

1 Michael McShane
Jonas P. Mann
2 AUDET & PARTNERS, LLP
711 Van Ness Ave., Ste. 500
3 San Francisco, CA 94112
Tel.: 415.568-2555
4 Fax: 415.568-2556
5 mcsbane@audetlaw.com
jmann@audetlaw.com

6 *(Additional Counsel listed on signature page)*

7 *Attorneys for Plaintiffs William Scott Phillips,*
8 *Suzanne Schmidt Phillips, and William Cottrell*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

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

15 Plaintiffs,

16 v.

17 APPLE INC.,

18 Defendant.

Case No. 5:15-cv-04879

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

21 Plaintiffs,

22 v.

23 APPLE INC.,

24 Defendant.

Case No. 5:15-cv-05205

25 **CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**
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1 **CLASS ACTION COMPLAINT**

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

9 **SUMMARY OF THE ACTION**

10 1. This is a case involving one of, if not the most, influential company for American
11 consumers and its intentional and very reckless deception of its consumers. Indeed, Forbes has
12 recently stated Apple is the most valuable brand on the market.¹ It is not surprising that there are
13 over 101 million active iPhones in the United States currently. Thus, Apple’s misleading and unfair
14 practices had a widespread impact on consumers throughout the nation.

15 2. Specifically, Defendant’s failure to adequately disclose and represent the true nature
16 of the Wi-Fi Assist included in the iOS 9 operating system released in fall 2015. Specifically,
17 although Apple ensured that the Wi-Fi Assist application is installed on the phone as automatically
18 activated, Apple failed to fully disclose that if Wi-Fi Assist is left activated it will allow the phone
19 to automatically switch to cellular data. This lawsuit seeks, among other things, an injunction
20 barring Apple from ever setting Wi-Fi Assist as activated without a consumer’s permission and
21 prohibiting Apple from modifying, altering or choosing the Wi-Fi Assist setting on any device.

22
23 3. By its very design, Wi-Fi Assist uses more cellular data than users expect.
24 Defendant failed to disclose to consumers that this automatic switch to cellular data caused by an
25 activated Wi-Fi Assist may result in exceeding the data capacity allowed under their phone plans.
26 Defendant's failure to disclose is aggravated by the fact that, as noted above, Wi-Fi Assist is turned
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28 ¹ <http://www.forbes.com/companies/apple/>

1 on by default. As a result, users were left unaware that this new "feature" was using cellular data at
2 an unusually high rate. This is especially true as there is no warning or disclosure when the phone
3 switches from Wi-Fi to cellular data.

4 4. Defendant intentionally elected to have the Wi-Fi Assist' default setting as
5 "activated" while at the same failing to provide any warning to the millions of potential consumers
6 of the likelihood of data overcharges to consumers that do not have an unlimited data plan.

7 5. As one Apple consumer reported:

8 Amongst its big bag of tricks, iOS 9 has one seemingly innocuous feature: Wi-Fi
9 Assist, enabled by default, which will switch to cellular data when your Wi-Fi sucks.
10 This would be great, if I had an unlimited data plan. I don't, but now I do have a very
expensive cellphone bill.

11 I've been using Wi-Fi Assist on my iPhone for a few months; even despite knowing
12 what to look for (a greyed-out Wi-Fi icon), I haven't really noticed it in action. But it
13 has been showing up in my cell data usage: since downloading the iOS 9 beta that
introduced Wi-Fi assist, I've used around a third more data a month (4GB vs my
14 regular-as-clockwork 3GB).²

15 6. Instead, consumers were notified by news articles and blogs that there was a need to
16 deactivate the Wi-Fi Assist. For instance, on September 29th, 2015, Fortune.com reported the threat
17 of massive phone bills:

18
19 If Wi-Fi Assist is left activated, your iPhone will automatically use cellular data
20 whenever it finds that a Wi-Fi router signal is weak. This results in faster network
connections for your phone, but it will eat up the data allotted by your cell phone
21 plan. If you don't have an unlimited data plan, this could be a big problem when your
next phone bill arrives. That's right, extra fees.³

