

BLOOD HURST & O'REARDON, LLP

BLOOD HURST & O'REARDON, LLP  
TIMOTHY G. BLOOD (149343)  
THOMAS J. O'REARDON II (247952)  
501 West Broadway, Suite 1490  
San Diego, CA 92101  
Tel: 619/338-1100  
619/338-1101 (fax)  
tblood@bholaw.com  
toreardon@bholaw.com

CARLSON LYNCH SWEET KILPELA  
& CARPENTER, LLP  
TODD D. CARPENTER (234464)  
1350 Columbia Street, Suite 603  
San Diego, CA 92101  
Tel: 619/762-1910  
619/756-6991 (fax)  
tcarpenter@carlsonlynch.com

Attorneys for Plaintiff

[Additional counsel appear on signature page]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

AMANDA HOLMAN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

APPLE INC., a California corporation,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

Case No.

CLASS ACTION COMPLAINT

1 Plaintiff Amanda Holman (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, upon personal knowledge of the facts pertaining to herself and on  
3 information and belief as to all other matters, by and through undersigned counsel, hereby  
4 brings this action against Apple Inc. (“Apple” or “Defendant”), and alleges as follows:

5 **NATURE OF THE CASE**

6 1. On December 20, 2017, Apple admitted to purposefully slowing down or  
7 “throttling” the processing speed of its iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus,  
8 iPhone SE, iPhone 7 and iPhone 7 Plus (the “Subject iPhones”). Apple was able to slow down  
9 the performance of the Subject iPhones by encouraging consumers to download Apple’s “iOS”  
10 software updates that secretly contained code linking iPhone processing speed with battery  
11 capacity. By intentionally crippling the Subject iPhones through the secret software update  
12 link, Apple has slowed down the performance of almost every major feature of the  
13 smartphones, including making the phones unnecessarily slow at ordinary tasks such as  
14 launching apps, updating apps, loading webpages, and responding to inputs like scrolling and  
15 swiping.

16 2. Instead of disclosing to unsuspecting consumers that replacing the iPhone  
17 battery will restore your iPhone’s performance speed and functionality, Apple secretly chose to  
18 cripple the performance speed of the Subject iPhones. Because of Apple’s misconduct,  
19 consumers are left with a poor and slowly performing smartphone, which also leads many  
20 consumers to naturally purchase a newer model iPhone for upwards of \$1,000. Apple’s  
21 unilateral and secretive actions enriches Apples by both obscuring and deterring Subject  
22 iPhone owners from taking a simple and less costly measure to restore performance of their  
23 property, and deprives Subject iPhone owners of the smartphone performance which was  
24 promised by Apple and expected by reasonable consumers.

25 3. Plaintiff brings this class action on behalf of herself and similarly situated  
26 buyers of Subject iPhones, and alleges claims for violation of California consumer protection  
27 laws and common law to obtain redress for those who have purchased Subject iPhones and to  
28 enjoin Apple’s unlawful conduct alleged herein.

**JURISDICTION AND VENUE**

4. The Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and some of the members of the class are citizens of states different from Defendant.

5. This Court has personal jurisdiction over Defendant because Defendant is authorized to and does conduct business in California. Defendant has marketed, promoted, distributed, and sold the Subject iPhones in California, and Defendant's primary place of business is in California, rendering exercise of jurisdiction by California courts permissible.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district. Venue is also proper under 18 U.S.C. §1965(a) because Defendant transacts substantial business in this District and is a resident of this District.

7. Intradistrict Assignment: Pursuant to Civil Local Rules 3-2(c)-(d), and 3-5(b), Defendant is headquartered in Santa Clara County, this action otherwise arises in Santa Clara County, and it is therefore appropriate to assign this action to the Santa Clara Division.

