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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WILLIAM SCOTT PHILLIPS and
SUZANNE SCHMIDT PHILLIPS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 5:15-cv-04879

WILLIAM COTTRELL, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 5:15-cv-05205

SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

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1 1. Plaintiffs WILLIAM SCOTT PHILLIPS, SUZANNE SCHMIDT PHILLIPS,
2 and WILLIAM B. COTTRELL ("Plaintiffs"), individually and on behalf of all others similarly
3 situated, file this class action against Defendant Apple Inc. ("Apple," the "Company" or
4 Defendant"). Plaintiffs state and allege as follows upon information and belief, based upon, *inter*
5 *alia*, investigations conducted by and through their attorneys, except as to those allegations
6 pertaining to Plaintiffs personally, which are alleged upon personal knowledge. Plaintiffs invoke
7 this Court's jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d).

8 **I. SUMMARY OF THE ACTION**

9 2. This matter arises from Defendant's stealthy introduction and implementation of Wi-
10 Fi Assist in its iOS 9 operating system, used in Apple mobile devices such as the iPhone and iPad.
11 Apple, one of the best known and most successful consumer technology companies in the world,
12 sells tens of millions of new iOS devices every year.

13 3. On September 15, 2015, Apple released iOS 9, the latest iteration of the operating
14 system for its wildly popular handheld devices, such as the iPhone and the iPad. The release of iOS
15 9 had been anticipated and reported on for months following the Company's June 8, 2015 keynote
16 address describing iOS 9 and its primary features.

17 4. Included in the release of iOS 9 were numerous features and changes to the iOS,
18 many of which were discussed at length by Apple during its June 8, 2015 keynote address and
19 described further in press materials released by Apple. But also included in the release of iOS 9
20 was an undisclosed "feature" – Wi-Fi Assist – which forces an iOS device with a cellular
21 connection, such as an iPhone or cellular-equipped iPad, to switch to cellular data when an
22 algorithm determines that its Wi-Fi signal is too weak. By default, Wi-Fi Assist is activated upon
23 installation of iOS 9. As a result of this default activation, users are left unaware that this new
24 "feature" is using cellular data at an unusually high rate. Significantly, there is no warning to users
25 when an iOS device switches from Wi-Fi to cellular data.

26 5. Apple is widely heralded for its intense focus on the user interface ("UX") of its
27 devices. As set forth in detail herein, Apple's UX design is the product of consideration of every
28 aspect of the user experience, including a design philosophy that elevates providing information to

1 its users in clear, consistent and easy to understand means, reflecting an understanding that "you
2 can't assume that they [users] have the time (or can spare the attention) to figure out how it works."¹

3 6. Apple had the means and opportunity to fully and adequately disclose this adverse
4 feature of Wi-Fi Assist, and Apple had the means to mitigate the risk of excessive cellular data
5 usage by simply leaving Wi-Fi Assist deactivated by default. Instead, Apple intentionally chose to
6 make Wi-Fi Assist active by default, knowing that iOS device users would, as a result, be
7 unknowingly exposed to excess cellular data usage. Despite this, Apple elected not to meaningfully
8 and adequately warn users about the existence, function or automatic implementation of Wi-Fi
9 Assist.

10 7. As a result of Apple's failure to disclose the existence and automatic activation of
11 Wi-Fi assist, cellular users with limited data plans have suffered damages arising from charges for
12 excessive cellular data use. Tens of thousands of users likely suffered damages within weeks of the
13 release of iOS 9 and, even now, eight months after the release of iOS 9, users are still discovering
14 the existence of Wi-Fi Assist only after they incur excess cellular data charges.

15 **II. JURISDICTION AND VENUE**

16 8. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(11) because
17 there are one hundred or more persons whose individual claims are being brought herein, Plaintiffs
18 are citizens of a different state than Defendant, and the overall amount in controversy exceeds
19 \$5,000,000.00, exclusive of costs, interest, and attorneys' fees. The individual claims can be tried
20 jointly in that they involve common questions of fact and law.

21 9. This Court has personal jurisdiction over the Defendant because it conducts
22 substantial and continuous business in California, and is headquartered in California.

23 10. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) and (b) because part
24 of the events or omissions that give rise to the claims occurred in California and this District and
25 because Defendant conducts a substantial part of its business in this District.

26
27
28 ¹ Apple, Inc., iOS Human Interface Guidelines, 2011.

III. PARTIES

11. Plaintiffs William Scott Phillips and Suzanne Schmidt Phillips are residents of Edgewater, Florida who upgraded two iPhone 5S's to the new iOS 9 operating system. Plaintiffs were unaware that this upgrade automatically activated Wi-Fi Assist on their devices, which ultimately resulted in data overuse charges by their cellular service provider. As a result of these upgrades, and owing to the automatic implementation of Wi-Fi Assist, Plaintiffs William Scott Phillips and Suzanne Schmidt Phillips incurred extra data charges from their cellular provider when, during the billing period running from August 27, 2015, through September 26, 2015, their cellular data usage exceeded the limits of their cellular data plan. During this period, Plaintiffs William Scott Phillips and Suzanne Schmidt Phillips were unaware that this iOS 9 upgrade automatically activated Wi-Fi Assist on their iPhones. Plaintiffs William Scott Phillips' and Suzanne Schmidt Phillips' cellular data use typically does not exceed the limits included in their cellular data plan. Upon learning of the existence and automatic activation of Wi-Fi Assist after receiving a cellular phone bill, Plaintiffs William Scott Phillips and Suzanne Schmidt Phillips disabled Wi-Fi Assist and have not subsequently suffered any additional charges arising from excessive data use.

12. Plaintiff William Cottrell owns a 4th generation iPad equipped with a 4G Cellular connection. Since purchasing the iPad in 2013, Mr. Cottrell has maintained cellular data service for the iPad through Verizon. Under the terms of his cellular data plan, Mr. Cottrell is allowed 3GB of cellular data service, and is billed for any overages. Mr. Cottrell generally uses his iPad at home, where he connects to the internet through his home Wi-Fi network. As a result, Mr. Cottrell rarely uses his cellular data service. Mr. Cottrell generally uses his iPad for Facetime communications with his grandchildren, social media, viewing YouTube videos, and checking his email.

13. Mr. Cottrell updated his iPad to iOS 9 shortly after its release on September 16, 2015. Prior to upgrading to iOS 9, Mr. Cottrell reviewed the representations made by Apple on the "Software Update" screen, including Apple's representation that "improvements at the foundation of the operating system enhance performance, improve security and give you up to an hour of extra battery life." At the time he upgraded to iOS 9, Mr. Cottrell was unaware of the inclusion of Wi-Fi

1 Assist in iOS 9 and he was unaware that, by default, Wi-Fi Assist was activated in iOS 9.

2 14. During the billing cycle running from September 24, 2015 through October 23,
3 2015, Mr. Cottrell exceeded the 3 GB data cap for his iPad and was charged for excess data use by
4 Verizon. After speaking with a Verizon representative regarding the charge for his excess data use,
5 Mr. Cottrell learned of the existence of Wi-Fi Assist and, subsequently, Mr. Cottrell has disabled
6 Wi-Fi Assist. Mr. Cottrell had never previously exceeded the 3 GB data cap and, subsequent to the
7 September 24-October 23, 2015 billing period, has not exceeded his data cap since.

8 15. Mr. Cottrell has been a Certified Public Accountant for over thirty-eight years. Mr.
9 Cottrell has extensive experience in using both computers and consumer electronics. Mr. Cottrell
10 has used computers since 1984 and, in prior employment as the chief financial officer of a
11 company, Mr. Cottrell was also responsible for the information technology of the company,
12 including the establishment of the company's data network. Being well-versed in computers and
13 consumer electronics, Mr. Cottrell was surprised by the cellular data overage he experienced
14 between September 24-October 23, 2015, and was surprised to learn of the existence, function, and
15 default activation of Wi-Fi Assist.

16 16. Defendant Apple Inc. ("Apple") is a corporation organized under the laws of the
17 State of California, and has its principal place of business in Cupertino, Santa Clara County,
18 California.

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IV. FACTS

A. Apple is Well Known for its Focus on the User Experience

17. Apple is heralded for its intense focus on the design of the user interface of its products, especially the iOS user interface that is central to the function of its iPhones and iPads.

18. Apple's intense focus on the user interface comes from the top. Apple's Chief Design Officer, Jonathan Ive, once described by former Apple CEO Steve Jobs as the second most powerful person at the Company, acknowledges that "fanatical attention to detail and coming across a problem and being determined to solve it is critically important – that defines your minute by minute, day by day experience."² Ive is known to "obsess on solving a tiny issue, being unwilling to compromise in his quest to create a more fundamental product. This process can take months, but what sets Apple's products apart is the ultimate impression that results from thousands of tiny decisions that go into the design and development." *Id.* The result, in Ive's words, is a successful design philosophy in which "[t]he decisive factor is fanatical care beyond the obvious stuff; the obsessive attention to details that are often overlooked." *Id.* This attention to detail means that no feature of the iOS, and no aspect of its design and implementation, is happenstance.

19. Mark Kawano, a former "User Experience Evangelist" and senior designer at Apple who was responsible for guiding third-party developers in coding iOS apps, described Apple's formula for successful UX design as being simple:³

Everybody there is thinking about UX and design, not just the designers. And that's what makes everything about the product so much better . . . much more than any individual designer or design team.

As indicated in the interview with Kawano, "everyone at Apple—from the engineers to the marketers—is, to some extent, thinking like a designer." *Id.*

² John Webb, 10 Success Principles of Apple's Innovation Master Jonathan Ive, *Innovation Excellence*, Apr. 30, 2012, <http://www.innovationexcellence.com/blog/2012/04/30/10-success-principles-of-apples-innovation-master-jonathan-ive/#sthash.SZom94Th.dpuf> (last visited April 28, 2016).

³ Mark Wilson, 4 Myths About Apple Design, From An Ex-Apple Designer, *FastCoDesign*, May 22, 2014, <http://www.fastcodesign.com/3030923/4-myths-about-apple-design-from-an-ex-apple-designer> (last visited April 28, 2016).

20. Apple also has a thorough expertise and understanding of cellular data, having developed the iPhone and cellular-equipped iPad and having created new features for the iOS, such as Location Services and Wi-Fi calling, which required extensive knowledge of how cellular data connections work and how to utilize them with Apple hardware.