22
23 7. Similarly, on the same day, the Washington Post carried an article warning
24 consumers of the Wi-Fi Assist's capability to silently switch a phone to cellular data:

25 The setting, called "Wi-Fi Assist," automatically switches your phone over to the
26 cellular network when you're in a place with spotty Wi-Fi. The feature is on by
default in iOS 9, meaning that your iPhones and iPads will seek out cell networks
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28 ² <http://reviews.gizmodo.com/ios-9s-wi-fi-assist-is-eating-my-cell-data-1733513159>

³ <http://fortune.com/2015/09/29/wifi-assist-apple-iphone-setting/>

1 unless you tell them not to — and could potentially eat up your data plan without you
2 realizing it.⁴

3 8. It was not until after the flood of articles, comments and complaints online and
4 potential liability exposure that Apple issued a statement on October 2, 2015 respecting Wi-Fi
5 Assist, including how it works and that the default setting is activated.

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

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

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

23 **BACKGROUND ON APPLE WI-FI ASSIST**

24 10. In mid-September 2015, Apple introduced and released the iOS 9 operating system,
25 which includes "Wi-Fi Assist," a feature that keeps consumers' internet connections alive when
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27 ⁴ <https://www.washingtonpost.com/news/the-switch/wp/2015/09/29/apples-wifi-assist-gets-blamed-for-surprise-spikes-in-data-use/>

28 ⁵ The Wi-Fi Assist option is buried deep in this menu, listed only after settings for third-party apps.

1 internet via a wireless local area network ("Wi-Fi") is deemed too slow by Apple's algorithm. The
2 feature automatically switches consumers to a cellular connection if it senses that the Wi-Fi signal
3 is not as strong as the cellular connection.

4 11. The purpose of the feature is to boost smartphone speeds. Unfortunately, the setting
5 does so at the expense of data usage. Apple's software engineers prioritized one over the other.
6 Because the Wi-Fi Assist is left in activated mode, consumers' iPhones automatically use cellular
7 data upon determining that a Wi-Fi router signal is not strong enough. Some consumers have
8 reported that their iPhones naturally chose cellular because their home Wi-Fi networks are not as
9 strong as their cellular network. While this results in faster network connections for iPhone users, it
10 eats up the data allotted by cell phone carriers to consumers, except those who possess unlimited
11 data cell phone plans, thereby causing millions of consumers economic losses in the nature of
12 excess data usage charges or fees.

13 12. Chris Mills, a writer for technology site *Gizmodo*, noted that since he started testing
14 the beta version of iOS 9, his data usage increased by around a third.

15 13. Confronted with the fact that the problem caused by the Wi-Fi Assist feature had
16 been publicly exposed, Apple belatedly made some effort to warn consumers, albeit in an
17 inadequate, watered down fashion. On October 2, 2015, commenting on Wi-Fi Assist, Apple stated:
18 "Because you'll stay connected to the [i]nternet over cellular when you have a poor Wi-Fi
19 connection, you might use more cellular data."

20 14. Apple's warning failed to address or account for the reality that normal usage by
21 iPhone consumers includes streaming music and videos, and running various applications – all of
22 which use significant data. The problem created by Wi-Fi Assist was far more significant than
23 Apple confessed. The take up rate for iOS 9 is very high. According to data gathered by Apple's
24 App Store, as of January 25, 2016, 76% of devices are running iOS 9.⁶ Further, according to a
25 November 2015 report by Consumer Intelligence Research Partners, 101 million iPhones are
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28 ⁶ See <https://developer.apple.com/support/app-store/>.

1 currently in active use in the United States.⁷ As a result, in excess of 76 million consumers have
2 been harmed by virtue of Apple's lack of a prior, clear and adequate warning. Numerous consumers
3 have reported massive overcharges. To cite just one example, after the filing of the original
4 complaint a news station in San Francisco reported a teenager in the San Francisco area racking up
5 a \$2,000 bill in just one month because of Wi-Fi Assist determining that the Wi-Fi signal in his
6 bedroom was not as strong as his cellular signal. Collectively, excess cell phone charges for data
7 usage consumers otherwise would not have absorbed exceeds \$5,000,000.00 and is an amount to be
8 determined after the benefit of discovery and according to proof at trial.