**PARTIES**

8. Plaintiff Amanda Holman resides in San Francisco, California. Plaintiff purchased an iPhone 6 Plus (64 GB) in 2016. Ever since her phone was updated with iOS software version 10.2.1 in or around January or February 2017, her phone has exhibited significantly slower processing speeds, apps freeze and take longer to open and update, the phone responds slowly to inputs and lags, and the overall performance has deteriorated substantially.

9. Defendant Apple Inc. is a California corporation headquartered in Cupertino, California. Defendant markets and sells the Subject iPhones in its own retail stores located throughout the country, online, and also through third parties, such as AT&T. Defendant engineers and licenses iOS software to iPhone users, the only operating system Apple permits on its devices.

**FACTUAL BACKGROUND**

10. Apple is the only smartphone manufacturer to control every aspect of its product design—both hardware and software.

11. Apple purposefully and secretly planted code into operating system updates that was designed to degrade the performance of the older Subject iPhones after newer iPhone models were introduced as part of a strategy to induce its customers to purchase newer iPhones.

12. Apple's iPhone 6 and iPhone 6 Plus were released on September 19, 2014. At the time of launch, the iPhone 6 was available to those committing to a 2-year service contract for \$199 (16GB variant), \$299 (64 GB variant), and \$399 (128 GB variant), and was available off-contract for \$649.92 (16 GB variant), \$749.91 (64 GB variant), and \$849.90 (128 GB variant). The iPhone 6 Plus was available to those committing to a 2-year service contact for \$299 (16 GB variant), \$399 (64 GB variant), and \$499 (128 GB variant), and off-contract for \$749.76 (16 GB variant), \$849.99 (64 GB variant), and \$949.99 (128 GB variant).

13. Apple's iPhone 6S and iPhone 6S Plus were released on September 25, 2015. At the time of launch, the iPhone 6S cost \$649 (16GB variant), \$749 (64GB variant), and \$849 (128GB variant), and the iPhone 6S Plus cost \$749 (16GB variant), \$849 (64GB variant), and \$949 (128 GB variant).

14. Apple's iPhone 7 and iPhone 7 Plus were released on September 16, 2016. At the time of launch, the iPhone 7 cost \$649 (32 GB variant), \$749 (128 GB variant), and \$849 (256 GB variant), and the iPhone 7 Plus cost \$749 (32 GB variant), \$849 (128 GB variant), and \$949 (256 GB variant).

15. iOS is the mobile operating system developed by Apple exclusively for its hardware, including iPhones and iPads. Apple provides major updates to the iOS operating system annually. For example, iOS 10, the successor to iOS 9, is the tenth major release of the iOS mobile operating system. iOS 10 was released on September 13, 2016, and was succeeded by iOS 11 on September 19, 2017. In between annual iOS releases, Apple releases additional

1 updates (*e.g.*, iOS 10.01, 10.02, 10.03, etc.), including to ostensibly fix bugs and improve  
2 aspects of iPhone performance.

3 16. On January 23, 2017—four months after the launch of the iPhone 7 and iPhone  
4 7 Plus—Apple released iOS version 10.2.1. Shortly thereafter, iPhone users were notified that  
5 an update to iOS was available. Apple encouraged and represented to consumers that 10.2.1  
6 should be downloaded because it “includes bug fixes and improves the security of your iPhone  
7 or iPad”:



**iOS 10.2.1**  
Apple Inc.  
72.1 MB

iOS 10.2.1 includes bug fixes and improves the security of your iPhone or iPad.

For information on the security content of Apple software updates, please visit this website:  
<https://support.apple.com/en-gb/HT201222>

17 17. As with Apple’s other iOS updates, the iOS update prompt and Apple’s  
18 representation about its purpose appears on the iPhone itself and is a representation to which  
19 all iPhone users are exposed and told follow in order to accept and download the update.

