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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE  
PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

**CLASS ACTION**

This Document Relates To:

ALL ACTIONS.

**SECOND CONSOLIDATED AMENDED  
COMPLAINT**

Hon. Edward J. Davila

**REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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## INTRODUCTION

1. Plaintiffs file this Second Consolidated Amended Complaint<sup>1</sup> for Damages and Equitable Relief against Apple Inc. (“Apple,” the “Company,” or “Defendant”) on behalf of themselves and all persons worldwide who purchased, owned, used, or leased one or more of Apple’s Devices<sup>2</sup> (the “Class” as defined herein) for fraudulent misrepresentations and omissions, and other unlawful and unfair business practices. The allegations in this Second Amended Complaint are based on information and belief, including *inter alia* a review of documents produced by Apple in this litigation to date and consultation with experts.

2. After years of customer frustration, on December 20, 2017, Apple admitted to one of the largest consumer frauds in history, affecting hundreds of millions of Apple Devices across the globe. Prompting the admission were reports of unexplained shutdowns and unexpected power-offs (“UPOs”) of certain Devices and Apple’s decision to secretly throttle certain Devices, which was discovered by a third-party.

3. [REDACTED]

4. As discussed in detail below and in ¶¶ 369 - 405, [REDACTED]

<sup>1</sup> Plaintiffs’ reallege the claims related to iPads in their entirety and the “throttling” claims for the iPhone 5, iPhone 5s, and iPhone 5c solely to preserve those claim for appeal. *Miletak v. Allstate Ins. Co.*, 2007 WL 7061350, at \*4 (N.D. Cal. July 18, 2007).

<sup>2</sup> As used herein, the term “Devices” are the following products designed and marketed by Apple for sale: the iPhone 5, iPhone 5s, iPhone 5c, iPhone SE, iPhone 6, iPhone 6s, iPhone 6 Plus, iPhone 6s Plus, iPhone 7, iPhone 7 Plus, the Fourth Generation iPad, iPad Mini, iPad Air, iPad Mini 2, Update to Fourth Generation iPad, iPad Air 2, iPad Mini 3, iPad Mini 4, iPad Pro, 9.7-Inch iPad Pro, Fifth Generation iPad, iPad Pro 10.5-inch and 12.9 inch models, and Sixth Generation iPad.



(the "Defect").

5. Apple represents that its batteries will last for 500 complete charge cycles.

6.

7.

8. These representations were materially false because they failed to disclose the known Defect, and because millions of Devices did not perform as stated under normal use.

9.

10.

1 [REDACTED]  
2 [REDACTED]  
3 11. [REDACTED] Apple failed to  
4 inform consumers of the Defect and continued selling millions of Devices, notwithstanding  
5 their knowledge of the Defect and the increasing rate of UPOs.

6 12. [REDACTED]  
7 [REDACTED]  
8 [REDACTED] Apple actively concealed the decision to slow  
9 millions of the Devices from Plaintiffs and the Class.

10 13. The throttling via the Updates permitted Apple to have batteries that draw less  
11 current to run the Devices. The trade-off, however, was that the processing speed and other  
12 operations were substantially reduced.

13 14. The Updates did not solve the problem caused by the Defect. It merely  
14 concealed the Defect from the public by secretly throttling the Devices' performance to reduce  
15 the number of UPOs consumers experienced. Yet, even after the iOS update, Apple  
16 acknowledged that [REDACTED]

17 15. Apple's secret throttling did not stop at iOS 10.2.1.<sup>3</sup> On December 2, 2017,  
18 another set of throttling code was inserted in iOS 11.2, but Apple again told consumers the  
19 update was primarily to fix "bugs" and provide "improvements." Apple did not reveal the  
20 Defect until independent research was published online in mid-December 2017, which  
21 demonstrated the marked degradation of performance in a large sampling of Devices following  
22 installation of the Updates, thereby prompting Apple to begin to come clean.

23 16. On December 20, 2017, Apple tacitly admitted that the Updates intentionally  
24 slowed the Devices (the "December 20 Admission") stating, in relevant part:

25 Our goal is to deliver the best experience for customers, which includes overall  
26

27 <sup>3</sup> Notably, prior to releasing 10.2.1, in early January 2017, Apple released a software update on the  
28 Devices to gather additional diagnostic data.

1 performance and prolonging the life of their devices. Lithium-ion batteries become  
2 less capable of supplying peak current demands when in cold conditions, have a low  
battery charge or as they age over time, which can result in the device unexpectedly  
shutting down to protect its electronic components.

3 Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to *smooth out*  
4 the instantaneous peaks only when needed to prevent the device from unexpectedly  
shutting down during these conditions. We've now extended that feature to iPhone 7,  
5 with iOS 11.2, and plan to add support for other products in the future.<sup>4</sup>

6 17. The December 20 Admission, however, contained the further misrepresentation  
7 that the code was designed to "*smooth out*" allegedly "[unexpected] instantaneous peaks" in  
8 performance. A downpour of media reports ensued, several of which used the more appropriate  
9 term — "throttle" — to define this "smooth[ing]" feature that Apple inserted into the Updates.

10 18. While Plaintiffs and the Class need not attribute any motive behind Apple's  
11 intentional degradation of the Devices, it is evident that Apple did so for the simple reason most  
12 frauds are committed: money. Although technically complex in part, the scheme was logical  
13 and simple: Devices were designed defectively, and Apple released Updates to conceal the  
14 Defect, all the while exacerbating the Defect's effects— principally decreased performance —  
15 so that Device users had no choice but to purchase new batteries or upgrade their Devices,  
16 resulting in additional payments to Apple and a sustained (albeit forced) customer base.

17 19. Highlighting Apple's dependence on the "success" of its defective products, the  
18 Devices represented at least 70% of Apple's overall revenue for at least fiscal years 2013 to  
19 2017 (nearly \$800 billion), and to date. In 2016 — just prior to the first of the Updates —  
20 Apple was stumbling for the first time in 15 years in iPhone sales, was facing a saturated iPhone  
21 market, decreased sales of iPads (and even its Mac product line), the end or phasing out of third  
22 party vendor "two-year" service contracts, and increased competition overall.

23 20. As such, a perfect storm was brewing for Apple, with a host of problems  
24 threatening its continued ability to profit in the smartphone and tablet markets. *No time, and*

---

25  
26  
27 <sup>4</sup> Shara Tibiken, "Apple admits slowing older iPhones, says it's to prevent battery issues," *C/Net*  
28 (Dec. 20, 2017) (available online at <https://www.cnet.com/news/apple-slows-down-older-iphone-battery-issues/#ftag=CAD-09-10aai5b>) (last visited July 1, 2018).

1 *particularly during 2016 and 2017*, was a good time for Apple to reveal that its Devices were  
2 defective. And so, the sly saga progressed.

3 21. Following the December 20 Admission, Apple's statements and conduct reveal a  
4 carefully orchestrated public relations maneuver to continue to conceal and misrepresent the  
5 true extent of Apple's misconduct with regard to the Devices and the Defect. Apple has failed,  
6 even today, to affirmatively tell consumers that the Company sold them Devices that suffered  
7 from the Defect, which impairs the Device's central functioning and purpose.

8 22. While Apple also "apologize[d]" on December 28, 2017, the apology is just  
9 more public relations machinations. In fact, the December 28, 2017 Apple statement (the  
10 "Apology") merely confirmed the earlier undisclosed material facts – facts which Apple should  
11 have disclosed long before. As stated by Apple in the "Apology":

12 iOS 10.2.1 (released January 2017) includes updates for previous models of iPhone to  
13 prevent them from unexpectedly shutting down. This includes a feature for iPhone 6,  
14 iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE to dynamically manage the  
15 instantaneous performance peaks, only when needed, to prevent the device from  
16 unexpectedly shutting down. This capability was also extended to iPhone 7 and  
17 iPhone 7 Plus with iOS 11.2, and we will continue improving our power management  
18 feature in the future. This feature's only intent is to prevent unexpected shutdowns so  
19 that the iPhone can still be used.

20 This power management works by looking at a combination of the device temperature,  
21 battery state of charge, and battery impedance. Only if these variables require it, iOS  
22 will dynamically manage the maximum performance of some system components,  
23 such as the CPU and GPU, in order to prevent unexpected shutdowns. As a result, the  
24 device workloads will self-balance, allowing a smoother distribution of system tasks,  
25 rather than larger, quick spikes of performance all at once. In some cases, a user may  
26 not notice any differences in daily device performance. The level of perceived change  
27 depends on how much power management is required for a particular device.

28 In cases that require more extreme forms of this power management, the user may  
notice effects such as:

Longer app launch times

Lower frame rates while scrolling

Backlight dimming (which can be overridden in Control Center)

Lower speaker volume by up to -3dB

Gradual frame rate reductions in some apps

During the most extreme cases, the camera flash will be disabled as visible in the

camera UI

Apps refreshing in background may require reloading upon launch.<sup>5</sup>

23. While government officials and regulators, both domestic and foreign, are investigating and/or examining Apple's conduct,<sup>6</sup> it is insufficient to help members of the Class, each of whom are forced to choose among four harms going forward: 1) turn off the "throttling" feature, subjecting the Device to increased risk of UPOs; 2) keep the "throttling" feature on, subjecting the Device to reduced performance; 3) buy a new battery, paying money now (\$29 in the United States and a similar amount in other countries) and not knowing whether or when the Device will again be at risk for UPOs; or 4) upgrade to a new Device. So not only are Plaintiffs and the Class entitled to damages for past harms, each and every Class member who has not yet upgraded must necessarily choose which of the four harms above they "prefer" in the future.

24. As discussed herein, Apple includes a California choice-of-law provision in the Software License Agreement accompanying its iOS software, ostensibly applicable on a near-global basis. Plaintiffs accordingly allege claims under both federal and California law, and in the alternative under (or in some cases, in addition to) the laws of other jurisdictions.

### **JURISDICTION AND VENUE**

25. This Consolidated Complaint is intended to serve as a superseding complaint as to all other complaints consolidated in this multidistrict litigation, and to serve for all purposes as the operative pleading for the Class defined below. As set forth herein, this Court has general jurisdiction over Apple and original jurisdiction over Plaintiffs' claims.

26. This Court has federal question subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because Plaintiffs allege that Apple violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*

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<sup>5</sup> Apple, iPhone and Battery Performance, Understand iPhone performance and its relation to your battery (Dec. 31, 2017), *available at* <https://goo.gl/C4paop>.

<sup>6</sup> See discussion *supra* at ¶ 3 and *infra* at Part V.

27. This Court also has subject-matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action in which the matter in controversy exceeds the sum of \$5,000,000, and Apple is a citizen of a State different from that of at least one Class member.

28. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a) because all claims alleged herein form part of the same case or controversy.

29. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because Apple's principal place of business is located in this District and substantial parts of the events or omissions giving rise to the claims occurred in the District. Venue is also proper in this Court because Apple is located here, the causes of action arose here, and as Apple has admitted, the Devices at issue herein have always been designed, manufactured, and tested by Apple in this District.

### **INTRADISTRICT ASSIGNMENT**

30. Assignment of the cases originally filed within this District to the San Jose Division is proper pursuant to Local Rule 3-2-(c)-(e), as a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Santa Clara County, California.

### **PARTIES**

#### **A. Plaintiffs<sup>7</sup>**

#### **ALABAMA**

31. **Plaintiff Joseph Taylor** is a resident and citizen of the State of Alabama and he acquired an iPhone 6 on April 8, 2015. Prior to his purchase of the Device, he did not know, nor

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<sup>7</sup> With the filing of this Consolidated Amended Complaint in this multidistrict jurisdiction case, several Plaintiffs have been "added" that were not in the original filed complaints before the Judicial Panel on Multidistrict Litigation or otherwise transferred to this Court. Accordingly, Plaintiffs have filed a separate complaint with this Court on behalf of the added Plaintiffs, and are seeking intra-district transfer and consolidation, for the sake of ensuring subject matter jurisdiction.



1 could he have known through reasonable diligence, of the Defect in his Device. Taylor  
2 downloaded and installed iOS 10.2.1 on his Device in or around January or February of 2017.

3 32. Not only did Taylor's Device not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that iOS updates would cause the way  
5 Taylor's Device operated to fundamentally change. Taylor's Device did not operate as  
6 promised in Apple's advertisements, representations, and the information publicly available in  
7 the marketplace. Additionally, none of the packaging in which the Device was sold to Taylor  
8 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
9 or otherwise regulate the battery power and speed pursuant to which Taylor's Device would  
10 operate. Accordingly, not only was Taylor's Device defective at the point of sale due to the  
11 Defect, but Apple exacerbated the problems with Taylor's Device via its misrepresentations and  
12 omissions with the iOS software Updates. As a result of Apple's actions, Taylor did not receive  
13 the benefit of his bargain, and was injured as a result. If Taylor had been told of the Defect and  
14 the deceptive manner in which Apple would damage the Device after sale, Taylor would not  
15 have purchased the Device, or would have paid substantially less for it.

### 16 ALABAMA

17 33. **Plaintiff Khendle Harvest Williams** is a resident and citizen of the State of  
18 Alabama and she purchased an iPhone 6 and 6s for her daughter in or about September 2014.  
19 She purchased two iPhone 7 Pluses in or about January 2017. She also purchased an iPhone 7  
20 Plus in or about November 2016. Prior to her purchases of the Devices, she did not know, nor  
21 could she have known through reasonable diligence, of the Defect in her Devices.