21. Apple also has a long history of smart engagement with wireless carriers. For example, Apple was the first cellular phone manufacturer to negotiate a revenue sharing agreement with a wireless carrier, by which Apple received a cut of the monthly fees charged to iPhone users who used AT&T wireless service.⁴ Later, Apple also negotiated deals with major wireless carriers, under which the carriers would underwrite or subsidize the cost of iPhones, making their high prices more palatable to consumers and thus helping Apple expand its market share.⁵ Indeed, now Apple is reportedly considering developing its own cellular data plans so that it can cut out the "middleman," meaning cellular service providers like AT&T, Sprint, T-Mobile and Verizon.⁶

22. Moreover, Apple knows that its user experience drives higher average data use for iOS devices than is typically seen in Android mobile devices.⁷ One industry expert has opined that "[t]his is effectively the continuation of a kind of Moore's law where every new generation of the iPhone consumes 50 or 60 percent more data than the previous one."⁸ Apple's data usage is driven

⁴ Peter Cohan, How Steve Jobs Got AT&T to Share Revenue, *Forbes*, Aug. 16, 2013, <http://www.forbes.com/sites/petercohan/2013/08/16/how-steve-jobs-got-att-to-share-revenue/#56ad917c5cad> (last visited May 16, 2016).

⁵ Anton Troianovski, iPhone's Crutch of Subsidies, *The Wall Street Journal*, Feb. 27, 2012, <http://www.wsj.com/articles/SB10001424052970204653604577247471036145902> (last visited May 16, 2016).

⁶ Todd R. Weiss, Apple is Looking at Becoming a Cellular Service Provider, *eWeek*, Aug. 4, 2015, <http://www.eweek.com/mobile/apple-is-looking-at-becoming-a-cellular-service-provider.html> (last visited May 16, 2016).

⁷ Martin Scott, Why iPhones generate so much data traffic than any other smartphone, *Knowledge Center*, June 29, 2012, <http://www.analysysmason.com/About-Us/News/Insight/iPhone-data-traffic-Jun2012/> (last visited May 16, 2016).

⁸ Mikael Ricknas, iPhone 5, Galaxy S III users fingered as biggest data hogs, *PC World*, Jan. 14, 2013, <http://www.pcworld.com/article/2025184/iphone-5-galaxy-s-iii-users-fingered-as-biggest-data-hogs.html> (last visited May 16, 2016).

1 by features, such as high resolution screens, that Apple adds to each new iteration of the iPhone.

2 23. As a result of Apple's intense focus on user interface, the organization and function
3 of its devices, including their utilization of cellular data, is carefully thought out and executed with
4 an end result in mind. Here, the end result of Apple's implementation of Wi-Fi Assist has resulted,
5 and continues to result in, numerous iOS device users suffering unexpected charges for cellular data
6 use arising from a feature that users do not know exists and do not know is activated by default.
7 Users only discover this "feature" after they've suffered harm.

8 **B. Apple Failed to Adequately Disclose the Existence and Nature of Wi-Fi Assist**
9 **when it Introduced iOS 9**

10 24. As with most of Apple's new device releases or substantial operating system
11 upgrades, the introduction of iOS 9 was heavily publicized and promoted by Apple. The release of
12 iOS was hyped by the Company for months, beginning with Apple's June 8, 2015 presentation
13 previewing iOS 9. A press release accompanying the iOS 9 Preview did not include a single
14 reference to Wi-Fi Assist.⁹ Indeed, Apple's June 8, 2015 keynote presentation introducing iOS 9
15 addressed multiple features of the new iOS over the course of more than 140 minutes, but
16 presenters did not make a single reference to Wi-Fi Assist.¹⁰ Wi-Fi Assist keeps consumers'
17 internet connections alive when internet via a Wi-Fi network is deemed too slow by Apple's
18 algorithm. The feature automatically switches consumers to a cellular connection if it senses that
19 the Wi-Fi signal is not as strong as the cellular connection.

20 25. While Wi-Fi Assist is designed to boost smartphone speeds, the setting does so at the
21 expense of cellular data usage. Apple's software engineers prioritized one over the other. Because
22 Wi-Fi Assist is activated upon installation of iOS 9, consumers' iPhones automatically use cellular
23 data upon determining that a Wi-Fi signal is not strong enough. Some consumers have reported that
24 their iPhones naturally chose cellular because their home Wi-Fi networks are not as strong as their

25 _____
26 ⁹ Apple, Inc., Apple Previews iOS 9, June 8, 2015,
27 <http://www.apple.com/pr/library/2015/06/08Apple-Previews-iOS-9.html> (last visited April 28,
2016).

28 ¹⁰ Apple WWDC Keynote Address, <http://www.apple.com/live/2015-june-event/>, (last visited
April 28, 2016).

cellular network. This results in unexpected consumption of cellular data by users who are both unaware of the existence of Wi-Fi Assist and unaware that, by default, Wi-Fi Assist is turned on. For cellular users who have unlimited data plans, this increased usage is irrelevant. However, for millions of consumers who have cellular plans that provide for limited data, Wi-Fi Assist causes, has caused, and will continue to cause, economic losses in the nature of excess data usage charges or fees.

26. Following the official release of iOS 9 on September 16, 2015, press coverage of the new operating system missed the inclusion and activation of Wi-Fi Assist. For example, MacWorld's "iOS 9 FAQ: Everything you need to know about Apple's new mobile OS," made no reference to Wi-Fi Assist.¹¹ Similarly, other tech publications covering the release of iOS 9 and reporting on its new features failed to identify Apple's hidden "feature."¹²

27. Even today, Apple's web page highlighting "What's new in iOS," fails to mention iOS 9 even while providing a detailed overview of other aspects and features.¹³

C. Users begin Suffering Cellular Data Overages shortly after installing iOS 9

28. News of Wi-Fi Assist broke, not because Apple disclosed its existence, but because within days of the introduction of iOS 9, users began to complain of excess cellular data usage. For example, a September 29, 2015 article in the International Business Times noted that "iOS 9 users have been plagued with a bunch of inherent bugs and issues ever since its release, including the recently unearthed mobile data usage issue, wherein the upgrade is costing more data bandwidth due to a built-in feature that automatically switches between Wi-Fi and 3G/4G data networks . . .

¹¹ Oscar Raymundo, iOS 9 FAQ: Everything you need to know about Apple's new mobile OS, *MacWorld*, Sept. 16, 2015, <http://www.macworld.com/article/2932872/ios/ios-9-faq-everything-you-need-to-know-about-apples-new-mobile-os.html> (last visited April 28, 2016).

¹² Jonny Evans, 12 great iOS 9 features you'll probably use, *Computerworld*, June 16, 2015, <http://www.computerworld.com/article/2936176/apple-ios/12-great-ios-9-features-youll-probably-use.html> (last visited April 28, 2016).

¹³ Apple, Inc., What's new in iOS. <http://www.apple.com/ios/whats-new/> (last visited April 28, 2016).

1 ."¹⁴ The article went on to provide users with directions on how to disable "this automatic switch."
2 *Id.*

3 29. Shortly after the release of iOS 9, user complaints regarding excessive cellular data
4 use in iOS 9 began appearing online. These complaints were followed by news articles discussing
5 the issue. For instance, on September 29, 2015, Fortune.com reported the threat of massive phone
6 bills:

7 If Wi-Fi Assist is left activated, your iPhone will automatically use cellular data
8 whenever it finds that a Wi-Fi router signal is weak. This results in faster network
9 connections for your phone, but it will eat up the data allotted by your cell phone
10 plan. If you don't have an unlimited data plan, this could be a big problem when
11 your next phone bill arrives. That's right, extra fees.¹⁵

12
13 30. Similarly, on the same day, the Washington Post carried an article warning
14 consumers of the Wi-Fi Assist's capability to silently switch a phone to cellular data:

15 The setting, called "Wi-Fi Assist," automatically switches your phone over to the
16 cellular network when you're in a place with spotty Wi-Fi. The feature is on by
17 default in iOS 9, meaning that your iPhones and iPads will seek out cell networks
18 unless you tell them not to — and could potentially eat up your data plan without
19 you realizing it.¹⁶

20 31. It was not until after the flood of articles, comments and complaints online and
21 potential liability exposure that, on October 2, 2015, Apple belatedly issued a statement respecting
22 Wi-Fi Assist:

23
24 ¹⁴ Vinod Yalburgi, iOS 9: How to fix increased mobile data usage issue after upgrade,
25 *International Business Times*, Sept. 29, 2015, [http://www.ibtimes.co.uk/ios-9-how-fix-increased-](http://www.ibtimes.co.uk/ios-9-how-fix-increased-mobile-data-usage-issue-after-upgrade-1521611)
mobile-data-usage-issue-after-upgrade-1521611 (last visited April 28, 2016).

26 ¹⁵ Robert Hackett, Change this setting to avoid massive iPhone data bills, *Fortune*, Sept. 29,
2015 <http://fortune.com/2015/09/29/wifi-assist-apple-iphone-setting/> (last visited April 28, 2016).

27 ¹⁶ Hayley Tsukayama, A new feature in Apple's iOS 9 could be causing a surprising spike in
28 data use, *The Washington Post*, Sept. 29, 2015 [https://www.washingtonpost.com/news/the-](https://www.washingtonpost.com/news/the-switch/wp/2015/09/29/apples-wifi-assist-gets-blamed-for-surprise-spikes-in-data-use/)
switch/wp/2015/09/29/apples-wifi-assist-gets-blamed-for-surprise-spikes-in-data-use/ (last visited
April 28, 2016).

1 Because you'll stay connected to the Internet over cellular when you have a poor
2 Wi-Fi connection, you might use more cellular data. For most users, this should
3 only be a small percentage higher than previous usage. If you have questions
4 about your data usage, learn more about managing your cellular data or contact
5 Apple Support

6
7 Wi-Fi Assist is on by default. If you don't want your iOS device to stay connected
8 to the Internet when you have a poor Wi-Fi connection, you can disable Wi-Fi
9 Assist. Go to Settings > Cellular. Then scroll down and tap Wi-Fi Assist.¹⁷

10
11 32. Apple's statement, posted on its website, was not, and is not, an effective means of
12 addressing the problems caused by its implementation of Wi-Fi Assist. Instead, Plaintiffs seek an
13 injunction barring Apple from ever setting Wi-Fi Assist as activated without a consumer's
14 permission and prohibiting Apple from modifying, altering or choosing the Wi-Fi Assist setting on
15 any device. Indeed, Apple's statement still downplays the possible data overcharges a user could
16 incur. Reasonable and average consumers use their iPhones for streaming of music, videos and
17 running various applications – all of which can use significant data. Defendant's corrective
18 statement does not disclose any basis for its false conclusion that an average consumer would not
19 see much increase in cellular usage. Apple has stubbornly refused to take affirmative steps to
20 remedy the problems caused by its implementation of Wi-Fi Assist.

