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10 Attorneys for Defendant
APPLE INC.
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 MITCH KALCHEIM, individually and on
behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 APPLE INC.; and Does 1-100,
19 Defendant.
20
21

Case No. 16-cv-9324

CLASS ACTION

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

Removed from the Superior
Court of California, Los Angeles
County

Case No. BC640958

NOTICE OF REMOVAL

Defendant Apple Inc. (“Apple”), pursuant to 28 U.S.C. § 1441, removes to this Court the state action described below, which is within the original jurisdiction of this Court and properly removed under 28 U.S.C. §§ 1332, 1441, 1446, and 1453. Pursuant to 28 U.S.C. § 1446(d), Apple will promptly serve a copy of this Notice on counsel for Plaintiff Mitch Kalcheim (“Plaintiff”) and will file a copy of this Notice with the Clerk of the Superior Court of California, County of Los Angeles.

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On November 17, 2016, Plaintiff filed this action against Apple in the Superior Court of California, County of Los Angeles, captioned *Kalcheim v. Apple Inc.*, Case No. BC640958 (the “State Court Action”).

2. Apple was personally served with the State Court Action Summons and Complaint on November 18, 2016. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Apple in the State Court Action are attached to this Notice as **Exhibit A**.

3. The Superior Court of California, County of Los Angeles is located within the Central District of California. 28 U.S.C. § 84(c). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

NO JOINDER NECESSARY

4. Because there are no other defendants in this action, no consent to removal is necessary.

ALLEGATIONS OF THE COMPLAINT

5. This action is a putative nationwide class action against Apple. (Compl. ¶ 20.) Plaintiff asserts various claims arising out of his purchase of an AppleCare extended warranty.

6. Plaintiff seeks to represent the following class of individuals:

1 All persons and entities residing in the United States of America who
 2 purchased an Apple Care extended warranty for an Apple Hardware
 3 Product and the warranty commenced prior to receiving the
 4 underlying Hardware Product. Excluded from the class are defendant,
 5 its agents and affiliates, and any government entities.

6 (*Id.* ¶ 20.)

7 7. The Complaint seeks, *inter alia*, restitution, injunctive relief, damages,
 8 attorney's fees, and costs. (Compl., Prayer for Relief.)

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

12 **BASIS FOR REMOVAL**

13 9. This action is within the original jurisdiction of this Court. Removal is
 14 proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C.
 15 § 1332(d), which grants district courts original jurisdiction over class actions in
 16 which the amount in controversy exceeds \$5,000,000 and any member of the class
 17 of plaintiffs is a citizen of a state different from any defendant. As set forth below,
 18 this action satisfies each of the requirements of Section 1332(d)(2) for original
 19 jurisdiction under CAFA:

20 A. Covered Class Action. This action meets the CAFA definition
 21 of a class action, which is "any civil action filed under [R]ule 23 of the
 22 Federal Rules of Civil Procedure or similar State statute or rule of judicial
 23 procedure." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a) & (b). (Compl. ¶ 20.)

24 B. Class Action Consisting of More than 100 Members. Plaintiff
 25 seeks relief on behalf of "[a]ll persons and entities residing in the United
 26 States of America who purchased an Apple Care extended warranty for an
 27 Apple Hardware Product and the warranty commenced prior to receiving the
 28 underlying Hardware Product." (Compl. ¶ 20.) The Complaint alleges that
 the class is "so numerous . . . that joinder of all members as individual
 plaintiffs is impracticable." (*Id.*) According to Apple's records, "during the

1 four years immediately preceding November 17, 2016 [the filing date],
2 Apple's net sales of AppleCare extended warranties within the United States
3 and from Apple's Online Store exceeded \$5 million." (Declaration of
4 Michael Jaynes ¶ 2.) Given that the maximum price of an AppleCare
5 extended warranty is \$349, the number of potential class members
6 necessarily exceeds 100 for purposes of 28 U.S.C. § 1332(d)(5)(B).

7 C. Diversity. Diversity of citizenship under CAFA is satisfied
8 because "any member of a class of plaintiffs is a citizen of a State different
9 from any defendant." 28 U.S.C. § 1332(d)(2)(A). Plaintiff is a California
10 resident who purports to represent a nationwide class. (Compl. ¶¶ 12, 20.)
11 Apple, "based in Cupertino, California," maintains its principal place of
12 business in California. (*Id.* ¶ 11.) Thus, according to the allegations of the
13 Complaint, the diversity requirements of CAFA are satisfied. 28 U.S.C.
14 § 1332(d)(2)(A).

