feature and security updates.<sup>37</sup>

3 28. Importantly, Apple routinely represented to customers, including Plaintiffs, that the  
4 iOS software on older iPhone models may be updated to improve the devices performance. For  
5 example, on August 7, 2014, Apple encouraged iPhone 4 users to upgrade to iOS 7 stating that the  
6 software was compatible with the iPhone 4 and that in addition to “[b]ug fixes and other  
7 improvements . . . iPhone 4 users will enjoy improved responsiveness and performance” after the  
8 download. Exhibit F; *see also* Exhibit G (same representation made on July 1, 2014); Exhibit H  
9 (“iOS 6 gives you more features to make the things you do every day even better. It’s free and easy  
10 to upgrade . . .”).

11 29. On its website, Apple has historically had a section devoted to comparing the newest  
12 iPhone with later generations still being sold, which compares each device’s features, such as the  
13 Wi-Fi and Bluetooth capabilities of the iPhones. For example, on June 18, 2010, Apple provided a  
14 side-by-side comparison of the iPhone 4 and later model, iPhone 3GS, and advertised that both  
15 phones had Wi-Fi capabilities, as well as battery life while using the internet for “up to 1- hours on  
16 Wi-Fi[.]” Exhibit I. Again on September 24th, 2012, Apple provided a side-by-side comparison of  
17 the iPhones at issue in this case – the iPhone 5, 4s and 4. On that date, Apple stated, among other  
18 things, that each device was equipped with both Wi-Fi and Bluetooth. Exhibit J. Upon information  
19 and belief, Apple has never sold an iPhone without Wi-Fi capability.

20 30. Further representations regarding the Wi-Fi capabilities of the iPhones on Apple’s  
21 website include an advertisement on June 11, 2010 promoting the iPhone 4’s FaceTime feature and  
22 plainly stated that the feature could be used from “iPhone 4 to iPhone 4 over Wi-Fi.” Exhibit K.  
23 Additionally, Apple boasted improved Wi-Fi capabilities on certain models, such as the iPhone 5,  
24 and stated that the iPhone 5 had “[u]ltrafast wireless that doesn’t sacrifice battery life” and “Dual-  
25 band 802.11n wireless connectivity accelerates [the] Wi-Fi experience, too – up to 150 Mbps.”

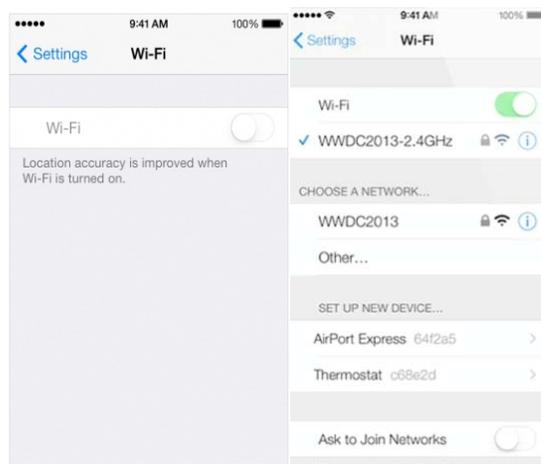
26  
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28 <sup>37</sup> <http://arstechnica.com/apple/2013/09/new-lease-on-life-or-death-sentence-ios-7-on-the-iphone-4/> (last visited April 18, 2014)

1 Exhibit L; *see also* Exhibit M (stating that on the iPhone 5, “Wi-Fi is faster, too. So you can browse,  
2 download, stream content at remarkable speeds, wherever you happen to be”).

3 31. Notwithstanding Apple’s national advertising campaign showcasing the iPhones’ Wi-  
4 Fi capabilities, including the ability to wirelessly download the latest features and apps from new  
5 versions of iOS, backup and store data using iCloud, and the iPhones Wi-Fi and Bluetooth  
6 connection capabilities, the iPhones failed to perform as advertised for Plaintiffs and members of the  
7 Class when iOS 7, and later, were downloaded.

8 32. Because of the Grayed Out Issue, Plaintiffs and Class members who downloaded iOS  
9 7, and later, onto their iPhones discovered that after the download, their Wi-Fi and Bluetooth were  
10 rendered unusable, and their iPhones had significantly diminished functionality. Indeed, after the  
11 update, they could not wirelessly download any iOS patches or versions because such downloads  
12 require a Wi-Fi connection and cannot be downloaded over a Network connection. This meant that  
13 Plaintiffs and members of the Class could not wirelessly download iOS 7.0.6, which provided, for  
14 example, a patch for a major security flaw in iOS 7, as detailed in ¶¶65-66 below.

15 33. The Grayed Out Issue is referred to on Apple message boards as “grayed out”  
16 because the option to turn Wi-Fi on in the iPhone’s setting turns gray and cannot be turned on. A  
17 true and correct depiction of the Grayed Out Issue is displayed below (to the left), as well as how the  
18 screen looks when the option to turn Wi-Fi on is available (to the right):



1           34. Defendant's misrepresentations concerning: (i) the iPhones' ability to download and  
2 run the latest iOS effectively; (ii) Bluetooth and Wi-Fi connection capabilities; and (iii) the ability to  
3 upgrade to new iOS software and run new applications and features, are misleading, false, and  
4 reasonably likely to deceive, and have deceived, Plaintiffs and members of the putative Class.

5           35. Defendant designed, manufactured, marketed, and warranted the iPhones to  
6 consumers nationwide. In conjunction with the sale of the iPhones, Defendant marketed, advertised  
7 and warranted, among other things, that each iPhone was: (i) a smartphone; (ii) able to run  
8 applications via a Wi-Fi connection; (iii) able to run applications through a functioning Bluetooth  
9 connection; (iv) capable of downloading and running future versions of iOS, such as iOS 7 (without  
10 adverse effects to the device's Wi-Fi and Bluetooth connection capabilities);  
11 (v) able to backup data using iCloud and was otherwise fit for the ordinary purpose for which such  
12 goods are used; and (vi) free from defects in materials and workmanship.

13           36. Plaintiffs and members of the Class have been damaged, in that they purchased and/or  
14 own an iPhone 4, iPhone 4s or iPhone 5, downloaded iOS 7 or later, at Defendant's instruction,  
15 experienced the Grayed Out Issue, and were the forced to incur costs to replace the defective iPhone  
16 or to incur significant cellular data usage because they were unable to utilize Wi-Fi in their homes or  
17 public places. Plaintiffs would not otherwise have purchased their iPhones had they known they  
18 would be unable to, at any point, use Wi-Fi or Bluetooth after upgrading.

19           37. Defendant knew or should have known that the iPhones were defective in design  
20 and/or manufacture, were not fit for their ordinary and intended use, and did not perform in  
21 accordance with the advertisements, marketing materials, and warranties disseminated by Defendant  
22 in its nationwide marketing and advertising campaign. Apple consistently represented that the  
23 iPhones were smartphones that included Wi-Fi and Bluetooth features. Apple then encouraged users  
24 to upgrade the iOS software on compatible iPhones and that, doing so, would enhance the iPhone.  
25 At no point did Defendant mention any adverse effects the upgrades would have on the iPhones  
26 functionality. In addition, Defendant knew or should have known that consumers had no real choice  
27 but to upgrade to new iOS versions, including iOS 7, and that the iPhones did not conform with the  
28 reasonable expectations of ordinary consumers because they were, and are, vulnerable to the Grayed

1 Out Issue and/or other deterioration of functionality. Indeed, Defendant has received hundreds of  
2 complaints, including complaints regarding the Grayed Out Issue.

3 38. Plaintiffs bring this action on behalf of themselves and all other similarly situated  
4 consumers who purchased and/or own the iPhone 4, iPhone 4s or iPhone 5 and experienced Wi-Fi  
5 and Bluetooth connectivity issues after downloading iOS 7 and later, in order to halt the  
6 dissemination of Apple's false and misleading advertising message, and to obtain redress for those  
7 who have acquired an iPhone 4, iPhone 4s or iPhone 5. Plaintiffs allege violations of the Consumers  
8 Legal Remedies Act, California Civil Code §1750, *et seq.* (the "California Act"); violations of the  
9 Unfair Competition Law, California Business and Professions Code §17200, *et seq.* (the "UCL");  
10 breach of express warranty; intentional misrepresentation; and negligent misrepresentation.

#### 11 **JURISDICTION AND VENUE**

12 39. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) as modified by the  
13 Class Action Fairness Act of 2005, because at least one member of the Class is a citizen of a  
14 different state than Defendant, there are more than 100 members of the Class, and the aggregate  
15 amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.

16 40. Pursuant to 28 U.S.C. §1391(b), venue is proper in this District because a substantial  
17 part of the events or omissions giving rise to the claims occurred in this District.

#### 18 **INTRADISTRICT ASSIGNMENT**

19 41. A substantial part of the events or omissions which give rise to the claims in this  
20 action occurred in the county of Santa Clara, and as such this action is properly assigned to the San  
21 Jose branch of this Court.

#### 22 **PARTIES**

23 42. Plaintiff David Yastrab ("Mr. Yastrab") is a citizen and resident of the State of New  
24 York. Mr. Yastrab acquired a 16 gigabyte ("GB") version of the iPhone 4s, Serial Number 990-  
25 00101148043, on or about April 30, 2012. Mr. Yastrab experienced the Grayed Out Issue after  
26 upgrading his iPhone 4s' software to iOS 7.

27 43. Plaintiff John Keller ("Mr. Keller") is a citizen and resident of the State of North  
28 Carolina. Mr. Keller acquired a 16 GB version of the iPhone 4s, Serial Number C38HCFUVDTF9,

1 on or about August 25, 2012. Mr. Keller also experienced the Grayed Out Issue after upgrading his  
2 iPhone 4s' software to iOS 7.

3 44. Plaintiff Daniel Arellano ("Mr. Arellano") is a citizen and resident of New York. Mr.  
4 Arellano acquired a 16 GB version of the iPhone 4s, Serial Number C39HF5FGDTF9, in 2009. Mr.  
5 Arellano also experienced the Grayed Out Issue after upgrading his iPhone 4s' software to iOS 7.

6 45. Plaintiff Penelope Shaw ("Ms. Shaw") is a citizen and resident of New York. Ms.  
7 Shaw acquired a 16 GB version of the iPhone 4s, Serial Number DYLLP5TWDTD1, in Raleigh,  
8 North Carolina on December 28, 2012. Ms. Shaw experienced the Grayed Out Issue after upgrading  
9 her iPhone 4s' software to iOS 7.

10 46. Plaintiff Evelyn Cortez ("Ms. Cortez") is a citizen and resident of California. Ms.  
11 Cortez acquired a 16 GB version of the iPhone 4s, Serial Number C39GTKCEDTD3, in mid-2012.  
12 Ms. Cortez also experienced the Grayed Out Issue after upgrading the software on her iPhone 4s to  
13 iOS 7.

14 47. Plaintiff Stanley Williams ("Mr. Williams) is a citizen of North Carolina. Mr.  
15 Williams acquired a 16 GB version of the iPhone 4s, Serial Number 013060007225203, on May 7,  
16 2012. Mr. Williams also experienced the Grayed Out Issue after upgrading his iPhone 4s' software  
17 to iOS 7.

18 48. Plaintiff Michael Robins ("Mr. Robins") is a citizen and resident of the State of  
19 Nevada. Mr. Robins purchased two 16 GB versions of the iPhone 4s, Serial Numbers  
20 C39HFCXLDT9V and DYLLJ0UJDT9Y, on or around April 15, 2012. Mr. Robins experienced the  
21 Grayed Out Issue on both iPhone 4s' after upgrading their iOS software to iOS 7.