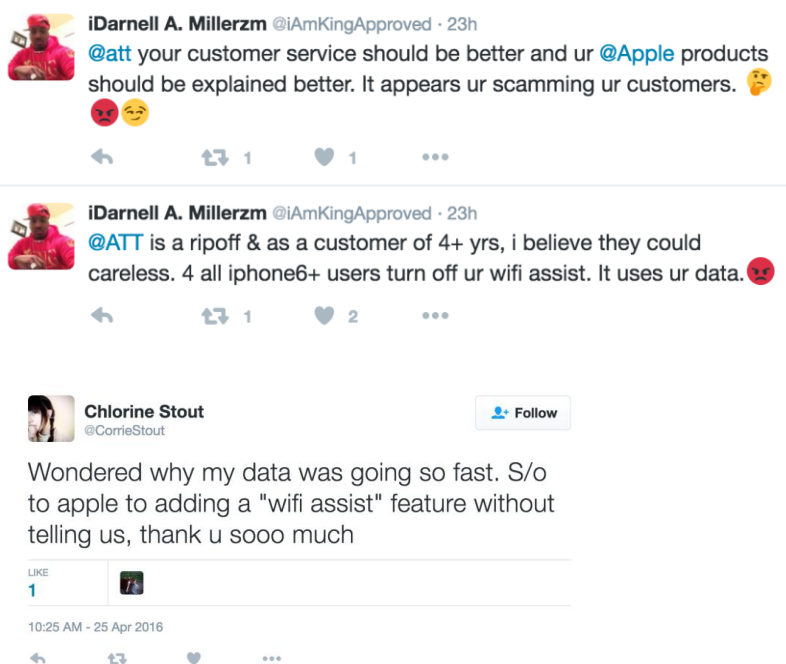
21 //

22 //

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24
25
26
27 ¹⁷ The Wi-Fi Assist option is buried deep in this menu, listed only after settings for third-party
28 apps.

D. Apple's Failure to Adequately Disclose iOS 9 Continues and is Evident Even Today

33. Despite the fact that iOS 9 was introduced approximately eight months ago, iOS device users are still discovering the existence of Wi-Fi Assist through increased data charges. The complaints are near universal in their frustration that Apple did not tell consumers that Wi-Fi Assist was activated by default and that users only discover this fact when they try to determine why they are incurring unexpected charges for cellular data use. For example, as reported in early January 2016, the family of a San Francisco teenager was shocked with a \$2,000 cell phone bill triggered by the implementation of Wi-Fi Assist on the teen's phone.¹⁸



¹⁸ CBS News, Apple's Wi-Fi Assist feature blamed for teen's \$2,000 phone bill, *CBS News*, Jan. 5, 2016, <http://www.cbsnews.com/news/apple-iphone-wi-fi-assist-blamed-for-teens-2000-phone-bill/> (last visited April 28, 2016).

**Somnambulist**
@bbbbbbetheball

Follow

Hey thanks #wifiassist for turning on by yourself
and [REDACTED] up my month. #micro[REDACTED] #apple

1:15 AM - 4 Feb 2016

**Greg Herlein**
@gherlein

Follow

iOS "WiFi Assist" just caused me data charges-
had no idea it was on by default. #fail #att
#apple - breaking how things work=a[REDACTED]s

RETWEET

1

LIKE

1



3:24 PM - 24 Apr 2016

**Pawel Niewolny**
@pniewolny

Follow

"wi-fi assist" enabled by default in #iPhone?
Thank you #Apple very much, now you owe me
12 CHF :< #fail #iOS9

**iPhone warning: If you've upgraded, beware the data trap**

A new iPhone setting could eat into your data allowance
potentially landing you with huge bills
moneysavingexpert.com

8:17 AM - 13 Apr 2016

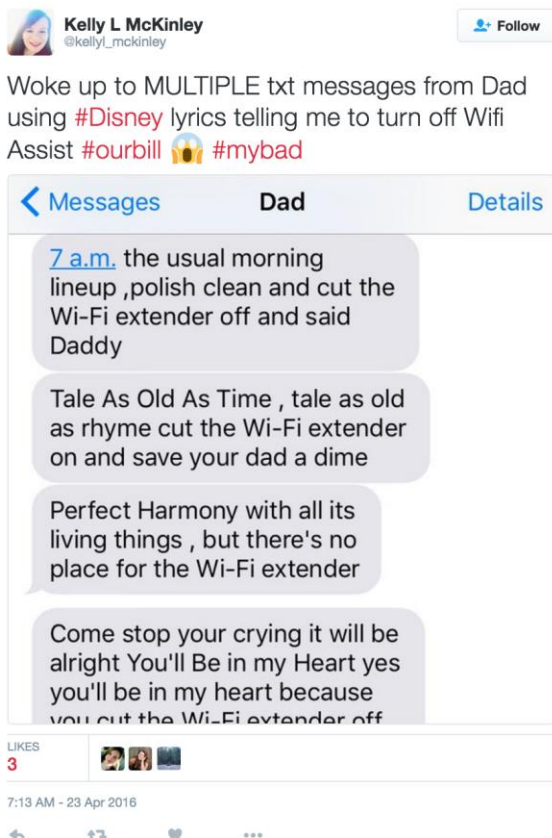
**John Clark**
@Johnnyr_63

Follow

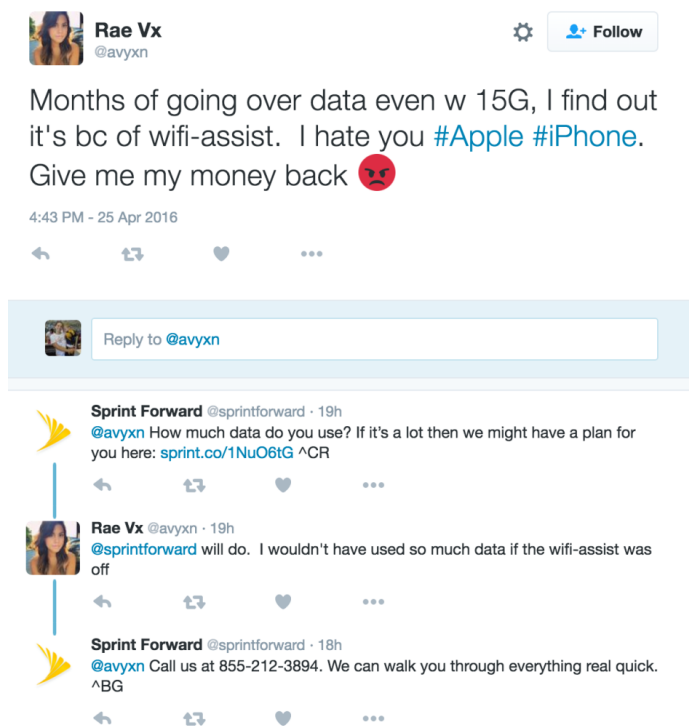
Pardon me, @tim_cook , could you get the next
update to fix the "wifi assist" so iOS asks if you
want it? Really a pain going over data plan

5:34 PM - 14 Apr 2016





34. Wireless providers have even begun using online complaints about Wi-Fi Assist as a tool to market new cellular data packages to consumers.



E. The iOS 9 Software Update Screen Misleads Users

35. Prior to installing iOS 9, all users are presented with a "Software Update" screen that provides an overview of iOS 9 and its features. This software update screen includes the following limited disclosure:

With this update your iPhone, iPad and iPod touch become more intelligent and proactive with powerful search and improved Siri features. New multitasking features for iPad allow you to work with two apps simultaneously, side-by-side or with the new Picture-in-Picture feature. And, built-in apps become more powerful with detailed transit information in Maps, a redesigned Notes app, and an all-new News app. *And improvements at the foundation of the operating system enhance performance, improve security and give you up to an hour of extra battery life.*

(Emphasis Added).¹⁹



¹⁹ Roman Loyola, How to upgrade to iOS 9 (and, if you need to, reinstall iOS 8), *MacWorld.com*, Sept. 16, 2015, <http://www.macworld.com/article/2984436/operating-systems/how-to-upgrade-to-ios-9-and-if-you-need-to-reinstall-ios-8.html> (last visited May 18, 2016).

36. While this disclosure touts the increased battery life of iOS 9, it fails to disclose that Wi-Fi Assist, when enabled and active, will actually *increase* battery usage, negatively impacting battery life. This is because using a cellular connection to transfer data is much more processor intensive and thus more of a drain on the battery than is transferring data via a Wi-Fi connection.²⁰

37. The partial disclosures on Apple's software update screen misled, and continue to mislead, users regarding the functionality of Wi-Fi Assist, the nature of its integration into the iOS and its impact on the performance of users' iOS devices. In touting "improvements to the foundation of the operating system" that were designed by Apple to "enhance performance, improve security and give you up to an extra hour of battery life," Apple indicates that installation of iOS 9 will make iOS devices more efficient and improve their performance. As reflected in numerous consumer complaints regarding unexpected cellular data bills arising from operation of Wi-Fi Assist, the inclusion of the "feature" did not "enhance" the performance of class members' iOS devices.