22 34. Not only did Williams's Devices not operate as Apple warranted and promised  
23 initially, but Apple never represented or warranted that iOS updates would cause the way  
24 Williams's Devices operated to fundamentally change. Williams's Devices did not operate as  
25 promised in Apple's advertisements, representations, and the information publicly available in  
26 the marketplace. Additionally, none of the packaging in which the Devices were sold to  
27 Williams revealed that there was any Defect or that Apple would use the Updates to "smooth,"  
28

1 “throttle,” or otherwise regulate the battery power and speed pursuant to which Williams’s  
2 Devices would operate. Accordingly, not only were Williams’s Devices defective at the point  
3 of sale due to the Defect, but Apple exacerbated the problems with Williams’s Devices via its  
4 misrepresentations and omissions with the iOS software Updates. As a result of Apple’s  
5 actions, Williams did not receive the benefit of her bargains, and was injured as a result. If  
6 Williams had been told of the Defect and the deceptive manner in which Apple would damage  
7 the Device after sale, Williams would not have purchased the Devices or would have paid  
8 substantially less for them.

#### 9 ALASKA

10 35. **Plaintiff Loren Haller** is a resident and citizen of the State of Alaska and he  
11 purchased an iPhone 6 on or around October 2014, an iPhone 6s on or around November 2015,  
12 an iPhone 7 on or around October 2016, and an iPhone 7 Plus on or around January 2017. Prior  
13 to his purchase of the Devices, he did not know, nor could he have known through reasonable  
14 diligence of the Defect in his Devices.

15 36. Not only did Haller’s Devices not operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS updates would cause the way  
17 Haller’s Devices operated to fundamentally change. Haller’s Devices did not operate as  
18 promised in Apple’s advertisements, representations, and the information publicly available in  
19 the marketplace. Additionally, none of the packaging in which the Devices were sold to Haller  
20 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
21 or otherwise regulate the battery power and speed pursuant to which Haller’s Devices would  
22 operate. Accordingly, not only was Haller’s Devices defective at the point of sale due to the  
23 Defect, but Apple exacerbated the problems with Haller’s Devices via its misrepresentations  
24 and omissions with the iOS software Updates. As a result of Apple’s actions, Haller did not  
25 receive the benefit of his bargain, and was injured as a result. If Haller had been told of the  
26 Defect and the deceptive manner in which Apple would damage the Devices after sale, Haller  
27 would not have purchased the Devices, or would have paid substantially less for them.  
28



**ARIZONA**

37. **Plaintiff Alex Eugene Rodriguez** is a resident and citizen of the State of Alaska and he purchased an iPhone SE in or about July or August 2016 in Arizona. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence of the Defect in his Device. Rodriguez downloaded and installed iOS updates as they were recommended.

38. Not only did Rodriguez's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Rodriguez's Device operated to fundamentally change. Rodriguez's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Rodriguez revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Rodriguez's Device would operate. Accordingly, not only was Rodriguez's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Rodriguez's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Rodriguez did not receive the benefit of his bargain, and was injured as a result. If Rodriguez had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Rodriguez would not have purchased the Device, or would have paid substantially less for it.

**ARIZONA / TEXAS**

39. **Plaintiff Jonathan David** is a resident and citizen of the State of Arkansas and he purchased an iPhone 6 Plus in Arizona and an iPhone 6 in Texas in March 2015. Prior to his purchase of the Devices, he did not know, nor could he have known through reasonable diligence of the Defect in his Devices. At time of initial purchase, the Devices operated on iOS 8. David downloaded and installed iOS 10 on his iPhone 6 in the fall of 2016.

40. Not only did David's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10 or any of the future updates would cause the way David's Devices operated to fundamentally change. David's Devices, particularly after installation of iOS 10, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to David revealed that there was any Defects or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which David's Devices would operate. Accordingly, not only were David's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with David's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, David did not receive the benefit of his bargain, and was injured as a result. If David had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, David would not have purchased the Devices, or would have paid substantially less for them.

### ARIZONA

41. **Plaintiff Daphne Bowles Rodriguez** is a resident and citizen of the State of Arizona and she purchased an iPhone 5 on December 1, 2012, an iPhone 6 in or around 2014 or 2015, and an iPhone 7 in 2017. Prior to her purchases of the Devices, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices. At time of initial purchases, the Devices operated on the latest version of iOS.

42. Not only did Rodriguez's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Rodriguez's Devices operated to fundamentally change. Rodriguez's Devices did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Rodriguez revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Rodriguez's

1 Devices would operate. Accordingly, not only were Rodriquez's Devices defective at the point  
2 of sale due to the Defect, but Apple exacerbated the problems with Rodriquez's Devices via its  
3 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
4 actions, Rodriquez did not receive the benefit of her bargain, and was injured as a result. If  
5 Rodriquez had been told of the Defect and the deceptive manner in which Apple would damage  
6 the Devices after sale, Rodriquez would not have purchased the Devices, or would have paid  
7 substantially less for them.

### 8 ARIZONA

9 43. **Plaintiff Trent Young** is a resident and citizen of the State of Arizona and  
10 he purchased an iPhone 6s in September 2015. Prior to his purchase of the Device, he did not  
11 know, nor could he have known through reasonable diligence, of the Defect in his Device.  
12 Young regularly downloaded and installed iOS updates when prompted.

13 44. Not only did Young's Device not operate as Apple warranted and promised  
14 initially, but Apple never represented or warranted that iOS updates would cause the way  
15 Young's Device operated to fundamentally change. Young's Device did not operate as  
16 promised in Apple's advertisements, representations, and the information publicly available in  
17 the marketplace. Additionally, none of the packaging in which the Device was sold to Young  
18 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
19 or otherwise regulate the battery power and speed pursuant to which Young's Device would  
20 operate. Accordingly, not only was Young's Device defective at the point of sale due to the  
21 Defect, but Apple exacerbated the problems with Young's Device via its misrepresentations and  
22 omissions with the iOS software Updates. As a result of Apple's actions, Young did not receive  
23 the benefit of his bargain, and was injured as a result. If Young had been told of the Defect and  
24 the deceptive manner in which Apple would damage the Device after sale, Young would not  
25 have purchased the Device, or would have paid substantially less for it.  
26  
27  
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**ARKANSAS**

45. **Plaintiff Cynthia Stacy** is a resident and citizen of the State of Arkansas and she purchased an iPhone 6 Plus on or around 2015. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device.

46. Not only did Stacy's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Stacy's Device operated to fundamentally change. Stacy's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Stacy revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Stacy's Device would operate. Accordingly, not only was Stacy's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Stacy's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Stacy did not receive the benefit of her bargain, and was injured as a result. If Stacy had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Stacy would not have purchased the Device, or would have paid substantially less for it.

**CALIFORNIA**

47. **Plaintiff Amanda Holman** is a resident and citizen of the State of California and she purchased an iPhone 6 in January 2015 and an iPhone 6 Plus in October 2016. Prior to her purchase of the Devices, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices. At time of initial purchase, her Devices operated on their factory-installed iOS versions. Holman downloaded and installed iOS 9 on her iPhone 6 in or around October 2015 and iOS 10.3.1 on her iPhone 6 Plus in or around May 2017.

48. Not only did Holman's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 9, 10.3.1, or any of the future updates would cause the way Holman's Devices operated to fundamentally change. Holman's

1 Devices, particularly after installation of iOS 9 and 10.3.1, respectively, did not operate as  
2 promised in Apple's advertisements, representations, and the information publicly available in  
3 the marketplace. Additionally, none of the packaging in which the Devices were sold to  
4 Holman revealed that there was any Defect or that Apple would use the Updates to "smooth,"  
5 "throttle," or otherwise regulate the battery power and speed pursuant to which Holman's  
6 Devices would operate. Accordingly, not only were Holman's Devices defective at the point of  
7 sale due to the Defect, but Apple exacerbated the problems with Holman's Devices via its  
8 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
9 actions, Holman did not receive the benefit of her bargain and was injured as a result. If  
10 Holman had been told of the Defect and the deceptive manner in which Apple would damage  
11 the Devices after sale, Holman would not have purchased the Devices, or would have paid  
12 substantially less for them.

### 13 CALIFORNIA

14 49. **Plaintiff John Webb** is a resident and citizen of the State of California and he  
15 purchased an iPhone 7 Plus on January 4, 2017. Prior to his purchase of the Device, he did not  
16 know, nor could he have known through reasonable diligence, of the Defect in his Device. At  
17 time of initial purchase, the Device operated on iOS 10. Webb downloaded and installed iOS  
18 11 on his iPhone 7 Plus in or around September 2017.

19 50. Not only did Webb's Device not operate as Apple warranted and promised  
20 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
21 would cause the way Webb's Device operated to fundamentally change. Webb's Device,  
22 particularly after installation of iOS 11, did not operate as promised in Apple's advertisements,  
23 representations, and the information publicly available in the marketplace. Additionally, none  
24 of the packaging in which the Device was sold to Webb revealed that there was any Defect or  
25 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
26 power and speed pursuant to which Webb's Device would operate. Accordingly, not only was  
27 Webb's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
28

1 problems with Webb's Device via its misrepresentations and omissions with the iOS software  
2 Updates. As a result of Apple's actions, Webb did not receive the benefit of his bargain, and  
3 was injured as a result. If Webb had been told of the Defect and the deceptive manner in which  
4 Apple would damage the Device after sale, Webb would not have purchased the Device, or  
5 would have paid substantially less for it.

## 6 CALIFORNIA

7 51. **Plaintiff Laura Gail Diamond** is a resident and citizen of the State of California  
8 and she has purchased multiple generations of the iPhone dating back to the iPhone 4  
9 generation, including an iPhone 6 and 6s Plus in fall 2015, and an iPhone 7 in fall 2016. Prior  
10 to her purchases of the Devices, she did not know, nor could she have known through  
11 reasonable diligence, of the Defect in her Devices. At time of initial purchase, the Devices  
12 operated on their factory-installed iOS versions.

13 52. Not only did Diamond's Devices not operate as Apple warranted and promised  
14 initially, but Apple never represented or warranted that iOS 11.1 or any future updates would  
15 cause the way Diamond's Devices operated to fundamentally change. Diamond's Devices, for  
16 example after installation of iOS 11.1 on her iPhone 7, did not operate as promised in Apple's  
17 advertisements, representations, and the information publicly available in the marketplace.  
18 Additionally, none of the packaging in which the Devices were sold to Diamond revealed that  
19 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
20 regulate the battery power and speed pursuant to which Diamond's Devices would operate.  
21 Accordingly, not only were Diamond's Devices defective at the point of sale due to the Defect,  
22 but Apple exacerbated the problems with Diamond's Devices via its misrepresentations and  
23 omissions with the iOS software Updates. As a result of Apple's actions, Diamond did not  
24 receive the benefit of her bargain and was injured as a result. If Diamond had been told of the  
25 Defect and the deceptive manner in which Apple would damage the Devices after sale,  
26 Diamond would not have purchased the Devices, or would have paid substantially less for them.

**CALIFORNIA**

53. **Plaintiff Robert Gilson** is a resident and citizen of the State of California and he purchased an iPhone 6s. Prior to his purchases of the Device, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device. At time of initial purchase, the Device operated on iOS 9. In or around January 2017, Gilson downloaded and installed iOS 10.2.1 on his Device.

54. Not only did Gilson's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10.2.1 or any future updates would cause the way Gilson's Device operated to fundamentally change. Gilson's Device, particularly after installation of iOS 10.2.1, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Gilson revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Gilson's Device would operate. Accordingly, not only was Gilson's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Gilson's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Gilson did not receive the benefit of his bargain and was injured as a result. If Gilson had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Gilson would not have purchased the Device, or would have paid substantially less for it.

**CALIFORNIA**

55. **Plaintiff Romeo Alba** is a resident and citizen of the State of California and he purchased an iPhone 6 Plus in September 2014. Prior to his purchases of the Device, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device. At time of initial purchase, the iPhone 6 Plus operated on iOS 8. In or around October 2017, Alba downloaded and installed iOS 11 on his iPhone 6 Plus.



1           56. Not only did Alba's Device not operate as Apple warranted and promised  
2 initially, but Apple never represented or warranted that iOS 11 or any future updates would  
3 cause the way Alba's Device operated to fundamentally change. Alba's Device, particularly  
4 after installation of iOS 11, did not operate as promised in Apple's advertisements,  
5 representations, and the information publicly available in the marketplace. Additionally, none  
6 of the packaging in which the Device was sold to Alba revealed that there was any Defect or  
7 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
8 power and speed pursuant to which Alba's Device would operate. Accordingly, not only was  
9 Alba's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
10 problems with Alba's Device via its misrepresentations and omissions with the iOS software  
11 Updates. As a result of Apple's actions, Alba did not receive the benefit of his bargain, and was  
12 injured as a result. If Alba had been told of the Defect and the deceptive manner in which  
13 Apple would damage the Device after sale, Alba would not have purchased the Device, or  
14 would have paid substantially less for it.

### 15 CALIFORNIA

16           57. **Plaintiff Sara Hawes** is a resident and citizen of the State of California and she  
17 leased multiple generations of the iPhone, including an iPhone 5 (in August 2013), two iPhone  
18 6 Devices (in September and December 2014), and an iPhone 7 Plus (in September 2016). Prior  
19 to her lease of the Devices, she did not know, nor could she have known through reasonable  
20 diligence, of the Defect in her Devices. At time of initial lease, the Devices operated on their  
21 factory-installed iOS versions.