22 49. As set forth in greater detail below, the Plaintiffs purchased their iPhones after  
23 viewing certain advertising and other representations by Apple regarding the iPhone features,  
24 including that the iPhones were smartphones, that the iPhones would have Wi-Fi and Bluetooth  
25 connectivity, and/or that the iPhones had iOS software that could, and should, be upgraded. No  
26 Plaintiff would have purchased the iPhone 4s had he or she known that the Wi-Fi and Bluetooth  
27 features of the iPhone may be disabled by upgrading the iOS software.

28



1 working hard to get an iPhone 5 into the hands of every customer who wants one as quickly as  
 2 possible . . . While we have sold out of our initial supply, stores continue to receive iPhone 5  
 3 shipments regularly and customers can continue to order online and receive an estimated delivery  
 4 date. We appreciate everyone’s patience and are working hard to build enough iPhone 5s for  
 5 everyone.”<sup>42</sup>

6 55. The iPhone 4 came standard with iOS 4, the iPhone 4s came standard with iOS 5 and  
 7 the iPhone 5 came standard with iOS 6. Owners of these phones were prompted to download the  
 8 iOS 7 update when it was made available for download September 17, 2013.<sup>43</sup> Defendant’s message  
 9 alerts, notifying iPhone users that an iOS update is available, were effective. As of March 21, 2014,  
 10 85% of active Apple devices had downloaded, and were running, on iOS 7.<sup>44</sup> After Plaintiffs and  
 11 Class members downloaded iOS 7 onto their iPhones, they were unable to connect to Wi-Fi or  
 12 Bluetooth. Because of the Grayed Out Issue, Plaintiffs and Class members could no longer access  
 13 often free Wi-Fi and thus used data unnecessarily and/or incurred data charges for all data used on  
 14 their iPhone 4s. In addition, Plaintiffs and Class members could no longer backup their device using  
 15 iCloud, wirelessly download iOS patches or the newest versions of iOS.

16 56. According to Apple’s website, the iOS 7 update was compatible with the iPhone 4  
 17 and later, iPad 2, iPad with Retina display, iPad Air, iPad mini and iPad mini with Retina display  
 18 and iPad touch 5th generation.<sup>45</sup> Craig Federighi, Apple’s Senior Vice President of Software  
 19 Engineering, commented on the update, stating: “iOS 7 is completely redesigned with an entirely  
 20 new user interface and over 200 new features, so it’s like getting a brand new device, but one that  
 21 will still be instantly familiar to our users.”<sup>46</sup> The look of icons, apps and home screens were all  
 22 dramatically changed to what Apple dubbed a much “simpler, more useful interface” that “brings

23 \_\_\_\_\_  
 24 <sup>42</sup> Id.

25 <sup>43</sup> <http://www.apple.com/pr/library/2013/09/10iOS-7-With-Completely-Redesigned-User-Interface-Great-New-Features-Available-September-18.html> (last visited April 13, 2015)

26 <sup>44</sup> <https://developer.apple.com/support/appstore/> (last visited April 18, 2014)

27 <sup>45</sup> <https://www.apple.com/ios/features/> (last visited April 18, 2014)

28 <sup>46</sup> <http://www.apple.com/pr/library/2013/09/10iOS-7-With-Completely-Redesigned-User-Interface-Great-New-Features-Available-September-18.html> (last visited April 13, 2015)

1 clarity to the entire experience.”<sup>47</sup> Wanting to have the latest and greatest Apple software and  
2 features at no additional cost, millions of iPhone users download updates, like iOS 7. The adoption  
3 rate (the percentage of Apple users that have downloaded an update) for iOS 7 reached 74% in the  
4 first three months of availability, and quickly rose to 80% after four months.<sup>48</sup>

5 57. The iPhone 4, 4s and 5 included a version of Apple’s web browsing application,  
6 Safari, as well as access to the App Store, iTunes Library, iBooks Store, contacts, and notepad. All  
7 iPhone content is downloadable via Wi-Fi or Network connection, but some content may only be  
8 downloaded via a Wi-Fi connection. Applications that are larger in size, for example, can only be  
9 downloaded wirelessly over a working Wi-Fi connection, and not over a Network connection.

10 58. Certain video streaming services, including Amazon’s instant video service,<sup>49</sup> which  
11 allows users to watch tens of thousands of movies and TV episodes on Apple devices, can only be  
12 used with a Wi-Fi connection. These and other features like them are not available over a Network  
13 connection.<sup>50</sup>

14 59. The iPhones can connect to the internet using either a Network connection or properly  
15 operating Wi-Fi connection. When users purchase an iPhone, they must select a data plan from their  
16 cellular provider and use the providers Network connection in order to use internet-enabled features  
17 when Wi-Fi is unavailable. Data plans range in the amount of data a device may access without the  
18 user incurring overage charges. Overage charges occur when a user exceeds the data allowance on  
19 his or her plan. When a user is connected to a Wi-Fi connection, any data used does not count  
20 toward the amount allotted by a user’s monthly data plan.

21 60. Utilizing Wi-Fi can amount to serious cost savings for users who use a lot of data, or  
22 cannot afford more expensive data plans. The ability to use a Wi-Fi connection is appealing to  
23

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24 <sup>47</sup> <https://www.apple.com/hk/en/ios/design/> (last visited April 13, 2015)

25 <sup>48</sup> [http://www.maclife.com/article/news/apple\\_ios\\_7\\_adoption\\_rate\\_now\\_80](http://www.maclife.com/article/news/apple_ios_7_adoption_rate_now_80) (last visited April  
18, 2014)

26 <sup>49</sup> <http://www.amazon.com/gp/feature.html?&docId=1000798971> (last visited April 13, 2015)

27 <sup>50</sup> [http://www.tuaw.com/2012/12/13/amazon-instant-video-app-updated-to-support-to-iphone-](http://www.tuaw.com/2012/12/13/amazon-instant-video-app-updated-to-support-to-iphone-and-ipod-t/)  
28 [and-ipod-t/](http://forums.macrumors.com/showthread.php?t=1507359) (last visited on April 18, 2014); [http://forums.macrumors.com/showthread.php?t=](http://forums.macrumors.com/showthread.php?t=1507359)  
1507359 (last visited April 13, 2015)

1 customers because downloading data-rich content using a Network connection can be very  
2 expensive, especially when users exceed the monthly data limits of their plan and have to pay costly  
3 overage fees.

4 61. For example, Verizon Wireless charges \$30 for 2GB of monthly data, and \$10 for  
5 each GB over the allotted 2GB per month.<sup>51</sup> The two other data plans include 5GB for \$50 per  
6 month and 10GB for \$80 per month.<sup>52</sup> If a user goes over this or her plan's allotted data, regardless  
7 of whether they originally had a 2GB, 5GB or 10GB plan, they are charged \$10 for each GB over the  
8 plan.<sup>53</sup> Notably, data plan charges are paid in addition to the cost for cellular minutes and  
9 purchasing the actual device.

10 62. In addition the significant cost-saving advantages of utilizing a Wi-Fi connection  
11 rather than a Network connection, other benefits of using a Wi-Fi connection to access the internet  
12 include, but are not limited to: (i) Wi-Fi connections can be significantly faster than Network  
13 connections, which allow iPhone users to download or upload information quicker than on a  
14 Network connection alone; (ii) using a Wi-Fi connection helps to preserve the battery life of the  
15 iPhone when compared to using a Network connection; (iii) Wi-Fi is often available where a  
16 Network connection is not, such as on a plane; (iv) an iPhone is able to connected to the internet via  
17 a Wi-Fi connection even if the user does not have contract with a cellular telephone service provider,  
18 such as AT&T or Verizon. For these reasons and more, having a Wi-Fi enabled device is an  
19 essential part of the iPhone which, if eliminated, significantly – if not completely – diminishes the  
20 devices value and utility.

21 63. After downloading the iOS 7 update, Plaintiffs lost the ability to connect to Wi-Fi or  
22 Bluetooth and were no longer able to run Siri, or other applications via a Wi-Fi connection, and  
23 could only download and run these applications using a Network connection, thus using data from  
24 their cellular plan.

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25  
26 <sup>51</sup> <http://www.verizonwireless.com/b2c/includes/plans/dataInfoOverlay.jsp> (last visited April  
13, 2015)

27 <sup>52</sup> Id.

28 <sup>53</sup> Id.

1           64. Perhaps most ironically, updates like iOS 7, because of their large size, can only be  
2 downloaded wirelessly via a Wi-Fi connection. Therefore, Plaintiffs and members of the Class are  
3 unable to wirelessly download any future iOS updates. The ability to download iOS updates is  
4 important because it allows users to add the latest iOS features on their older devices, but is also  
5 important when iOS versions are flawed in a way that is only remedied through a downloadable  
6 patch or later version of iOS.

7           65. For example, soon after iOS 7 was released, it was revealed that the update had a  
8 major security flaw requiring users to download a software patch, iOS 7.0.6, to fix. iOS 7.0.6 was  
9 the sixth update to iOS 7. This security flaw in iOS 7 effected how the software validates SSL  
10 certificates, which are critical in establishing secure sessions. To establish secure sessions, websites  
11 or devices “verfi[y] that the information is coming from a trusted source. By validating the  
12 certificate, the bank website knows that the request is coming from the user, and is not a spoofed  
13 request by an attacker. The browser also relies on the certificate to verify the response came from  
14 the bank’s servers and not from an attacker sitting in the middle and intercepting sensitive  
15 communications.”<sup>54</sup>

16           66. In describing the iOS 7.0.6 patch, Apple stated on its website that the reason for the  
17 patch was that “[a]n attacker with a privileged network position may capture or modify data in  
18 sessions protected by SSL/TLS.”<sup>55</sup> Devices without the patch are vulnerable to attack by hackers  
19 who “could intercept, and even modify, the messages as they pass from a user’s iOS 7 device to  
20 secured sites, such as Gmail or Facebook, or even for online banking sessions.”<sup>56</sup> Users cannot  
21 download iOS updates over 3G/4G or LTE connections.