20 18. Apple’s description of the scope and purpose of iOS version 10.2.1 was false  
21 and deceptive. Unbeknownst to iPhone 6, iPhone 6 Plus, iPhone 6S, and iPhone 6 Plus owners,  
22 Apple misrepresented a material purpose of the update and did not disclose that it had inserted  
23 code into the iOS version 10.2.1 that would dramatically slow down the processing  
24 performance of these phones by linking each phone’s processing performance with its battery  
25 health.

26 19. Nowhere in its representations did Apple disclose that iOS version 10.2.1 was  
27 incompatible with and would impair or degrade the Subject iPhone’s performance and speed.  
28

1 To the contrary, Apple prompted Subject iPhone owners to download iOS version 10.2.1 in  
2 order to obtain “fixes and improve[ments].”

3 20. Absent the malicious code inserted by Apple into iOS version 10.2.1, the  
4 battery capacity of the Subject iPhones would not have negativity affected processing  
5 performance.

6 21. Apple’s iPhone 8 and iPhone X were released on September 22, 2017, and  
7 November 3, 2017, respectively.

8 22. On December 2, 2017, iOS version 11.2.0 was released. Shortly thereafter,  
9 Apple notified iPhone users that the iOS update was available. On the Subject iPhones  
10 themselves, Apple represented as follows regarding the update:



**iOS 11.2**  
Apple Inc.  
430.7 MB

iOS 11.2 introduces Apple Pay Cash to send,  
request and receive money from friends and  
family with Apple Pay. This update also  
includes bug fixes and improvements.

For information on the security content of  
Apple software updates, please visit this  
website:

<https://support.apple.com/en-gb/HT201222>

19 23. Apple’s description of the scope and purpose of iOS version 11.2 was false and  
20 deceptive. Unbeknownst to iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone 7, and  
21 iPhone 7 Plus owners, Apple misrepresented a material purpose of the update and failed to  
22 disclose that it again inserted code into the iOS version 11.2.0 that dramatically slowed down  
23 the processing performance of these phones by linking each phone’s processing performance  
24 with its battery health.

25 24. Nowhere in its representations did Apple disclose that iOS version 11.2 was  
26 incompatible with and would impair or degrade the Subject iPhone’s performance and speed.  
27 To the contrary, Apple prompted Subject iPhone owners to download iOS version 11.2 in order  
28 to obtain “fixes and improvements.”

1           25. On December 9, 2017, a post appeared on the website Reddit that offered  
2 evidence that simply replacing the battery on an older iPhone restores the performance of older  
3 iPhones. In response, commenters speculated that, in fact, Apple was secretly throttling the  
4 performance speed of older iPhones through software “updates”.

5           26. On December 18, 2017, John Poole, co-founder of Primate Labs, published  
6 iPhone testing results that connected Subject iPhone’s slow performance to battery capacity in  
7 certain iOS software versions. Poole found that the performance deterioration arose when iOS  
8 software version 10.2.1 (or later) was installed in iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone  
9 6S Plus, and iPhone SE. Poole also found performance deterioration arose when iOS software  
10 version 11.2 (or later) was installed in iPhone 7 or iPhone 7 Plus.

11           27. Only after Poole’s revelation did Apple admit that it had been developing and  
12 introducing code to its customers intended to secretly throttle the processing speed of the  
13 Subject iPhones. Apple states that it did nothing wrong and that it intends to continue to  
14 include throttling code in future iOS updates.

15           28. The processing speed of iPhones should not normally diminish as a function of  
16 battery capacity. As Poole observes, “While we expect battery capacity to decrease as batteries  
17 age, we expect processor performance to stay the same.” Because of Apple’s intentional and  
18 secretive conduct, once the battery condition of Subject iPhones reaches a certain state,  
19 processing speeds slow dramatically.