38. All of this information is included on one screen of the phone, thus users do not need to scroll down to review it. At the bottom of this screen, users are provided the option to download and install the update.²¹

F. The iOS 9 Upgrade and Setup Process Provided Numerous Opportunities to Warn Users about Wi-Fi Assist

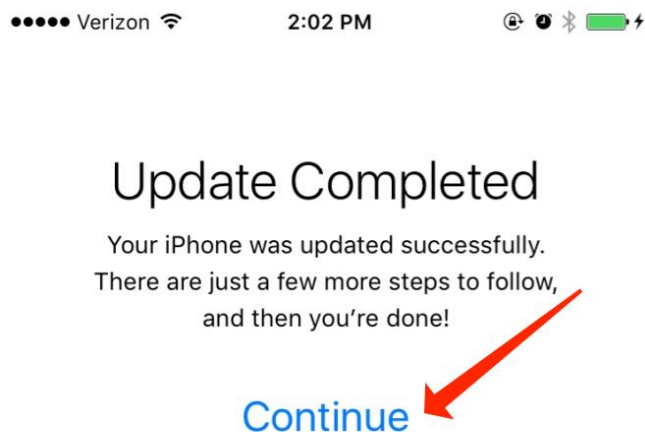
39. Whether a user is upgrading to iOS 9 or has purchased a new iOS device with iOS 9 preinstalled, the iOS 9 installation and setup processes require user engagement at several steps. Each of these steps is, consistent with the Apple design guidelines described in section G, designed to provide users a clear understanding of certain features and give them an opportunity to engage those features. Once iOS 9 is downloaded and the installation process has been completed, users

²⁰ Kevin Roose, A hidden feature in the new iPhone update may be killing your battery and data plan—here's how to turn it off, *Fusion*, Sept. 29, 2015 [http://fusion.net/story/205535/ios-wifi-assist/](http://fusion.net/story/205535/ios-wifi-assist/fusion.net/story/205535/ios-wifi-assist/) (last visited April 28, 2016).

²¹ Grant Brunner, How to upgrade to iOS 9: The complete guide, *Extreme Tech*, Sept. 16, 2015, <http://www.extremetech.com/mobile/214428-how-to-upgrade-to-ios-9-the-complete-guide> (last visited April 28, 2016).

are prompted through several steps necessary to complete the setup of the iOS before they can actually use their iOS devices. This setup process includes several steps that require user input, thus providing Apple ample opportunity to 1) disclose the existence of Wi-Fi Assist, 2) explain its function to iOS users and 3) allow users to decide whether they want to enable the feature.^{22, 23}

40. First, following a "Hello" screen, users are informed that the update has completed but that "[t]here are just a few more steps to follow, and then you're finished!"²⁴



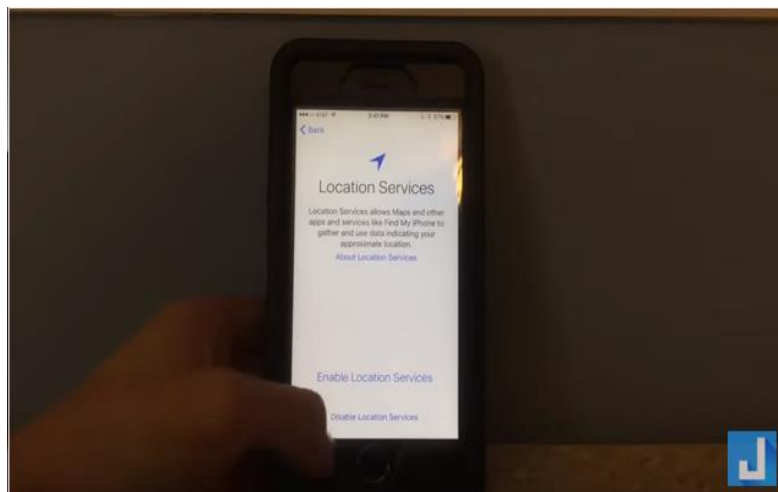
In order to exit this screen, users must tap a button labeled "continue." Then, depending on the device and the user settings, users are prompted to walk through several steps, each of which requires affirmative action by the user.

²² Macworld UK, How to install iOS 9 on your iPhone or iPad, *YouTube*, Sept. 18, 2015, <https://www.youtube.com/watch?v=zusyymzx-NM>, (last visited April 28, 2016).

²³ DHTV – Dan, How To Update and Install iOS 9 Via iTunes iPhone, iPad, iPod Touch, *YouTube*, Sept. 16, 2015, <https://www.youtube.com/watch?v=8D6coTMV5pI>, (last visited April 28, 2016).

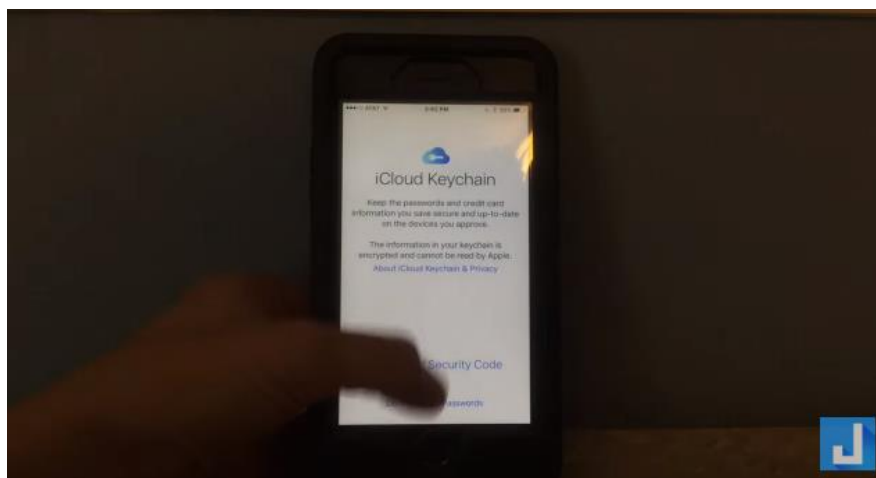
²⁴ Grant Brunner, How to upgrade to iOS 9: The complete guide, *Extreme Tech*, Sept. 16, 2015, <http://www.extremetech.com/mobile/214428-how-to-upgrade-to-ios-9-the-complete-guide> (last visited April 28, 2016).

41. Some users are prompted to activate "Location Services," which, according to Apple, "allows Maps and other apps and services like Find My iPad to gather and use data indicating your approximate location."²⁵



Location Services is set off by default, requiring users to enable it before it can be used.

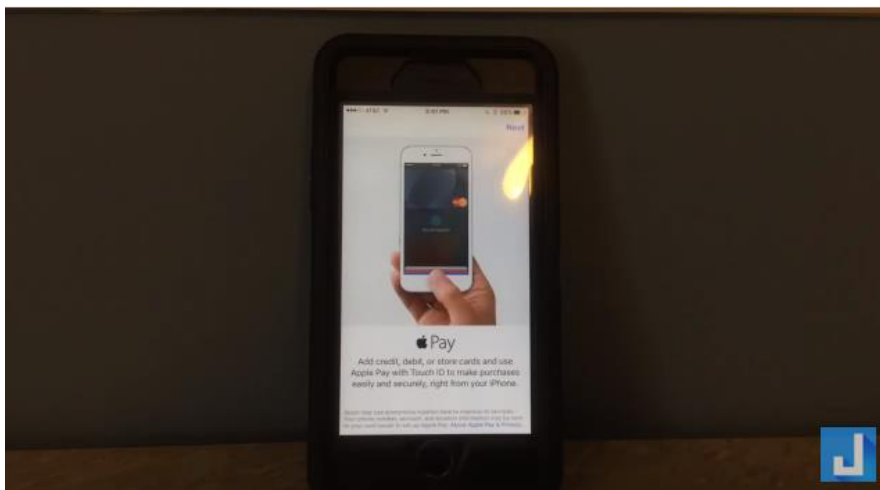
42. Similarly, if users have not previously enabled the "iCloud Keychain" a password saving application built into the iOS, users are prompted to do so.



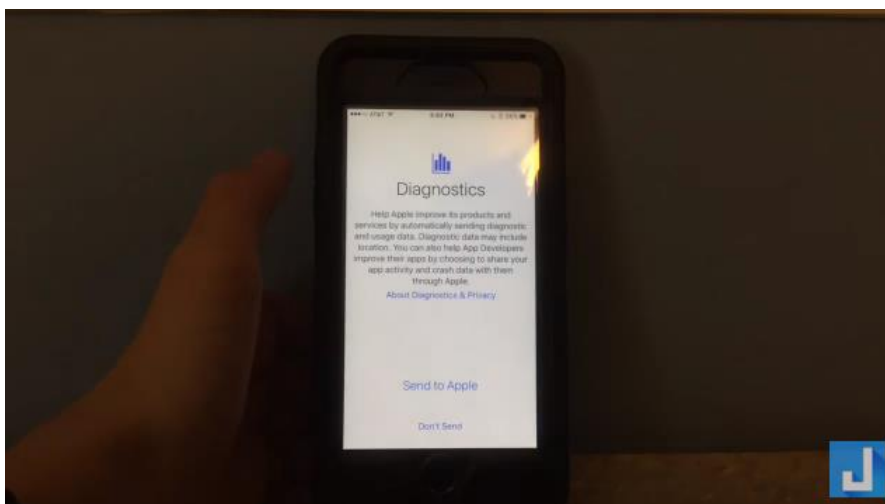
43. Users are also prompted to create a new six digit passcode for their iOS device. At this screen, users can either input a new passcode (prior versions of the iOS were limited to a four digit passcode). By selecting "Passcode Options," users can bypass this feature and retain their old six digit passcode.

²⁵ JJTHC, How To Install and Setup: IOS 9, YouTube, Sept. 16, 2015, <https://www.youtube.com/watch?v=QUuZYjn5CHM>, (last visited April 28, 2016).

1 44. The iOS 9 setup process then provides several other options, including promoting
2 users to add a payment method to the "Apple Pay" feature.