22           67. In an article titled “Apple’s Serious Security Issue: Update Your iPhone or iPad  
23 Immediately,” the *New York Times* stressed the importance of downloading the security issue patch.  
24 The article explained: “In a nutshell, Apple has a security hole in both its mobile and desktop  
25

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26 <sup>54</sup> <http://www.pcmag.com/article2/0,2817,2453936,00.asp> (last visited April 13, 2015)

27 <sup>55</sup> <http://support.apple.com/kb/HT6147> (last visited April 13, 2015)

28 <sup>56</sup> <http://securitywatch.pcmag.com/apple/320936-apple-fixes-fundamental-ssl-bug-in-ios-7> (last  
visited April 13, 2015)

1 operating systems that could let a malicious hacker jump in on what you think is a secure Web  
2 transaction if you're on a public Wi-Fi network like those at a coffee shop, airport or some other  
3 location. . . . Thanks to this flaw, your browser can't verify the authenticity of an encryption  
4 certificate, meaning someone could easily be pretending to be your bank's website, your doctor's  
5 office site or a credit card application form."<sup>57</sup>

6 68. The security flaw revealed in iOS 7 was not a one-time occurrence, either. Media  
7 reports, the National Cybersecurity and Communications Integration Center and the U.S. Computer  
8 Emergency Readiness Teams have recently warned of a major security flaw in iOS .1.1, 7.1.2, 8.0,  
9 8.1 and 8.1 beta<sup>58</sup> and later labeled the flaw "Masque Attack."<sup>59</sup> Masque Attack refers to "fake apps  
10 designed to resemble a legitimate bank or email program could replace genuine apps installed  
11 though Apple's App Store and siphon off users' personal information back to hackers without users'  
12 knowledge."<sup>60</sup> The Masque Attack flaw allows "[h]ackers [to] potentially steal login credentials,  
13 access sensitive data stored on iOS devices and remotely monitor activity on those devices."<sup>61</sup> The  
14 first Masque Attack was reported to Apple on July 26, 2014 and was made public by researchers at  
15 cyber security firm FireEye in November 2014. According to FireEye, there is a second flaw called  
16 "Masque Attack II" – part of which has been fixed in the iOS 8.1.3 security content update issued in  
17 February 2015.<sup>62</sup> Masque Attack II is even more worrisome than the first, because "attackers might  
18 be able to conduct masque attack II through an app in the App Store."<sup>63</sup> Indeed, as of February

19 \_\_\_\_\_  
20 <sup>57</sup> [http://bits.blogs.nytimes.com/2014/02/24/apples-serious-security-issue-update-your-iphone-or-ipad-immediately/?\\_php=true&\\_type=blogs&\\_r=0](http://bits.blogs.nytimes.com/2014/02/24/apples-serious-security-issue-update-your-iphone-or-ipad-immediately/?_php=true&_type=blogs&_r=0) (last visited April 13, 2015)

21 <sup>58</sup> <https://www.fireeye.com/blog/threat-research/2014/11/masque-attack-all-your-ios-apps-belong-to-us.html> (last visited April 14, 2015)

22 <sup>59</sup> <http://www.cnet.com/news/apple-downplays-threat-posed-by-masque-attack-bug/> (last  
23 visited April 15, 2015)

24 <sup>60</sup> <http://www.cnet.com/news/apple-downplays-threat-posed-by-masque-attack-bug/> (last  
visited April 14, 2015)

25 <sup>61</sup> <http://www.reuters.com/article/2014/11/13/us-apple-cybersecurity-dhs-idUSKCN0IX29T20141113>(last visited April 14, 2015)

26 <sup>62</sup> [http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-  
27 attacks-says-FireEye](http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-attacks-says-FireEye) (last visited April 14, 2015)

28 <sup>63</sup> [http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-  
attacks-says-FireEye](http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-attacks-says-FireEye) (last visited April 14, 2015)

1 2015, “28% of devices use iOS version 7 or lower, which are still vulnerable.”<sup>64</sup> Even among users  
2 who have downloaded iOS 8, those that have not upgraded to the latest version, iOS 8.1.3 – an  
3 estimated 72% of iOS 8-run devices – are still vulnerable as well.

4 69. The occurrence of major security flaws that are remedied only by upgrading iOS is a  
5 prime example of the lack of real choice Class members faced when deciding whether to upgrade the  
6 iOS software on their iPhones. Even if they had known that upgrading would, or could, cause the  
7 Grayed Out Issue, which they did not, they would have been forced to upgrade their iPhones’ iOS  
8 software regardless, because the update provided necessary protection against hackers and identity  
9 thieves. Thus, Plaintiffs and members of the Class were forced to perform an upgrade that resulted  
10 in their iPhones becoming completely obsolete.

11 70. Despite having full knowledge of this issue, Apple has refused to provide an adequate  
12 remedy, and instead has profited from its scheme. Indeed, Apple has refused to provide a “fix” for  
13 the Grayed Out Issue, has denied Class members the ability to downgrade their software to a  
14 previous version and has only provided, as the sole source of recourse for aggrieved Class members,  
15 the option to purchase a new or refurbished iPhone for hundreds of dollars. Essentially, Apple has  
16 left members of the Class with no choice but to purchase a new iPhone due to damage caused by an  
17 update Defendant released, and distributed, to them on their previously fully functioning iPhones.

#### 18 **Problems Emerge After iOS 7 Is Downloaded by iPhone Users**

19 71. Plaintiff, Mr. Yastrab acquired his 16 GB version iPhone 4s, Serial Number 990-  
20 00101148043, on or around April 30, 2012. On or before April 30th, he visited Apple’s website,  
21 www.Apple.com, to find out more about the iPhone 4s. On Apple’s website he read various  
22 representations made by Apple regarding the iPhone 4s, including general statements regarding:

- 23 a. the technical specifications of the iPhone 4s, which stated that the iPhone 4s  
24 came equipped with Bluetooth wireless technology and Wi-Fi;
- 25 b. the special features of the iPhone 4s, which included iCloud, FaceTime, Siri  
26 and other applications;

27 <sup>64</sup> [http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-](http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-attacks-says-FireEye)  
28 [attacks-says-FireEye](http://www.computerweekly.com/news/2240240929/Apples-iOS-still-vulnerable-to-masque-attacks-says-FireEye) (last visited April 14, 2015)

1 c. the iOS 5 software, which the iPhone 4s came equipped with, accompanied  
2 by Apple's statements that earlier iPhone generations could upgrade to iOS 5  
3 software, such as "iOS 5 software update. Your iPhone gets better with every iOS  
4 update. To get the free iOS update, just connect your iPhone to your Mac or PC,  
5 open iTunes, and follow the onscreen instructions. Learn More." *See, e.g.* Exhibit  
6 N.

7 72. After reading these, and similar other representations, Mr. Yastrab understood at the  
8 time of purchasing his iPhone 4s that it was being purchased with the most recent software, iOS 5,  
9 and that as new software became available he would have the option to upgrade in order to improve  
10 the performance of the device. This belief is what led him to download iOS 7, which subsequently  
11 resulted in his iPhone's Wi-Fi and Bluetooth being disabled. He does not recall any representations  
12 by Apple suggesting that an upgrade to the iOS on his iPhone 4s could have a negative impact on the  
13 functionality of the iPhone's hardware features, including Wi-Fi or Bluetooth features.

14 73. In or around October 2013, after his iPhone 4s was used without any issues, an alert  
15 from Apple appeared on his iPhone alerting of the availability of the iOS 7 update. The update was  
16 promptly downloaded. After the download was complete, the Wi-Fi and Bluetooth connection  
17 capabilities on the iPhone were "grayed out" or, in other words, disabled.

18 74. Plaintiff John Keller also experienced the Grayed Out Issue. Mr. Keller purchased  
19 the iPhone 4s because of its Wi-Fi and smartphone capabilities, and based on Apple's  
20 representations about those attributes. After being prompted with an alert by Apple, he upgraded his  
21 iPhone's iOS software to iOS 7. Shortly after the upgrade, the Wi-Fi became Grayed Out and  
22 unusable. Mr. Keller attempted the recommended trouble shooting methods suggested by Apple on  
23 its website, but none of them remedied the problem. He also spoke to an Apple customer service  
24 representative, who suggested that he visit an Apple store because his iPhone was no longer under  
25 warranty. Mr. Keller then drove approximately fifty miles to his nearest Apple store where an Apple  
26 Genius Bar Representative attempted to reset the iPhone, but ultimately told him that the Wi-Fi  
27 problem corresponded to the iOS upgrade and that his only option was to purchase a new or  
28 refurbished iPhone 4s. He declined to purchase another iPhone 4s because he felt that it would have  
the Gray Out Issue again after upgrading the software and he did not want an iPhone that could not  
be upgraded without issue. Mr. Keller wrote a letter to Apple CEO Tim Cook, dated May 31, 2014,

1 explaining his experience and relaying his frustration. Had Mr. Keller known that the iPhone 4s  
2 could have Grayed Out if the iOS software was upgraded he would not have downloaded it.  
3 Moreover, had he known that upgrading the iPhone's iOS software could cause the Wi-Fi feature to  
4 become unusable, he never would have purchased the iPhone 4s.

5 75. Plaintiff Arellano purchased an iPhone 4s for both himself and his wife, Edtya  
6 Arellano (together, the "Arellanos"), after seeing and hearing various Apple advertisements  
7 regarding the features of the device, including TV commercials and the Apple website, both of  
8 which represented the iPhone 4s' new features and smartphone capabilities. The Arellanos both  
9 purchased the iPhone 4s because they previously owned other Apple products and found them to be  
10 reliable, and because it was a smartphone with camera features, Wi-Fi capability and a multitude of  
11 applications. The Arellanos' iPhone 4s' worked fine, and without any issues, until Mr. Arellano  
12 upgraded his iOS software to iOS 7.1. Immediately, Mr. Arellano's iPhone experienced the Grayed  
13 Out Issue. Mrs. Arellano did not upgrade her iPhone 4s for fear of having her iPhone's Wi-Fi Gray  
14 Out as well. However, because she did not upgrade her iPhone's software to the latest iOS, the  
15 device could no longer run several applications. The Arellanos would not have purchased the  
16 iPhone 4s had they known the iOS software could not be upgraded without probable damage to the  
17 Wi-Fi features of their iPhones.

18 76. Plaintiff Shaw purchased an unlocked iPhone 4s on December 28, 2012 for use when  
19 she was studying abroad in Paris, France. She purchased the iPhone specifically because she needed  
20 a smartphone with Wi-Fi, as well as a map application for use while she was abroad, and had seen or  
21 heard Apple's representations about these attributes. The iPhone worked without issue until she  
22 upgraded her iPhone to iOS 7 and the Wi-Fi and Bluetooth capabilities Grayed Out. After  
23 discussing the issue with an Apple Genius Bar Representative at a store in London, England, she was  
24 told she had no other option but to pay for a replacement iPhone. Had Ms. Shaw known that the iOS  
25 upgrade could have adversely affected her iPhone's Wi-Fi and other features, she would not have  
26 downloaded it. Furthermore, she would not have purchased the iPhone 4s had she known that the  
27 iOS updates Apple could send to her iPhone would cause the Grayed Out Issue.

28

1           77. Plaintiff Cortez purchased an iPhone 4s in mid-2012 from a Sprint store in California.  
2 After upgrading to iOS 7, her iPhone experienced the Grayed Out Issue. Prior to purchasing the  
3 iPhone 4s, she viewed iPhone 4s commercials featuring Siri, a new feature on the iPhone 4s  
4 smartphone. She purchased the iPhone 4s because she liked the new features, including iMessage,  
5 and because it was a smartphone. Ms. Cortez attempted to remedy the Grayed Out Issue, and  
6 followed troubleshooting instructions she found on the Apple website for the Grayed Out Issue.  
7 None of the troubleshooting worked. She also spoke to an Apple Genius Bar Representative at the  
8 Beverly Center Apple Store, who told her that the Grayed Out Issue could not be fixed and that she  
9 would need to purchase a new device. She would not have purchased the iPhone 4s if it did not have  
10 Wi-Fi. She also would not have purchased the device if she had known that upgrading the iOS  
11 software could cause the Grayed Out Issue.

12           78. Plaintiff Williams purchased an iPhone 4s on or about May 7, 2012 and experienced  
13 the Grayed Out Issue after upgrading his iPhone 4s' software to iOS 7.1. Mr. Williams purchased  
14 the iPhone 4s specifically because it was a smartphone with Wi-Fi capabilities and based on  
15 representations by Apple about those capabilities. At Mr. Williams place of business, he does not  
16 receive cellular/data service and relies entirely on a Wi-Fi connection to be able to receive emails,  
17 and other features on his iPhone. He also travels for work often and requires all of the features of a  
18 smartphone so that he does not need to bring a computer when he travels. In an attempt to remedy  
19 the problem, Mr. Williams visited an Apple Store in North Carolina, but was told that his only  
20 choice was to purchase an Apple Care package, or a new iPhone, as the manufacturer warranty on  
21 his iPhone 4s had expired. Mr. Williams would not have purchased the iPhone 4s had it not been  
22 equipped with Wi-Fi. He also would not have purchased the iPhone had he known that the device's  
23 iOS software upgrades would cause the Grayed Out Issue.