15 D. Amount in Controversy. Under CAFA, the claims of the
16 individual class members are aggregated to determine if the amount in
17 controversy exceeds the required "sum or value of \$5,000,000, exclusive of
18 interest and costs." 28 U.S.C. §§ 1332(d)(2), (d)(6). Plaintiff's request for
19 restitution in and of itself exceeds \$5,000,000. "[D]uring the four years
20 immediately preceding November 17, 2016, Apple's net sales of AppleCare
21 extended warranties within the United States and from Apple's Online Store
22 exceeded \$5 million." (Jaynes Decl. ¶ 2.) While Apple disputes that it is
23 liable to plaintiff or any putative class member, or that plaintiff or the
24 putative class members suffered injury or incurred damages in any amount
25 whatsoever, for purposes of satisfying the jurisdictional prerequisites of
26 CAFA, the matter in controversy exceeds \$5,000,000.

27 E. No CAFA Exclusions. The action does not fall within any
28 exclusion to removal jurisdiction recognized by 28 U.S.C. § 1332(d), and

EXHIBIT A



**Service of Process
Transmittal**

11/18/2016

CT Log Number 530212330

TO: Ami Gomez
Apple Inc.
1 Infinite Loop, M/S 169-2NYJ
Cupertino, CA 95014-2083

RE: Process Served in California

FOR: Apple Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: MITCH KALCHEIM, Individually and on Behalf of All Others Similarly Situated,
Pltf. vs. Apple, Inc., et al., Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Complaint, Cover Sheet(s), Addendum(s) and Statement(s), Notice(s),
Attachment(s), Stipulation(s), Stipulation(s) and Order(s)

COURT/AGENCY: Los Angeles County - Superior Court - Hill Street, CA
Case # BC640958

NATURE OF ACTION: VIOLATION OF CONSUMER LEGAL REMEDIES ACT and VIOLATION OF UNFAIR
COMPETITION ACT

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 11/18/2016 at 11:30

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): PERRY C. WANDER
LAW OFFICES OF PERRY C. WANDER
9454 Wilshire Boulevard, Penthouse Suite
Beverly Hills, CA 90212
910-274-9985

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0107424601

Image SOP

Email Notification, Noreen Krall nkrall@apple.com

Email Notification, David Melaugh melaugh@apple.com

Email Notification, Colleen Brown colleen_brown@apple.com

Email Notification, Erica Tierney etierney@apple.com

Email Notification, Diana Loop loop@apple.com

Email Notification, Sarita Venkat saritav@apple.com

Page 1 of 3 / SH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit A p. 5



**Service of Process
Transmittal**

11/18/2016

CT Log Number 530212330

TO: Ami Gomez
Apple Inc.
1 Infinite Loop, M/S 169-2NYJ
Cupertino, CA 95014-2083

RE: Process Served in California

FOR: Apple Inc. (Domestic State: CA)

Email Notification, Tom Vigdal tvigdal@apple.com

Email Notification, Cyndi Wheeler cwheeler@apple.com

Email Notification, Heather Moser hmoser@apple.com

Email Notification, Ami Gomez ami_r_gomez@apple.com

Email Notification, Tim O'Neil toneil@apple.com

Email Notification, Charstie Wheelock wheelock@apple.com

Email Notification, Erik Floyd efloyd@apple.com

Email Notification, Beth Kellermann kellermann@apple.com

Email Notification, Andrew Song asong@apple.com

Email Notification, Ryan Moran rmoran@apple.com

Email Notification, David Weiskopf dweiskopf@apple.com

Email Notification, Jennifer Brown jennifer_brown@apple.com

Email Notification, Susan Guarino sguarino@apple.com

Email Notification, Andrew Farthing afarthing@apple.com

Email Notification, Ash Upreti aupreti@apple.com

Email Notification, Jen Yokoyama jyokoyama@apple.com

Email Notification, Scott Murray scott_murray@apple.com

Email Notification, Pami Vyas pyvas@apple.com

Email Notification, Kim Moore kim_moore@apple.com

Email Notification, Lisa Olle olle@apple.com

Email Notification, Victoria Nakaahiki victoria_nakaahiki@apple.com

Email Notification, Maya Kumar maya_kumar@apple.com

Email Notification, Phil Rawlinson prawlinson@apple.com

Page 2 of 3 / SH

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**Service of Process
Transmittal**