20           29. Apple secretly and without authorization diminishes the performance of  
21 Plaintiff’s and the Class members’ phones to induce them to buy newer models. This triggering  
22 of the older Subject iPhones with a switch that slows processor speed to a crawl is but one of  
23 the many ways Apple achieves this end. Apple employs other means of accomplishing this end  
24 by delivering software updates that in other ways unjustifiably diminishes the performance of  
25 older model iPhones. This course of conduct is unfair, deceptive, in bad faith, and injures  
26 Plaintiff and the other Class members, and unjustly enriches Apple at their expense.

27           30. Plaintiff installed iOS 10.2.1 on her iPhone 6 Plus, and as a result, her iPhone’s  
28 performance deteriorated substantially. Apps take unduly long to open, update, and respond to

inputs such as swiping and scrolling lag. Websites crash and take too long to load. Plaintiff had not experienced such deterioration until installing the update. The performance of Plaintiff's iPhone 6 Plus has not improved with subsequent software installations. Plaintiff's iPhone 6 Plus now runs iOS 11.2.0, and it still performs in a deficient and deteriorated manner.

### **CLASS ACTION ALLEGATIONS**

31. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of a proposed Nationwide Class defined as:

All persons in the United States who purchased or leased any one of the following models of iPhone: iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone SE, iPhone 7 and iPhone 7 Plus.

32. In the alternative to the Nationwide Class, Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of a proposed California Class defined as:

All persons in California who purchased or leased any one of the following models of iPhone: iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone SE, iPhone 7 and iPhone 7 Plus.

33. Excluded from the Classes are Defendant, its parents, affiliates, subsidiaries, and entities in which Defendant has a controlling interest, as well as Defendant's officers, directors, legal representatives, heirs, predecessors, successors, and assigns, and the judicial officers presiding over the case.

34. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims

35. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. Defendant has sold many thousands of Subject iPhones to Class members.

36. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:



- a. whether Apple intentionally hinders performance of the Subject iPhones with the installation of certain software;
- b. whether a reasonable consumer expects the performance of the Subject iPhones to deteriorate with new software updates;
- c. whether Apple violated California's Consumers Legal Remedies Act;
- d. whether Apple violated California's Unfair Competition Law;
- e. the extent of the damages and harm suffered by Plaintiff and the other Class members;
- f. whether Apple's above-described uniform wrongful actions, inaction, omissions, and deceptive conduct caused Plaintiff and the other Class members to suffer damages;
- g. whether injunctive relief in the form of a software update removing the code that causes the processor performance deterioration is appropriate;
- h. whether injunctive relief in the form of corrective advertising is appropriate;
- i. whether Plaintiff and the other Class members are entitled to recover actual damages, consequential damages, incidental damages, statutory damages, punitive damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amount of the recovery.

37. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the claims of the other Class members because, among other things, Plaintiff and the other Class members were injured through the substantially uniform misconduct described above. Plaintiff is advancing the same claims and legal theories on behalf of herself and all other Class members, and no defense is available to Defendant that is unique to Plaintiff.

38. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because she will fairly represent the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class they seek to represent, and have the resources to do so. Neither Plaintiff nor her counsel have any interest adverse or antagonistic to those of the Class.

39. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to Class as a whole.

40. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system should not be required to undertake such an unnecessary burden. Individualized litigation would also create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Violation of the Consumers Legal Remedies Act – Civil Code §§1750, *et seq.***

41. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

42. Apple is a "person," under Cal. Civ. Code §1761(c).

43. Plaintiff and Class members are "consumers," as defined by Cal. Civ. Code §1761(d), who purchased or leased one or more Subject iPhones.