24           79. Plaintiff Robins purchased two iPhone 4s', one for himself and one for his wife, on or  
25 about April 15, 2012. Each iPhone 4s experienced the Grayed Out Issue after upgrading the devices  
26 iOS software to iOS 7. Mr. Robins, prior to purchasing the iPhones, viewed an Apple commercial  
27 featuring the iPhone 4s' new Siri feature, as well as other on features on the device. He also went  
28 online to Apple's webpage and viewed Apple's comparison of iPhone models 3GS, 4 and 4s. The

1 comparison included the representation that each model came equipped with Wi-Fi and Bluetooth  
 2 capabilities. When the Grayed Out issued occurred, Mr. Robins contacted Apple support, which told  
 3 him that the devices were out of warranty and the only option was to replace them with new devices  
 4 at a cost of about \$200 each. After later speaking with a supervisor, Apple agreed to replace one of  
 5 Mr. Robins iPhones with a refurbished model. The refurbished device's Wi-Fi Grayed Out once Mr.  
 6 Robins upgraded the iOS software to iOS 7.1. Had Mr. Robins known that upgrading the iPhones  
 7 iOS software could possibly cause the Grayed Out Issue, he would not have purchased them.

8         80. The Grayed Out Issue Plaintiffs experienced is not unique and has been experienced  
 9 by an unknown number of other iPhone 4, 4s and 5 users after they downloaded iOS 7 onto their  
 10 devices. The number of impacted consumers, based on online reports, blog entries and message  
 11 board posts, is reasonably believed to be in the hundreds, if not thousands. Defendant has received  
 12 countless comments regarding Wi-Fi and Bluetooth connectivity issues after iOS 7 was downloaded.

13         81. In a discussion thread on Apple's support site titled "Wifi greyed out on iphone 4s  
 14 with ios 7," a sampling of users' posts included the following:

15         **Haymen**

16         Sep 22, 2013 5:12 PM

17         What happened with me is really the same except Wifi was working for almost a day  
 but suddenly both Wifi and Bluetooth has stopped at once please any advice????<sup>65</sup>

18         **nealfrirl**

19         Sep 25, 2013 5:03 AM

20         I have this EXACT problem too. The Wifi is generally greyed out, then after  
 restarting it about 50 times, updating it 12 time, standing on my head and doing the  
 twist it comes back but only briefly.

21         I'm spending a fortune on 3G because of it!  
 My bluetooth is also affected. HEEEEELP!<sup>66</sup>

22         **PetrVIVIVI**

23         Sep 26, 2013 1:22 PM

24         Hi. I have the same problem. WIFI and bluetooth are grayed out and I can not turn  
 them on. Hope that this is some software issue. I dont want to replace any hardware  
 because I am out of warranty. I have iphone 4S 16GB with IOS7.<sup>67</sup>

25         **loniep**

26         Sep 30, 2013 3:48 AM

27 <sup>65</sup> <https://discussions.apple.com/thread/5331834?tstart=0> (last visited April 18, 2014)

28 <sup>66</sup> <https://discussions.apple.com/thread/5331834?start=15&tstart=0> (last visited April 13, 2015)

<sup>67</sup> Id.

1 I've had the same problem since updating to ios7 (greyed out wifi etc.). I've been on  
 2 Apple chat for over 2 hours and they are not prepared to fix (as out of warranty). I  
 3 went to my cellular provider (Vodafone) who state that it is a known issue by Apple!  
 4 They won't fix the phone for free even though it's a result of an ios update! They've  
 5 told me (on Apple Chat) that the ios update only highlighted the problem - the  
 6 hardware was 'about' to fail in any case! Not sure how true that is!<sup>68</sup>

7 **iPhoneandy**

8 Sep 30, 2013 1:17 PM

9 Same here, it sounds like full BS from apple. WiFi and all functions has been  
 10 perfectly well and my phone has been gently used generally and for sure from update  
 11 to iOS7. WiFi started to loose connection to networks and refresh the list all the time  
 12 then it got greyed out, came back for a short while then permanently beeing greyed  
 13 out. Freezing the phone to make it work is a clear sign of HW failure. The fact that  
 14 a lot of people experience the same problem shortly after iOS update on totally  
 15 different ages of phones is also clearly pointing out iOS bug as the cause. Why does  
 16 it take different time from update to malfunction, well, circuits are different, usage is  
 17 different, for example in how warm environment is it used. Was phone used as GPS  
 18 while charging and lots of apps running in a hot car, the phone most likely was  
 19 extremely much warmer then a phone used minimally.

20 APPLE!!! Take care of this! We know you make huge margins and they must be  
 21 used to sponsor misstakes that are caused by YOUR misstakes. Believe me I know  
 22 my homework, I'm working in electronics business with embedded development and  
 23 HW manufacturing and testing.<sup>69</sup>

24 **Bin Kroon**

25 Oct 3, 2013 11:12 AM

26 I am having the exact same problem on my iPhone 4S after installing iOS7. Today I  
 27 installed iOS7 and since the upgrade the wifi is now greyed out and I can not get it  
 28 switched on anymore. Tried several restarts, have reset the network settings but all  
 to no avail. However Bluetooth still does work, but the BT sound quality has  
 drastically deteriorated since the upgrade to iOS7 to the extent that people can no  
 longer understand me, making BT no longer usable. (until this morning the use of  
 Bluetooth was flawless and crystal clear using my Plantronics Voyager headset). So  
 far in this discussion I see no response from Apple in this issue. So it seems we are  
 all out in the dark on possible solutions which only Apple can provide. My iPhone is  
 now a little over a year old and I find it hard to accept that Apple would not assist her  
 customers in solving a problem caused as a result of the iOS7 upgrade. Furthermore  
 I NEED my wifi when travelling abroad and I fly to Asia next week. Without a  
 working iPhone with wifi I can not communicate with my office. So if Apple does  
 not come to the rescue I'll have no choice but to purchase a new phone. And I can  
 assure you, in that case it will most likely not be an iPhone. Therefor my plea here  
 on this Apple website to the Apple support team: Please come to our rescue and  
 assist your customers in finding a solution to this problem!!<sup>70</sup>

29 **Chti59**

30 Oct 3, 2013 11:38 AM

31 My iPhone 4S is going in for service tomorrow after having tried all the tricks  
 32 (except anything involving temperature changes) to no avail. Since updating it to ios

33 <sup>68</sup> Id.

34 <sup>69</sup> Id.

35 <sup>70</sup> <https://discussions.apple.com/thread/5331834?start=30&tstart=0> (last visited April 13, 2015)

1 7, the wifi button is greyed out, I have no bluetooth and no reception to the point  
2 where the Apple representative I spoke to over the phone asked to ring me back on  
my home line and added the reception issue to my file.

3 Thankfully in Europe it's covered for 2 years so barring any unforeseen problems, I  
4 should either be getting a fixed phone or a new phone. So disappointed that a  
company like Apple could make such a huge mistake!<sup>71</sup>

5 **ios7.2**

Oct 4, 2013 9:28 PM

6 After I upgraded my iphone 4S to IOS 7, the Wifi and bluetooth worked for 2 days  
7 and stopped working after that. My wifi is grayed out. I have tried all the tricks  
8 nothing is working for me. I went to apple store, the tech after running the diagnosis  
9 tells me that he is not able to identify what the issue is... how Sad! unfortunately the  
phone is not under warranty. Apple has to acknowledge that this is an IOS 7 issue  
and release a fix. If not they should recall the defective iphone 4s. Very  
disappointed with Apple.<sup>72</sup>

10 **Ezuq**

Nov 17, 2013 11:55 AM

11 So, this is my situation. My WiFi got greyed out and it didn't take me long to realise  
12 that it was a hardware issue. I waited around for 3 weeks trying all sorts of quick  
13 fixes. From removing the WiFi chip and heating it, to placing it in a freezer. The  
14 freezer solution worked, but for me, it only lasted 5-20 minutes, the my phone would  
15 get hot. Seeing there was no solution, I ordered a genuine iPhone 4S Wifi chip. It  
was only £5 and is cheaper than paying £200 for an iPhone 4S. So after I ordered it,  
my battery went to around 18% and turned itself off. I thought nothing of it and left  
it to charge. A couple of seconds later, the apple logo appeared, and the home screen  
came on.

16 Then, I looked up at the notification bar and saw my WiFi was on! To see if this was  
17 a fluke, I played some of the most graphically intense games I could get from the  
18 App Store to get my phone very hot. And guess what? WiFi is still on!! One thing I  
19 have noticed is that my phone is much cooler than normal. Anyway, for those who  
20 are in a less fortunate situation than myself, replace the WiFi chip. It is easy to do,  
and is MUCH, MUCH cheaper than getting a new iphone. If anyone wants a link to  
a video which I used to remove the WiFi chip, message me, and if you want the ebay  
link to the WiFi module I purchased, also message me.<sup>73</sup>

21 82. Another thread on Apple's support site entitled "WIFI disabled – Greyed out since  
22 iOS 7 update on iphone 4s" further details consumers' common complaints:

23 **Tarrantion82**

Sep 23, 2013 3:32 AM

24 My 4s has had no WIFI issues until i updated to iOS 7. after the update it worked for  
25 about 20 hours then disabled. I noticed my wifi was no longer connected, i checked  
the wifi was on and it was, still unable to connect i restarted the phone and now the

26 <sup>71</sup> Id.

27 <sup>72</sup> <https://discussions.apple.com/thread/5331834?start=45&tstart=0> (last visited April 13, 2015)

28 <sup>73</sup> <https://discussions.apple.com/message/23819352#23819352> (last visited April 13, 2015)

1 WI-FI button is grey, dim and wont switch on. However Bluetooth does work fine,  
 2 so I'm thinking it's not the chip.  
 3 network setting reset  
 4 factory reset..... itunes crashed while restoring my data so now unable to re-sync my  
 5 personal data  
 6 battery drain  
 7 freezer  
 8 nothing seems to fix this issue ! after reading forums it seems a similar thing  
 9 happened when iOS 6.x.x was released, my 4s is out of warranty, apple seem to be  
 10 taking no responsibility for the issue, clearly caused by the update as had zero issues  
 11 until that point... which I find "convenient" as it so happens to co-inside with new  
 12 iphone launches.  
 13 Please help anyone in the same boat ?  
 14 not a happy camper!<sup>74</sup>

15 **manos\_var**

16 Sep 24, 2013 11:19 AM (in response to Tarrantion82)

17 I had two iPhone 4s with the same problem, My first phone wifi greyed out after 11  
 18 months, so it was under warranty and replaced from Apple. The replacement's  
 19 iPhone wifi greyed out too after 32 days and replaced again (replacement Iphone  
 20 have 3 months under warranty). Now i have the 3rd iPhone 4s in a year, and hope to  
 21 be more lucky...<sup>75</sup>

22 83. Other internet forums and posts, created to discuss the Grayed Out Issue, read:

23 **epi231 May 23, 2013 2:50 PM**

24 Iphone 4S, running iOS 6.1.3

25 Wifi toggle is greyed out. Tried rebooting and resetting the network settings in Reset  
 26 Options but nothing works. I googled this problem and it seems many Iphone 4s  
 27 owners are having this issue. There is also a discussion in the Apple forums  
 28 regarding this issue. I would like to know from Verizon what my options are. From  
 reading the Apple forums it seems its a issue with the product itself and not the user.  
 You can google it or go on the apple forums and look for yourself. This is a issue  
 which is no fault of the user.<sup>76</sup>

29 **tjomro Jun 1, 2013 9:42 AM (in response to epi231)**

30 I am having this same issue. My iPad connects fine but like epi231 said - wifi is  
 31 greyed out (and so is bluetooth on mine) I have had the phone for 6 months and for  
 about a week this has been an issue. I am going to stop at a store as you did. I would  
 really just like it fixed as I have a few apps that I depend on with info in them.  
 Thanks for your information, wish me luck!<sup>77</sup>

32 **chrispy3093 Sep 25, 2013 11:06 PM**

33 Wifi Grayed out after ios7 updated among other things.

34 So everything worked perfectly until I updated to ios7. Now my wifi will not turn  
 35 on, or should i say allow me to turn it on. I have tried everything including a factory  
 36 reset on my phone and still nothing. When I say everything, I mean: Network

37 <sup>74</sup> <https://discussions.apple.com/thread/5356193> (last visited April 13, 2015)

38 <sup>75</sup> <https://discussions.apple.com/thread/5356193?start=15&tstart=0> (last visited April 13, 2015)

<sup>76</sup> <https://community.verizonwireless.com/thread/799058> (last visited April 13, 2015)

<sup>77</sup> Id.