22           58. Not only did Hawes's Devices not operate as Apple warranted and promised  
23 initially, but Apple never represented or warranted that any of the future iOS updates would  
24 cause the way Hawes's Devices operated to fundamentally change. Hawes's Devices,  
25 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
26 advertisements, representations, and the information publicly available in the marketplace.  
27 Additionally, none of the packaging in which the Devices were sold to Hawes revealed that  
28



1 there was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise  
2 regulate the battery power and speed pursuant to which Hawes’s Devices would operate.  
3 Accordingly, not only were Hawes’s Devices defective at the point of lease due to the Defect,  
4 but Apple exacerbated the problems with Hawes’s Devices via its misrepresentations and  
5 omissions with the iOS software Updates. As a result of Apple’s actions, Hawes did not receive  
6 the benefit of her bargain and was injured as a result. If Hawes had been told of the Defect and  
7 the deceptive manner in which Apple would damage the Devices after sale, Hawes would not  
8 have leased the Devices, or would have paid substantially less for them.

### 9 CALIFORNIA

10 59. **Plaintiff Thomas Cook** is a resident and citizen of the State of California, and  
11 he purchased an iPhone 6 on September 30, 2014. Prior to his purchase of the Device, he did  
12 not know, nor could he have known through reasonable diligence, of the Defect in his Device.  
13 At time of initial purchase, the Device operated on iOS 8. Cook downloaded and installed iOS  
14 10.2.1 on his Device in or around January 2017.

15 60. Not only did Cook’s Device fail to operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS 10.2.1 or any future updates would  
17 cause the way Cook’s Device operated to fundamentally change. Cook’s Device, particularly  
18 after installation of iOS 10.2.1, did not operate as promised in Apple’s advertisements,  
19 representations, and the information publicly available in the marketplace. Additionally, none  
20 of the packaging in which the Device was sold to Cook revealed that there was any Defect or  
21 that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery  
22 power and speed pursuant to which Cook’s Device would operate. Accordingly, not only was  
23 Cook’s Device defective at the point of sale due to the Defect, but Apple exacerbated the  
24 problems with Cook’s Device via its misrepresentations and omissions with the iOS software  
25 Updates. As a result of Apple’s actions, Cook did not receive the benefit of his bargain, and  
26 was injured as a result. If Cook had been told of the Defect and the deceptive manner in which  
27  
28

1 Apple would damage the Device after sale, Cook would not have purchased the Device, or  
2 would have paid substantially less for it.

3 **CALIFORNIA**

4 61. **Plaintiff Ida Villegas** is a resident and citizen of the State of California and she  
5 purchased an iPhone 6 in or about September 2014. She also purchased an iPhone 6S in or  
6 about 2016. Prior to her purchase of the Devices, she did not know, nor could she have known  
7 through reasonable diligence, of the Defect in her Devices.

8 62. Not only did Villegas's Devices not operate as Apple warranted and promised  
9 initially, but Apple never represented or warranted that iOS updates would cause the way  
10 Villegas's Devices operated to fundamentally change. Villegas's Devices did not operate as  
11 promised in Apple's advertisements, representations, and the information publicly available in  
12 the marketplace. Additionally, none of the packaging in which the Devices were sold to  
13 Villegas revealed that there was any Defect or that Apple would use the Updates to "smooth,"  
14 "throttle," or otherwise regulate the battery power and speed pursuant to which Villegas's  
15 Devices would operate. Accordingly, not only were Villegas's Devices defective at the point of  
16 sale due to the Defect, but Apple exacerbated the problems with Villegas's Device via its  
17 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
18 actions, Villegas did not receive the benefit of her bargain, and was injured as a result. If  
19 Villegas had been told of the Defect and the deceptive manner in which Apple would damage  
20 the Devices after sale, Villegas would not have purchased the Devices, or would have paid  
21 substantially less for them.

22 **CALIFORNIA**

23 63. **Plaintiff Heidi Valle** is a resident and citizen of the State of California and she  
24 purchased two iPhone 5s in or about 2013 or 2014. She also purchased an iPhone 6 and iPhone  
25 6s Plus on or about September 12, 2014. She purchased an iPhone 6 on or about October 2,  
26 2015. She purchased an iPhone 7 in or about September 2016. Prior to her purchases of the  
27  
28

1 Devices, she did not know, nor could she have known through reasonable diligence, of the  
2 Defect in her Device. Valle regularly updated iOS as prompted.

3 64. Not only did Valle's Devices not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that iOS updates would cause the way  
5 Valle's Devices operated to fundamentally change. Vales's Devices did not operate as  
6 promised in Apple's advertisements, representations, and the information publicly available in  
7 the marketplace. Additionally, none of the packaging in which the Devices were sold to Valle  
8 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
9 or otherwise regulate the battery power and speed pursuant to which Valle's Devices would  
10 operate. Accordingly, not only were Valles's Devices defective at the point of sale due to the  
11 Defect, but Apple exacerbated the problems with Valle's Devices via its misrepresentations and  
12 omissions with the iOS software Updates. As a result of Apple's actions, Valle did not receive  
13 the benefit of her bargain, and was injured as a result. If Valle had been told of the Defect and  
14 the deceptive manner in which Apple would damage the Devices after sale, Valle would not  
15 have purchased the Devices, or would have paid substantially less for it.

#### 16 CALIFORNIA

17 65. **Plaintiff Samara Diner** is a resident and citizen of the State of California and  
18 she purchased an iPhone 6 on April 15, 2015. Prior to her purchase of the Device, she did not  
19 know, nor could she have known through reasonable diligence, of the Defect in her Device. At  
20 time of initial purchase, the Device operated on the latest version of iOS. Diner downloaded  
21 and installed the latest versions of iOS on her Device within a couple days of receiving any  
22 update notifications.

23 66. Not only did Diner's Device not operate as Apple warranted and promised  
24 initially, but Apple never represented or warranted that any version of iOS or any of the future  
25 updates would cause the way Diner's Device operated to fundamentally change. Diner's  
26 Device, after continued installations, did not operate as promised in Apple's advertisements,  
27 representations, and the information publicly available in the marketplace. Additionally, none  
28

1 of the packaging in which the Device was sold to Diner revealed that there was any Defect or  
2 that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery  
3 power and speed pursuant to which Diner’s Device would operate. Accordingly, not only was  
4 Diner’s Device defective at the point of sale due to the Defect, but Apple exacerbated the  
5 problems with Diner’s Device via its misrepresentations and omissions with the iOS software  
6 Updates. As a result of Apple’s actions, Diner did not receive the benefit of her bargain, and  
7 was injured as a result. If Diner had been told of the Defect and the deceptive manner in which  
8 Apple would damage the Device after sale, Diner would not have purchased the Device, or  
9 would have paid substantially less for it.

#### 10 COLORADO

11 67. **Plaintiff Gary Merenstein** is a resident and citizen of the State of Colorado and  
12 he purchased an iPhone 5c in the Fall of 2013 and an iPhone SE in 2016. Prior to his purchases  
13 of the Devices, he did not know, nor could he have known through reasonable diligence, of the  
14 Defect in his Devices. At time of initial purchase, the iPhone 5c operated on iOS 7 and the  
15 iPhone SE operated on iOS 9.

16 68. Not only did Merenstein’s Devices not operate as Apple warranted and promised  
17 initially, but Apple never represented or warranted that any future iOS updates would cause the  
18 way Merenstein’s Devices operated to fundamentally degrade. Merenstein’s Devices,  
19 particularly after installation of the Updates in his iPhone SE, did not operate as promised in  
20 Apple’s advertisements, representations, and the information publicly available in the  
21 marketplace. Additionally, none of the packaging in which the Devices were sold to Merenstein  
22 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
23 or otherwise regulate the battery power and speed pursuant to which Merenstein’s Devices  
24 would operate. Not only were Merenstein’s Devices defective at the point of sale due to the  
25 Defect, but Apple exacerbated the problems with Merenstein’s Devices via its  
26 misrepresentations and omissions with the iOS software Updates. As a result of Apple’s  
27 actions, Merenstein did not receive the benefit of his bargain, and was injured as a result. If  
28

1 Merenstein had been told of the Defect and the deceptive manner in which Apple would damage  
2 the Devices after sale, Merenstein would not have purchased the Devices, or would have paid  
3 substantially less for them.

#### 4 COLORADO

5 69. **Plaintiff Steven Connolly** is a resident and citizen of the State of Idaho and he  
6 purchased two iPhone 6 Devices on February 14, 2015 in Colorado while a Colorado resident.  
7 Prior to his purchase of the Devices, he did not know, nor could he have known through  
8 reasonable diligence, of the Defect in his Devices. At time of initial purchase, the iPhone 6  
9 Devices operated on iOS 8.

10 70. Not only did Connolly's Devices not operate as Apple warranted and promised  
11 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
12 would cause the way Connolly's Devices operated to fundamentally change. Connolly's  
13 Devices, particularly after installation of iOS 11, did not operate as promised in Apple's  
14 advertisements, representations, and the information publicly available in the marketplace.  
15 Additionally, none of the packaging in which the Devices were sold to Connolly revealed that  
16 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
17 regulate the battery power and speed pursuant to which Connolly's Devices would operate.  
18 Accordingly, not only were Connolly's Devices defective at the point of sale due to the Defect,  
19 but Apple exacerbated the problems with Connolly's Devices via its misrepresentations and  
20 omissions with the iOS software Updates. As a result of Apple's actions, Connolly did not  
21 receive the benefit of his bargain and was injured as a result. If Connolly had been told of the  
22 Defect and the deceptive manner in which Apple would damage the Devices after sale,  
23 Connolly would not have purchased the Devices, or would have paid substantially less for them.

#### 24 COLORADO

25 71. **Plaintiff Bryan Schell** is a resident of France and citizen of the State of  
26 Wyoming and he purchased an iPhone 5s on May 15, 2014 in Colorado. Prior to his purchase  
27  
28

1 of the Device, he did not know, nor could he have known through reasonable diligence, of the  
2 Defect in his Device. At time of initial purchase, the Device operated on iOS 7.

3 72. Not only did Schell's Device not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that iOS 9 or any of the future updates would  
5 cause the way Schell's Device operated to fundamentally change. Schell's Device, particularly  
6 after installation of iOS 9, did not operate as promised in Apple's advertisements,  
7 representations, and the information publicly available in the marketplace. Additionally, none  
8 of the packaging in which the Device was sold to Schell revealed that there was any Defect or  
9 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
10 power and speed pursuant to which Schell's Device would operate. Accordingly, not only was  
11 Schell's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
12 problems with Schell's Device via its misrepresentations and omissions with the iOS software  
13 Updates. As a result of Apple's actions, Schell did not receive the benefit of his bargain, and  
14 was injured as a result. If Schell had been told of the Defect and the deceptive manner in which  
15 Apple would damage the Device after sale, Schell would not have purchased the Device, or  
16 would have paid substantially less for it.

## 17 CONNECTICUT

18 73. **Plaintiff Sandra Merola** is a resident and citizen of the State of Connecticut and  
19 she purchased an iPhone 6 Plus in 2015 and purchased an iPhone 7 Plus in December 2017.  
20 Prior to her purchases of the Devices, she did not know, nor could she have known through  
21 reasonable diligence, of the Defect in her Devices.

22 74. Not only did Merola's Devices not operate as Apple warranted and promised  
23 initially, but Apple never represented or warranted that iOS updates would cause the way  
24 Merola's Devices operated to fundamentally change. Merola's Devices did not operate as  
25 promised in Apple's advertisements, representations, and the information publicly available in  
26 the marketplace. Additionally, none of the packaging in which the Devices were sold to Merola  
27 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
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1 or otherwise regulate the battery power and speed pursuant to which Merola's Devices would  
2 operate. Accordingly, not only were Merola's Devices defective at the point of sale due to the  
3 Defect, but Apple exacerbated the problems with Merola's Devices via its misrepresentations  
4 and omissions with the iOS software Updates. As a result of Apple's actions, Merola did not  
5 receive the benefit of her bargain, and was injured as a result. If Merola had been told of the  
6 Defect and the deceptive manner in which Apple would damage the Device after sale, Merola  
7 would not have purchased the Devices, or would have paid substantially less for them.

### 8 CONNECTICUT

9 75. **Plaintiff Ashley Ann Antonucci** is a resident and citizen of the State of  
10 Connecticut and she purchased an iPhone 6 in or about November 2015. Prior to her purchase  
11 of the Device, she did not know, nor could she have known through reasonable diligence, of the  
12 Defect in her Device.

13 76. Not only did Antonucci's Device not operate as Apple warranted and promised  
14 initially, but Apple never represented or warranted that iOS updates would cause the way  
15 Antonucci's Device operated to fundamentally change. Antonucci's Device did not operate as  
16 promised in Apple's advertisements, representations, and the information publicly available in  
17 the marketplace. Additionally, none of the packaging in which the Device was sold to  
18 Antonucci revealed that there was any Defect or that Apple would use the Updates to "smooth,"  
19 "throttle," or otherwise regulate the battery power and speed pursuant to which Antonucci's  
20 Device would operate. Accordingly, not only was Antonucci's Device defective at the point of  
21 sale due to the Defect, but Apple exacerbated the problems with Antonucci's Device via its  
22 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
23 actions, Antonucci did not receive the benefit of her bargain, and was injured as a result. If  
24 Antonucci had been told of the Defect and the deceptive manner in which Apple would damage  
25 the Device after sale, Antonucci would not have purchased the Device, or would have paid  
26 substantially less for it.