44. Defendant's conduct, as described herein, in misrepresenting the capabilities and performance of the Subject iPhones, as well as the nature and purposes of the iOS updates, and omitting to disclose that the iOS updates contained software code designed to slow and impair the Subject iPhone's performance capabilities, violates the California Consumers Legal

1 Remedies Act (“CLRA”), Cal. Civ. Code §§1750, *et seq.* Specifically, Defendant violated the  
 2 CLRA by misrepresenting and omitting material facts as it relates to the Subject iPhones and  
 3 the iOS updates, and by engaging in the following practices proscribed by Civil Code §1770(a)  
 4 in transactions that were intended to result in, and did result in, the sale or lease of goods or  
 5 services:

- 6 a. Representing that goods or services have...characteristics,...uses, [or]  
 7 benefits,...which they do not have (Civil Code §1770(a)(5));
- 8 b. Representing that goods or services are of a particular standard, quality,  
 or grade...if they are of another (Civil Code §1770(a)(7));
- 9 c. Advertising goods or services with intent not to sell them as advertised  
 10 (Civil Code §1770(a)(9)); and
- 11 d. Representing that goods or services have been supplied in accordance  
 12 with previous representations when they have not (Civil Code  
 §1770(a)(16)).

13 45. Defendant violated the CLRA by representing and failing to disclose material  
 14 facts, as described above, when it knew, or should have known, that the representations were  
 15 false and misleading and that the omissions were of material facts they were obligated to  
 16 disclose.

17 46. Pursuant to Civil Code §1782(d), Plaintiff, individually and on behalf of the  
 18 other members of the Class, seeks a Court order enjoining the above-described wrongful acts  
 19 and practices of Defendant, ordering Defendant to extend repair and replacement remedies to  
 20 all Class members, and awarding restitution and disgorgement.

21 47. Pursuant to §1782 of the CLRA, Plaintiff notified Defendant in writing by  
 22 certified mail of the particular violations of §1770 of the CLRA and demanded that Defendant  
 23 rectify the problems associated with the actions detailed above and give notice to all affected  
 24 consumers of Defendant’s intent to so act. A copy of the letter is attached hereto as Exhibit A.

25 48. If Defendant fails to rectify or agree to rectify the problems associated with the  
 26 actions detailed above and give notice to all affected consumers within 30 days of the date of  
 27 written notice pursuant to §1782 of the CLRA, Plaintiff will amend this complaint to add  
 28 claims for actual, punitive and statutory damages, as appropriate.

49. Defendant's conduct is fraudulent, wanton, and malicious.

50. Pursuant to §1782(d) of the CLRA, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum

## COUNT II

### **Violation of Business & Professions Code §§17200, *et seq.***

51. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

52. The Unfair Competition Law, Business & Professions Code §§17200, *et seq.* ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising.

53. In the course of conducting business, Defendant committed unlawful business practices by, among other things, transmitting code to harm and impair the Subject iPhones and making the representations and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), (6), (7), (9), and (16) and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law. Plaintiff, individually and on behalf of the other Class members, reserves the right to allege other violations of the law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

54. In the course of conducting business, Defendant committed "unfair" business practices by, among other things, purposefully hampering the speed and performance of Subject iPhones, and making the representations and omissions of material facts regarding the Subject iPhones and iOS updates, as alleged. There is no societal benefit from depriving Plaintiff and other Class members of the benefit of their bargain, and such false and misleading representations and omissions. There is only harm. While Plaintiff and the other Class members were harmed by this conduct, Defendant was unjustly enriched. As a result, Defendant's conduct is "unfair" as it has offended an established public policy. Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

1           55. Further, as set forth in this Complaint, Plaintiff alleges violations of consumer  
2 protection, unfair competition, and truth in advertising laws in California and other states,  
3 resulting in harm to consumers. Defendant's acts and omissions also violate and offend the  
4 public policy against engaging in unfair competition, deceptive conduct towards consumers,  
5 and false and misleading advertising. This conduct constitutes violations of the unfair prong of  
6 Business & Professions Code §§17200, *et seq.* There were reasonably available alternatives to  
7 further Defendant's legitimate business interests, other than the conduct described herein.

8           56. Business & Professions Code §§17200, *et seq.*, also prohibits any "fraudulent  
9 business act or practice." In the course of conducting business, Defendant committed  
10 "fraudulent business act or practices" by, among other things, making the representations  
11 (which also constitute advertising within the meaning of §17200) and omissions of material  
12 facts regarding the Subject iPhones and iOS updates, as set forth more fully herein.