1 settings reset, network settings reset with airplane mode on, erased ( ' ) from iphone  
 2 name, etc. Pretty much everything I could find on the web relating to the problem I  
 3 tried. I have also taken my phone to a Verizon store, where the woman suggested my  
 4 antenna was toast and i probably needed a new phone... I thought that was pretty cute  
 5 considering i could still make call's and still use my data on my phone. I also told  
 6 her several times that it started only after I had installed the update. Sorry to sound  
 7 kind of angry, but i am quite frustrated. If anyone could help at all that would be  
 8 much appreciated.<sup>78</sup>

9 **TonyaS13 Sep 30, 2013 8:46 AM (in response to Verizon Wireless Customer Support)**

10 I am having the same dilemma. Not longer after I downloaded iOS7, my WiFi is  
 11 also became grayed out. I reset my Network Settings, to no avail. I then went to  
 12 Settings > General> Software Update and there is a version 7.0.2 available. Problem  
 13 is - I don't have WiFi. WiFi is required to "Download and Install" the update. What  
 14 can be done to retain my WiFi?? I have an iPhone 4S.<sup>79</sup>

15 MacRock

16 Member

17 Group:Members

18 Posts:87

19 Joined:04-January 08

20 Posted 27 October 2013 - 04:16 PM

21 Has anyone seen this thread: <https://discussions....?thread=5328365> My iPhone 4S  
 22 won't recognize any WiFi (in coffee shops, at my work, at home) now that I have  
 23 "upgraded" to the latest IOS. It also won't open anything to type in any passwords  
 24 when it does see a network. Why does Apple even release this crap without testing  
 25 for bugs? This is almost as bad as Lion. Is there a fix on the horizon. I now have a  
 26 fairly useless iPhone and iPad Mini. I now have to carry my original non-updated  
 27 iPad to log into WiFi if I go out. Apple is quickly losing more points with me.  
 28 Android is looking better all the time.

Is there a known simple fix or are well all (note 600+ complaints to Apple) screwed?<sup>80</sup>

29 **brettyboo 10/11/13 at 1:59am**

30 My wife and I both have a 4s.

31 We both upgraded to iOS 7.0.2.

32 BOTH NOW FAIL WIFI.

33 Just random, right? You tell me the odds.<sup>81</sup>

34 **Xyniss**

35 10/16/13 at 12:19pm

36 I have had this iPhone 4S since October 2012. I bought it with it's original iOS 5  
 37 and upgraded to iOS 6 having no problems. The button for the wifi button didn't  
 38 grey out until I updated to iOS 7. This means that this is not a hardware problem,  
 39 because the phone was perfectly fine with the previous two iOS updates. Now I

40 <sup>78</sup> <https://community.verizonwireless.com/thread/806529> (last visited April 13, 2015)

41 <sup>79</sup> Id.

42 <sup>80</sup> <http://forums.macworld.com/index.php?/topic/153502-wifi-doesnt-work-with-ios-7/> (last  
 43 visited April 18, 2014)

44 <sup>81</sup> [http://forums.appleinsider.com/t/160054/ios-7-update-brings-more-wi-fi-issues-for-some-  
 45 iphone-4s-owners/40](http://forums.appleinsider.com/t/160054/ios-7-update-brings-more-wi-fi-issues-for-some-iphone-4s-owners/40) (last visited April 13, 2015)

1 can't even turn my wifi on, having to use my 4G every day even though my home  
 2 internet is faster I don't have the option to be able to use it. I hope the next update  
 3 iOS 7.0.3 would fix this issue, I really hope to stick with the Apple company because  
 I personally love iPhones more than the Samsung Galaxy phones. Apple please do  
 your best and help us!<sup>82</sup>

4 **MegsMore**

10/17/13 at 11:59am

5 Well, I guess I'm one of the UNLUCKY ones! y 4S - only a year and 7 months old,  
 6 worked great. Before...the update. My husband warned me to never update my  
 7 phone since he has had 2 iPhone's that have had problems after the update, but that  
 8 stupid little "I" that stays on my phone unless I update gets me every time. First few  
 9 days - my phone was fine. Then, the battery started wearing down. I read every blog  
 10 from here to Nigeria to find out how to fix it. I turned off everything I could. Then,  
 11 no wifi. Completely greyed out. Again, read every blog, restored to factory settings,  
 12 lost everything. Finally, I apple-chatted. They told me I had to bring it into the  
 13 Genius bar. I brought it into the Genius bar in Mission Viejo, CA. They ran a  
 14 diagnostic test and the girl told me this: "I'm sorry. When you updated your  
 software it seems to have broken the hardware in your phone that runs the wifi. The  
 only thing I can offer you, since your warranty ran out, is another refurbished phone  
 for \$199." So you want me to pay \$199 for a refurbished phone. When the Apple  
 software that I downloaded (with no discretion that it could ruin my 4S, even though  
 I probably should have already known) broke my hardware. There you go. So now,  
 my iPhone has NO apps, I can't check email, I can't play my spotify, iTunes radio,  
 etc. because they all eat up too much data. Basically you could give me my old  
 1996 Nokia phone and I'd be happy. Apple, I just want to give you the biggest  
 middle finger and CUSS WORDS I possibly can.<sup>83</sup>

15 84. A petition was created on www.change.org "[t]o get Apple to replace all units  
 16 affected negatively by the update of iOS7 or patch an update that will remedy the issues many loyal  
 17 customers are experiencing."<sup>84</sup> Comments by those who have signed the petition include:

18 **David Poyner GLASTONBURY, UNITED KINGDOM**

19 My iPhone 4S is now virtually useless. WiFi no longer works and the GUI is  
 horrible.<sup>85</sup>

20 **Chow-lung Ting SAN DIEGO, CA**

21 Iphone 4s is a defective product and it needs to be repaired voluntarily and  
 22 immediately without cost, instead of urging customer to keep updating iOS or luring  
 with newer product line. I did not do anything to deserve a dyfuncnt phone.<sup>86</sup>

23 <sup>82</sup> Id.

24 <sup>83</sup> Id.

25 <sup>84</sup> [https://www.change.org/petitions/apple-to-get-apple-to-replace-all-units-affected-negatively-by-the-update-of-ios7-or-patch-an-update-that-will-remedy-the-issues-many-loyal-customers-are-experiencing?share\\_id=EWvbUpSNtW&utm\\_campaign=mailto\\_link&utm\\_medium=email&utm\\_source=share\\_petition](https://www.change.org/petitions/apple-to-get-apple-to-replace-all-units-affected-negatively-by-the-update-of-ios7-or-patch-an-update-that-will-remedy-the-issues-many-loyal-customers-are-experiencing?share_id=EWvbUpSNtW&utm_campaign=mailto_link&utm_medium=email&utm_source=share_petition) (last visited April 13, 2015)

27 <sup>85</sup> Id.

28 <sup>86</sup> Id.

**Bo Bennike SHERMAN OAKS, CA**

I am one of the many victims of a know design flaw with regards to the wifi antenna on early iPhone 4s models. Apple should fix this for free.<sup>87</sup>

**Mina Nabil GERMANY**

iOS 7 screwed up my iPhone 4S's WiFi<sup>88</sup>

**Greg Welch KINGWOOD, TX**

My Iphone 4s is pretty much worthless without wifi. My previous 3 phones had the same problem but were under warranty. The apple store replaced all three of them and one time the apple employee could not get the new phone to operate in the store. So he replaced that phone before he could get the next phone's wifi to work. Unfortunately, the replacement phones only come with a 90 day warranty. Mine ran out before I had time to return it. THIS IS WRONG for Apple to be treating their customers in this manner!!!<sup>89</sup>

**Timothy Obiso SADDLE BROOK, NJ**

My iPhone 4S had WiFi no problem until i updated to iOS 7. So far I have had to blowdry my phone 15 times. The problem is a software problem ad Apple should own up to their mistake and release a patch update that would fix this issue.<sup>90</sup>

85. On October 10, 2013, Appleinsider.com posted an article titled "iOS 7 update brings more Wi-Fi issues for some iPhone 4s owners."<sup>91</sup> The article featured users' posts on Apple's customer support site describing the problems they incurred after downloading iOS 7 onto their iPhone 4s' and draws a comparison to what seems to have been a similar problem when iOS 6 was rolled out. The article stated: "The same issue was reported during last year's rollout of iOS 6, when a 91-page thread — now repurposed for discussing the issue as it relates to iOS 7 — appeared in September. Many users at that time found the problem could be resolved by downgrading to the previous iOS release, something that is not possible with iOS 7."<sup>92</sup>

86. Regarding the Grayed Out Issue, NBC Connecticut interviewed Kelly Shermer, an iPhone 4s user who experienced dull battery life and had Wi-Fi disabled after downloading iOS 7. Shermer explained that she tried to fix the issue by following Apple's suggestions, but to no avail.

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<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> Id.

<sup>91</sup> <http://appleinsider.com/articles/13/10/10/ios-7-update-brings-more-wi-fi-issues-for-some-iphone-4s-owners> (last visited April 13, 2015)

<sup>92</sup> Id.

1 Mike Shermer, her husband, took her iPhone 4s to the Apple store where he was told the issue was  
 2 not iOS, but rather the iPhone 4s's antenna, and that he should replace the phone.<sup>93</sup> Mike Shermer  
 3 said: "Why should I have to pay for a phone that's broken, only because I installed software on it?  
 4 That's Apple software."<sup>94</sup> Lon Seidman, a tech expert and writer for CTNewsJunkie, who was also  
 5 interviewed for the news story, advised iPhone 4s users that since "most Wi-Fi and battery issues  
 6 seem to primarily affect the iPhone 4S, customers with that model who haven't had issues should  
 7 hold off on updating their phone until a new iOS patch is released."<sup>95</sup>

8 87. A more recent version of iOS 7, iOS 7.1, was released by Apple on March 10, 2014.<sup>96</sup>  
 9 According to user posts on Apple's support website, the update did not provide relief from the Wi-Fi  
 10 and Bluetooth connectivity issues for the iPhones that were Grayed Out after downloading iOS 7.