**DELAWARE**

1  
2           77.     **Plaintiff Aisha Boyd** is a resident and citizen of the State of Delaware and she  
3 purchased an iPhone 6 on December 12, 2015. Prior to her purchase of the Device, she did not  
4 know, nor could she have known through reasonable diligence, of the Defect in her Device. At  
5 time of initial purchase, the Device operated on iOS 8. Boyd downloaded and installed iOS 11  
6 on her Device in or around October 2017.

7           78.     Not only did Boyd's Devices not operate as Apple warranted and promised  
8 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
9 would cause the way Boyd's Devices operated to fundamentally change. Boyd's Devices,  
10 particularly after installation of iOS 11 and 11.3, respectively, did not operate as promised in  
11 Apple's advertisements, representations, and the information publicly available in the  
12 marketplace. Additionally, none of the packaging in which the Devices were sold to Boyd  
13 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
14 or otherwise regulate the battery power and speed pursuant to which Boyd's Devices would  
15 operate. Accordingly, not only were Boyd's Devices defective at the point of sale due to the  
16 Defect, but Apple exacerbated the problems with Boyd's Devices via its misrepresentations and  
17 omissions with the iOS software Updates. As a result of Apple's actions, Boyd did not receive  
18 the benefit of her bargain and was injured as a result. If Boyd had been told of the Defect and  
19 the deceptive manner in which Apple would damage the Devices after sale, Boyd would not  
20 have purchased the Devices, or would have paid substantially less for them.

**DELAWARE / PENNSYLVANIA**

21  
22           79.     **Plaintiff Irwin Darack** is a resident and citizen of the State of Pennsylvania and  
23 he purchased an iPhone 6 on April 22, 2015 in Delaware and another iPhone 6 on December 15,  
24 2017 in Pennsylvania. Prior to his purchase of the Devices, he did not know, nor could he have  
25 known through reasonable diligence, of the Defect in his Devices. At time of initial purchase,  
26 the Devices operated on iOS 8. Darack downloaded and installed iOS 11 on his Devices in the  
27 fall of 2017.  
28



80. Not only did Darack's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 11 or any of the future updates would cause the way Darack's Device operated to fundamentally change. Darack's Device, particularly after installation of iOS 11, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Darack revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Darack's Device would operate. Accordingly, not only was Darack's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Darack's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Darack did not receive the benefit of his bargain, and was injured as a result. If Darack had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Darack would not have purchased the Device, or would have paid substantially less for it.

## DISTRICT OF COLUMBIA

81. **Plaintiff Brandi S. White** is a resident and citizen of the District of Columbia and she purchased an iPhone 6s in July 2016. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device.

82. Not only did White's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way White's Device operated to fundamentally change. White's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to White revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which White's Device would operate. Accordingly, not only was White's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with White's Device via its misrepresentations and

1 omissions with the iOS software Updates. As a result of Apple's actions, White did not receive  
2 the benefit of her bargain, and was injured as a result. If White had been told of the Defect and  
3 the deceptive manner in which Apple would damage the Device after sale, White would not  
4 have purchased the Device, or would have paid substantially less for it.

5 **DISTRICT OF COLUMBIA**

6 83. **Plaintiff Lauren Weintraub** is a resident and citizen of the District of Columbia  
7 and she leased an iPhone 6 on September 21, 2015 and an iPhone 7 in October 2016. Prior to  
8 her lease of the Devices, she did not know, nor could she have known through reasonable  
9 diligence of the Defect in her Devices. At time of initial lease, the iPhone 6 operated on iOS 8  
10 and the iPhone 7 operated on iOS 10. Weintraub downloaded and installed iOS 9 on her  
11 iPhone 6 in or around September 2016 and iOS 11 on her iPhone 7 on October 19, 2017.

12 84. Not only did Weintraub's Devices not operate as Apple warranted and promised  
13 initially, but Apple never represented or warranted that iOS 9, 11, or any of the future updates  
14 would cause the way Weintraub's Devices operated to fundamentally change. Weintraub's  
15 Devices, particularly after installation of iOS 9 and 11, respectively, did not operate as promised  
16 in Apple's advertisements, representations, and the information publicly available in the  
17 marketplace. Additionally, none of the packaging in which the Devices were sold to Weintraub  
18 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
19 or otherwise regulate the battery power and speed pursuant to which Weintraub's Devices  
20 would operate. Accordingly, not only were Weintraub's Devices defective at the point of lease  
21 due to the Defect, but Apple exacerbated the problems with Weintraub's Device via its  
22 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
23 actions, Weintraub did not receive the benefit of her bargain, and was injured as a result. If  
24 Weintraub had been told of the Defect and the deceptive manner in which Apple would damage  
25 the Devices after sale, Weintraub would not have leased the Devices, or would have paid  
26 substantially less for them.

**FLORIDA**

85. **Plaintiff Sandra Brodsky** is a resident and citizen of the State of Florida and she, her husband, and her two children have leased iPhones dating back to the first generation, including the iPhone 6, iPhone 6s, iPhone 6s Plus, iPhone 7, and iPhone 7 Plus in Florida, as well as purchasing the iPad Air 2. Prior to her purchase of the Devices, she did not know, nor could she have known through reasonable diligence of the Defect in her Devices. At time of initial lease and purchase, the Devices operated on their factory-installed iOS versions.

86. Not only did Brodsky's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that the future iOS updates would cause the way Brodsky's Devices operated to fundamentally change. Brodsky's Devices, particularly after installation of subsequent iOS updates, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Brodsky revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Brodsky's Devices would operate. Accordingly, not only were Brodsky's Devices defective at the point of sale or lease due to the Defect, but Apple exacerbated the problems with Brodsky's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Brodsky and her family did not receive the benefit of their bargain, and were injured as a result. If Brodsky and her family had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, they would not have purchased or leased the Devices, or would have paid substantially less for them.

**FLORIDA**

87. **Plaintiff Stephen Margolis** is a resident and citizen of the State of Florida and he leased multiple generations of the iPhone, including an iPhone 6 on December 30, 2014 and an iPhone 7 on October 14, 2016 in Florida, and also purchased multiple generations of the iPad, including a sixth generation iPad. Prior to his lease and purchase of the Devices, he did

1 not know, nor could he have known through reasonable diligence, of the Defect in his Devices.  
2 At time of initial lease and purchase, the Devices operated on their factory-installed iOS  
3 versions.

4 88. Not only did Margolis's Devices not operate as Apple warranted and promised  
5 initially, but Apple never represented or warranted that any of the future iOS updates would  
6 cause the way Margolis's Devices operated to fundamentally change. Margolis's Devices,  
7 particularly after installation of subsequent iOS updates, like iOS 11 on his iPhone 7, did not  
8 operate as promised in Apple's advertisements, representations, and the information publicly  
9 available in the marketplace. Additionally, none of the packaging in which the Devices were  
10 sold to Margolis revealed that there was any Defect or that Apple would use the Updates to  
11 "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which  
12 Margolis's Devices would operate. Accordingly, not only were Margolis's Devices defective at  
13 the point of sale or lease due to the Defect, but Apple exacerbated the problems with Margolis's  
14 Devices via its misrepresentations and omissions with the iOS software Updates. As a result of  
15 Apple's actions, Margolis did not receive the benefit of his bargain, and was injured as a result.  
16 If Margolis had been told of the Defect and the deceptive manner in which Apple would  
17 damage the Devices after sale, Margolis would not have purchased or leased the Devices, or  
18 would have paid substantially less for them.

## 19 FLORIDA

20 89. **Plaintiff Jessica Greenshner** is a resident and citizen of the State of Indiana and  
21 she purchased an iPhone 6 in November 2015 in Florida and an iPhone 6s in November 2016 in  
22 Florida. Prior to her purchase of the Devices, she did not know, nor could she have known  
23 through reasonable diligence, of the Defect in her Devices. At time of initial purchase, the  
24 iPhone 6 operated on iOS 8 and the iPhone 7 operated on iOS 10.

25 90. Not only did Greenshner's Devices not operate as Apple warranted and promised  
26 initially, but Apple never represented or warranted that future iOS updates would cause the way  
27 Greenshner's Device operated to fundamentally change. Greenshner's Devices, particularly  
28

1 after installation of subsequent iOS updates, did not operate as promised in Apple's  
2 advertisements, representations, and the information publicly available in the marketplace.  
3 Additionally, none of the packaging in which the Devices were sold to Greenshner revealed that  
4 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
5 regulate the battery power and speed pursuant to which Greenshner's Devices would operate.  
6 Accordingly, not only were Greenshner's Devices defective at the point of sale due to the  
7 Defect, but Apple exacerbated the problems with Greenshner's Devices via its  
8 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
9 actions, Greenshner did not receive the benefit of her bargain, and was injured as a result. If  
10 Greenshner had been told of the Defect and the deceptive manner in which Apple would  
11 damage the Devices after sale, Greenshner would not have purchased the Devices, or would  
12 have paid substantially less for them.

### 13 GEORGIA

14 91. **Plaintiff Jason Ratner** is a resident and citizen of the State of Georgia, and he  
15 purchased four iPhone 5c Devices in June 2015, two iPhone 5C Devices in June 2017, and two  
16 iPhone 6s Devices in May 2017 for him and his family. Prior to his purchase of the Devices, he  
17 did not know, nor could he have known through reasonable diligence, of the Defect in his  
18 Devices. At time of initial purchase, the Devices operated on their factory-installed iOS  
19 versions. Ratner and his family downloaded and installed iOS 10 on their iPhone 5c Devices in  
20 the summer of 2016 and iOS 11.4 on his iPhone 6s in May 2018.

21 92. Not only did Ratner's Devices fail to operate as Apple warranted and promised  
22 initially, but Apple never represented or warranted that iOS 10, 11.4, or any of the future  
23 updates would cause the way Ratner's Devices operated to fundamentally change. Ratner's  
24 Devices, particularly after installation of 10 and 11.4, respectively, did not operate as promised  
25 in Apple's advertisements, representations, and the information publicly available in the  
26 marketplace. Additionally, none of the packaging in which the Devices were sold to Ratner  
27 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
28

1 or otherwise regulate the battery power and speed pursuant to which Ratner's Devices would  
2 operate. Accordingly, not only were Ratner's Devices defective at the point of sale due to the  
3 Defect, but Apple exacerbated the problems with Ratner's Devices via its misrepresentations  
4 and omissions with the iOS software Updates. As a result of Apple's actions, Ratner did not  
5 receive the benefit of his bargain and was injured as a result. If Ratner had been told of the  
6 Defect and the deceptive manner in which Apple would damage the Devices after sale, Ratner  
7 would not have purchased the Devices, or would have paid substantially less for them.

### 8 GEORGIA

9 93. **Plaintiff Tamica Gordon** is a resident and citizen of the state of Georgia and  
10 she purchased an iPhone 6s on or around December 22, 2016. Prior to her purchase of the  
11 device, she did not know, nor could she have known through reasonable diligence, of the Defect  
12 in her device. At time of initial purchase or lease, the device operated on the current version of  
13 iOS available at the time. Tamica downloaded and installed version 11.3 of iOS on her device  
14 at some point after the purchase of her device.

15 94. Not only did Gordon's device not operate as apple warranted and promised  
16 initially, but apple never represented or warranted that iOS 11.3 or any of the future updates  
17 would cause the way Gordon's device operated to fundamentally change. Gordon's device,  
18 particularly after installation of iOS 11.3, did not operate as promised in apple's advertisements,  
19 representations, and the information publicly available in the marketplace. Additionally, none  
20 of the packaging in which the device was sold to Gordon revealed that there was any Defect or  
21 that apple would use the updates to "smooth," "throttle," or otherwise regulate the battery power  
22 and speed pursuant to which Gordon's device would operate. Accordingly, not only was  
23 Gordon's device defective at the point of sale due to the Defect, but apple exacerbated the  
24 problems with Gordon's device via its misrepresentations and omissions with the ios software  
25 updates. As a result of apple's actions, Gordon did not receive the benefit of her bargain, and  
26 was injured as a result. If Gordon had been told of the Defect and the deceptive manner in  
27  
28

1 which apple would damage the device after sale, Gordon would not have purchased the device,  
2 or would have paid substantially less for it.

### 3 HAWAII

4 95. **Plaintiff Amy Brown** is a resident and citizen of the State of Hawaii and she  
5 purchased an iPhone 5 on February 28, 2013 in Hawaii and an iPhone 6 on March 7, 2015 in  
6 Hawaii. Prior to her purchase of the Devices, she did not know, nor could she have known  
7 through reasonable diligence, of the Defect in her Devices. At time of initial purchase, her  
8 Devices operated on their factory-installed iOS versions.

9 96. Not only did Brown's Device not operate as Apple warranted and promised  
10 initially, but Apple never represented or warranted that iOS 10 or any of the future updates  
11 would cause the way Brown's Device operated to fundamentally change. Brown's Device,  
12 particularly after installation of iOS 10, did not operate as promised in Apple's advertisements,  
13 representations, and the information publicly available in the marketplace. Additionally, none  
14 of the packaging in which the Device was sold to Brown revealed that there was any Defect or  
15 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
16 power and speed pursuant to which Brown's Device would operate. Accordingly, not only was  
17 Brown's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
18 problems with Brown's Device via its misrepresentations and omissions with the iOS software  
19 Updates. As a result of Apple's actions, Brown did not receive the benefit of her bargain, and  
20 was injured as a result. If Brown had been told of the Defect and the deceptive manner in which  
21 Apple would damage the Device after sale, Brown would not have purchased the Device, or  
22 would have paid substantially less for it.