9 **JURISDICTION AND VENUE**

10 15. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(11) because
11 there are one hundred or more persons whose individual claims are being brought herein, Plaintiffs
12 are a citizen of a different state than Defendant, and the overall amount in controversy exceeds
13 \$5,000,000.00, exclusive of costs, interest, and attorneys' fees. The individual claims can be tried
14 jointly in that they involve common questions of fact and law.

15 16. This Court has personal jurisdiction over the Defendant because it conducts
16 substantial and continuous business in California.

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

20 **PARTIES**

21 18. Plaintiffs William Scott Phillips and Suzanne Schmidt Phillips are residents of
22 Edgewater, Florida who upgraded two iPhones 5S to the new iOS 9 operating system. Plaintiffs
23 were unaware that this upgrade automatically activated Wi-Fi Assist on their devices, which
24 ultimately resulted in data overuse charges by their cellular service provider.

25 19. Plaintiff William B. Cottrell is a resident of Little Rock, Arkansas and is an owner of
26 an Apple iPhone with the new iOS 9 operating system. Plaintiff was unaware that this iOS 9
27

28 ⁷ See <http://9to5mac.com/2015/11/19/apple-100-million-active-iphones-us/>.

1 upgrade automatically activated Wi-Fi Assist on his device, which ultimately resulted in his
2 absorbing data overuse charges by his cellular service provider

3 20. Defendant Apple Inc. (“Apple”) is a corporation organized under the laws of the
4 State of California, and has its principal place of business in Cupertino, Santa Clara County,
5 California.

6 **PLAINTIFFS AND THE CLASS WERE MISLED ABOUT**

7 **CELLULAR DATA USAGE ON THEIR DEVICES**

8 21. Plaintiffs were unaware that a simple upgrade to their operating system – as
9 incessantly recommended by their iPhones – could result in their devices silently switching over to
10 cellular usage. Defendant chose to not disclose to Plaintiffs and the public that Wi-Fi Assist would
11 likely result in data overuse charges if not disabled.

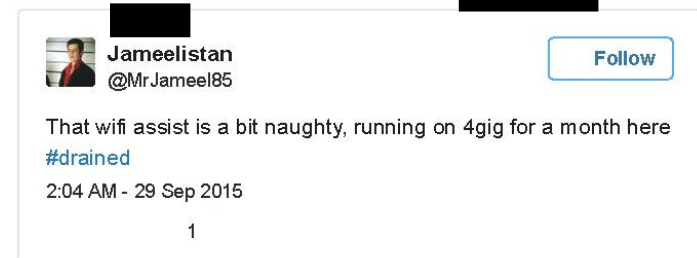
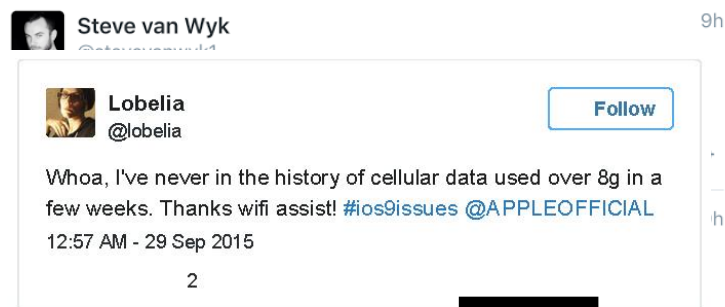
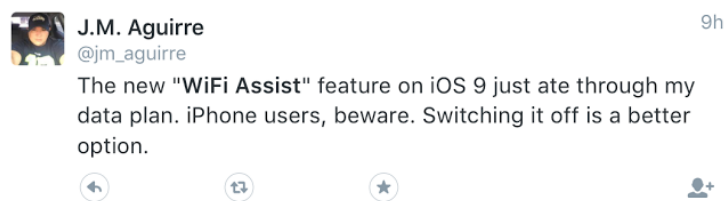
12 22. Instead, Defendant opted to ensure Wi-Fi Assist’s default setting was activated. This
13 decision unfairly subjected consumers, such as Plaintiffs, to overuse charges and/or early usage of
14 available data which could lead to incurring new charges to increase data allotment or loss of ability
15 to use device as usual. Plaintiffs seek an injunction from this Court barring Apple from ever setting
16 Wi-Fi Assist as activated without a consumer’s permission and prohibiting Apple from modifying,
17 altering or choosing the Wi-Fi Assist setting on any device..