13           57. Defendant's actions, claims, omissions, and misleading statements, as more  
14 fully set forth above, were also false, misleading and/or likely to deceive the consuming public  
15 within the meaning of Business & Professions Code §§17200, *et seq.*

16           58. Plaintiff and the other members of the Class have in fact been deceived as a  
17 result of their reliance on Defendant's material representations and omissions, which are  
18 described above. This reliance has caused harm to Plaintiff and the other members of the  
19 Class, each of whom purchased one of Defendant's Subject iPhones. Plaintiff and the other  
20 Class members have suffered injury in fact and lost money as a result of Defendant's unlawful,  
21 unfair, and fraudulent practices. Their Subject iPhones' processing speed has been significantly  
22 reduced, apps and programs perform poorly. Plaintiff and the other Class members have been  
23 deprived of the benefit of their bargain and are left with substandard iPhones that perform  
24 worse than they should.

25           59. Defendant knew, or should have known, that its material representations and  
26 omissions would be likely to deceive the consuming public and result in consumers  
27 purchasing the Subject iPhones and, indeed, intended to deceive consumers.  
28

60. As a result of its deception, Defendant has been able to reap unjust revenue and profit.

61. Unless restrained and enjoined, Defendant will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

62. Plaintiff, on behalf of herself, all others similarly situated, and the general public, seeks restitution from Defendant of all money obtained from Plaintiff and the other members of the Class collected as a result of unfair competition, an injunction prohibiting Defendant from continuing such practices, corrective advertising, and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

### COUNT III

#### Trespass to Chattels

63. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

64. Apple's conduct described above, in purposefully hampering the speed and performance of the Subject iPhones owned by Plaintiff and Class members, constitutes a trespass to chattels.

65. Through its iOS updates, Apple purposefully and secretly installed computer code on the Subject iPhones that was intended to and did burden, interfere with and hamper the speed and performance of Plaintiff's and the other Class members' Subject iPhones.

66. Apple's conduct in interfering with and hampering the speed and performance of the Subject iPhones was without consent or exceeded the consent given by Plaintiff and the other Class members.

67. As a result of Apple's trespass and interference, the Subject iPhones were harmed, Plaintiff and Class members lost use of the Subject iPhones, and Plaintiff and the other Class members have and continue to suffer damage in an amount to be determined at trial.

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, individually and on behalf of all other Class members, respectfully requests that the Court enter judgment in Plaintiff's favor and an Order:

A. Certifying the Classes under Fed. R. Civ. P. 23 as requested herein, appointing Plaintiff as Class Representative, and undersigned counsel as Class Counsel;

B. Awarding Plaintiff and the other Class members damages, restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members;

C. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;

D. Awarding Plaintiff and the other Class Members pre- and post-judgment interest on all amounts awarded;

E. Awarding attorneys' fees, litigation expenses, and costs of suit incurred through the trial and any appeals of this case; and

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

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury on all claims so triable.

Respectfully submitted,

Dated: January 5, 2018

BLOOD HURST & O'REARDON, LLP  
TIMOTHY G. BLOOD (149343)  
THOMAS J. O'REARDON II (247952)

By: s/ Timothy G. Blood  
TIMOTHY G. BLOOD

501 West Broadway, Suite 1490  
San Diego, CA 92101  
Tel: 619/338-1100  
619/338-1101 (fax)  
tblood@bholaw.com  
toreardon@bholaw.com

CARLSON LYNCH SWEET KILPELA  
& CARPENTER, LLP  
TODD D. CARPENTER (234464)  
1350 Columbia Street, Suite 603  
San Diego, CA 92101  
Tel: 619/762-1910  
619/756-6991 (fax)  
tcarpenter@carlsonlynch.com