### 23 HAWAII

24 97. **Plaintiff Ruth Beauchan** is a resident and citizen of the State of Hawaii and she  
25 purchased an iPhone 6 on or about September 14, 2014. She also purchased an iPhone 7 on or  
26 about April 18, 2017. Prior to her purchase of the Device, she did not know, nor could she have  
27 known through reasonable diligence, of the Defect in her Devices.  
28



98. Not only did Beauchan's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Beauchan's Devices operated to fundamentally change. Beauchan's Devices, particularly after installation of iOS updates in late 2016/early 2017, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Beauchan revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Beauchan's Device would operate. Accordingly, not only was Beauchan's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Beauchan's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Beauchan did not receive the benefit of her bargain, and was injured as a result. If Beauchan had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Beauchan would not have purchased the Devices, or would have paid substantially less for it. Ultimately, the function of Beauchan's Devices degraded too much for her to continue using and she replaced it with an iPhone 7 on April 18, 2017 in Hawaii.

## HAWAII / OREGON

99. **Plaintiff Eric Tanovan** is a resident and citizen of California and he leased an iPhone 6 in November 2014 in Hawaii and an iPhone 7 Plus in June 2017 in Oregon, both while residing in Hawaii. Prior to his purchases of the Devices, he did not know, nor could he have known through reasonable diligence, of the Defect in his Devices. At time of initial purchase, the iPhone 6 operated on iOS 8 and the iPhone 7 Plus operated on iOS 10.

100. Not only did Tanovan's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that any of the future iOS updates would cause the way Tanovan's Devices operated to fundamentally change. Tanovan's Devices, particularly after installation of updates like iOS 10 on his iPhone 6 and iOS 11 on his iPhone 7 Plus, did not operate as promised in Apple's advertisements, representations, and the



1 information publicly available in the marketplace. Additionally, none of the packaging in  
2 which the Devices were sold to Tanovan revealed that there was any Defect or that Apple would  
3 use the Updates to “smooth,” “throttle,” or otherwise regulate the battery power and speed  
4 pursuant to which Tanovan’s Devices would operate. Accordingly, not only were Tanovan’s  
5 Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems  
6 with Tanovan’s Devices via its misrepresentations and omissions with the iOS software  
7 Updates. As a result of Apple’s actions, Tanovan did not receive the benefit of his bargain, and  
8 was injured as a result. If Tanovan had been told of the Defect and the deceptive manner in  
9 which Apple would damage the Devices after sale, Tanovan would not have purchased the  
10 Devices, or would have paid substantially less for them.

#### 11 IDAHO

12 101. **Plaintiff Linda Sauer** is a resident and citizen of the State of Idaho and she  
13 purchased an iPhone 5s in or around 2015 in Idaho. Prior to her purchase of the Device, she did  
14 not know, nor could she have known through reasonable diligence, of the Defect in her Device.  
15 At time of initial purchase, the Device operated on iOS 7. Sauer downloaded and installed iOS  
16 8 on her Device after purchase.

17 102. Not only did Sauer’s Device not operate as Apple warranted and promised  
18 initially, but Apple never represented or warranted that any of the future iOS updates would  
19 cause the way Sauer’s Device operated to fundamentally change. Sauer’s Device, after  
20 installation of subsequent iOS versions, did not operate as promised in Apple’s advertisements,  
21 representations, and the information publicly available in the marketplace. Additionally, none  
22 of the packaging in which the Device was sold to Sauer revealed that there was any Defect or  
23 that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery  
24 power and speed pursuant to which Sauer’s Device would operate. Accordingly, not only was  
25 Sauer’s Device defective at the point of sale due to the Defect, but Apple exacerbated the  
26 problems with Sauer’s Device via its misrepresentations and omissions with the iOS software  
27 Updates. As a result of Apple’s actions, Sauer did not receive the benefit of her bargain and  
28

1 was injured as a result. If Sauer had been told of the Defect and the deceptive manner in which  
2 Apple would damage the Device after sale, Sauer would not have purchased the Device, or  
3 would have paid substantially less for it.

#### 4 ILLINOIS

5 103. **Plaintiff Rifah Alexander** is a resident and citizen of the State of Illinois and  
6 she purchased an iPhone 6 Plus on April 19, 2015. Prior to her purchase of the Device, she did  
7 not know, nor could she have known through reasonable diligence, of the Defect in her Device.

8 104. Not only did Alexander's Device not operate as Apple warranted and promised  
9 initially, but Apple never represented or warranted that iOS updates would cause the way  
10 Alexander's Device operated to fundamentally change. Alexander's Device did not operate as  
11 promised in Apple's advertisements, representations, and the information publicly available in  
12 the marketplace. Additionally, none of the packaging in which the Device was sold to  
13 Alexander revealed that there was any Defect or that Apple would use the Updates to "smooth,"  
14 "throttle," or otherwise regulate the battery power and speed pursuant to which Alexander's  
15 Device would operate. Accordingly, not only was Alexander's Device defective at the point of  
16 sale due to the Defect, but Apple exacerbated the problems with Alexander's Device via its  
17 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
18 actions, Alexander did not receive the benefit of her bargain, and was injured as a result. If  
19 Alexander had been told of the Defect and the deceptive manner in which Apple would damage  
20 the Device after sale, Alexander would not have purchased the Device, or would have paid  
21 substantially less for it.

#### 22 ILLINOIS

23 105. **Plaintiff Andrew Yashchuk** is a resident and citizen of the State of Texas and  
24 he purchased two iPhone 6 Pluses on September 19, 2014 in Illinois. Prior to his purchase of  
25 the Devices, he did not know, nor could he have known through reasonable diligence, of the  
26 Defect in his Devices.

106. Not only did Yashchuk's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that any iOS update would cause the way Yashchuk's Devices operated to fundamentally change, let alone render any of his Devices inoperable. Yashchuk's Devices did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Yashchuk revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Yashchuk's Devices would operate. Accordingly, not only were Yashchuk's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Yashchuk's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Yashchuk did not receive the benefit of his bargain, and was injured as a result. If Yashchuk had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Yashchuk would not have purchased the Devices, or would have paid substantially less for them.

# INDIANA

107. **Plaintiff Alisha Boykin** is a resident and citizen of the State of Tennessee and she purchased an iPhone 6s on October 14, 2015 in Indiana while residing in Indiana. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device. At time of initial purchase, the Device operated on iOS 9. Boykin downloaded and installed iOS 11 on her Device in the fall of 2017.

108. Not only did Boykin’s Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 11 or any of the future updates would cause the way Boykin’s Device operated to fundamentally change. Boykin’s Device, particularly after installation of iOS 11, did not operate as promised in Apple’s advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Boykin revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery

1 power and speed pursuant to which Boykin's Device would operate. Accordingly, not only was  
2 Boykin's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
3 problems with Boykin's Device via its misrepresentations and omissions with the iOS software  
4 Updates. As a result of Apple's actions, Boykin did not receive the benefit of her bargain and  
5 was injured as a result. If Boykin had been told of the Defect and the deceptive manner in  
6 which Apple would damage the Device after sale, Boykin would not have purchased the  
7 Device, or would have paid substantially less for it.

### 8 IOWA

9 109. **Plaintiff Tammy Greenfield** is a resident and citizen of the State of Iowa and  
10 she purchased five iPhone 6s Devices on September 25, 2015 for her and her family. Prior to  
11 her purchase of the Devices, she did not know, nor could she have known through reasonable  
12 diligence, of the Defect in her Devices. At time of purchase, the Devices operated on iOS 9.

13 110. Not only did Greenfield's Devices not operate as Apple warranted and promised  
14 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
15 would cause the way Greenfield's Devices operated to fundamentally change. Greenfield's  
16 Devices, particularly after installation of iOS 11, did not operate as promised in Apple's  
17 advertisements, representations, and the information publicly available in the marketplace.  
18 Additionally, none of the packaging in which the Devices were sold to Greenfield revealed that  
19 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
20 regulate the battery power and speed pursuant to which Greenfield's Devices would operate.  
21 Accordingly, not only were Greenfield's Devices defective at the point of sale due to the Defect,  
22 but Apple exacerbated the problems with Greenfield's Devices via its misrepresentations and  
23 omissions with the iOS software Updates. As a result of Apple's actions, Greenfield did not  
24 receive the benefit of her bargain and was injured as a result. If Greenfield had been told of the  
25 Defect and the deceptive manner in which Apple would damage the Devices after sale,  
26 Greenfield would not have purchased the Devices, or would have paid substantially less for  
27 them.  
28

**KANSAS**

111. **Plaintiff Natasha Bryant** is a resident and citizen of the State of Kansas and she purchased an iPhone 5c on November 29, 2013 and an iPhone 6 Plus on July 1, 2016. Prior to her purchase of the Devices, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices. At time of initial purchase, the iPhone 5c Device operated on iOS 7 and the iPhone 6 Plus operated on iOS 8.

112. Not only did Bryant's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10 or any of the future updates would cause the way Bryant's Devices operated to fundamentally change. Bryant's Devices, particularly after installation of iOS 10, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Bryant revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Bryant's Devices would operate. Accordingly, not only were Bryant's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Bryant's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Bryant did not receive the benefit of her bargain and was injured as a result. If Bryant had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Bryant would not have purchased the Devices, or would have paid substantially less for them.

**KANSAS**

113. **Plaintiff John Farris** is a resident and citizen of the State of Texas and he purchased an iPhone 6 on October 29, 2014 and an iPhone 6s on August 2, 2017, both in Kansas while a resident of Kansas. Prior to his purchase of the Devices, he did not know, nor could he have known through reasonable diligence, of the Defect in his Devices. At time of initial purchase, the iPhone 6 Device operated on iOS 8. In February 2017, Apple automatically downloaded and installed iOS 10.2.1 on Farris's iPhone 6 Device.

114. Not only did Farris's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10.2.1 or any of the future updates would cause the way Farris's Device operated to fundamentally change. Farris's Device, particularly after installation of iOS 10.2.1, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Farris revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Farris's Device would operate. Accordingly, not only was Farris's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Farris's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Farris did not receive the benefit of his bargain and was injured as a result. If Farris had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Farris would not have purchased the Devices, or would have paid substantially less for them.

#### KENTUCKY

115. **Plaintiff Herman Praszquier** is a resident and citizen of the Commonwealth of Kentucky and he has purchased multiple generations of iPhones, including two iPhone 6 Plus Devices, and an iPhone 7 Device in Kentucky. Prior to his purchase of the Devices, he did not know, nor could he have known through reasonable diligence, of the Defect in his Devices. At time of initial purchase, the Devices operated on their factory-installed iOS versions.

116. Not only did Praszquier's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that any of the future iOS updates would cause the way Praszquier's Devices operated to fundamentally change. Praszquier's Devices, particularly after installation of subsequent iOS versions, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Praszquier revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise

1 regulate the battery power and speed pursuant to which Praszquier's Devices would operate.  
2 Accordingly, not only were Praszquier's Devices defective at the point of sale due to the Defect,  
3 but Apple exacerbated the problems with Praszquier's Devices via its misrepresentations and  
4 omissions with the iOS software Updates. As a result of Apple's actions, Praszquier did not  
5 receive the benefit of his bargain and was injured as a result. If Praszquier had been told of the  
6 Defect and the deceptive manner in which Apple would damage the Devices after sale,  
7 Praszquier would not have purchased the Devices, or would have paid substantially less for them.

### 8 KENTUCKY

9 117. **Plaintiff Lawrence Pethick** is a resident and citizen of the State of Michigan  
10 and he purchased multiple generations of the iPhone and iPad in Kentucky while a Kentucky  
11 resident, including the iPhone 5, and 6 (purchased on December 17, 2014) and the iPad Air and  
12 Air Mini. Prior to his purchases of the Devices, he did not know, nor could he have known  
13 through reasonable diligence, of the Defect in his Devices. At time of initial purchase, the  
14 Devices operated on the factory-installed iOS versions.

15 118. Not only did Pethick's Devices not operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
17 would cause the way Pethick's Devices operated to fundamentally change. Pethick's Devices,  
18 particularly after installation of iOS 11, did not operate as promised in Apple's advertisements,  
19 representations, and the information publicly available in the marketplace. Additionally, none  
20 of the packaging in which the Devices were sold to Pethick revealed that there was any Defect  
21 or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
22 power and speed pursuant to which Pethick's Devices would operate. Accordingly, not only  
23 were Pethick's Devices defective at the point of sale due to the Defect, but Apple exacerbated  
24 the problems with Pethick's Devices via its misrepresentations and omissions with the iOS  
25 software Updates. As a result of Apple's actions, Pethick did not receive the benefit of his  
26 bargain and was injured as a result. If Pethick had been told of the Defect and the deceptive  
27  
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1 manner in which Apple would damage the Devices after sale, Pethick would not have purchased  
2 the Devices, or would have paid substantially less for them.

### 3 LOUISIANA

4 119. **Plaintiff Kenyotta Smith** is a resident and citizen of the State of Louisiana  
5 and she purchased an iPhone 6s on June 22, 2016. Prior to her purchase of the Device, she did  
6 not know, nor could she have known through reasonable diligence, of the Defect in her Device.