18 23. Plaintiffs did in fact incur overuse charges on both of their iPhones and were not
19 informed when their device would switch between Wi-Fi and cellular data due to the addition of an
20 activated Wi-Fi Assist on their iPhones.

21 24. In the end, Plaintiffs and the Class were not properly informed by Defendant about
22 the existence, nature and purpose of Wi-Fi Assist when they upgraded to iOS 9 and/or purchased a
23 device with iOS 9 already downloaded. Plaintiffs seek an injunction from this Court barring Apple
24 from ever setting Wi-Fi Assist as activated without a consumer’s permission and prohibiting Apple
25 from modifying, altering or choosing the Wi-Fi Assist setting on any device..

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1 25. Defendant has attempted to downplay the nondisclosure by claiming any increase
2 data usage would only be by a “small percentage” for most people. But the numerous complaints
3 available online belie this assertion:⁸



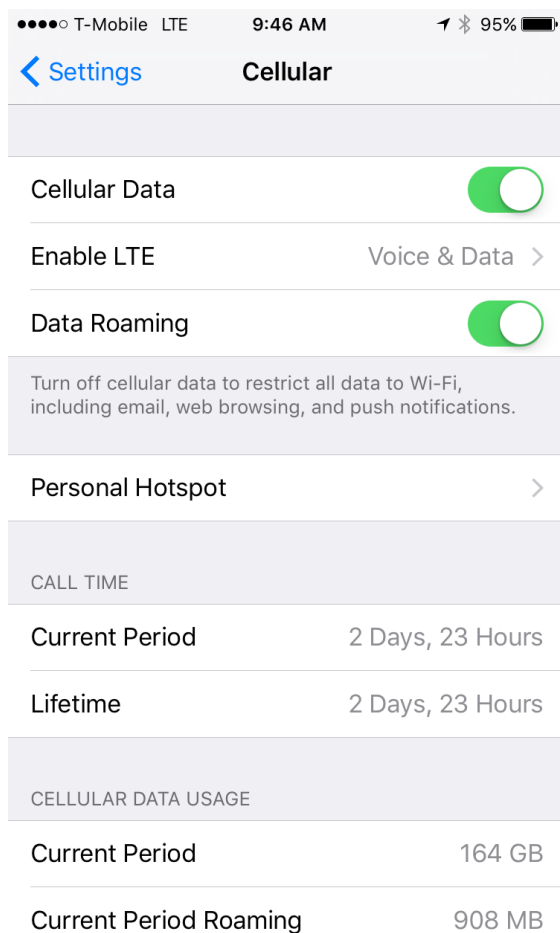
28 ⁸ <http://www.techinsider.io/apple-wifi-assist-feature-vs-battery-life-2015-10>