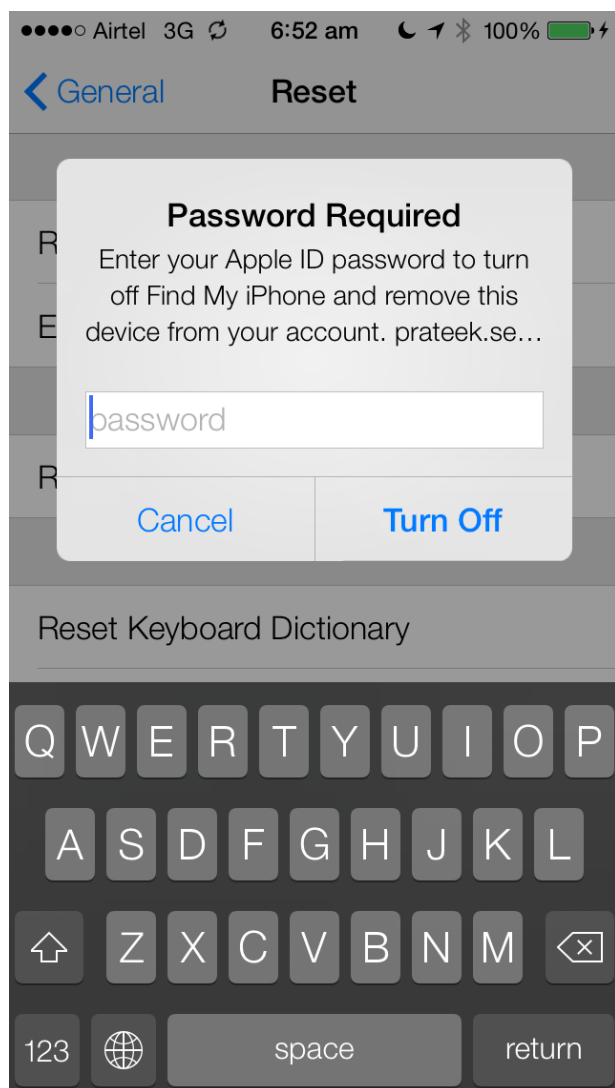
11 45. Finally, the iOS setup process provides a screen allowing Apple to collect diagnostic
12 data from a users' iOS device.



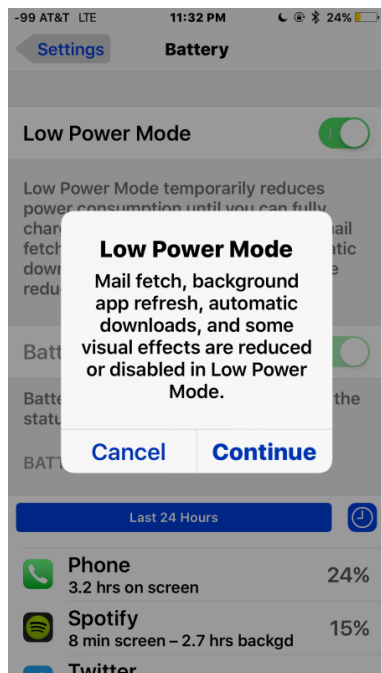
22 46. This setup process was a logical place for Apple to disclose Wi-Fi Assist, educate
23 iOS users about how Wi-Fi Assist works, and to provide users with sufficient information to allow
24 them to understand that using Wi-Fi Assist could cause them to exceed their cellular data limits,
25 thus incurring excess charges. However, Apple chose not to do so.

26 47. In addition to using the iOS 9 setup process to inform users about the functionality of
27 iOS 9, Apple could utilize pop-up notifications as a means of notifying users about Wi-Fi assist and
28 its operation. Apple regularly uses notifications on the iOS screen to alert users to available

updates, features, potential security threats, and other issues. For example as noted in ¶35, when a new iOS upgrade is available, users are reminded to upgrade their iOS device. Apple also uses notification windows to notify users of actions that may lead to security threats and to maintain security in order to avoid unauthorized purchases, such as asking users to reenter their user passwords in order to purchase items on the Apple App Store.



48. In iOS 9, users are also warned when the battery in their device reaches 20% and 10% capacity and users are offered the opportunity to switch to low-power mode.²⁶



49. These notifications, frequently used to provide warning to iOS users or to require action of them, provided ample opportunity for Apple to disclose to users that Wi-Fi Assist was enabled, or, alternatively, had Apple chosen to leave Wi-Fi Assist off by default, to notify users that they could enable it.

G. Apple's Effort to Hide the Wi-Fi Assist Settings is Inconsistent with its Own Published Design Guidelines

50. Apple's intense focus on the user experience and the design of the iOS user interface is exemplified by its detailed iOS Human Interface Guidelines. For example, the edition of the iOS Human Interface Guidelines published on March 23, 2011 included more than 150 pages of requirements and suggestions for software developers building iOS apps.

²⁶ OSXDaily, 3 Important Improvements in iOS 9 That Are Less Than Obvious, Sept. 26, 2015, <http://osxdaily.com/2015/09/26/3-important-under-hood-ios-9-improvements/> (last visited April 28, 2016).

51. The most recent edition of Apple's iOS Human Interface Guidelines continue the theme of making iOS apps and their settings clear, logical and easily found. Indeed, the first iOS "theme" referred to by Apple is that the "UI helps people understand and interact with the content, but never competes with it."²⁷ For example, in its guidelines, Apple states that "With your layout, you show users what's most important, what their choices are, and how things are related."²⁸ Apple instructs iOS app developers to "Create a layout that fits the screen of an iOS device. Users should see primary content without zooming or scrolling horizontally."²⁹ Apple also reminds developers to logically organize apps, in order to "*Create an easy-to-read layout that puts controls close to the content they modify.*"³⁰

52. Apple's 2011 iOS Design Guidelines repeatedly urged designers to provide information to users in the clearest possible fashion, in order to "analyze what's needed in each screen," and "focus on the primary task."³¹ iOS developers are further told to "elevate the content people care about," and to "think top down," here, Apple's guidance is especially relevant in light of the implementation of Wi-Fi Assist:

Think Top Down

The top of the screen is most visible to people, because they tend to interact with the device by holding the device in the following ways:

- In their nondominant hand (or laying it on a surface), and gesturing with a finger of the dominant hand
- In one hand, and gesturing with the thumb of the same hand
- Between their hands, and gesturing with both thumbs

Put the most frequently used (usually higher level) information near the top, where it is most visible and easy to reach. As the user scans the screen from top to bottom, the information displayed should progress from general to specific and from high level to low level.

For example, in a game, the most important action can take place in the top half of the screen. This leaves the bottom half of the screen for supplementary information and for controls users can tap without obscuring their view.

²⁷ Apple, Inc., iOS Human Interface Guidelines – Designing for iOS, https://developer.apple.com/library/ios/documentation/UserExperience/Conceptual/MobileHIG/index.html?utm_source=twitterfeed&utm_medium=twitter (last visited April 28, 2016).

²⁸ Apple, Inc., iOS Human Interface Guidelines – Adaptivity and Layout, https://developer.apple.com/library/ios/documentation/UserExperience/Conceptual/MobileHIG/LayoutandAppearance.html#//apple_ref/doc/uid/TP40006556-CH54-SW1 (last visited April 28, 2016).

²⁹ Apple, Inc., UI Design Do's and Don'ts, <https://developer.apple.com/design/tips/> (last visited April 28, 2016).

³⁰ Apple, Inc., UI Design Do's and Don'ts, <https://developer.apple.com/design/tips/> (last visited April 28, 2016).

³¹ Apple, Inc., iOS Human Interface Guidelines 47 (2011).

Apple encourages iOS developers to "[p]ut the most frequently used . . . information near the top, where it is most visible and easy to reach" and reminds developers that "*the information displayed should progress from general to specific and from high level to low level.*" *Id.* Apple's implementation of Wi-Fi Assist turns this directive on its head, burying the setting for Wi-Fi Assist, a high-level iOS system setting that can impact multiple iOS apps, apart from other, similar settings, instead burying the setting for Wi-Fi Assist below the settings for unrelated third party apps.

53. Apple's iOS Human Interface Guidelines also remind developers to make their apps "logical" and "easy to predict."

Give People a Logical Path to Follow

Make the path through the information you present logical and easy for users to predict. In addition, be sure to provide markers, such as back buttons, that users can use to find out where they are and how to retrace their steps.

Here again, Apple's implementation of Wi-Fi Assist cannot be squared with its own guidelines. With the introduction and implementation of Wi-Fi Assist, Apple failed to provide consumers with critical information that users needed to understand Wi-Fi Assist and "predict" how it would operate. Specifically, when it released iOS 9, Apple did not disclose that Wi-Fi Assist was activated by default. As a result, Plaintiffs and numerous other consumers did, and even now continue to, suffer excess data charges as a result of their unknowing use of Wi-Fi Assist.

54. Finally, Apple reminds iOS app developers to "make usage easy and obvious," stating that "you can't assume that they have the time (or can spare the attention) to figure out how it works."

Make Usage Easy and Obvious

Strive to make your application instantly understandable to people, because you can't assume that they have the time (or can spare the attention) to figure out how it works.

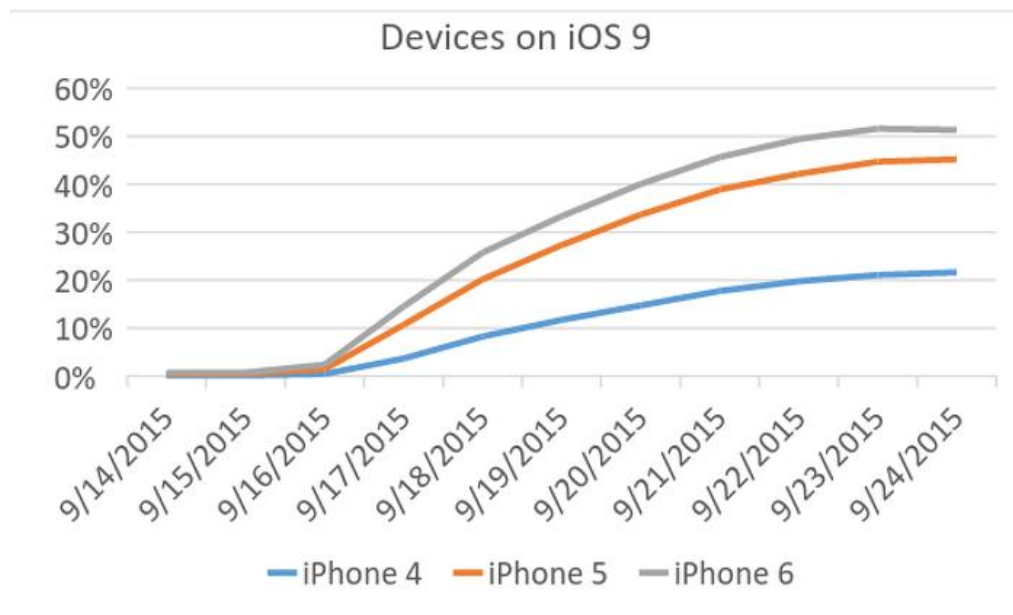
1 55. Apple's failure to disclose Wi-Fi Assist and to disclose that it was activated by
2 default runs afoul of Apple's own standards. The Company acknowledges and understands that,
3 due to the complexity of the iOS, users may not be aware, or may not be able to "spare the
4 attention," to find and understand the significance of new additions to an iOS update. This is
5 especially the case where, as here, Apple failed to disclose Wi-Fi Assist when it release iOS 9 and
6 failed to disclose to users that Wi-Fi Assist was activated by default