BLOOD HURST & O'REARDON, LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CARLSON LYNCH SWEET KILPELA  
& CARPENTER, LLP  
EDWIN J. KILPELA, JR.  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Tel: 412/322-9243  
412/231-0246 (fax)  
ekilpela@carlsonlynch.com

BALKAN & PATTERSON, LLP  
JOHN PATTERSON  
601 S. Federal Highway, Suite 302  
Boca Raton, FL 33432  
Tel: 561/750-9191  
561/750-1574 (fax)  
john@balkanpatterson.com

*Attorneys for Plaintiff*



# EXHIBIT A



501 W. Broadway, Suite 1490 | San Diego, CA 92101  
 T | 619.338.1100 F | 619.338.1101  
 www.bholaw.com

Timothy G. Blood  
 tblood@bholaw.com

January 5, 2018

**VIA CERTIFIED MAIL (RETURN RECEIPT)**  
**(RECEIPT NO. 7014 0150 0000 6250 7475)**

Mr. Tim Cook, CEO  
 Apple, Inc.  
 1 Infinite Loop  
 Cupertino, CA 95014

Dear Mr. Cook:

We represent Amanda Holman ("Plaintiff") and all other consumers similarly situated in an action against Apple Inc. ("Defendant"), arising out of, *inter alia*, Defendant's "throttling" the processing speed of the iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone SE, iPhone 7 and iPhone 7 Plus ("Subject iPhones") through "iOS" software updates.

Apple encouraged its customers to download Apple's "iOS" software updates onto their Subject iPhones. Through these updates, Apple slowed down the performance of the Subject iPhones by secretly linking the iPhone processing speed with battery capacity. This resulted in slowed performance of almost every major feature of the smartphones. Rather than disclosing that performance would be slowed or that replacing the battery would restore the iPhone's performance speed and functionality, Apple secretly chose to cripple the performance speed of the Subject iPhones. As a result, consumers are left with poor and slowly performing smartphones.

Defendant's misrepresentations and omissions constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices. These practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* Specifically, Defendant's practices violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that goods or services have ... approval, characteristics, . . . uses [or] benefits ... [which] they do not have ....

\* \* \*

- (7) Representing that goods or services are of a particular standard, quality, or grade ... if they are of another.

\* \* \*

- (9) Advertising goods or services with intent not to sell them as advertised.

\* \* \*

- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.



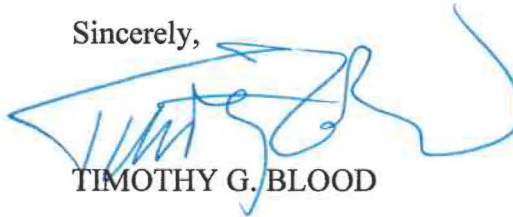
Mr. Tim Cook, CEO  
Apple, Inc.  
January 5, 2018  
Page 2

Defendant's practices also violate California Business and Professions Code §§17200, *et seq.*

While the complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendant immediately correct and rectify these violations by properly informing consumers of the effects of the "iOS" software update on the performance of the Subject iPhones and available remedies, and by providing repair and replacement remedies free of charge, in addition to, reimbursement for interest, costs, and fees.

We await your response.

Sincerely,



TIMOTHY G. BLOOD

TGB:jk

Enclosure

# EXHIBIT B

BLOOD HURST &amp; O'REARDON, LLP

BLOOD HURST & O'REARDON, LLP  
 TIMOTHY G. BLOOD (149343)  
 THOMAS J. O'REARDON II (247952)  
 501 West Broadway, Suite 1490  
 San Diego, CA 92101  
 Tel: 619/338-1100  
 619/338-1101 (fax)  
 tblood@bholaw.com  
 toreardon@bholaw.com

CARLSON LYNCH SWEET KILPELA  
 & CARPENTER, LLP  
 TODD D. CARPENTER (234464)  
 1350 Columbia Street, Suite 603  
 San Diego, CA 92101  
 Tel: 619/762-1910  
 619/756-6991 (fax)  
 tcarpenter@carlsonlynch.com

Attorneys for Plaintiff

[Additional counsel appear on signature page]

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

AMANDA HOLMAN, individually and on  
 behalf of all others similarly situated,

Plaintiff,

v.