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

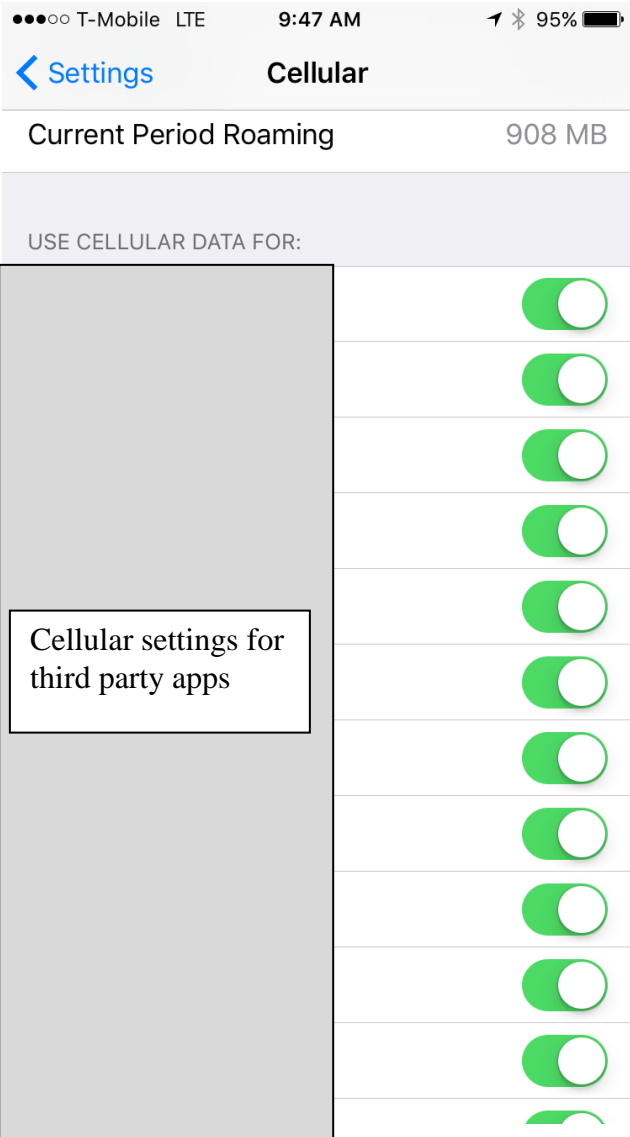
26. In mid-October 2015, after receiving numerous complaints about increased data usage, Apple posted instructions on its website indicating how to turn off Wi-Fi assist. These instructions, which users would likely only begin looking for after they had incurred charges resulting from excessive data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

27. 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, as indicated below.

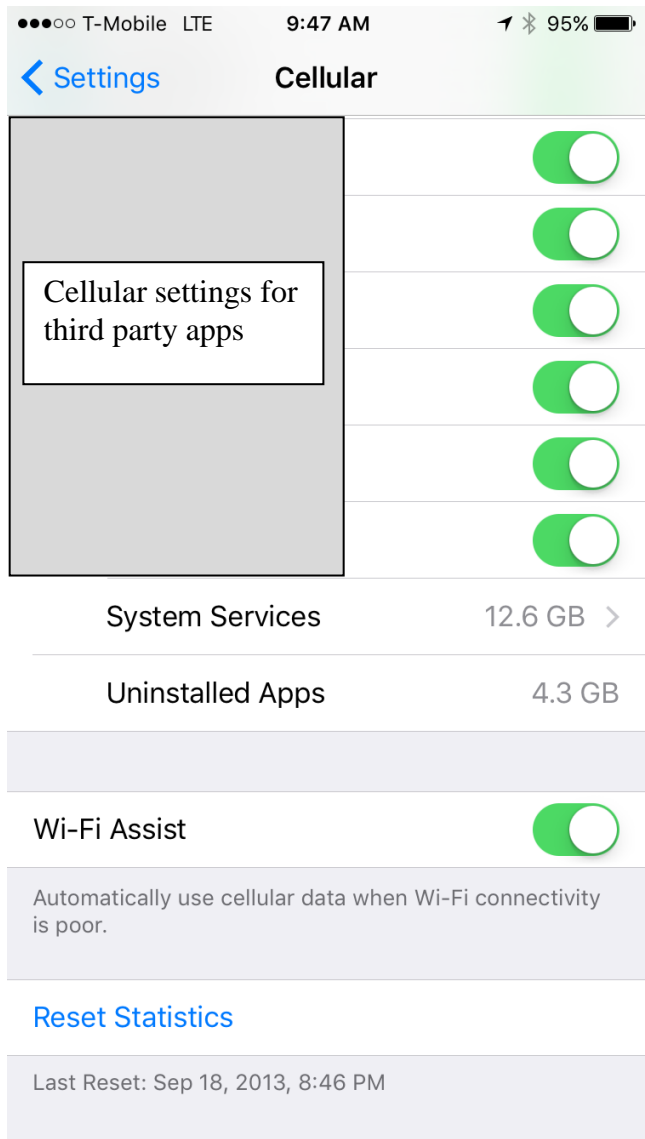
28. As indicated below, the first page of the Cellular subsection of the Settings menu lists operating system options. This is a logical place to locate the Wi-Fi Assist setting.