7 //

8 //

H. New iOS Updates are Rapidly Adopted and Installed by Users

56. The harm caused by Apple's failure to disclose Wi-Fi Assist, and its failure to disclose the fact that Wi-Fi Assist is activated upon installation of iOS 9, is aggravated by the fact that iOS users rapidly upgrade their iOS devices to new iterations of the iOS operating system. Much of this adoption comes within days of the rollout of a new iOS. According to an article published by Macworld.com, on the first day of its availability, approximately 12% of iOS devices were upgraded to iOS 9.³² Indeed, according to a report published on September 29, 2015, by September 24, 2015, more than half of iPhone 6 users and almost half of iPhone 5 users, had upgraded their phones to iOS 9.³³ Less than a month later, by October 19, 2015, 61% of iOS devices visiting the Apple App Store had upgraded to iOS 9.³⁴ Apple also regularly reports iOS adoption on its developer webpage, noting, for example, that that, on April 18, 2016, 84% of iOS devices accessing Apple's App Store were running iOS 9 or its variants.³⁵



³² Oscar Raymundo, Here's how many users upgraded to iOS 9 on Day 1, *Macworld*, Sept. 17, 2015, <http://www.macworld.com/article/2984732/ios/heres-how-many-users-upgraded-to-ios-9-on-day-1.html> (last visited April 28, 2016).

³³ Dan Pearson, Research firm says iOS 9 adoption rates running around 45%, *gameindustry.biz*, Sept. 29, 2015, <http://www.gamesindustry.biz/articles/2015-09-29-research-firm-says-ios-9-adoption-rates-running-around-45-percent> (last visited April 28, 2016).

³⁴ Kevin Tofel, Apple iOS 9 quickly hits 61 percent adoption rate, bugs and all, *ZDNet*, Oct. 22, 2015, <http://www.zdnet.com/article/apple-ios-9-quickly-hits-61-percent-adoption-rate-bugs-and-all/> (last visited April 28, 2016).

³⁵ Apple, Inc., <https://developer.apple.com/support/app-store/> (last visited April 28, 2016).

1 57. Apple has sold well over 1 billion iOS devices.³⁶ And, in each of the last six fiscal
 2 quarters, Apple has sold between 47.5 million and 74.78 million iPhones, all of which are
 3 compatible with iOS 9.³⁷ As a result, well over 100 million consumers have likely been
 4 unknowingly been exposed to the Wi-Fi Assist “feature.”

5 **I. Apple Pushes Users to Install its Frequent iOS Upgrades**

6 58. In the eight months since the September 15, 2016 release of the first iteration of iOS
 7 9, iOS 9.0, Apple has released eight iOS updates.³⁸ Each of these updates included bug fixes,
 8 security improvements, new features, or some combination thereof. Apple puts a substantial effort
 9 into encouraging iOS device owners to rapidly upgrade their devices and, as set forth below, that
 10 effort has been successful. However, Apple's frequent upgrade process also creates numerous
 11 opportunities for Apple to, as it did here, add undisclosed “features,” or enable those newly added
 12 “features” by default, and even to reset user settings by, for example, turning Wi-Fi Assist back on
 13 even after a user has learned about the feature, found its menu setting, and disabled it.

14 59. Security of mobile devices, including iOS devices, is a pressing and high-profile
 15 issue. As a result, regular coverage is given to the inclusion of security fixes in iOS updates. For
 16 example, following the release of iOS 9.2.1, outlets reported on the critical nature of the update,
 17 with one noting that “If you've got an iPhone, iPad or a Mac, you're definitely going to want to
 18 download and install the updates that Apple released today, because they fix bugs that will
 19
 20
 21

22 ³⁶ Jordan Kahn, Apple announces 1 billion iOS devices sold, *9to5Mac.com*, Jan. 27, 2016,
 23 <http://9to5mac.com/2015/01/27/apple-announces-1-billion-ios-devices-sold/> (last visited May 18,
 24 2016).

25 ³⁷ Statista, Global Apple iPhone sales from 3rd quarter 2007 to 2nd quarter 2016 (in million
 26 units), *Statista*, (n.d.) [http://www.statista.com/statistics/263401/global-apple-iphone-sales-since-3rd-](http://www.statista.com/statistics/263401/global-apple-iphone-sales-since-3rd-quarter-2007/)
 27 [quarter-2007/](http://www.statista.com/statistics/263401/global-apple-iphone-sales-since-3rd-quarter-2007/) (last visited May 18, 2016).

28 ³⁸ iOS 9.0.1, released on September 23, 2015; iOS 9.0.2, released on September 30, 2015;
 iOS 9.1, released on October 21, 2015; iOS 9.2, released on December 8, 2015; iOS 9.2.1, released
 on January 19, 2016; iOS 9.3, released on March 21, 2016; and iOS 9.3.1, released on March 31,
 2016; and iOS 9.3.2, released on May 16, 2016.

otherwise leave you vulnerable to security threats."³⁹ Similarly, following the release of iOS 9.3, BGR.com encouraged reads to "[u]pdate to iOS 9.3 right now to fix a serious iPhone security flaw," warning users that "[i]f you don't update to iOS 9.3 right now, your iPhone or iPad will remain exposed by a serious security flaw that could allow hackers to steal photos, videos and other files that you send or receive through iMessage."⁴⁰ One online blog publishes a list of reasons to upgrade for virtually every iOS update and consistently identifies updating "if you care about security" as the first reason to install newly released iOS upgrades.⁴¹ Virtually all iOS updates are described by Apple as "Security updates," and, according to Apple, many iOS updates include a litany of security fixes. For example, documentation for iOS 9.3 identifies approximately seven pages of security issues that were addressed with the update.⁴² The security patches included in iOS 9.3 include numerous fixes designed to prevent "[a] remote attacker" or "application" from "execut[ing] arbitrary code."⁴³ Security fixes alone are a substantial reason that many users regularly update the system software on their iOS devices. While such updates may protect them from external threats, it also leaves them vulnerable to changes, such as re-enabling Wi-Fi Assist, undertaken by Apple.

60. In addition to security updates, iOS updates frequently introduce new features that users can only access through iOS upgrades. For example, iOS 9.1 introduced more than 150 new

³⁹ Chelsea B. Coombs, Apple Releases Critical Security Updates for Macs, iPads and iPhones, *Techlicious*, Jan. 21, 2016 <http://www.techlicious.com/blog/apple-mac-iphone-ipad-security-public-wifi-networks-updates/> (last visited April 28, 2016).

⁴⁰ Zach Epstein, Update to iOS 9.3 right now to fix a serious iPhone security flaw, *BGR*, Mar. 23, 2016, <http://bgr.com/2016/03/23/ios-security-flaw-fix-update-ios-9-3/> (last visited April 28, 2016).

⁴¹ Adam Mills, 4 Reasons Not to Install iOS 9.1 & 5 Reasons To Do It, *GottaBeMobile*, Nov. 4, 2015, <http://www.gottabemobile.com/2015/11/04/should-you-install-ios-9-1/> (last visited April 28, 2016).

⁴² Apple, Inc., About the security content of iOS 9.3, <https://support.apple.com/en-us/HT206166> (last visited April 28, 2016).

⁴³ Apple, Inc., About the security content of iOS 9.3, <https://support.apple.com/en-us/HT206166> (last visited April 28, 2016).

"emojis," popular icons that users can insert in emails and text messages. iOS 9.1 also improved "Live Photo" a feature added to the iPhone 6S that allows users to capture a small amount of video when they take a photo using the iPhone's built-in camera. iOS 9.2 provided substantial updates and improvements in the implementation of Apple Music and Apple News.⁴⁴ With iOS 9.3, Apple introduced a new feature, "Night Shift" which changes the displayed colors on iPhones and iPads at night to encourage better sleep patterns.⁴⁵ iOS 9.3 also added password protection to Apple's popular Notes app and provided additional updates to the Apple News app. *Id.*

61. Finally, iOS updates are also used to provide compatibility with new devices, or to allow iOS devices to work with new hardware feature. For example, iOS 9.2 added support for Apple's Lightning to USB Camera Adapter and Lightning to SD Card Reader. These accessories, both popular with photographers, cannot be used with iOS devices absent an upgrade of the iOS.⁴⁶

J. Apple Frequently Leaves New iOS Features Disabled by Default Rather than Activated

62. Apple's decision to secretly enable Wi-Fi Assist is not the result of a policy to enable all new features. In fact, Apple frequently introduces new features, even highly touted ones, that are turned off by default, thus requiring user intervention, and knowledge, to enable. For example, one of the highlighted features of the recently released iOS 9.3 is Night Shift, an iOS setting that automatically shifts iOS device display colors to warmer colors in the evening. By default, the Night Shift feature is disabled and requires a user to access it and turn it on.⁴⁷ Similarly, in iOS 9,

⁴⁴ Adam Mills, 4 Reasons Not to Install iOS 9.1 & 5 Reasons To Do It, *GottaBeMobile*, Nov. 4, 2015, <http://www.gottabemobile.com/2015/11/04/should-you-install-ios-9-1/> (last visited April 28, 2016).

⁴⁵ Matt Swider, iOS 9.3: What features are in the new iPhone and iPad update?, *TechRadar*, Apr. 4, 2016 <http://www.techradar.com/us/news/phone-and-communications/mobile-phones/ios-9-3-update-new-iphone-and-ipad-features-1313731> (last visited April 28, 2016).

⁴⁶ Adam Mills, 4 Reasons Not to Install iOS 9.1 & 5 Reasons To Do It, *GottaBeMobile*, Nov. 4, 2015, <http://www.gottabemobile.com/2016/01/18/4-reasons-not-to-install-ios-9-2-5-reasons-to-do-it/?gbmsl=4> (last visited April 28, 2016).

⁴⁷ Juli Clover, How to Use Night Shift Mode in iOS 9.3, *MacRumors*, Jan. 14, 2016, <http://www.macrumors.com/how-to/use-ios-9-3-night-shift-mode/> (last visited April 28, 2016).