11/18/2016

CT Log Number 530212330

TO: Ami Gomez
Apple Inc.
1 Infinite Loop, M/S 169-2NYJ
Cupertino, CA 95014-2083

RE: Process Served in California

FOR: Apple Inc. (Domestic State: CA)

Email Notification, Jessica Hannah jessica_hannah@apple.com

Email Notification, Kate Kaso-Howard kkasohoward@apple.com

Email Notification, Marc Breverman mbreverman@apple.com

SIGNED:
ADDRESS: C T Corporation System
818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

Page 3 of 3 / SH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit A p. 7

10-16
 11:30 AM
 SUM-100

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

APPLE, INC; AND DOES 1-100,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MITCH KALCHEIM, INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARY SITUATED,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

NDV 17 2016

Sherri R. Carter, Executive Office/Clerk

By: Ishayla Chambers, Deputy
Ishayla Chambers

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): LOS ANGELES SUPERIOR COURT
STANLEY MOSK COURTHOUSE 111 N. HILLS STREET, LOS
ANGELES, CA 90012

CASE NUMBER:
(Número del Caso):

BC 6 4 0 9 5 8

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
PERRY C. WANDER, ESQ. 9454 Wilshire Blvd., Penthouse, Beverly Hills, CA 90212 310-274-9985

DATE:
(Fecha)

NOV 17 2016

SHERRI R. CARTER

Clerk, by
(Secretario)

Ishayla Chambers, Deputy
(Adjunto)

(For proof of service for this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): APPLE, Inc

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

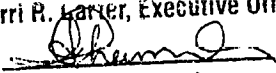
- ☒ by personal delivery on (date):

LAW OFFICES OF PERRY C. WANDER
PERRY C. WANDER, ESQ. (Bar No. 102523)
9454 Wilshire Boulevard, Penthouse Suite
Beverly Hills, California 90212
Telephone: (310) 274-9985
Facsimile: (310) 274-9987
Email: pcwlaw@msn.com

Attorneys for Plaintiff Mitch Kalcheim

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 17 2016

Sherri R. Larver, Executive Office/Clerk
By:  Deputy
Ishavla Chambers

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MITCH KALCHEIM, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

APPLE, INC; and Does 1-100,

Defendant.

Case No.

BC 640958

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CONSUMER
LEGAL REMEDIES ACT (CAL.
CIV. CODE § 1750 ET SEQ.);
2. VIOLATION OF UNFAIR
COMPETITION ACT (CAL. BUS.
PROF. CODE § 17200 ET SEQ.);
3. FALSE ADVERTISING (CAL. BUS.
& PROF. CODE § 17500 ET SEQ.);
4. BREACH OF CONTRACT
5. BREACH OF COVENANT OF
GOOD FAITH & FAIR DEALING
6. MONEY HAD AND RECEIVED
7. UNJUST ENRICHMENT

JURY TRIAL DEMANDED

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:

Plaintiff Mitch Kalcheim ("Plaintiff") brings this action on behalf of himself and a class of persons defined below against Apple, Inc. ("Defendant," "Apple" or "the Company") and Does 1 – 100. Plaintiff's allegations are made upon information and belief, except those allegations concerning Plaintiff or his counsel, which are based upon Plaintiff's personal knowledge.

JURISDICTION AND VENUE

1. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, § 10, because this case is a cause not given by statute to other trial courts.

2. This Court has jurisdiction over the Defendant named herein because Defendant is either a corporation or association organized under the laws of the State of California, a foreign corporation or association authorized to do business in California and registered with the California Secretary of State, or does sufficient business in California, has sufficient minimum contacts with California or otherwise intentionally avails itself of the laws and markets of California, through the promotion, sale, marketing and distribution of its goods or services in California, to render the exercise of jurisdiction by the California courts permissible.

3. Venue is proper in this Court because Plaintiff resides in Los Angeles County. Plaintiff is informed and believes that Defendant has received and continues to receive substantial compensation from California consumers who purchase goods and services from Defendant.

INTRODUCTION AND SUMMARY OF THE ALLEGATIONS

4. This is a class action pursuant to Cal. Code Civ. Proc. § 382 and Civil Code § 1781, on behalf of all persons and entities residing in the United State of America who purchased AppleCare which is Apple's extended warranty product prior to the receiving of the underlying hardware which is covered by the AppleCare extended warranty.

5. As described in more detail below, Defendant Apple is a technology company selling a range of technical hardware products such as the iPhone, iPad, iWatch, Macbook and Macbook Pro ("Hardware Products").