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



1 30. Users can only find the Wi-Fi Assist setting after they have scrolled the Cellular
2 settings for all third party apps, as indicated below.



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

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

3 32. Apple is able to remedy the problems caused by its implementation of Wi-Fi Assist.
4 However, despite six updates to the iOS operating system since the introduction of iOS 9.0 on
5 September 16, 2015, Apple has failed to do so.

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

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

12 35. Apple could, but has failed to, provide users with information regarding how much
13 data is being used by the Wi-Fi Assist feature. According to at least one website that reports on
14 developments at the Company, Apple has already developed this ability and has included it in the
15 beta version of planned iOS update 9.3.⁹

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

18 **CLASS ACTION ALLEGATIONS**

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

24 38. Plaintiffs also bring this action on their own behalf and on behalf of the following
25 California Business and Professions Code Subclasses: (1) an “iOS 9 California Claims Purchaser
26 Class” consisting of all persons or entities who purchased an iPhone, iPod or iPad with iOS 9 pre-
27 installed for purposes other than resale or distribution with respect to California Business &

28 ⁹ <http://www.macrumors.com/2016/01/12/ios-9-3-wifi-assist-data-usage/>

1 Professions Code 17200 claims, and (2) an “iOS 9 California Claims Upgrade Class” consisting of
2 all persons or entities in the United States who upgraded an iPhone, iPod or iPad to iOS 9 with
3 respect to California Business & Professions Code 17200 claims.

4 39. This action is properly maintainable as a class action under Rule 23 of the Federal
5 Rules of Civil Procedure.

6 40. The Class is so numerous that joinder of all members is impracticable. As noted
7 above, public reports indicate that the class exceeds 100 million members geographically dispersed
8 throughout the United States.

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

- 12 a. The nature, scope and operations of the wrongful practices of Apple;
- 13 b. Whether Defendant owed a duty of care to the Class;
- 14 c. Whether Defendant's advertising, marketing, product packaging, and
15 other promotional materials were untrue, misleading, or reasonably likely to deceive;
- 16 d. Whether Defendant knew that its representations and/or omissions
17 regarding the Wi-Fi Assist were false or misleading, but continued to make them;
- 18 e. Whether allowing the default setting for Wi-Fi Assist to be activated
19 was an unfair and deceptive business act;
- 20 f. Whether California law applies to the proposed Class;
- 21 g. Whether, by the misconduct as set forth in this Complaint, Apple
22 engaged in unfair or unlawful business practices, pursuant to Cal. Bus. & Prof. Code §
23 17200, *et seq.*;
- 24 h. Whether Defendant's conduct violated the Cal. Bus. & Prof. Code §
25 17500, *et seq.*;
- 26 i. Whether Plaintiffs and the Class are entitled to an injunction barring
27 Apple from ever setting Wi-Fi Assist as activated without a consumer's permission and
28 prohibiting Apple from modifying, altering or choosing the Wi-Fi Assist setting on any
device;

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j. Whether Defendant was unjustly enriched; and

k. Whether Plaintiffs and the Class members are entitled to actual, statutory, and punitive damages.

42. Plaintiffs’ claims are typical of the claims of the other Class members and Plaintiffs do not have any interests adverse to the Class. Specifically, Plaintiffs and all the Class members sustained damages arising out of Defendant’s wrongful course of conduct. The harms suffered by Plaintiffs are typical harms suffered by the Class members, and Plaintiffs and other Class members have an interest in preventing Defendant from engaging in such conduct in the future.