11 88. For example, the following were posted under the thread "The iOS 7.1 update doesn't  
 12 fix the Wifi issue on iPhone 4S!":

13 **hinc94**

14 Mar 11, 2014 9:36 AM

15 My wifi greyed out since iOS 7, the hair dryer did fix the problem for a day. But it  
 16 greyed out again after a day, and now the 7.1 update doesn't fix that \*\*\*\*???

17 iPhone 4S, iOS 7.1<sup>97</sup>

18 **JG0614**

19 Mar 12, 2014 7:19 AM

20 My WiFi worked fine yesterday, prior to the iOS7.1 update. Immediately after the  
 21 update, WiFi selection was "greyed-out" and am not able to turn it on to search for  
 22 networks. How is this a Hardware issue and not directly related to the Software  
 23 update? The update is the only thing that changed. Please explain.<sup>98</sup>

24 89. Not only did iOS 7.1 fail to fix the Wi-Fi and Bluetooth issues caused by iOS 7.0,  
 25 some who downloaded iOS 7 and did not experience any Wi-Fi or Bluetooth issues began to

26 <sup>93</sup> <http://www.nbcconnecticut.com/investigations/Apple-Releases-New-iOS-Upgrade-Will-it-Fix-Customers-Wi-Fi-and-Battery-Problems-233403381.html> (last visited April 13, 2015)

27 <sup>94</sup> Id.

28 <sup>95</sup> Id.

<sup>96</sup> <http://www.usatoday.com/story/tech/2014/03/10/apple-ios-7-update/6260611/> (last visited April 13, 2015)

<sup>97</sup> <https://discussions.apple.com/message/25133865#25133865> (last visited April 13, 2015)

<sup>98</sup> Id.

1 experience those issues after downloading iOS 7.1. The following messages were posted in the  
2 thread “IOS 7.1 iphone 4S wifi not available .. help..”

3 **Ibezerd**

Mar 13, 2014 1:58 PM

4 I’ve done all of the above, reset network and all settings, and nothing at all. Apple  
5 also told me the chip is burnt out because of the update but they want 200 to upgrade  
6 the phone. Uh so if your update caused my chip to die, IT’S YOUR PROBLEM, not  
7 mine. All I can do now is freeze the phone for 15 mins and wifi comes back for an  
8 hour, but who the heck wants to do that? All the while my data plan is suffering big  
9 time. Thanks Apple.<sup>99</sup>

10 **Enkarta98**

Mar 14, 2014 1:22 AM

11 Just want to share my experience with the same issue in hopes of it being recognized  
12 and resolved. Last night, After third restart, wifi was enabled but couldn’t locate or  
13 connect to my home wifi. Wifi remained not connected all day. I plugged in the  
14 phone to sync music with iTunes and move some photos to iphoto, and then when I  
15 disconnected from the computer.. wifi is grey and again not available. I tried my  
16 standard triple restart and, as I half expected, no luck. Not for nothing, but wifi  
17 worked fine up until the moment the 7.1 update was installed. So perhaps there is  
18 something I am not understanding, but I don’t see why a software update would  
19 somehow be able to damage the physical wifi chip. Even if that could be possible, I  
20 don’t understand why it would be alright for this to be released without a warning to  
21 4s users that the software may damage the physical functions of the device.  
22 Basically, I hope that is not the case and I hope this issue will be addressed.<sup>100</sup>

23 **ahazen**

Mar 14, 2014 5:49 PM

24 I have the exact same problem with my iPhone 4s. As soon as I updated to iOS 7.1  
25 my wifi was slow/on&off and then soon stopped all together. I’ve done a restore,  
26 eliminated almost all apps and reset the settings & several hard restarts. nothing  
27 works. Heading to the Apple store tomorrow and hoping to get a reasonable  
28 solution. I’ll post an update as to how things go.<sup>101</sup>

**caseyinberlin**

Mar 17, 2014 2:56 PM

I’m in the exact same boat with my 4S. My wifi has been greyed out from the  
moment that I upgraded and only sporadically returned for five minutes here and  
there. The phone is also super slow and freezes constantly. I would LOVE to know  
how many of us are suffering from the same problem. Apple, if you don’t act soon,  
you are going to really start losing some customers.<sup>102</sup>

<sup>99</sup> <https://discussions.apple.com/thread/5984942?start=15&tstart=0> (last visited April 13, 2015)

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> <https://discussions.apple.com/thread/5984942?start=30&tstart=0> (last visited April 13, 2015)

1 90. Users of the iPhone 5, which was released in September 2012 and came with iOS  
 2 6,<sup>103</sup> have voiced similar complaints, stating that updating to iOS 7 caused Wi-Fi and Bluetooth  
 3 connectivity issues:

4 **omglpl**

5 Re: iphone 5 wont connect to internet while using data or Wifi after iOS 7.0.6 update  
 Feb 25, 2014 2:10 PM

6 Same problem...no wifi connectability on either my ipad mini retina display nor my  
 7 iPhone 5 after installing 7.0.6 upgrade. This is really unacceptable and Apple needs  
 to fix this right away. It clearly is impacting many, many Apple customers.<sup>104</sup>

8 **Frodo711**

9 Re: wifi greyed out after update to ios7  
 Oct 5, 2013 8:54 PM

10 Just to throw a spanner in your summary - I have Iphone 5 doing exactly the same  
 after IOS 7 update<sup>105</sup>

11 **twannabe**

12 Re: wifi drops out since ios 7  
 Oct 3, 2013 5:45 AM

13 I am having the same issue with my two month old iphone 5 after installing ios 7. I  
 14 tried all the "fixes" i found online including this one, reset my home router several  
 times, no luck. I went to ATT they sent me to the apple store. It worked fine in the  
 15 apple store, but won't pickup any other wifi for more than a few seconds. Secondly  
 it can't even see the wifi unless you are within 10 feet of the router. When will  
 Apple address this?<sup>106</sup>

16 **Max\_R2014**

17 Mar 12, 2014 8:18 PM

18 I have an iPhone 5 and since upgrading to the new ios7.1, I've been experiencing  
 19 issues with my wifi connections. It will drop a connection and then won't allow me  
 to enable wifi in my settings. I've rebooted multiple times, but the same issues are  
 20 occurring. I've also rebooted my wireless router a couple times and it will allow me  
 to connect to my wifi network, but only for a brief time before the same issues  
 reoccur. I didn't experience these issues when I was using ios7.0.6. Please advise.<sup>107</sup>

21 91. The release of iOS 8 has failed to remedy iPhone 4s users complaints, and has been  
 22 reported to cause the Grayed Out Issue in iPhones as well. There are multiple threads on Apple's  
 23 support website devoted solely to users who experienced the Grayed Out Issue after downloading

24 <sup>103</sup> <http://www.apple.com/pr/library/2012/09/12Apple-Introduces-iPhone-5.html> (last visited  
 April 13, 2015)

25 <sup>104</sup> <https://discussions.apple.com/message/24968728#24968728> (last visited April 13, 2015)

26 <sup>105</sup> <https://discussions.apple.com/message/23129669#23129669> (last visited April 13, 2015)

27 <sup>106</sup> <https://discussions.apple.com/thread/5374440> (last visited April 13, 2015)

28 <sup>107</sup> <https://discussions.apple.com/message/25151269> (last visited April 13, 2015)

1 iOS 8. For example, the following complaints appear on a thread entitled “iOS 8.0.2 grayed out wifi  
2 on my iPhone 4s”:

3 **beth152**

4 Oct 1, 2014 11:21 AM

5 This is ridiculous and I’m so furious. This incident may deter me from EVER  
6 purchasing another product from Apple ever again. The new software has disabled  
7 my wifi completely, and the button is grayed out. I tried all the possible solutions  
8 they pose on the support site, but nothing, of course, was successful. I know it is a  
9 software problem and the fact that I can’t talk to anyone on the phone about it  
10 is absolutely ridiculous. I’m not paying \$20 for a software mistake on Apple’s part.  
11 If there is anyone who knows how to fix this problem without having to wait for the  
12 next update, any help would be greatly appreciated.<sup>108</sup>

13 **carlinto**

14 Oct 2, 2014 5:34 PM

15 Re: iOS 8.0.2 grayed out wifi on my iPhone 4s in response to beth152

16 same problem here aswell & the funny thing about it is ios8.0 I didn’t get to update  
17 the phone so when they sent out 8.0.1 , I was home on my day off work I updated the  
18 phone and it was still working ,internet/wifi 7 all. after the 8.01 another update pop  
19 up 8.0.2 I set it to update over night woke up sunday and no wifi, I cant even turn  
20 wifi the thing wont even slide to ON it (greyed out) and I charge my phone at night  
21 100% batt in morning, by 2pm battery life at 8% no apps opened and I only sent 2  
22 txt...I even tried downgrading to ios 8.0 no go! reinstall ios8.02 still the samething  
23 crap. and ios 7.1.2 & 8.0.1 is nowhere to be found. whats the use of the iphone  
24 without internet when apps,icloud,facetime,etc uses the wifi ?

25 this is \*\*\*\*\* come apple you guy can do BETTER! don’t mean to hijack  
26 BETH152, but finally realized its my phone but the messed up ios8<sup>109</sup>

27 **Uranfrajer**

28 Oct 5, 2014 7:40 AM Re: iOS 8.0.2 grayed out wifi on my iPhone 4s in response to  
29 carlinto

30 HEy guys I am so furious as well !!!! Completely same thing happened to me as  
31 well!!! Tried everything and my wifi is totally gray and cant turned it on !!! Are they  
32 making fun of us or what ? What should I do now??? Its crazy really, so expensive  
33 iphone and so ridiculous - you upgrade ios and you are not able to use the wifi.  
34 Crazy world. going to service guys tomorrow, I am really curious what they are  
35 going to do<sup>110</sup>

36 **kkoemets**

37 Oct 14, 2014 4:46 AM

38 Re: iOS 8.0.2 grayed out wifi on my iPhone 4s in response to beth152

39 Same problem here with 4S and latest iOS8. Really annoying to have phone without  
40 wifi and also Bluetooth not connecting. Apple, can you fix this?

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108 <https://discussions.apple.com/thread/6574268> (last visited April 13, 2015)

109 <https://discussions.apple.com/thread/6574268> (last visited April 13, 2015)

110 <https://discussions.apple.com/thread/6574268> (last visited April 13, 2015)

1 **Apple's Response**

2 92. Apple has had knowledge of the Grayed Out Issue and customers complaints for  
3 years. Recognizing that users have experienced their Wi-Fi settings becoming grayed out or dim,  
4 Apple issued instructions on December 9, 2013 with suggestions on how to remedy the problem.  
5 Apple stated: "In rare instances, the setting to turn on Wi-Fi on your iPhone, iPad, or iPod touch may  
6 appear grayed out or dim. You may see the following when you tap Settings > Wi-Fi. If this occurs,  
7 you can't turn Wi-Fi on, and when you try to turn Wi-Fi on, your device won't respond. If you're  
8 using iOS 7, Wi-Fi may appear to turn on and off in Control Center, but Wi-Fi won't respond."<sup>111</sup>

9 93. Apple's "resolution" suggested users try the following to fix the issue: (i) restart the  
10 iOS device; (ii) ensure the device is not in airplane mode; (iii) reset the network settings; and (vi)  
11 ensure the device has the latest software, *i.e.*, iOS 7.<sup>112</sup> If these solutions do not fix the issue, Apple  
12 advised users to contact Apple for support and service options.<sup>113</sup> Plaintiffs tried the suggested fixes  
13 for the problem and visited Apple stores for assistance, but were ultimately advised that their only  
14 option was to purchase a new or refurbished device.