6. Along with these Hardware Products Apple also sells an extended warranty product called AppleCare. AppleCare agreements will extend the Hardware Product's Warranty by a specified time. For example, presently Apple is selling AppleCare extended warranty for its MacBook Pro for 3 years for \$349.

7. Many of Apple's products are so popular and in such demand that wait times to receive Hardware Products are 4-5 weeks or more. Of course because AppleCare is simply a service and warranty agreement no wait time exists for this product.

8. At all times relevant hereto, Apple has maintained and continues to maintain certain customs, policies, practices (Apple's "Deceptive Purchase Policies") designed and intended to cause customers to purchase AppleCare at the same time a consumer orders a Hardware Product. For example, unless AppleCare is purchased at the same time as an Apple Hardware product a rigorous diagnostic procedure exists that a consumer must submit his Hardware Product to before Apple will allow a consumer to purchase AppleCare.

9. If a consumer buys an Apple Hardware product that is backordered or needs to be delivered and AppleCare at the same time Apple will begin the AppleCare warranty days or weeks before the consumer receives the underlying Hardware Product that is covered by the warranty. This conduct by Apple deprives the customer of days or weeks of warranty coverage which he paid for.

10. The claims asserted herein are premised on unlawful, fraudulent and unfair business practices, as well as breach of contract. Plaintiff seeks injunctive and equitable relief, including restitution and/or disgorgement, compensatory and additional statutory damages.

PARTIES

Defendant(s)

11. Defendant Apple, Inc. is based in Cupertino, California. Its products are sold directly through Apple.com and at Apple stores and through various resellers and distributors to the consuming public.

Plaintiff Kalcheim

12. Plaintiff Kalcheim is a resident of Los Angeles County. On or about, October 27, 2016 Plaintiff purchased a MacBook Pro and at the same time Plaintiff also purchased AppleCare for 3

1 years to cover the Macbook Pro. Plaintiff's Macbook Pro was delivered on November 15, 2017
 2 however the AppleCare warranty protection was "delivered" prior to the receipt of the Hardware
 3 Product. Apple sent an e-mail stating the warranty would expire on November 11, 2019. Thus
 4 Plaintiff was denied days of his warranty period.

5 **COMMON ALLEGATIONS OF FACT**

6 13. Apple is one of the leading computer and technology companies in the world.

7 14. Apple's Hardware Products, which may be purchased either online or at various retailers,
 8 include iPhone, iPad, iMac, Macbook, Macbook Pro, and many other products geared towards
 9 individual, small, medium and large businesses. Many times consumer's buy Apple products which
 10 are not in stock or need to be built and delivery times for these products can be 4-5 weeks or even
 11 more.

12 15. Generally, the Apple advertises AppleCare as a warranty to be purchased at the same time as
 13 the underlying Hardware Product.

14 16. Apple has concealed and misrepresented the details of its actual Warranty extension
 15 practices.

16 17. Plaintiff Kalcheim purchased AppleCare for his Macbook Pro at the same time as a
 17 Hardware Product. However, the extended Warranty began to run approximately one week prior to
 18 receiving the Hardware Product.

19 18. Apple's policy of "delivering" the AppleCare product prior to actually delivering the
 20 underlying Hardware Product is deceptive to consumers because it does not inform them that
 21 purchasing the AppleCare product prior to delivery of the underlying Hardware Product will shorten
 22 the actual length of the extended warranty.

23 19. Plaintiff and class members have been damaged as a result of Apple's deceptive practices.

24 **CLASS ACTION ALLEGATIONS**

25 20. This action is brought and may properly proceed as a class action, pursuant to the provisions
 26 of Cal. Code Civ. Proc. § 382 and Cal. Civil Code § 1781. Plaintiff brings this action on behalf of
 27 himself and all others similarly situated. The Class is defined as follows:
 28

1 All persons and entities residing in the United State of America who purchased an Apple Care
2 extended warranty for an Apple Hardware Product and the warranty commenced prior to
3 receiving the underlying Hardware Product.

4 Excluded from the class are defendant, its agents and affiliates, and any government entities.

5 21. This action is properly maintainable as a class action. The members of the proposed
6 plaintiff class are so numerous and geographically dispersed that joinder of all members as
7 individual plaintiffs is impracticable.

8 22. This case presents questions of common and general interest among the members of the
9 proposed class, including questions of law and fact which are common to the class and which
10 predominate over questions affecting any individual class member.