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

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

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

46. In addition, certification of specific issues such as Defendant’s liability is appropriate.

COUNT I
VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)
(Cal. Bus. & Prof. Code §§ 17200, et seq.)

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

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

49. The UCL prohibits acts of unfair competition, including any “unlawful, unfair or fraudulent business act or practice.”

50. 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.

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

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

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

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

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

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

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

19 58. Defendant's misrepresentations, business practices and its false and misleading
20 advertising regarding Wi-Fi Assist constitute "fraudulent" business acts and practices because
21 members of the consuming public, including Plaintiffs and the Class members, were and are likely
22 to be deceived thereby.

23 59. The harm to Plaintiffs and members of the public outweighs the utility, if any, of
24 Defendant's acts and practices described above and therefore Defendant's acts and practices
25 constitute an unfair business act or practice.

26 60. Defendant's acts and practices have detrimentally impacted competition and caused
27 substantial harm to Plaintiffs, the Class members, and the consuming public. Plaintiffs and the Class
28 members were misled and suffered injuries and lost money or property as a direct and proximate
result of Defendant's unlawful business acts and practices.

1 61. Defendant knew or reasonably should have known its misleading business practices
2 of ensuring the Wi-Fi Assist was activated and failing to provide real-time notice that the phone
3 switched to cellular data was likely to deceive reasonable consumers. Likewise, Defendant knew or
4 reasonably should have known its misrepresentations and omissions regarding Wi-Fi Assist’s
5 capabilities and functions were and are likely to deceive reasonable consumers.

6 62. Defendant’s misrepresentations and its false and misleading business practices
7 present a continuing threat to consumers in that such advertising will continue to mislead
8 consumers.

9 63. By reason of the foregoing, Defendant should be required to pay damages and/or
10 make restitution to Plaintiffs and the Class Members and pay for Plaintiffs’ and the Class members’
11 attorneys’ fees. Defendant should also be ordered by the Court through an injunction to take action
12 to disable Wi-Fi Assist so that the feature is only available to consumers who affirmatively choose
13 to engage it.

14 **COUNT II**
15 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW (“FAL”)**
16 **(Cal. Bus. & Prof. Code §§ 17500, et seq.)**

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

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

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

21 67. The FAL provides that “[i]t is unlawful for any . . . corporation . . . with intent . . . to
22 dispose of . . . personal property . . . to induce the public to enter into any obligation relating
23 thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the
24 public in any state, in any newspaper or other publication, or any advertising device, or by public
25 outcry or proclamation, or in any other manner or means whatever, including over the Internet, any
26 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”

27 68. When Defendant disseminated the advertising, it knew, or by the exercise of
28 reasonable care should have known, that the statements concerning Wi-Fi Assist capacity were

1 untrue or misleading, or omitted to state the truth about the Wi-Fi Assist impact on data usage, in
2 violation of the FAL. Specifically, Defendant failed to disclose that the default setting for Wi-Fi
3 Assist was “activated” and that Wi-Fi Assist provides no notice when it switches to cellular data.
4 Likewise, Defendant knew or reasonably should have known its misrepresentations and omissions
5 regarding Wi-Fi Assist’s capabilities and functions were and are likely to deceive reasonable
6 consumers.

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

10 70. As a result of Defendant’s wrongful conduct, Plaintiffs and the Class are entitled to
11 restitution and an order for the disgorgement of the funds by which Defendant was unjustly
12 enriched.

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

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

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

23 74. Plaintiffs, individually and on behalf of the Class, seek restitution, disgorgement,
24 injunctive relief, and all other relief allowable under the FAL.

25 **COUNT III**

26 **NEGLIGENT MISREPRESENTATION**

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

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

1 77. Defendant had a duty to disclose to Plaintiffs and the Class members that the default
2 setting for Wi-Fi Assist was “activated” and that Wi-Fi Assist provides no notice when it switches
3 to cellular data. Likewise, Defendant had a duty to disclose the true nature of Wi-Fi Assist’s
4 capabilities and functions.