APPLE INC., a California corporation,

Defendant.

Case No.

**AFFIDAVIT OF TIMOTHY G. BLOOD  
 PURSUANT TO CAL. CIVIL CODE  
 §1780(d)**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

Case No.

1 I, TIMOTHY G. BLOOD, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 California. I am a partner of the law firm of Blood Hurst & O'Reardon LLP, and one of the  
4 counsel of record for plaintiff in the above-entitled action.

5 2. Defendant Apple Inc. has its headquarters in and has done and is doing business  
6 in Santa Clara County, California. Such business includes the marketing, promoting,  
7 distributing, and selling of iPhones and iOS software updates, the products at issue in the  
8 lawsuit.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct. Executed on January 5, 2018, at San Diego, California.

11 s/ Timothy G. Blood

12 TIMOTHY G. BLOOD



**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

AMANDA HOLMAN, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Francisco County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Timothy G. Blood

Blood Hurst &amp; O'Reardon, LLP

501 West Broadway, Suite 1490, San Diego, CA 92101

[SEE ATTACHMENT]

Tel: (619) 338-1100

**DEFENDANTS**

APPLE INC., a California corporation

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question  
(U.S. Government Not a Party)
- 2 U.S. Government Defendant ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	<input checked="" type="checkbox"/> 2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	440 Other Civil Rights		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting		<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
220 Foreclosure	442 Employment		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities—Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other			950 Constitutionality of State Statutes
290 All Other Real Property	448 Education	<b>PRISONER PETITIONS</b>		
		<b>HABEAS CORPUS</b>		
		463 Alien Detainee		
		510 Motions to Vacate Sentence		
		530 General		
		535 Death Penalty		
		<b>OTHER</b>		
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation—Transfer 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332(d)(2)

Brief description of cause:

Violations of Civil Code §1750 (CLRA); Cal. Bus. &amp; Prof. Code §17200 (UCL); Trespass to Chattels

**VII. REQUESTED IN COMPLAINT:**

✓ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes No**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT** (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

☒ SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 01/05/2018

SIGNATURE OF ATTORNEY OF RECORD

s/ Timothy G. Blood

*Amanda Holman v. Apple, Inc.*  
United States District Court, Northern District of California

**ATTACHMENT A TO CIVIL COVER SHEET (JS-CAND-44)**

*Attorneys for Plaintiff Amanda Holman*

**BLOOD HURST & O'REARDON, LLP**

Timothy G. Blood (149343)  
Thomas J. O'Reardon II (247952)  
501 West Broadway, Suite 1490  
San Diego, CA 92101  
Tel: 619/338-1100  
619/338-1101 (fax)  
tblood@bholaw.com  
toreardon@bholaw.com

**CARLSON LYNCH SWEET KILPELA**

& CARPENTER, LLP  
TODD D. CARPENTER (234464)  
1350 Columbia Street, Suite 603  
San Diego, CA 92101  
Tel: 619/762-1910  
619/756-6991 (fax)  
tcarpenter@carlsonlynch.com

**BALKAN & PATTERSON, LLP**

JOHN PATTERSON  
601 S. Federal Highway, Suite 302  
Boca Raton, FL 33432  
Tel: 561/750-9191  
561/750-1574 (fax)  
john@balkanpatterson.com

**CARLSON LYNCH SWEET KILPELA**

& CARPENTER, LLP  
EDWIN J. KILPELA, JR.  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Tel: 412/322-9243  
412/231-0246 (fax)  
ekilpela@carlsonlynch.com



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
  - (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.