11 23. Defendant's liability turns primarily on the determination of facts related to its own conduct
12 and policies rather than facts specific to individual class members. The questions of common interest
13 among the members include inter alia:

- 14 (a) Whether Apple's practice of "delivering" AppleCare days or weeks before it
15 delivers the underlying Hardware Product associated with the AppleCare
16 purchase is deceptive.
- 17 (b) Whether Apple made it policy or practice during the class period to "deliver"
18 AppleCare to consumers before delivering the underlying Hardware Product.
- 19 (c) Whether the failure to refrain from, correct, or disclose this practice is a
20 violation of the statutory provisions, laws of contract, or equitable doctrines
21 set forth as causes of action herein.
- 22 (d) Whether and to what extent Apple has been unjustly enriched by the practices
23 alleged herein.

24 24. Plaintiff is asserting claims that are typical of the claims of the entire Class, in that any
25 member of the class as defined would have similar claims under the applicable law. Plaintiff, just as
26 the members of the class he seeks to represent, had one or more Apple Hardware Products and
27 purchased AppleCare for that product and Apple delivered the AppleCare product before delivering
28 the underlying Hardware Product associated with the AppleCare purchase.

25. Class action treatment of this case will provide substantial benefits to the parties and the Court, and is superior to other methods for the fair and efficient adjudication of the claims herein asserted. The damages suffered by individual class members may be relatively small, so that the expense and burden of individual litigation makes it impossible for members of the Class to seek redress individually for the wrongful conduct alleged, though the aggregate financial impact of that conduct is certainly large. Under these circumstances, it is likely that class treatment will provide the only adequate method of resolving the dispute.

26. No unusual difficulties are likely to be encountered in the management of this case as a class action. Because this case involves purchases and renewals made over the internet through Defendant's (or its agents') website, the identification and notification of class members should be relatively uncomplicated, as should the calculation and remission of individual losses. Further, the specific requirements of accounting conventions applicable to the subscription services at issue in this case – specifically the ratable recognition of revenue as the service is delivered – are such that the identification of class members and the calculation of their individual losses should be easier than the average case involving a large number of commercial transactions.

27. Plaintiff will fairly and adequately represent and protect the interests of the Class in that he has no interests that are antagonistic to those of the other members of the Class. Plaintiff has retained counsel who is competent and experienced in the prosecution of class action litigation.

FIRST CAUSE OF ACTION

Consumers Legal Remedies Act – Cal. Civ. Code § 1750 et. seq.

(On Behalf of Plaintiff and the Class)

28. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein

29. Defendant has violated the following provisions of the Consumer Legal Remedies Act:

- (a) Cal Civ. Code § 1770(a)(5): by representing that its goods or services have sponsorship approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;

- (b) Cal. Civ. Code § 1770(a)(7): by representing that its goods or services are of a particular standard, quality, or grade, if they are of another;
- (c) Cal. Civ. Code § 1770(a)(9): by advertising goods and services with the intent not to sell them as advertised;
- (d) Cal. Civ. Code § 1770(a)(14): by representing that AppleCare confers or involves rights, remedies, or obligations which it does not have or involve;
- (e) Cal. Civ. Code § 1770(a)(16): by representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

30. Defendant undertook the above acts or practices in transactions intended to result, or did result, in the sale to customers for personal, family, or household use. CLRA § 1770(a).

31. Plaintiff and all class members are “consumers” within the meaning of CLRA § 1761(d).

32. Pursuant to §1780(a)(2) of the CLRA, Plaintiff seeks an order enjoining the above-described wrongful acts and practices of Apple, including, but not limited to, an order enjoining Apple from the methods, acts and practices detailed in this Complaint

33. Pursuant to Cal. Civ. Code § 1782, in conjunction with the filing of this action, Plaintiff’s counsel notified Apple of the particular violations of the CLRA and demanded that it correct or agree to correct the actions described herein.

34. As authorized by statute and in compliance with the provisions of CLRA §1782, in conjunction with the filing of this action, Plaintiff gave notice to Apple of his intention to file an action for monetary damages under CLRA § 1750, *et seq.*, unless Apple correct, repair, replace, or otherwise rectify the consumer fraud resulting from its conduct. If Defendant does not timely correct, and/or otherwise rectify the consumer fraud resulting from its conduct Plaintiff will, individually and on behalf of the class, seek to amend this Complaint and request the following relief from Defendant: compensatory damages in an amount to be determined at trial; an Order providing Plaintiff and the class with restitution; punitive damages in an amount to be determined at trial; costs and attorneys’ fees; and such other relief as the Court deems proper.