1 Apple introduced Low Power Mode, an iOS system setting designed to extend battery life when
 2 less than 20% of the battery charge is remaining. When iOS 9 is installed, Low Power Mode is
 3 turned off by default. iOS 9 also introduced a longer, six digit pass code as a means of enhancing
 4 security for device users. Prior iterations of the iOS limited the passcode to four digits. While,
 5 following installation of iOS 9, users are prompted to update their passcode to a six digit number,
 6 the option can be skipped and iOS 9 users can continue to use a four digit passcode. Similarly, in
 7 iOS 9.3, Apple added a password protection feature to the iOS Notes app. Here too, password
 8 protection was off by default, requiring user intervention to turn it on.

9 63. Apple's history of leaving some new features off by default is not limited to iOS 9.
 10 In a previous iteration of the iOS, Apple introduced Location Services, which allowed applications
 11 to access GPS sensors built into some iOS devices and identify an iOS user's location. By default,
 12 Location Services was turned off on introduction, requiring user intervention to be set up.
 13 Similarly, with the release of iOS 5, Apple introduced Find My Friends, an App that used location
 14 services to identify the location of friends. Find My Friends was not enabled by default. Rather,
 15 users had to enter their Apple ID and password to enable the service.⁴⁸ Similarly, Apple's
 16 introduction of Apple Pay, a mobile wallet, required users to add in payment options, even though
 17 many users already had credit card information stored on their phones for use in making purchases
 18 from Apple's App Store or iTunes Store.

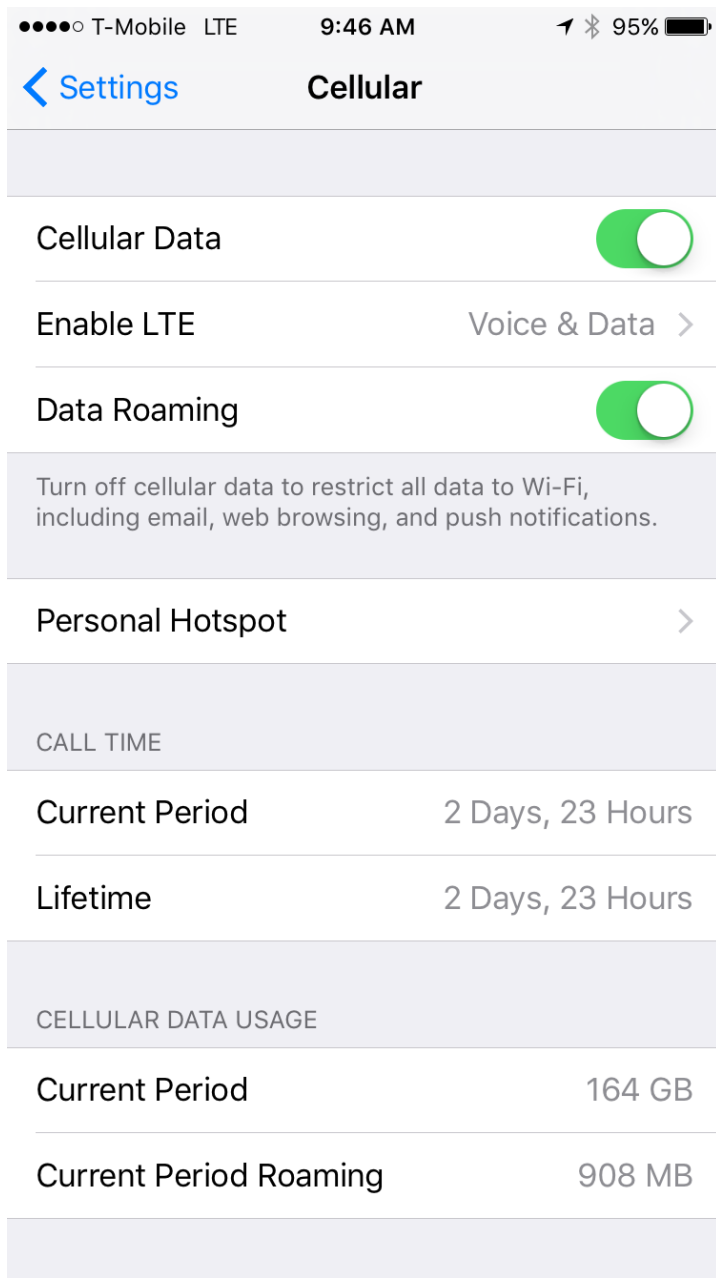
19 **V. APPLE'S BELATED AND INADEQUATE EFFORT**
 20 **TO ADDRESS PROBLEMS WITH WI-FI ASSIST**

21 64. In mid-October 2015, after receiving numerous complaints about increased data
 22 usage, Apple posted instructions on its website indicating how to turn off Wi-Fi assist. These
 23 instructions, which users would likely only begin looking for after they had incurred charges
 24 resulting from excessive data use, do not adequately address the problems caused by Apple's
 25 implementation of Wi-Fi Assist.

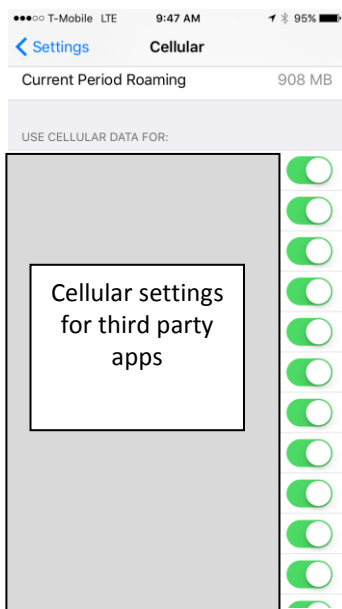
27 ⁴⁸ Lex Friedman, Apple Releases Find My Friends for iOS, *Macworld*, Oct. 12, 2011,
 28 http://www.macworld.com/article/1162969/apple_releases_find_my_friends_for_ios.html (last
 visited April 28, 2016)

65. The menu option for turning off Apple's Wi-Fi Assist is buried deep in a submenu and, remarkably, instead of being laid out with other operating-system related options at the top of the menu, is included only after listings for third-party apps. For some users, this can mean that finding the Wi-Fi Assist menu option requires scrolling through multiple pages.

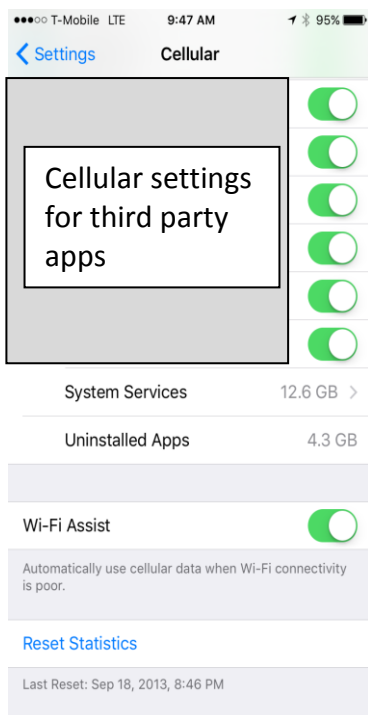
66. As indicated below, the first page of the Cellular subsection of the Settings menu lists operating system options. This is a logical place to locate the Wi-Fi Assist.



67. However, Apple chose not to place the Wi-Fi Assist setting on this screen. Instead, users must scroll past this first screen, after which cellular settings for third-party apps are listed, as indicated below:



Users can only find the Wi-Fi Assist setting after they have scrolled the Cellular settings for all third party apps, as indicated below, which on a typical phone can be ten or more screens below.



68. By turning Wi-Fi Assist on by default, and by burying the Wi-Fi Assist setting deep in a submenu, Apple prevents users from making an informed choice about the use of Wi-Fi Assist, instead leaving users in the position of having to research and find the setting only after they have discovered the "feature" after incurring additional charges for excess use of cellular data.

**VI. APPLE CAN EASILY REMEDY THE PROBLEMS
CAUSED BY ITS IMPLEMENTATION OF WI-FI ASSIST**

69. Apple is able to remedy the problems caused by its implementation of Wi-Fi Assist. However, despite six updates to the iOS operating system since the introduction of iOS 9 on September 16, 2015, Apple has failed to do so.

70. As a threshold matter, Apple could, but has refused, to turn Wi-Fi Assist off by default, thus allowing users to choose to use the "feature," and thus use additional cellular data. Plaintiffs seek an injunction to do just that.

71. Apple could, but has refused to, place the Wi-Fi Assist setting more prominently on the iOS Cellular menu. As set forth above, the setting is placed deep in the Cellular menu, making it difficult to find.

72. Apple could have, but initially failed to, provide users with information regarding how much data was being used by the Wi-Fi Assist feature. This information was not added until the release of iOS 9.3 on March 21, 2016.

73. Finally, Apple could, but has failed to, provide users with the option to set a threshold data usage at which point Wi-Fi Assist will automatically discontinue so as to avoid data usage overcharges.

VII. CLASS ACTION ALLEGATIONS

74. Plaintiffs bring this action on their own behalf and on behalf of the following Classes: (1) an "iOS 9 Purchaser Class" consisting of all persons or entities in the United States who purchased an iPhone, iPod or iPad with iOS 9 pre-installed for purposes other than resale or distribution, and (2) an "iOS 9 Upgrade Class" consisting of all persons or entities in the United States who upgraded an iPhone, iPod or iPad to iOS 9.

1 75. Plaintiffs also bring this action on their own behalf and on behalf of the
 2 following California Business and Professions Code Subclasses: (1) an "iOS 9 California
 3 Claims Purchaser Class" consisting of all persons or entities who purchased an iPhone, iPod
 4 or iPad with iOS 9 pre-installed for purposes other than resale or distribution with respect to
 5 California Business & Professions Code §17200 claims, and (2) an "iOS 9 California Claims
 6 Upgrade Class" consisting of all persons or entities in the United States who upgraded an
 7 iPhone, iPod or iPad to iOS 9 with respect to California Business & Professions Code
 8 §17200 claims.

9 76. This action is properly maintainable as a class action under Rule 23 of the
 10 Federal Rules of Civil Procedure.

11 77. The Class is so numerous that joinder of all members is impracticable. As
 12 noted above, public reports indicate that the class may exceed 100 million members
 13 geographically dispersed throughout the United States.