15 **Users are Unable to Downgrade to Previous iOS Versions**

16 94. Plaintiffs and members of the Class had no issues with their iPhones' Wi-Fi and  
17 Bluetooth connection prior to downloading the newest version of iOS and attempted to remedy the  
18 Grayed Out Issue without success. For example, Mr. Yastrab asked Apple representatives to  
19 downgrade his phone back to the previous iOS version, in an effort to remedy the Grayed Out Issue.  
20 Upon information and belief, many iPhone users that have experienced a deterioration of the  
21 functionality of their iPhones have made the same request. Apple, however, will not downgrade iOS  
22 on iPhones.

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26 <sup>111</sup> <http://support.apple.com/kb/ts1559> (last visited April 13, 2015)

27 <sup>112</sup> Id.

28 <sup>113</sup> Id.

1 95. Apple, in fact, will not allow users to revert to prior versions of iOS. Once a new iOS  
2 version is released, Apple stops “signing” previous versions with Apple’s “signature.”<sup>114</sup> A  
3 signature is “cryptographic signature of the files matches a list of approved signatures on Apple’s  
4 servers.”<sup>115</sup> When new versions of iOS come out, Apple stops signing older versions and without  
5 Apple’s signature, iOS cannot be installed.

6 96. Online comments and complaints concerning the inability or restriction to revert back  
7 to a prior iOS include:

8 **Alamfr**

9 Dec 27, 2013 6:17 PM

10 Want to downgrade my iPhone ios 7.0.4 to 6.1.3 can you help me<sup>116</sup>

11 **stedman1**

12 Re: Want to downgrade my iPhone in 6.1.3

13 Dec 27, 2013 6:18 PM (in response to Alamfr)

14 Sorry, Apple has no approved method to downgrade the version of iOS on your  
15 iDevice. You can voice your displeasure with the iOS by leaving feedback at the  
16 appropriate subsection from the link below.

17 <http://www.apple.com/feedback/><sup>117</sup>

18 **naviprince09**

19 Feb 27, 2014 8:08 AM

20 i want to downgrade my ios 7 to ios 6 .... could you please tell me the process<sup>118</sup>

21 **KiltedTim North-East Ohio**

22 HT5012 Re: i want to downgrade to ios 6.1.3 in iphone 4

23 Feb 27, 2014 8:11 AM (in response to naviprince09)

24 Sorry. There is no process. You can't.<sup>119</sup>

25 **Mohammed 108**

26 Sep 25, 2013 11:18 AM

27 Can I downgrade iPhone 4s to 6.1.3<sup>120</sup>

28 **Axeman1020 New Jersey, USA**

<sup>114</sup> <http://readwrite.com/2013/09/24/apple-ios-7-no-downgrade#awesm=~oAtXvAoPucGN5x>  
(last visited April 13, 2015)

<sup>115</sup> <http://www.extremetech.com/computing/167450-downgrading-from-ios-7-to-ios-6-why-apple-wont-let-you> (last visited April 13, 2015)

<sup>116</sup> <https://discussions.apple.com/message/24278663#24278663> (last visited April 13, 2015)

<sup>117</sup> Id.

<sup>118</sup> <https://discussions.apple.com/message/25007292#25007292> (last visited April 13, 2015)

<sup>119</sup> Id.

<sup>120</sup> <https://discussions.apple.com/thread/5369545> (last visited April 13, 2015)

1 Re: Can I downgrade from ISO 7 to 6.1.3  
2 Sep 25, 2013 11:19 AM (in response to Mohammed 108)  
3 Apple does not support iOS downgrades. There have been many people encouraging  
4 this but you should know that Apple views an attempt to downgrade the iOS as  
5 unauthorized tampering and will void the warranty and any future support for that  
6 device.

Are you having a specific problem with iOS 7 we can help you with?<sup>121</sup>

5 **gopalagk**

Nov 7, 2013 9:38 AM

6 HOW TO DOWNGRADE IOS 7 TO 6<sup>122</sup>

7 **ChrisJ4203 Illinois, Land of Lincoln**

Re: HOW TO DOWNGRADE IOS 7 TO 6

8 Nov 7, 2013 9:40 AM (in response to gopalagk)

9 You don't. Apple does not support downgrading.<sup>123</sup>

10 **Preetham777**

Feb 18, 2014 11:12 AM

11 Hi can anyone please tell me how to restore to ios6 from ios7 in iphone 4...?<sup>124</sup>

12 **Niel**

Re: How to restore to ios6 from ios7 in iphone 4..?

13 Feb 18, 2014 11:13 AM (in response to Preetham777)

Downgrading isn't possible. iTunes won't install iOS versions older than the latest  
14 compatible release, and if one's somehow installed anyway, Apple's servers won't  
activate the device afterwards.<sup>125</sup>

15 **razmee209 Central Cali**

Re: HOW TO DOWNGRADE IOS 7 TO 6

16 Nov 7, 2013 11:08 AM (in response to gopalagk)

Restoring your phone won't give you back IOS 6.

17 As stated already you can't go back to IOS 6.<sup>126</sup>

18 97. Because the Wi-Fi and Bluetooth connection capabilities do not perform as advertised  
19 or intended once iOS 7 (and later versions) are downloaded onto the iPhones, users are forced to use  
20 their Network connection in order to use any features requiring an internet connection. Not only  
21 does this cause unanticipated additional monthly data usage charges from a user's cellular provider,  
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23  
24 <sup>121</sup> Id.

25 <sup>122</sup> <https://discussions.apple.com/message/23701506#23701506> (last visited April 13, 2015)

26 <sup>123</sup> Id.

27 <sup>124</sup> <https://discussions.apple.com/thread/5915376> (last visited April 13, 2015)

28 <sup>125</sup> Id.

<sup>126</sup> Id.

1 but it also leaves Plaintiffs and members of the Class with iPhones of significant reduced value and  
2 utility.

3 98. Having the option to use Wi-Fi instead of a Network connection is material to  
4 customers because it allows them to access features on their iPhone 4s devices at significantly less  
5 cost than if they could only use a Network connection. Without the ability to connect to Wi-Fi,  
6 many of the applications for which the iPhone 4s can be used, and for which Defendant expressly  
7 marketed the iPhone 4s to consumers, such as downloading large files or using Siri, would cause  
8 users to significantly exceed the limited of their data plans, resulting in overage charges. Being able  
9 to use Wi-Fi gives users the option to use their data plan to avoid both overage charges and having to  
10 purchase more monthly data.

11 99. Based upon the wide-ranging, debilitating effects of the iOS upgrades, as well as  
12 subsequent upgrades, it is reasonable and plausible to infer that Defendant had either actual or  
13 constructive knowledge of the iPhones' shortcomings prior to their distribution. To the detriment of  
14 consumers, however, the bulk of Apple's massive marketing and advertising campaign, including its  
15 dominant and expansive television advertisements, fail to mention the fact that when the iPhone 4s is  
16 updated to the latest iOS, it may lose its ability to connect to Wi-Fi and Bluetooth.

17 100. The information withheld from Plaintiffs and the other Class members is material and  
18 would have been considered by a reasonable person as more detailed herein.

### 19 CLASS ACTION ALLEGATIONS

20 101. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil  
21 Procedure 23(a) and 23(b) on behalf of himself and all others similarly situated as members of the  
22 following classes:

23 **THE CLASS:** All users of Apple iPhone 4s in the United States who experienced a  
24 loss of Wi-Fi and/or Bluetooth functionality after downloading the latest version of  
iOS (the "Class").

25 102. Subject to additional information obtained through further investigation and  
26 discovery, the foregoing definition of the Class may be expanded or narrowed by further  
27 amendment. Specifically excluded from the proposed Class are Defendant and its officers, directors,  
28 agents, trustees, parents, children, corporations, trusts, representatives, employees, principals,

1 servants, partners, joint ventures, or entities controlled by Defendant; its heirs, successors, assigns, or  
2 other persons or entities related to or affiliated with Defendant; its directors, or any of them; the  
3 Judge assigned to this action; and any member of the Judge's immediate family.

4       103. **Numerosity.** The members of the Class are so numerous that their individual joinder  
5 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that the Class contains  
6 millions of members. The precise number of Class members is unknown to Plaintiffs. The true  
7 number of Class members is known by Defendant, however, and, thus, may be notified of the  
8 pendency of this action by first class mail, electronic mail, and by published notice.

9       104. **Existence and Predominance of Common Questions of Law and Fact.** Common  
10 questions of law and fact exist as to all members of the Class and predominate over any questions  
11 affecting only individual Class members. These common legal and factual questions include, but are  
12 not limited to, the following:

13               (a) Whether the functionality of the iPhone 4, iPhone 4s, and/or iPhone 5 was  
14 reduced as a result of updates to iOS;

15               (b) Whether the Wi-Fi and Bluetooth capabilities work as advertised after the  
16 latest iOS is downloaded onto the iPhone 4, iPhone 4s and/or iPhone 5;

17               (c) Whether Defendant was negligent in the design, manufacturing, and  
18 distribution of the iPhone 4, iPhone 4s, iPhone 5;

19               (d) Whether Defendant violated the California Act;

20               (e) Whether Defendant violated the UCL;

21               (f) Whether the iPhone 4, iPhone 4s, and/or iPhone 5 designed, manufactured,  
22 marketed, distributed, or sold by Defendant were unfit for their intended purpose and use because of  
23 their design;

24               (g) Whether Defendant breached any warranties in selling the iPhone 4, iPhone 4s  
25 and/or iPhone 5;

26               (h) Whether Defendant intentionally or negligently misrepresented material facts  
27 relating to the character and quality of the iPhone 4s and/or iPhone 5;

28

1 (i) Whether Defendant failed to disclose material facts about the limitations of  
2 the performance of the iPhone 4, iPhone 4s and/or iPhone 5's Wi-Fi and Bluetooth connection  
3 capabilities after the latest iOS was downloaded onto the device;

4 (j) Whether Defendant's claims are false, misleading, or reasonably likely to  
5 deceive;

6 (k) Whether Plaintiffs and the other Class members have sustained monetary loss  
7 and the proper measure of that loss;

8 (l) Whether Plaintiffs and the Class are entitled to damages, and what is the  
9 proper measure of damages; and

10 (m) Whether Plaintiffs and the other Class members are entitled to declaratory and  
11 injunctive relief.

12 105. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class in  
13 that Defendant manufactured, marketed, advertised, sold, and warranted the iPhone 4, iPhone 4s  
14 and/or iPhone 5, including the product's Wi-Fi and Bluetooth connection capabilities after  
15 downloading the latest iOS, to Plaintiffs and all other members of the Class.

16 106. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the  
17 interests of the Class. Plaintiffs have retained counsel highly experienced in complex consumer  
18 class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no  
19 adverse or antagonistic interests to those of the Class.

20 107. **Superiority.** A class action is superior to all other available means for the fair and  
21 efficient adjudication of this controversy. The damages or other financial detriment suffered by  
22 individual Class members is relatively small compared to the burden and expense that would be  
23 entailed by individual litigation of their claims against Defendant. It would thus be virtually  
24 impossible for Class members, on an individual basis, to obtain effective redress for the wrongs done  
25 to them. Furthermore, even if Class members could afford such individualized litigation, the court  
26 system could not. Individualized litigation would create the danger of inconsistent or contradictory  
27 judgments arising from the same set of facts. Individualized litigation would also increase the delay  
28 and expense to all parties and the court system from the issues raised by this action. By contrast, the

1 class action device provides the benefits of adjudication of these issues in a single proceeding,  
2 economies of scale, and comprehensive supervision by a single court, and presents no unusual  
3 management difficulties under the circumstances here.