7 120. Not only did Smith's Device not operate as Apple warranted and promised  
8 initially, but Apple never represented or warranted that iOS updates would cause the way  
9 Smith's Device operated to fundamentally change. Smith's Device did not operate as promised  
10 in Apple's advertisements, representations, and the information publicly available in the  
11 marketplace. Additionally, none of the packaging in which the Device was sold to Smith  
12 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
13 or otherwise regulate the battery power and speed pursuant to which Smith's Device would  
14 operate. Accordingly, not only was Smith's Device defective at the point of sale due to the  
15 Defect, but Apple exacerbated the problems with Smith's Device via its misrepresentations and  
16 omissions with the iOS software Updates. As a result of Apple's actions, Smith did not receive  
17 the benefit of her bargain, and was injured as a result. If Smith had been told of the Defect and  
18 the deceptive manner in which Apple would damage the Device after sale, Smith would not  
19 have purchased the Device, or would have paid substantially less for it.

### 20 MAINE

21 121. **Plaintiff Judith Thompson** is a resident and citizen of the State of Maine and  
22 she purchased an iPhone 6 on or about October 2014. Prior to her purchase of the Device, she  
23 did not know, nor could she have known through reasonable diligence of the Defect in her  
24 Device. At time of initial purchase, the Device operated on version 8 of iOS. Thompson  
25 downloaded and installed version 11.2 of iOS on her Device in or around December 2017.

26 122. Not only did Thompson's Device not operate as Apple warranted and promised  
27 initially, but Apple never represented or warranted that version 8 of iOS or any of the future  
28



1 updates would cause the way Thompson's Device operated to fundamentally change.  
2 Thompson's Device, after installation of various versions of iOS, did not operate as promised in  
3 Apple's advertisements, representations, and the information publicly available in the  
4 marketplace. Additionally, none of the packaging in which the Device was sold to Thompson  
5 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
6 or otherwise regulate the battery power and speed pursuant to which Thompson's Device would  
7 operate. Accordingly, not only was Thompson's Device defective at the point of sale due to the  
8 Defect, but Apple exacerbated the problems with Thompson's Device via its misrepresentations  
9 and omissions with the iOS software Updates. As a result of Apple's actions, Thompson did  
10 not receive the benefit of her bargain, and was injured as a result. If Thompson had been told of  
11 the Defect and the deceptive manner in which Apple would damage the Device after sale,  
12 Thompson would not have purchased the Device, or would have paid substantially less for it.

### 13 MAINE

14 123. **Plaintiff Drew Victory** is a resident and citizen of the State of Maine and he  
15 purchased an iPhone 6 on or about July 4, 2015 and an iPhone 6s on or about 2016. Prior to his  
16 purchases of the Devices, he did not know, nor could he have known through reasonable  
17 diligence of the Defect in his Devices.

18 124. Not only did Drews's Devices not operate as Apple warranted and promised  
19 initially, but Apple never represented or warranted that iOS updates would cause the way  
20 Drew's Devices operated to fundamentally change. Drew's Devices did not operate as  
21 promised in Apple's advertisements, representations, and the information publicly available in  
22 the marketplace. Additionally, none of the packaging in which the Devices were sold to Drew  
23 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
24 or otherwise regulate the battery power and speed pursuant to which Drew's Devices would  
25 operate. Accordingly, not only were Drew's Devices defective at the point of sale due to the  
26 Defect, but Apple exacerbated the problems with Drew's Devices via its misrepresentations and  
27 omissions with the iOS software Updates. As a result of Apple's actions, Drew did not receive  
28

1 the benefit of his bargain, and was injured as a result. If Drew had been told of the Defect and  
2 the deceptive manner in which Apple would damage the Devices after sale, Drew would not  
3 have purchased the Devices, or would have paid substantially less for them.

#### 4 MARYLAND

5 125. **Plaintiff Jhonjulee Ray** is a resident and citizen of the State of Maryland and  
6 she purchased an iPhone 6 Plus in or around November 2014. Prior to her purchase of the  
7 Device, she did not know, nor could she have known through reasonable diligence, of the  
8 Defect in her Device.

9 126. Not only did Ray's Device not operate as Apple warranted and promised  
10 initially, but Apple never represented or warranted that iOS updates would cause the way Ray's  
11 Device operated to fundamentally change. Ray's Device did not operate as promised in Apple's  
12 advertisements, representations, and the information publicly available in the marketplace.  
13 Additionally, none of the packaging in which the Device was sold to Ray revealed that there  
14 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
15 regulate the battery power and speed pursuant to which Ray's Device would operate.  
16 Accordingly, not only was Ray's Device defective at the point of sale due to the Defect, but  
17 Apple exacerbated the problems with Ray's Device via its misrepresentations and omissions  
18 with the iOS software Updates. As a result of Apple's actions, Ray did not receive the benefit  
19 of her bargain, and was injured as a result. If Ray had been told of the Defect and the deceptive  
20 manner in which Apple would damage the Device after sale, Ray would not have purchased the  
21 Device, or would have paid substantially less for it.

#### 22 MASSACHUSETTS

23 127. **Plaintiff Laura Ciccone** is a resident and citizen of the Commonwealth of  
24 Massachusetts and she purchased an iPhone 6s in or around June 2016. Prior to her purchase of  
25 the Device, she did not know, nor could she have known through reasonable diligence, of the  
26 Defect in her Device.

128. Not only did Ciccone's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Ciccone's Device operated to fundamentally change. Ciccone's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Ciccone revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Ciccone's Device would operate. Accordingly, not only was Ciccone's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Ciccone's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Ciccone did not receive the benefit of her bargain, and was injured as a result. If Ciccone had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Ciccone would not have purchased the Device, or would have paid substantially less for it.

## MASSACHUSETTS

129. **Plaintiff Jonathan Jed Meyers** is a resident and citizen of the Commonwealth of Massachusetts and he purchased an iPhone 6 in or about April 2015. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device. Meyers downloaded and installed iOS updates on his Device at or around their release dates.

130. Not only did Meyers's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Meyers's Device operated to fundamentally change. Meyers's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Meyers revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Meyer's Device would operate. Accordingly, not only was Meyers's Device defective at the point of sale due to the

1 Defect, but Apple exacerbated the problems with Meyers's Device via its misrepresentations  
2 and omissions with the iOS software Updates. As a result of Apple's actions, Meyers did not  
3 receive the benefit of his bargain, and was injured as a result. If Meyers had been told of the  
4 Defect and the deceptive manner in which Apple would damage the Device after sale, Meyers  
5 would not have purchased the Device, or would have paid substantially less for it.

## 6 MICHIGAN

7 131. **Plaintiff Steven Henry** is a resident and citizen of the State of Michigan and he  
8 purchased an iPhone 7 in October 2016 in Michigan. Prior to his purchase of the Device, he did  
9 not know, nor could he have known through reasonable diligence, of the Defect in his Device.  
10 At time of initial purchase, the Device operated on iOS 10. Henry downloaded and installed  
11 iOS 11.2.1 on his Device in December 2017.

12 132. Not only did Henry's Device not operate as Apple warranted and promised  
13 initially, but Apple never represented or warranted that iOS 11.2.1 or any of the future updates  
14 would cause the way Henry's Device operated to fundamentally change. Henry's Device,  
15 particularly after installation of iOS 11.2.1, did not operate as promised in Apple's  
16 advertisements, representations, and the information publicly available in the marketplace.  
17 Additionally, none of the packaging in which the Device was sold to Henry revealed that there  
18 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
19 regulate the battery power and speed pursuant to which Henry's Device would operate.  
20 Accordingly, not only was Henry's Device defective at the point of sale due to the Defect, but  
21 Apple exacerbated the problems with Henry's Device via its misrepresentations and omissions  
22 with the iOS software Updates. As a result of Apple's actions, Henry did not receive the benefit  
23 of his bargain and was injured as a result. If Henry had been told of the Defect and the  
24 deceptive manner in which Apple would damage the Device after sale, Henry would not have  
25 purchased the Device, or would have paid substantially less for it.

**MICHIGAN**

133. **Plaintiff Timothy Baldwin** is a resident and citizen of the State of Michigan and he purchased an iPhone 6s on March 10, 2016 in Michigan. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device. At time of initial purchase, the Device operated on iOS 9. Baldwin downloaded and installed iOS 11.2 on his Device in or around December 2017.

134. Not only did Baldwin's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 11.2 or any of the future updates would cause the way Baldwin's Device operated to fundamentally change. Baldwin's Device, particularly after installation of iOS 11.2, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Baldwin revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Baldwin's Device would operate. Accordingly, not only was Baldwin's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Baldwin's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Baldwin did not receive the benefit of his bargain and was injured as a result. If Baldwin had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Baldwin would not have purchased the Device, or would have paid substantially less for it.

**MINNESOTA**

135. **Plaintiff Kristin Hansen** is a resident and citizen of the State of Minnesota and she has purchased several iPhones for her and her family in Minnesota, including an iPhone SE and an iPhone 6 in December 2015, an iPhone 6s in January 2016, and another iPhone 6s in December 2017. Prior to her purchase of the Devices, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices. At time of initial purchase,

1 the Devices operated on their factory-installed iOS versions. Hansen and her family  
2 downloaded and installed iOS 11.1 on their Devices in or around November 2017.

3 136. Not only did Hansen's Devices not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that iOS 11.1 or any of the future updates  
5 would cause the way Hansen's Devices operated to fundamentally change. Hansen's Devices,  
6 particularly after installation of iOS 11.1, did not operate as promised in Apple's  
7 advertisements, representations, and the information publicly available in the marketplace.  
8 Additionally, none of the packaging in which the Devices were sold to Hansen revealed that  
9 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
10 regulate the battery power and speed pursuant to which Hansen's Devices would operate.  
11 Accordingly, not only were Hansen's Devices defective at the point of sale due to the Defect,  
12 but Apple exacerbated the problems with Hansen's Devices via its misrepresentations and  
13 omissions with the iOS software Updates. As a result of Apple's actions, Hansen did not  
14 receive the benefit of her bargain and was injured as a result. If Hansen had been told of the  
15 Defect and the deceptive manner in which Apple would damage the Devices after sale, Hansen  
16 would not have purchased the Devices, or would have paid substantially less for them.

### 17 MISSISSIPPI

18 137. **Plaintiff Mary Jackson** is a resident and citizen of the State of Mississippi and  
19 she purchased an iPhone 6 on December 3, 2014. Prior to her purchase of the Device, she did  
20 not know, nor could she have known through reasonable diligence, of the Defect in her Device.

21 138. Not only did Jackson's Device not operate as Apple warranted and promised  
22 initially, but Apple never represented or warranted that iOS updates would cause the way  
23 Jackson's Device operated to fundamentally change. Jackson's Device did not operate as  
24 promised in Apple's advertisements, representations, and the information publicly available in  
25 the marketplace. Additionally, none of the packaging in which the Device was sold to Jackson  
26 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
27 or otherwise regulate the battery power and speed pursuant to which Jackson's Device would  
28

operate. Accordingly, not only was Jackson's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Jackson's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Jackson did not receive the benefit of her bargain, and was injured as a result. If Jackson had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Jackson would not have purchased the Device, or would have paid substantially less for it.

### MISSISSIPPI

139. **Plaintiff Alvin Davis** is a resident and citizen of the State of Mississippi and he purchased an iPhone 6s on December 13, 2016. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence of the Defect in his Device.

140. Not only did Davis's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Davis's Device operated to fundamentally change. Davis's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Davis revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Davis's Device would operate. Accordingly, not only was Davis's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Davis's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Davis did not receive the benefit of his bargain, and was injured as a result. If Davis had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Davis would not have purchased the Device, or would have paid substantially less for it.

### MISSOURI

141. **Plaintiff Kim Burton** is a resident and citizen of the State of Missouri and she purchased an iPhone 5s on September 20, 2013, which was delivered between October 8-11, 2013. She also purchased an iPad Mini on or around November 26, 2014. Prior to her purchase



1 of the Devices, she did not know, nor could she have known through reasonable diligence, of  
2 the Defect in her Devices. Burton downloaded and installed an iOS 11 update on her Devices in  
3 December 2017, specifically iOS 11.2.1 for her iPad Mini.

4 142. Not only did Burton's Devices not operate as Apple warranted and promised  
5 initially, but Apple never represented or warranted that iOS updates would cause the way  
6 Burton's Devices operated to fundamentally change. Burton's Devices, particularly after  
7 installation of one of the iOS 11 updates, did not operate as promised in Apple's  
8 advertisements, representations, and the information publicly available in the marketplace.  
9 Additionally, none of the packaging in which the Devices were sold to Burton revealed that  
10 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
11 regulate the battery power and speed pursuant to which Burton's Devices would operate.  
12 Accordingly, not only were Burton's Device defective at the point of sale due to the Defect, but  
13 Apple exacerbated the problems with Burton's Device via its misrepresentations and omissions  
14 with the iOS software Updates. As a result of Apple's actions, Burton did not receive the  
15 benefit of her bargain, and was injured as a result. If Burton had been told of the Defect and the  
16 deceptive manner in which Apple would damage the Device after sale, Burton would not have  
17 purchased the Device, or would have paid substantially less for it.

#### 18 MISSOURI

19 143. **Plaintiff Christopher Gautreaux** is a resident and citizen of the State of  
20 Missouri and he leased multiple generations of the iPhone for him and his family in Missouri,  
21 including an iPhone 5, an iPhone 5s, and an iPhone 6 on October 17, 2014; an iPhone 6 Plus on  
22 February 27, 2015; an iPhone 6s on December 2, 2015; and an iPhone 7 Plus on January 30,  
23 2017. Prior to his lease of the Devices, he did not know, nor could he have known through  
24 reasonable diligence, of the Defect in his Devices. At time of initial lease, the Devices operated  
25 on their factory-installed iOS versions.