SECOND CAUSE OF ACTION

Unlawful, Unfair and Fraudulent Business Practices

Cal. Bus. & Prof. Code § 17200, et. seq. ("UCL")

(On Behalf of Plaintiff and the Class, Against Each Defendant)

35. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

36. Plaintiff has suffered actual financial hardship from practices alleged herein. Plaintiff paid for an extended warranty of a certain duration however because the Hardware Product was not immediately available Plaintiff did not receive the full benefit of his AppleCare extended Warranty Purchase.

37. The acts and practices complained of by Plaintiff are unlawful because they violate California Business and Professions Code § 17500 et seq., (Unfair Competition Laws – False Advertising), and California Civil Code § 1770 (a)(5), (7), (9), (14), and (16) (Consumers Legal Remedies Act).

38. Defendant's practice of "delivering" the AppleCare extended Warranty Product prior to delivering the underlying Hardware Product is likely to mislead class members and members of the general public about the actual duration of the extended Warranty being supplied.

39. Defendant's conduct is unfair in that, inter alia, it constitutes a systematic breach of its existing contractual obligations to provide an extended warranty for a specific time period (i.e. three years) the update service due under existing subscriptions and because Defendant has unjustly retained money paid over by the members of the class.

40. The benefits of Apple's conduct accrue to Defendant alone, which has surreptitiously lopped days, weeks or months off its obligation to provide the update services and updated software to its customers, though it has already been paid in full for the entire period. While this has substantially enhanced defendant's revenue, no class member has obtained a benefit from this practice.

41. Defendant's conduct is an unlawful, fraudulent and unfair business practice under Cal. Bus. & Prof. Code § 17200, et seq., and plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION

False Advertising (UCL) – Cal. Bus. & Prof. Code § 17500, et seq.

(On Behalf of Plaintiff and the Class)

42. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

43. As detailed above, defendant has committed acts of untrue and misleading advertising by disseminating statements misrepresenting its AppleCare product. Defendant knew or should have known that its advertising and marketing of AppleCare was false and misleading.

44. Defendant knew or should have known that by delivering the underlying Hardware Product days' weeks or months after delivering AppleCare Defendant was depriving customers of the complete benefit of their AppleCare purchase.

45. The acts of untrue and misleading advertising present a continuing threat to the members of the plaintiff class and the general public, who are not aware that they will not receive the full benefit of their purchase of AppleCare. Plaintiff has no adequate remedy at law to address these particular problems, particularly as it relates to customers who may renew in the future.

46. Defendant has therefore violated Cal. Bus. & Prof. Code § 17500 et seq., and plaintiff and the class pray for relief as set forth below.

FOURTH CAUSE OF ACTION

Breach of Express and/or Implied Contract

(On Behalf of Plaintiff and the Class, Against Each Defendant)

47. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

48. Plaintiff and the class members have entered into certain contracts with Apple. Pursuant to these contracts and agreements, plaintiff and the class members either: (1) paid separately for an AppleCare extended warranty for a certain duration; (2) Apple did not deliver the underlying Hardware Product at the same time it "delivered" AppleCare; (3) paid for the AppleCare product when they purchased the underlying Hardware. Apple delivered the AppleCare warranty prior to

delivering the underlying Hardware Product thereby depriving plaintiff and class members of goods and services for which they had already paid money.

49. Plaintiff and class members satisfied their obligations under these contracts and agreements.

50. Apple failed to perform as required by the contracts and agreements, and breached said contracts and agreements because it deprived consumers of Warranty time which they paid for.

51. As a result of the foregoing, plaintiff and the class are entitled to damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Breach of Covenant of Good Faith and Fair Dealing

(On Behalf of Plaintiff and the Class, Against Each Defendant)

52. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

53. Defendant acted intentionally and in bad faith to frustrate the benefits owed to class members despite a duty to refrain from doing so.

54. Defendant's failure to deal fairly and in good faith caused damage to plaintiff and the class, who were deprived of the full benefits of their agreements.

55. As a result of the foregoing, plaintiff and the class are entitled to damages in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

Unjust Enrichment

(On Behalf of Plaintiff and the Class)

56. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth fully herein.

57. Defendant accepted and retained money from Plaintiff and the class under circumstances which would make it inequitable for Defendant to be permitted to retain that benefit. Specifically, Defendant accepted money for AppleCare warranty coverage, prior to delivering the underlying Hardware. As a result of the foregoing, Plaintiff and the class members are entitled to the restitution and return of such benefits in an amount to be proven at trial.