14 78. There are questions of law and fact which are common to the Class. The
 15 common questions, which are each separate issues that should be certified for classwide
 16 resolution pursuant to Fed. R. Civ. P. 23(c)(4), include but are not limited to:

- 17 a) The nature, scope and operations of the wrongful practices of Apple;
- 18 b) Whether Defendant owed a duty of care to the Class;
- 19 c) Whether Defendant's advertising, marketing, product packaging, and other
 20 promotional materials were untrue, misleading, or reasonably likely to deceive;
- 21 d) Whether Defendant knew that its representations and/or omissions regarding the
 22 Wi-Fi Assist were false or misleading, but continued to make them;
- 23 e) Whether allowing the default setting for Wi-Fi Assist to be activated was an
 24 unfair and deceptive business act;
- 25 f) Whether California law applies to the proposed Class;
- 26 g) Whether, by the misconduct as set forth in this Complaint, Apple engaged in
 27 unfair or unlawful business practices, pursuant to Cal. Bus. & Prof. Code §
 28 17200, *et seq.*;

- 1 h) Whether Defendant's conduct violated the Cal. Bus. & Prof. Code § 17500, *et*
2 *seq.*;
- 3 i) Whether Plaintiffs and the Class are entitled to an injunction barring Apple from
4 ever setting Wi-Fi Assist as activated without a consumer's permission and
5 prohibiting Apple from modifying, altering or choosing the Wi-Fi Assist setting
6 on any device;
- 7 j) Whether Defendant was unjustly enriched; and
- 8 k) Whether Plaintiffs and the Class members are entitled to actual, statutory, and
9 punitive damages.
- 10 l) Plaintiffs' claims are typical of the claims of the other Class members and
11 Plaintiffs do not have any interests adverse to the Class. Specifically, Plaintiffs
12 and all the Class members sustained damages arising out of Defendant's
13 wrongful course of conduct. The harms suffered by Plaintiffs are typical harms
14 suffered by the Class members, and Plaintiffs and other Class members have an
15 interest in preventing Defendant from engaging in such conduct in the future.

16 79. Plaintiffs are adequate representatives of the Class, have retained competent
17 counsel experienced in litigation of this nature and will fairly and adequately protect the
18 interests of the Class.

19 80. The prosecution of separate actions by individual Class members would
20 create a risk of inconsistent or varying adjudications with respect to individual Class
21 members which would establish incompatible standards of conduct for the party opposing
22 the Class.

23 81. Plaintiffs anticipate that there will be no difficulty in the management of this
24 litigation. A class action is superior to other available methods for the fair and efficient
25 adjudication of this controversy.

26 82. In addition, certification of specific issues such as Defendant's liability is
27 appropriate.

28

COUNT I

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL")

(CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*)

83. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

84. Plaintiffs bring this claim on behalf of themselves and the proposed Class.

85. The UCL prohibits acts of unfair competition, including any "unlawful, unfair or fraudulent business act or practice."

86. The UCL imposes strict liability. Plaintiffs do not have to prove Defendant intentionally or negligently engaged in unlawful, unfair or fraudulent business acts or practices. Instead, Plaintiffs only have to prove such acts or practices occurred.

87. Defendant engaged in unlawful business acts and practices in violation of the UCL by engaging in unfair, unlawful and fraudulent business acts or practices as described herein, including but not limited to, failing to disclose that Wi-Fi Assist's default setting could end up in significant data overuse charges.

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

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

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

91. By engaging in the above-described acts and practices, Defendant committed one or more acts of unfair competition within the meaning of the UCL.

92. Plaintiffs reserve the right to identify additional provisions of law violated by Defendant as further investigation and discovery warrants.

93. Defendant's misrepresentations, business practices and its false and misleading advertising regarding Wi-Fi Assist constitute "unfair" business acts and practices because such conduct is immoral, unscrupulous, and offends public policy.

1 94. Defendant's misrepresentations, business practices and its false and
2 misleading advertising regarding Wi-Fi Assist constitute "fraudulent" business acts and
3 practices because members of the consuming public, including Plaintiffs and the Class
4 members, were and are likely to be deceived thereby.

5 95. The harm to Plaintiffs and members of the public outweighs the utility, if
6 any, of Defendant's acts and practices described above and therefore Defendant's acts and
7 practices constitute an unfair business act or practice.

8 96. Defendant's acts and practices have detrimentally impacted competition and
9 caused substantial harm to Plaintiffs, the Class members, and the consuming public.
10 Plaintiffs and the Class members were misled and suffered injuries and lost money or
11 property as a direct and proximate result of Defendant's unlawful business acts and
12 practices.

13 97. Defendant knew or reasonably should have known its misleading business
14 practices of ensuring the Wi-Fi Assist was activated and failing to provide real-time notice
15 that the phone switched to cellular data was likely to deceive reasonable consumers.
16 Likewise, Defendant knew or reasonably should have known its misrepresentations and
17 omissions regarding Wi-Fi Assist's capabilities and functions were and are likely to deceive
18 reasonable consumers.

19 98. Defendant's misrepresentations and its false and misleading business
20 practices present a continuing threat to consumers in that such advertising will continue to
21 mislead consumers.

22 99. By reason of the foregoing, Defendant should be required to pay damages
23 and/or make restitution to Plaintiffs and the Class Members and pay for Plaintiffs' and the
24 Class members' attorneys' fees. Defendant should also be ordered by the Court through an
25 injunction to take action to disable Wi-Fi Assist so that the feature is only available to
26 consumers who affirmatively choose to engage it.

27
28

COUNT II

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW ("FAL")

(CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*)

100. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

101. Plaintiffs bring this claim on behalf of themselves and the proposed Class.

102. Defendant Apple Inc. is a California company disseminating advertising from its California headquarters throughout the United States.

103. The FAL provides that "[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading"

104. When Defendant disseminated the advertising, it knew, or by the exercise of reasonable care should have known, that the statements concerning Wi-Fi Assist capacity were untrue or misleading, or omitted to state the truth about the Wi-Fi Assist impact on data usage, in violation of the FAL. Specifically, Defendant failed to disclose that the default setting for Wi-Fi Assist was "activated" and that Wi-Fi Assist provides no notice when it switches to cellular data. Likewise, Defendant knew or reasonably should have known its misrepresentations and omissions regarding Wi-Fi Assist's capabilities and functions were and are likely to deceive reasonable consumers.

105. Plaintiffs and the Class members were misled and suffered injuries and lost money or property as a direct and proximate result of Defendant's misrepresentations and its false and misleading advertising regarding Wi-Fi Assist in violation of the FAL.

106. As a result of Defendant's wrongful conduct, Plaintiffs and the Class are entitled to restitution and an order for the disgorgement of the funds by which Defendant

1 was unjustly enriched.

2 107. Pursuant to Cal. Bus. & Prof. Code §§ 17203 & 17535, Plaintiffs and the
3 members of the Class seek an order of this Court enjoining Defendant from continuing to
4 engage, use, or employ the above-described practices as they pertain to the promotion of
5 Wi-Fi Assist and iOS 9.

6 108. Likewise, Plaintiffs seek an order requiring Defendant to make full corrective
7 disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial
8 disclosures, as well as to disable Wi-Fi Assist so that it is not engaged by default.

9 109. On information and belief, Defendant has failed and refused, and in the
10 future will fail and refuse, to cease its deceptive advertising practices, and will continue to
11 do those acts unless this Court orders Defendant to cease and desist pursuant to Cal. Bus. &
12 Prof. Code § 17535. The corrective statement by Apple did not fully address all
13 misrepresentations.

14 110. Plaintiffs, individually and on behalf of the Class, seek restitution,
15 disgorgement, injunctive relief, and all other relief allowable under the FAL.

16 **COUNT III**

17 **NEGLIGENT MISREPRESENTATION**

18 111. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

19 112. Plaintiffs bring this claim on behalf of themselves and the proposed Class.

20 113. Defendant had a duty to disclose to Plaintiffs and the Class members that the
21 default setting for Wi-Fi Assist was "activated" and that Wi-Fi Assist provides no notice
22 when it switches to cellular data. Likewise, Defendant had a duty to disclose the true nature
23 of Wi-Fi Assist's capabilities and functions.

24 114. Defendant negligently and/or carelessly misrepresented, omitted and
25 concealed from consumers material facts relating to Wi-Fi Assist's capabilities and
26 functions.

27 115. These misrepresentations and omissions were material and concerned the
28 specific characteristics and Wi-Fi Assist that a reasonable consumer would consider in

1 choosing to allow the application to run on their device.

2 116. As a result of Defendant's misstatements and omissions, it was under a duty
3 to disclose the additional facts necessary to avoid any misrepresentation or confusion.
4 Further, Defendant knew of its misrepresentations and omissions because Defendant
5 designed and controlled how Wi-Fi Assist would be uploaded on a device- including that the
6 default setting would be "activated."

7 117. At the time Defendant failed to disclose, concealed, suppressed and/or
8 omitted material information, Defendant knew, or by the exercise of reasonable care should
9 have known, that the statements were false and misleading to reasonable consumers.

10 118. Plaintiffs and Class members justifiably relied upon Defendant's
11 misrepresentations and omissions about the Wi-Fi Assist. Plaintiffs and Class members were
12 unaware of the falsity of Defendant's misrepresentations and omissions and, as a result,
13 justifiably relied on them in allowing Wi-Fi Assist to run as activated on their devices. Had
14 Plaintiffs and Class members been aware of the true nature and quality of Wi-Fi Assist, they
15 would have deactivated it to avoid data overuse charges. Plaintiffs request that this Court
16 order Defendant to disable Wi-Fi Assist so that it is only engaged if a Class member
17 affirmatively chooses to engage it.

18 119. As a direct and proximate result of Defendant's misrepresentations and
19 omissions of material fact, Plaintiffs and Class members have suffered and will continue to
20 suffer damages and losses as alleged herein in an amount to be determined at trial.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment with respect to their Complaint as
23 follows:

- 24 1. Certifying the Class as defined herein;
- 25 2. Award damages, including compensatory, exemplary, and statutory damages
26 to Plaintiffs and all members of the Class;
- 27 3. Award Plaintiffs and the Class actual damages sustained;
- 28 4. Award injunctive and declaratory relief, as claimed herein;

5. Award Plaintiffs and the Class punitive damages;

6. Award Plaintiffs and the Class their reasonable attorneys' fees and reimbursement of all costs for the prosecution of this action; and

7. Award such other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: May 19, 2016

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