26 144. Not only did Gautreaux's Devices not operate as Apple warranted and promised  
27 initially, but Apple never represented or warranted that any of the future iOS updates would  
28

1 cause the way Gautreaux's Devices operated to fundamentally change. Gautreaux's Devices,  
2 particularly after installation of subsequent iOS updates, did not operate as promised in Apple's  
3 advertisements, representations, and the information publicly available in the marketplace.  
4 Additionally, none of the packaging in which the Devices were sold to Gautreaux revealed that  
5 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
6 regulate the battery power and speed pursuant to which Gautreaux's Devices would operate.  
7 Accordingly, not only were Gautreaux's Devices defective at the point of lease due to the  
8 Defect, but Apple exacerbated the problems with Gautreaux's Devices via its  
9 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
10 actions, Gautreaux did not receive the benefit of his bargain and was injured as a result. If  
11 Gautreaux had been told of the Defect and the deceptive manner in which Apple would damage  
12 the Devices after sale, Gautreaux would not have leased the Devices, or would have paid  
13 substantially less for them.

#### 14 MISSOURI

15 145. **Plaintiff Charlie Bell Daily** is a resident and citizen of the State of Missouri and  
16 she purchased an iPhone 6s Plus in or about mid-2016. Prior to her purchase of the Device, she  
17 did not know, nor could she have known through reasonable diligence, of the Defect in her  
18 Device.

19 146. Not only did Daily's Device not operate as Apple warranted and promised  
20 initially, but Apple never represented or warranted that any of the iOS updates would cause the  
21 way Daily's Device operated to fundamentally change. Daily's Device, particularly after  
22 installation of a version of iOS, did not operate as promised in Apple's advertisements,  
23 representations, and the information publicly available in the marketplace. Additionally, none  
24 of the packaging in which the Device was sold to Daily revealed that there was any Defect or  
25 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
26 power and speed pursuant to which Daily's Device would operate. Accordingly, not only was  
27 Daily's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
28

1 problems with Daily's Device via its misrepresentations and omissions with the iOS software  
2 Updates. As a result of Apple's actions, Daily did not receive the benefit of her bargain, and  
3 was injured as a result. If Daily had been told of the Defect and the deceptive manner in which  
4 Apple would damage the Device after sale, Daily would not have purchased the Device, or  
5 would have paid substantially less for it.

## 6 MISSOURI

7 147. **Plaintiff William C. Ellis** is a resident and citizen of the State of Missouri and  
8 he purchased an iPhone 7 on September 9, 2016. Prior to his purchase of the Device, he did not  
9 know, nor could he have known through reasonable diligence, of the Defect in his Device.

10 148. Not only did Ellis' Device not operate as Apple warranted and promised initially,  
11 but Apple never represented or warranted that iOS updates would cause the way Ellis' Device  
12 operated to fundamentally change. Ellis' Device did not operate as promised in Apple's  
13 advertisements, representations, and the information publicly available in the marketplace.  
14 Additionally, none of the packaging in which the Device was sold to Ellis revealed that there  
15 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
16 regulate the battery power and speed pursuant to which Ellis's Device would operate.  
17 Accordingly, not only was Ellis' Device defective at the point of sale due to the Defect, but  
18 Apple exacerbated the problems with Ellis' Device via its misrepresentations and omissions  
19 with the iOS software Updates. As a result of Apple's actions, Ellis did not receive the benefit  
20 of his bargain, and was injured as a result. If Ellis had been told of the Defect and the deceptive  
21 manner in which Apple would damage the Device after sale, Ellis would not have purchased the  
22 Device, or would have paid substantially less for it.

## 23 MONTANA

24 149. **Plaintiff Michelle Martino** is a resident and citizen of the State of Montana and  
25 she purchased an iPhone 6 Plus in Fall 2014. Prior to her purchase of the Device, she did not  
26 know, nor could she have known through reasonable diligence, of the Defect in her Device.  
27 Martino downloaded and installed a version of iOS on her Device in or around December 2017.  
28

150. Not only did Martino's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Martino's Device operated to fundamentally change. Martino's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Martino revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Martino's Device would operate. Accordingly, not only was Martino's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Martino's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Martino did not receive the benefit of her bargain, and was injured as a result. If Martino had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Martino would not have purchased the Device, or would have paid substantially less for it.

**NEBRASKA**

151. **Plaintiff Kevin Browne** is a resident and citizen of the State of Nebraska and he purchased an iPhone 6s Plus on October 2, 2015. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device.

152. Not only did Browne’s Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Browne’s Device operated to fundamentally change. Browne’s Device did not operate as promised in Apple’s advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Browne revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery power and speed pursuant to which Browne’s Device would operate. Accordingly, not only was Browne’s Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Browne’s Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple’s actions, Browne did not

1 receive the benefit of his bargain, and was injured as a result. If Browne had been told of the  
2 Defect and the deceptive manner in which Apple would damage the Device after sale, Browne  
3 would not have purchased the Device, or would have paid substantially less for it.

#### 4 NEBRASKA

5 153. **Plaintiff Jill Klingman** is a resident and citizen of the State of Nebraska and  
6 she purchased an iPhone 6 in or around 2015 in Nebraska and an iPhone 7 on October 28, 2017  
7 in Nebraska. Prior to her purchase of the Devices, she did not know, nor could she have known  
8 through reasonable diligence, of the Defect in her Devices. At time of initial purchase, the  
9 iPhone 6 operated on iOS 8 and the iPhone 7 operated on iOS 10. Klingman downloaded and  
10 installed iOS 10 on her iPhone 6 in or around November 2016.

11 154. Not only did Klingman's Devices not operate as Apple warranted and  
12 promised initially, but Apple never represented or warranted that any of the future iOS updates  
13 would cause the way Klingman's Devices operated to fundamentally change. Klingman's  
14 Devices, particularly after installation of subsequent iOS versions, did not operate as promised  
15 in Apple's advertisements, representations, and the information publicly available in the  
16 marketplace. Additionally, none of the packaging in which the Devices were sold to Klingman  
17 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
18 or otherwise regulate the battery power and speed pursuant to which Klingman's Devices would  
19 operate. Accordingly, not only were Klingman's Devices defective at the point of sale due to  
20 the Defect, but Apple exacerbated the problems with Klingman's Devices via its  
21 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
22 actions, Klingman did not receive the benefit of her bargain, and was injured as a result. If  
23 Klingman had been told of the Defect and the deceptive manner in which Apple would damage  
24 the Devices after sale, Klingman would not have purchased the Devices, or would have paid  
25 substantially less for them.

**NEVADA**

155. **Plaintiff Angela Boykin** is a resident and citizen of the State of Nevada and she purchased an iPhone 6s on February 25, 2016 in Nevada. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device. At time of initial purchase, the Device operated on iOS 9.

156. Not only did Boykin's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10.3.2 or any of the future updates would cause the way Boykin's Device operated to fundamentally change. Boykin's Device, particularly after installation of 10.3.2, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Boykin revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Boykin's Device would operate. Accordingly, not only was Boykin's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Boykin's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Boykin did not receive the benefit of her bargain and was injured as a result. If Boykin had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Boykin would not have purchased the Device, or would have paid substantially less for it.

**NEVADA**

157. **Plaintiff Barbara Moriello** is a resident and citizen of the State of Nevada and she purchased an iPhone 6 on in April 2015 in Nevada. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device. At time of initial purchase, the Device operated on iOS 8. Moriello downloaded and installed iOS 11 on her Device in or around the fall of 2017.

158. Not only did Moriello's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 11 or any of the future updates

1 would cause the way Moriello's Device operated to fundamentally change. Moriello's Device,  
2 particularly after installation of 11, did not operate as promised in Apple's advertisements,  
3 representations, and the information publicly available in the marketplace. Additionally, none  
4 of the packaging in which the Device was sold to Moriello revealed that there was any Defect or  
5 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
6 power and speed pursuant to which Moriello's Device would operate. Accordingly, not only  
7 was Moriello's Device defective at the point of sale due to the Defect, but Apple exacerbated  
8 the problems with Moriello's Device via its misrepresentations and omissions with the iOS  
9 software Updates. As a result of Apple's actions, Moriello did not receive the benefit of her  
10 bargain and was injured as a result. If Moriello had been told of the Defect and the deceptive  
11 manner in which Apple would damage the Device after sale, Moriello would not have  
12 purchased the Device, or would have paid substantially less for it.

#### 13 NEW HAMPSHIRE

14 159. **Plaintiff Thomas Toth** is a resident and citizen of the State of New Hampshire  
15 and he purchased two iPhone 5s Devices for him and his wife in March 2015 in Massachusetts  
16 and two iPhone 7 Devices for him and his wife in July 2017 in New Hampshire. Prior to his  
17 purchase of the Devices, he did not know, nor could he have known through reasonable  
18 diligence, of the Defect in his Devices. At time of initial purchase, the iPhone 5s Devices  
19 operated on iOS 7 and the iPhone 7 Devices operated on iOS 10. Toth and his wife  
20 downloaded and installed iOS 10.2.1 in January 2017 and iOS 10.3 in April 2017, respectively,  
21 on their iPhone 5s Devices.

22 160. Not only did Toth's Devices not operate as Apple warranted and promised  
23 initially, but Apple never represented or warranted that iOS 10.2.1, 10.3 or any of the future  
24 updates would cause the way Toth's Devices operated to fundamentally change. Toth's  
25 Devices, particularly after installation of iOS 10.2.1 and 10.3, did not operate as promised in  
26 Apple's advertisements, representations, and the information publicly available in the  
27 marketplace. Additionally, none of the packaging in which the Devices were sold to Toth  
28



1 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
2 or otherwise regulate the battery power and speed pursuant to which Toth’s Devices would  
3 operate. Accordingly, not only were Toth’s Devices defective at the point of sale due to the  
4 Defect, but Apple exacerbated the problems with Toth’s Devices via its misrepresentations and  
5 omissions with the iOS software Updates. As a result of Apple’s actions, Toth did not receive  
6 the benefit of his bargain and was injured as a result. If Toth had been told of the Defect and  
7 the deceptive manner in which Apple would damage the Devices after sale, Toth would not  
8 have purchased the Devices, or would have paid substantially less for them.

### 9 NEW JERSEY

10 161. **Plaintiff Caren Schmidt** is a resident and citizen of the State of New Jersey and  
11 she purchased an iPhone 5 in 2014 and an iPhone 6s on November 26, 2016 in New Jersey.  
12 Prior to her purchase of the Devices, she did not know, nor could she have known through  
13 reasonable diligence, of the Defect in her Devices. At time of initial purchase, the Devices  
14 operated on their factory-installed iOS versions.

15 162. Not only did Schmidt’s Devices not operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS 10, 11.3, or any of the future  
17 updates would cause the way Schmidt’s Devices operated to fundamentally change. Schmidt’s  
18 Devices, particularly after installation of 10 and 11.3, respectively, did not operate as promised  
19 in Apple’s advertisements, representations, and the information publicly available in the  
20 marketplace. Additionally, none of the packaging in which the Devices were sold to Schmidt  
21 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
22 or otherwise regulate the battery power and speed pursuant to which Schmidt’s Devices would  
23 operate. Accordingly, not only were Schmidt’s Devices defective at the point of sale due to the  
24 Defect, but Apple exacerbated the problems with Schmidt’s Devices via its misrepresentations  
25 and omissions with the iOS software Updates. As a result of Apple’s actions, Schmidt did not  
26 receive the benefit of her bargain, and was injured as a result. If Schmidt had been told of the  
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1 Defect and the deceptive manner in which Apple would damage the Devices after sale, Schmidt  
2 would not have purchased the Devices, or would have paid substantially less for them.

3 **NEW JERSEY**

4 163. **Plaintiff Jacquelyn O'Neill** is a resident and citizen of the State of New Jersey  
5 and she purchased an iPhone 6 on March 21, 2015 in New Jersey. Prior to her purchase of the  
6 Device, she did not know, nor could she have known through reasonable diligence, of the  
7 Defect in her Device. At time of initial purchase, the Device operated on its factory-installed  
8 iOS versions.

9 164. Not only did O'Neill's Device not operate as Apple warranted and promised  
10 initially, but Apple never represented or warranted that iOS 10.2.1 or any of the future updates  
11 would cause the way O'Neill's Device operated to fundamentally change. O'Neill's Device,  
12 particularly after installation of iOS 10.2.1, did not operate as promised in Apple's  
13 advertisements, representations, and the information publicly available in the marketplace.  
14 Additionally, none of the packaging in which the Device was sold to O'Neill revealed that there  
15 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
16 regulate the battery power and speed pursuant to which O'Neill's Device would operate.  
17 Accordingly, not only was O'Neill's Device defective at the point of sale due to the Defect, but  
18 Apple exacerbated the problems with O'Neill's Device via its misrepresentations and omissions  
19 with the iOS software Updates. As a result of Apple's actions, O'Neill did not receive the  
20 benefit of her bargain and was injured as a result. If O'Neill had been told of the Defect and the  
21 deceptive manner in which Apple would damage the Device after sale, O'Neill would not have  
22 purchased the Device, or would have paid substantially less for it.