PRAYER FOR RELIEF

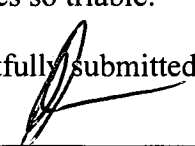
WHEREFORE, Plaintiff, on behalf of themselves and the members of the Class, pray for relief and demand judgment as follows:

1. A determination that this action may be maintained as a class action, certification of an appropriate and/or subclasses, certification of the named plaintiff as class representatives, and the appointment of their counsel as class counsel;
2. Equitable and injunctive relief enjoining Apple and Does 1-25 from continuing to engage in the policies, acts and practices described in this Complaint;
3. An order requiring Apple to provide an accounting for the revenues for the revenues obtained for subscription services not provided, as described herein, and an order imposing a constructive trust upon all monies received from the practices alleged herein and requiring Apple to make restitution, disgorge all sums unlawfully collected, and to pay over such money to Plaintiff and all members of the class for any act of practice declared by this Court to be unfair, fraudulent, or unlawful;
4. An order or orders requiring Apple to provide such notice to the class as the Court may require in the course of the litigation or resolution of this matter;
5. Statutory damages for violations of the application statutes, including pre-judgment and post-judgment interest at the maximum rate allowable by law;
6. Damages in an amount to be determined at trial, including exemplary damages in an amount to be determined at trial;
7. The costs and disbursements incurred by plaintiff in connection with this action, including reasonable attorney's fees and expert fees pursuant to Civil Code § 1780(d) and Code of Civil Procedure § 1021.5; and
8. Such other further relief as the Court deems just and proper.

Plaintiff hereby demands a trial by jury with respect to all issues so triable.

Dated: November 17, 2016

Respectfully submitted,


 Perry C. Wander, Esq.
 Attorneys for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LAW OFFICES OF PERRY C. WANDER, SBN#102523 9454 WILSHIRE BLVD., PENTHOUSE BEVERLY HILLS, CA 90212		FOR COURT USE ONLY	
TELEPHONE NO.: 310-274-9985 FAX NO.: 310-274-9987 ATTORNEY FOR (Name): PLAINTIFF MITCH KALCHEIM		CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. HILL STREET MAILING ADDRESS: CITY AND ZIP CODE: LOS ANGELES, CA 90212 BRANCH NAME: STANLEY MOSK COURTHOUSE		NOV 17 2016 Sherri R. Warner, Executive Office/Clerk By:  Deputy Isabella Chambers	
CASE NAME: KALCHEIM V. APPI.F		CASE NUMBER: BC 640958	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
JUDGE:		DEPT:	

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

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

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **7**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11/17/16

PERRY C. WANDER

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

SHORT TITLE: KALCHEIM V. APPLE

CASE NUMBER

BC 640958

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

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. | 7. Location where petitioner resides. |
| 2. Permissive filing in central district. | 8. Location wherein defendant/respondent functions wholly. |
| 3. Location where cause of action arose. | 9. Location where one or more of the parties reside. |
| 4. Mandatory personal injury filing in North District. | 10. Location of Labor Commissioner Office. |
| 5. Location where performance required or defendant resides. | 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
| 6. Location of property or permanently garaged vehicle. | |

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1, 4, 11	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1, 4, 11	

SHORT TITLE: KALCHEIM V. APPLE		CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input checked="" type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer		
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE: KALCHEIM V. APPLE

CASE NUMBER

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

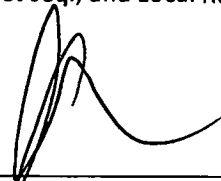
SHORT TITLE: KALCHEIM V. APPLE	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS: 9454 WILSHIRE BLVD. PH BEVERLY HILLS, CA 90212
CITY: BEVERLY HILLS	STATE: CA	ZIP CODE: 90212	

Step 5: Certification of Assignment: I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: 11/17/16


 (SIGNATURE OF ATTORNEY/FILING PARTY)

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

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT – CLASS ACTION CASES**

Case Number _____

BC 640958**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3 (c)).