4 108. In the alternative, the Class may be also certified because:

5 (a) the prosecution of separate actions by individual Class members would create  
6 a risk of inconsistent or varying adjudication with respect to individual Class members that would  
7 establish incompatible standards of conduct for Defendant;

8 (b) the prosecution of separate actions by individual Class members would create  
9 a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
10 interests of other Class members not parties to the adjudications, or substantially impair or impede  
11 their ability to protect their interests; and/or

12 (c) Defendant has acted or refused to act on grounds generally applicable to the  
13 Class thereby making appropriate final declaratory and/or injunctive relief with respect to the  
14 members of the Class as a whole.

15 109. The claims asserted herein are applicable to all consumers throughout the United  
16 States who acquired, for use and not resale, the iPhone 4, iPhone 4s and/or the iPhone 5.

17 110. Adequate notice can be given to Class members directly using information  
18 maintained in Defendant's records or through notice by publication.

19 111. Damages may be calculated from the claims data maintained in Defendant's records,  
20 so that the cost of administering a recovery for the Class can be minimized. However, the precise  
21 amount of damages available to Plaintiffs and the other members of the Class is not a barrier to class  
22 certification.

23 **COUNT I**

24 **Violations of the Consumers Legal Remedies Act**  
25 **California Civil Code §1750, et seq.**

26 112. Plaintiffs reallege and incorporates by reference the previous allegations as if fully set  
27 forth herein.  
28

1           113. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
2 California Civil Code §§1750, *et seq.* (the “California Act”). Plaintiffs are consumers as defined by  
3 California Civil Code §1761(d). The product is a good within the meaning of the California Act.

4           114. Defendant violated and continues to violate the California Act by engaging in the  
5 following practices proscribed by California Civil Code §1770(a) in transactions that were intended  
6 to result in, and did result in, the sale of the product:

7                   (a) Representing that the iPhone 4, iPhone 4s and/or iPhone 5 have characteristics  
8 and benefits which they do not have;

9                   (b) Representing that the iPhone 4, iPhone 4s and/or iPhone 5 are of a particular  
10 standard, quality, or grade, which they are not;

11                   (c) Advertising the iPhone 4, iPhone 4s and/or iPhone 5 with intent not to sell  
12 them as advertised; and

13                   (d) Representing that the iPhone 4, iPhone 4s and/or iPhone 5 has been supplied  
14 in accordance with previous representations when they have not.

15           115. Defendant knew, or should have known, that its representations and advertisements  
16 regarding the iPhone 4s were unsubstantiated, false, and misleading.

17           116. Pursuant to California Civil Code §1782(d), Plaintiffs seek a Court order enjoining  
18 the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

19           117. Pursuant to §1782 of the California Act, notice to Defendant was satisfied when  
20 Plaintiffs sent a notice letter by certified mail to Defendant’s CEO, Timothy Cook.

21           118. Defendant has failed to rectify or agree to rectify the problems associated with the  
22 actions detailed above or give notice to all affected consumers within 30 days of the date of written  
23 notice pursuant to §1782 of the California Act. Plaintiffs hereby provide Defendant with an  
24 additional 30 days from the date of this Complaint after which time Plaintiffs will, without further  
25 amendment, seek actual, punitive, and statutory damages, as appropriate. Defendant’s conduct is  
26 malicious, fraudulent, and wanton, and provides misleading information.

COUNT II

**Violation of California’s Unfair Competition Law  
California Business and Professions Code §17200, et seq.**

1  
2  
3  
4 119. Plaintiffs reallege and incorporates by reference the previous allegations as if fully set  
5 forth herein.

6 120. The UCL prohibits “any unlawful, unfair or fraudulent business act or practice . . . .”  
7 Cal. Bus. & Prof. Code §17200. There are three prongs of the UCL: acts or business practices that  
8 are (1) unlawful; (2) unfair; or (3) fraudulent.

9 121. Unlawful Conduct: Defendant violated §17200’s prohibition against engaging in  
10 unlawful acts and practices by, *inter alia*, engaging in false and misleading advertising and omitting  
11 material facts, as set forth more fully herein, violating California Civil Code §1750 and the common  
12 law. Plaintiffs reserve the right to allege other violations of law, which constitute other unlawful  
13 business acts or practices. Such conduct is ongoing and continues to this date.

14 122. Unfair Conduct: Defendant’s acts, omissions, misrepresentations, practices, and non-  
15 disclosures alleged herein also constitute “unfair” business acts and practices, within the meaning of  
16 the UCL, in that its conduct is substantially injurious to consumers, offends public policy, and is  
17 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any  
18 alleged benefits attributable to such conduct. Specifically, any utility gained by upgrading the iOS  
19 software of the iPhones was outweighed by the significant diminution of functionality that occurred  
20 as a result of harm to the iPhones’ hardware from the upgrade. Defendant’s business practices are  
21 unfair in that Defendant has refused to take responsibility for the direct damage suffered by Plaintiffs  
22 as a result of upgrading their iPhones iOS software, or provide any remedy for their injurious  
23 conduct other than to offer Plaintiffs and members of the Class a refurbished and fully functional  
24 version of the same iPhone at a cost of \$199 or the option to purchase a new iPhone at full price.

25 123. Fraudulent Conduct: Defendant’s business practices, as set forth herein, constitute  
26 fraudulent conduct under the UCL because they were likely to deceive, and did deceive, Class  
27 members into believing that the iPhones’ included Wi-Fi and Bluetooth features and were able to  
28 upgrade to future versions of iOS without adverse effects. Plaintiffs saw, read and heard statements

1 by Apple regarding the iPhones being “smartphones” that came equipped with Wi-Fi and Bluetooth  
2 capabilities prior to purchasing their devices. Plaintiffs were also aware of Apple’s systemic practice  
3 of releasing updates to the iPhones’ iOS software since the first iPhone, and read certain  
4 representations (described above) by Apple, all of which communicated the message that iOS  
5 updates would improve their iPhones and did not alert users to any potential adverse effects of  
6 updating. Plaintiffs had no reason to suspect or believe that updating the iOS software on their  
7 iPhones would cause any negative effects, including the Grayed out Issue, at the time of purchase.  
8 Indeed, Apple’s advertising led Plaintiffs to believe the exact opposite – that updating their iPhones  
9 would bring only positive benefits, such as new features, big fixes and increased security measures,  
10 to their devices.

11       124. Defendant’s advertisements were false, misleading and deceptive as they induced  
12 Plaintiffs and members of the Class to purchase iPhones that they believed were smartphones,  
13 equipped with Wi-Fi and Bluetooth capabilities, and software that would be released by Apple  
14 throughout the life of the iPhone to increase the iPhones’ functionality. In reliance on these, and  
15 other representations made by Apple in conjunction with the iOS update, *see* ¶¶71, 74, 75, 76, 77, 78  
16 and 79, Plaintiffs upgraded their iOS software which resulted in reduced functionality of the  
17 iPhones, including the Grayed Out Issue. Because Wi-Fi and Bluetooth are core functions of the  
18 iPhones, and Apple has refused to remedy the issue, Plaintiff and members of the Class were left  
19 with no choice but to purchase new iPhones or smartphones from other companies.

20       125. Prior to installing the most recent iOS, Plaintiffs used and relied on their ability to use  
21 Wi-Fi on their iPhone 4s’. Had Plaintiffs known that the iPhones could not be updated without the  
22 risk of causing the Grayed Out Issue, they would not have purchased the iPhone 4s, or would not  
23 have upgraded the iOS software, to the extent they could avoid doing so.

24       126. Defendant continues to violate the UCL to this day. Plaintiffs and members of the  
25 Class have suffered substantial injury in fact, money or property as a result of Defendant’s unfair and  
26 deceptive practices. Plaintiffs injuries include, but are not limited to, the loss in diminution of value  
27 of their personal property and expenses associated with replacing or repairing their iPhone 4s  
28 devices.



1 136. All conditions precedent to Defendant's liability under this express contract,  
2 including notice, have been performed by Plaintiffs and the Class.

3 **COUNT IV**

4 **Intentional Misrepresentation**

5 137. Plaintiffs reallege and incorporates by reference the previous allegations as if fully set  
6 forth herein.

7 138. At all relevant times, Defendant was engaged in the business of designing,  
8 manufacturing, marketing, distributing or selling the iPhone 4, iPhone 4s and/or iPhone 5.

9 139. Defendant, acting through its officers, agent, servants, representatives, or employees,  
10 delivered the iPhone 4s to its own retail stores, distributors, and various other distribution channels.

11 140. Defendant willfully, falsely, and knowingly misrepresented various material facts  
12 regarding the quality and character of the iPhone 4, iPhone 4s and/or iPhone 5's ability to connect to  
13 Wi-Fi and Bluetooth after updating the latest iOS. These misrepresentations are contained in various  
14 advertising and marketing disseminated or caused to be disseminated by Defendant, and such  
15 misrepresentations were further reiterated and disseminated by Defendant's officers, agents,  
16 representatives, servants, or employees acting within the scope of their authority, so employed by  
17 Defendant to merchandise and market the iPhone 4s. Specifically, Defendant promoted and  
18 marketed the iPhone 4s's ability to download future versions of iOS, and thereafter use all of its new  
19 features, without adverse effects to the iPhone 4, iPhone 4s and/or iPhone 5 Wi-Fi and Bluetooth  
20 connection capabilities.

21 141. Defendant's representations were made with the intent that the general public,  
22 including Plaintiffs and the other Class members, rely upon them. Defendant's representations were  
23 made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.  
24 If Plaintiffs and the Class had been aware of these suppressed facts, Plaintiffs and the Class would  
25 not have acquired the iPhone 4, iPhone 4s and/or iPhone 5 at the price sold by Defendant. In  
26 reliance upon these misrepresentations, Plaintiffs acquired the iPhone 4, iPhone 4s and/or iPhone 5  
27 for the use of apps and other features which require a Network or Wi-Fi connection, and its ability to  
28 update to future iOS versions at no additional cost, as advertised by Defendant.



1 the latest iOS, the direct and proximate results of which were injury and harm to Plaintiffs and the  
2 Class.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for  
5 relief and judgment against Defendant as follows:

6 A. Certification of this action as a class action, appointment of Plaintiffs as a Class  
7 representatives, and appointment of the undersigned counsel as Class counsel;

8 B. An order declaring the actions complained of herein to be in violation of the statutory  
9 laws set forth above, including a preliminary injunction enjoining Defendant from further acts in  
10 violation of the California Act and the UCL, pending the outcome of this action;

11 C. An order enjoining and restraining Defendant from any further acts in violation of the  
12 California Act and the UCL, as set forth above;

13 D. An award of compensatory damages, statutory damages, restitution, and all other  
14 forms of monetary and non-monetary relief recoverable under California law;

15 E. An award of pre-judgment and post-judgment interest;

16 F. An award of injunctive relief;

17 G. An award of costs, including, but not limited to, discretionary costs, attorneys' fees,  
18 and expenses incurred in prosecuting this case; and

19 H. Granting such other and further relief as the Court deems just and proper.

20 **JURY DEMAND**

21 Plaintiffs hereby demand a jury trial on all issues so triable.

22 DATED: May 8, 2015

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SHAWN A. WILLIAMS

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25 s/ Shawn A. Williams  
SHAWN A. WILLIAMS

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 8, 2015.

s/ Shawn A. Williams  
SHAWN A. WILLIAMS

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