5 78. Defendant negligently and/or carelessly misrepresented, omitted and concealed from
6 consumers material facts relating to Wi-Fi Assist’s capabilities and functions.

7 79. These misrepresentations and omissions were material and concerned the specific
8 characteristics and Wi-Fi Assist that a reasonable consumer would consider in choosing to allow the
9 application to run on their device.

10 80. As a result of Defendant’s misstatements and omissions, it was under a duty to
11 disclose the additional facts necessary to avoid any misrepresentation or confusion. Further,
12 Defendant knew of its misrepresentations and omissions because Defendant designed and
13 controlled how Wi-Fi Assist would be uploaded on a device- including that the default setting
14 would be “activated.”

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

18 82. Plaintiffs and Class members justifiably relied upon Defendant’s misrepresentations
19 and omissions about the Wi-Fi Assist. Plaintiffs and Class members were unaware of the falsity of
20 Defendant’s misrepresentations and omissions and, as a result, justifiably relied on them in allowing
21 Wi-Fi Assist to run as activated on their devices. Had Plaintiffs and Class members been aware of
22 the true nature and quality of Wi-Fi Assist, they would have deactivated it to avoid data overuse
23 charges. Plaintiffs request that this Court order Defendant to disable Wi-Fi Assist so that it is only
24 engaged if a Class member affirmatively chooses to engage it.

25 83. As a direct and proximate result of Defendant’s misrepresentations and omissions of
26 material fact, Plaintiffs and Class members have suffered and will continue to suffer damages and
27 losses as alleged herein in an amount to be determined at trial.

28 **PRAYER FOR RELIEF**

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

- 1 1. Certifying the Class as defined herein;
- 2 2. Award damages, including compensatory, exemplary, and statutory damages to
- 3 Plaintiffs and all members of the Class;
- 4 3. Award Plaintiffs and the Class actual damages sustained;
- 5 4. Award injunctive and declaratory relief, as claimed herein;
- 6 5. Award Plaintiffs and the Class punitive damages;
- 7 6. Award Plaintiffs and the Class their reasonable attorneys’ fees and reimbursement of
- 8 all costs for the prosecution of this action; and
- 9 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: February 8, 2016

s/ Jonas P. Mann
Jonas P. Mann
Michael McShane
AUDET & PARTNERS, LLP
711 Van Ness Ave., Ste. 500
San Francisco, CA 94112
Tel.: 415.568-2555
Fax: 415.568-2556
mcshane@audetlaw.com
jmann@audetlaw.com

Robert K. Shelquist (admitted pro hac)
Rebecca A. Peterson, #241858
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
rkshelquist@locklaw.com
rapeterson@locklaw.com

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Charles J. LaDuca, Esq.
CUNEO GILBERT & LADUCA, LLP
8120 Woodmont Avenue, Suite 810
Bethesda, Maryland 20814
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
charlesl@cuneolaw.com

D. Aaron Rihn
ROBERT PEIRCE & ASSOCIATES, P.C.
707 Grant Street, Suite 2500
Pittsburgh, PA 15219
Telephone: (866) 273-1941
arihnr@peircelaw.com

William H. Anderson, Esq.
CUNEO GILBERT & LADUCA, LLP
507 C Street, NE
Washington, DC 20002
Telephone: (202) 789-3960
wanderson@cuneolaw.com

Stephen R. Basser (121590)
Samuel M. Ward (216562)
BARRACK, RODOS & BACINE
600 West Broadway, Suite 900
San Diego, CA 92101
Telephone: (619) 230-0800
Facsimile: (619) 230-1874
sbasser@barrack.com
sward@barrack.com
Joseph Bellissimo, Jr.

BELLISSIMO & PEIRCE
324 Sims Avenue
Ellwood City, PA 16117
Telephone: (724) 758-1645
jsblaw@prodigy.net

JOHN G. EMERSON
EMERSON SCOTT, LLP
830 Apollo Lane
Houston, TX 77058
Telephone: (281) 488-8854
Facsimile: (281) 488-8867

Attorneys for Plaintiffs