	ASSIGNED JUDGE	DEPT.	ROOM
	Judge Elihu M. Berle	323	1707
	Judge William F. Highberger	322	1702
	Judge John Shepard Wiley, Jr.	311	1408
	Judge Kenneth Freeman	310	1412
	Judge Ann Jones	308	1415
	Judge Amy D. Hogue	307	1402
	OTHER		

Instructions for handling Class Action Civil Cases

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross Complainant/Attorney of Record on **NOV 17 2016** SHERRI R. CARTER, Executive Officer/Clerk

BY Ishayla Chambers, Deputy Clerk

VOLUNTARY EFFICIENT LITIGATION STIPULATIONS

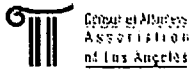


Superior Court of California
County of Los Angeles

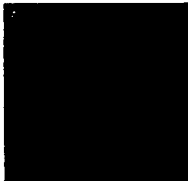


Los Angeles County
Bar Association
Litigation Section

Los Angeles County
Bar Association Labor and
Employment Law Section



Consumer Attorneys
Association of Los Angeles



Southern California
Defense Counsel



Association of
Business Trial Lawyers



California Employment
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION – EARLY ORGANIZATIONAL MEETING			CASE NUMBER:

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, *to discuss and consider whether there can be agreement on the following:*
 - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
 - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
 - c. Exchange of names and contact information of witnesses;
 - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
 - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
 - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
 - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
 - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at www.lacourt.org under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to _____ for the complaint, and _____ for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at www.lacourt.org under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
 3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
 4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date:

(TYPE OR PRINT NAME)

Date:

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Date:

(TYPE OR PRINT NAME)

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Date:

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Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

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(ATTORNEY FOR PLAINTIFF)

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(ATTORNEY FOR DEFENDANT)

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(ATTORNEY FOR DEFENDANT)

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(ATTORNEY FOR DEFENDANT)

>

(ATTORNEY FOR _____)

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(ATTORNEY FOR _____)

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(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION – DISCOVERY RESOLUTION			

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
 - a. The party requesting the Informal Discovery Conference will:
 - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
 - ii. Include a brief summary of the dispute and specify the relief requested; and
 - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
 - b. Any Answer to a Request for Informal Discovery Conference must:
 - i. Also be filed on the approved form (copy attached);
 - ii. Include a brief summary of why the requested relief should be denied;

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- iii. Be filed within two (2) court days of receipt of the Request; and
 - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

SHORT TITLE:	CASE NUMBER:
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The following parties stipulate:

Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR PLAINTIFF)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
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ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
INFORMAL DISCOVERY CONFERENCE (pursuant to the Discovery Resolution Stipulation of the parties)			CASE NUMBER:

1. This document relates to:

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Request for Informal Discovery Conference

Answer to Request for Informal Discovery Conference

2. Deadline for Court to decide on Request: _____ (insert date 10 calendar days following filing of the Request).
3. Deadline for Court to hold Informal Discovery Conference: _____ (insert date 20 calendar days following filing of the Request).
4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION AND ORDER – MOTIONS IN LIMINE			

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least ____ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
 - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
 - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

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Date:

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Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

➤ _____
(ATTORNEY FOR PLAINTIFF)

➤ _____
(ATTORNEY FOR DEFENDANT)

➤ _____
(ATTORNEY FOR DEFENDANT)

➤ _____
(ATTORNEY FOR DEFENDANT)

➤ _____
(ATTORNEY FOR _____)

➤ _____
(ATTORNEY FOR _____)

➤ _____
(ATTORNEY FOR _____)

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER

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10 Attorneys for Defendant
APPLE INC.
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 MITCH KALCHEIM, individually and on
behalf of all others similarly situated,

16 Plaintiff,
17

18 v.
19

APPLE INC.; and Does 1-100,
20 Defendant.
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Case No. 16-cv-9324

**DECLARATION OF
MICHAEL JAYNES IN
SUPPORT OF APPLE INC.'S
NOTICE OF REMOVAL**

Removed from the Superior
Court of California, Los Angeles
County

Case No. BC640958

DECLARATION OF MICHAEL JAYNES

I, Michael Jaynes, hereby declare as follows:

1. I am employed by Apple Inc. ("Apple") as a Finance Manager. In the course of my duties at Apple, I review Apple's product sales data, including sales data for Apple hardware products (e.g., MacBook Pros) and AppleCare Protection Plans (e.g., AppleCare extended warranties). I make the statements in this declaration based upon my personal knowledge and based upon corporate records maintained by Apple in its ordinary course of business, with which I am familiar. If called upon to do so, I could and would testify thereto under oath.

2. According to Apple's records, during the four years immediately preceding November 17, 2016, Apple's net sales of AppleCare extended warranties within the United States and from Apple's Online Store exceeded \$5 million.

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

Executed this 16th day of December, 2016 at Sunnyvale, California.



Michael Jaynes