23 **NEW MEXICO**

24 165. **Plaintiff Patrick DeFillippo** is a resident and citizen of the State of New  
25 Mexico and he purchased an iPhone 6s on January 26, 2016 in New Mexico. Prior to his  
26 purchase of the Devices, he did not know, nor could he have known through reasonable  
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1 diligence, of the Defect in his Devices. At time of initial purchase, the Devices operated on  
2 their factory-installed iOS version.

3 166. Not only did DeFillippo's Devices not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that any of the future iOS updates would  
5 cause the way DeFillippo's Devices operated to fundamentally change. DeFillippo's Devices,  
6 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
7 advertisements, representations, and the information publicly available in the marketplace.  
8 Additionally, none of the packaging in which the Devices were sold to DeFillippo revealed that  
9 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
10 regulate the battery power and speed pursuant to which DeFillippo's Devices would operate.  
11 Accordingly, not only were DeFillippo's Devices defective at the point of sale due to the  
12 Defect, but Apple exacerbated the problems with DeFillippo's Devices via its  
13 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
14 actions, DeFillippo did not receive the benefit of his bargain and was injured as a result. If  
15 DeFillippo had been told of the Defect and the deceptive manner in which Apple would damage  
16 the Device after sale, DeFillippo would not have purchased the Device, or would have paid  
17 substantially less for it.

## 18 NEW YORK

19 167. **Plaintiff Aniledis Batista** is a resident and citizen of the State of New York and  
20 she purchased an iPhone 6 on February 16, 2015 in New York and an iPhone 7 Plus on July 16,  
21 2017 in New York. Prior to her purchase of the Devices, she did not know, nor could she have  
22 known through reasonable diligence, of the Defect in her Devices. At time of initial purchase,  
23 her iPhone 6 operated on iOS 8 and her iPhone 7 Plus operated on iOS 10.

24 168. Not only did Batista's Devices not operate as Apple warranted and promised  
25 initially, but Apple never represented or warranted that iOS 10, 11, or any of the future updates  
26 would cause the way Batista's Devices operated to fundamentally change. Batista's Devices,  
27 particularly after installation of iOS 10 and 11, respectively, did not operate as promised in  
28

1 Apple's advertisements, representations, and the information publicly available in the  
2 marketplace. Additionally, none of the packaging in which the Devices were sold to Batista  
3 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
4 or otherwise regulate the battery power and speed pursuant to which Batista's Devices would  
5 operate. Accordingly, not only were Batista's Devices defective at the point of sale due to the  
6 Defect, but Apple exacerbated the problems with Batista's Devices via its misrepresentations  
7 and omissions with the iOS software Updates. As a result of Apple's actions, Batista did not  
8 receive the benefit of her bargain and was injured as a result. If Batista had been told of the  
9 Defect and the deceptive manner in which Apple would damage the Devices after sale, Batista  
10 would not have purchased the Devices, or would have paid substantially less for them.

#### 11 NEW YORK

12 169. **Plaintiff Benjamin Lazarus** is a resident and citizen of the State of New York  
13 and he purchased an iPhone 5 on September 13, 2013 in New York and an iPhone 7 on  
14 December 13, 2016 in New York. Prior to his purchase of the Devices, he did not know, nor  
15 could he have known through reasonable diligence, of the Defect in his Devices. At time of  
16 initial purchase, the Devices operated on their factory-installed iOS versions.

17 170. Not only did Lazarus's Devices not operate as Apple warranted and promised  
18 initially, but Apple never represented or warranted that any of the future iOS updates would  
19 cause the way Lazarus's Devices operated to fundamentally change. Lazarus's Devices,  
20 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
21 advertisements, representations, and the information publicly available in the marketplace.  
22 Additionally, none of the packaging in which the Device was sold to Lazarus revealed that there  
23 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
24 regulate the battery power and speed pursuant to which Lazarus's Devices would operate.  
25 Accordingly, not only were Lazarus's Devices defective at the point of sale due to the Defect,  
26 but Apple exacerbated the problems with Lazarus's Devices via its misrepresentations and  
27 omissions with the iOS software Updates. As a result of Apple's actions, Lazarus did not  
28

1 receive the benefit of his bargain and was injured as a result. If Lazarus had been told of the  
 2 Defect and the deceptive manner in which Apple would damage the Devices after sale, Lazarus  
 3 would not have purchased the Devices, or would have paid substantially less for them.

#### 4 **NEW YORK**

5 171. **Plaintiff Judy Milman** is a resident and citizen of the State of New York and  
 6 she purchased an iPhone 6s on April 21, 2016 in New York. Prior to her purchase of the  
 7 Device, she did not know, nor could she have known through reasonable diligence, of the  
 8 Defect in her Device. At time of initial purchase, the Device operated on iOS 9. Milman  
 9 downloaded and installed iOS 10 on her Device in or around September 2016.

10 172. Not only did Milman's Device not operate as Apple warranted and promised  
 11 initially, but Apple never represented or warranted that iOS 10 or any of the future updates  
 12 would cause the way Milman's Device operated to fundamentally change. Milman's Device,  
 13 particularly after installation of iOS 10, did not operate as promised in Apple's advertisements,  
 14 representations, and the information publicly available in the marketplace. Additionally, none  
 15 of the packaging in which the Device was sold to Milman revealed that there was any Defect or  
 16 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
 17 power and speed pursuant to which Milman's Device would operate. Accordingly, not only  
 18 was Milman's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
 19 problems with Milman's Device via its misrepresentations and omissions with the iOS software  
 20 Updates. As a result of Apple's actions, Milman did not receive the benefit of her bargain and  
 21 was injured as a result. If Milman had been told of the Defect and the deceptive manner in  
 22 which Apple would damage the Device after sale, Milman would not have purchased the  
 23 Device, or would have paid substantially less for it.

#### 24 **NORTH CAROLINA**

25 173. **Plaintiff Sherri Yelton** is a resident and citizen of the State of North Carolina  
 26 and she purchased an iPhone 6s on February 26, 2016 in North Carolina. Prior to her purchase  
 27 of her Device, she did not know, nor could she have known through reasonable diligence, of the  
 28

1 Defect in her Device. At time of initial lease, the Device operated on iOS 9. Yelton  
2 downloaded and installed iOS 11 on her Device in the fall of 2017.

3 174. Not only did Yelton's Device not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
5 would cause the way Yelton's Device operated to fundamentally change. Yelton's Device,  
6 particularly after installation of iOS 11, did not operate as promised in Apple's advertisements,  
7 representations, and the information publicly available in the marketplace. Additionally, none  
8 of the packaging in which the Device was sold to Yelton revealed that there was any Defect or  
9 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
10 power and speed pursuant to which Yelton's Device would operate. Accordingly, not only was  
11 Yelton's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
12 problems with Yelton's Device via its misrepresentations and omissions with the iOS software  
13 Updates. As a result of Apple's actions, Yelton did not receive the benefit of her bargain and  
14 was injured as a result. If Yelton had been told of the Defect and the deceptive manner in which  
15 Apple would damage the Device after sale, Yelton would not have purchased the Device, or  
16 would have paid substantially less for it.

#### 17 NORTH CAROLINA

18 175. **Plaintiff Brinley McGill** is a resident and citizen of the State of North Carolina  
19 and she purchased an iPhone 6s Plus in or around February 2015. Prior to her purchase of the  
20 Device, she did not know, nor could she have known through reasonable diligence, of the  
21 Defect in her Device.

22 176. Not only did McGill's Device not operate as Apple warranted and promised  
23 initially, but Apple never represented or warranted that iOS updates would cause the way  
24 McGill's Device operated to fundamentally change. McGill's Device did not operate as  
25 promised in Apple's advertisements, representations, and the information publicly available in  
26 the marketplace. Additionally, none of the packaging in which the Device was sold to McGill  
27 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
28

1 or otherwise regulate the battery power and speed pursuant to which McGill's Device would  
2 operate. Accordingly, not only was McGill's Device defective at the point of sale due to the  
3 Defect, but Apple exacerbated the problems with McGill's Device via its misrepresentations  
4 and omissions with the iOS software Updates. As a result of Apple's actions, McGill did not  
5 receive the benefit of her bargain, and was injured as a result. If McGill had been told of the  
6 Defect and the deceptive manner in which Apple would damage the Device after sale, McGill  
7 would not have purchased the Device, or would have paid substantially less for it.

#### 8 NORTH CAROLINA

9 177. **Plaintiff Jeanette Taylor** is a resident and citizen of the State of North Carolina  
10 and she purchased two iPhone SEs on or about September 10, 2017. She also purchased an  
11 iPhone 6 on or about September 13, 2017. Prior to her purchase of the Devices, she did not  
12 know, nor could she have known through reasonable diligence, of the Defect in her Devices. At  
13 time of initial purchase, the Devices operated on a certain iOS. Taylor installed an update on  
14 her Devices in or around October or November 2017.

15 178. Not only did Taylor's Devices not operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS updates would cause the way  
17 Taylor's Devices operated to fundamentally change. Taylor's Devices did not operate as  
18 promised in Apple's advertisements, representations, and the information publicly available in  
19 the marketplace. Additionally, none of the packaging in which the Devices were sold to Taylor  
20 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
21 or otherwise regulate the battery power and speed pursuant to which Taylor's Devices would  
22 operate. Accordingly, not only were Taylor's Devices defective at the point of sale due to the  
23 Defect, but Apple exacerbated the problems with Taylor's Devices via its misrepresentations  
24 and omissions with the iOS software Updates. As a result of Apple's actions, Taylor did not  
25 receive the benefit of her bargain, and was injured as a result. If Taylor had been told of the  
26 Defect and the deceptive manner in which Apple would damage the Devices after sale, Taylor  
27 would not have purchased the Devices, or would have paid substantially less for it.  
28



**NORTH DAKOTA / ALASKA**

179. **Plaintiff Matthew Shaske** is a resident and citizen of the State of North Dakota and he leased four iPhone 6 Devices for him and his family in early 2015 in Alaska while residing in Alaska and three iPhone 7 Plus Devices for him and his family in January 2017 in North Dakota while residing in North Dakota. Prior to his lease of the Devices, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device. At time of initial purchase, his iPhone 6 Devices operated on iOS 8. Shaske and his family downloaded and installed iOS 10 on their Devices in or around September 2016.

180. Not only did Shaske's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10 or any of the future updates would cause the way Shaske's Devices operated to fundamentally change. Shaske's Devices, particularly after installation of iOS 10, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Shaske revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Shaske's Devices would operate. Accordingly, not only were Shaske's Devices defective at the point of lease due to the Defect, but Apple exacerbated the problems with Shaske's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Shaske did not receive the benefit of his bargain and was injured as a result. If Shaske had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Shaske would not have leased the Devices, or would have paid substantially less for them.

**OHIO**

181. **Plaintiff Kelly A. Jankowski** is a resident and citizen of the State of Ohio and she purchased an iPhone 6 on or about May 13, 2015. She also purchased an iPhone 6s in or about August 2017. Prior to her purchase of the Devices, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices.

182. Not only did Jankowski's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Jankowski's Devices operated to fundamentally change. Jankowski's Devices did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Jankowski revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Jankowski's Devices would operate. Accordingly, not only were Jankowski's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Jankowski's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Jankowski did not receive the benefit of her bargain, and was injured as a result. If Jankowski had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Jankowski would not have purchased the Devices, or would have paid substantially less for it.

## OHIO

183. **Plaintiff Kristin Bilic** is a resident and citizen of the State of Ohio and she purchased an iPhone 6 Plus on December 1, 2014 (then exchanged it for an iPhone 6 on December 5, 2014), as well as an iPhone 7 Plus on June 24, 2017. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device.

184. Not only did Bilic’s Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Bilic’s Device operated to fundamentally change. Bilic’s Device did not operate as promised in Apple’s advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Bilic revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery power and speed pursuant to which Bilic’s Device would

1 operate. Accordingly, not only was Bilic's Device defective at the point of sale due to the  
2 Defect, but Apple exacerbated the problems with Bilic's Device via its misrepresentations and  
3 omissions with the iOS software Updates. As a result of Apple's actions, Bilic did not receive  
4 the benefit of her bargain, and was injured as a result. If Bilic had been told of the Defect and  
5 the deceptive manner in which Apple would damage the Device after sale, Bilic would not have  
6 purchased the Device, or would have paid substantially less for it.

### 7 OHIO

8 185. **Plaintiff Samuel Mangano** is a resident and citizen of the State of Ohio and he  
9 has leased multiple generations of the iPhone in Ohio for him and his family, including an  
10 iPhone 5c in November 2014, and iPhone 6 in September 2014, and three iPhone 7 Devices in  
11 October 2016. Prior to his lease of the Devices, he did not know, nor could he have known  
12 through reasonable diligence, of the Defect in his Devices. At time of initial lease, the Devices  
13 operated on their factory-installed iOS versions.

14 186. Not only did Mangano's Devices not operate as Apple warranted and promised  
15 initially, but Apple never represented or warranted that any of the future iOS updates would  
16 cause the way Mangano's Devices operated to fundamentally change. Mangano's Devices,  
17 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
18 advertisements, representations, and the information publicly available in the marketplace.  
19 Additionally, none of the packaging in which the Devices were sold to Mangano revealed that  
20 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
21 regulate the battery power and speed pursuant to which Mangano's Devices would operate.  
22 Accordingly, not only were Mangano's Devices defective at the point of lease due to the Defect,  
23 but Apple exacerbated the problems with Mangano's Devices via its misrepresentations and  
24 omissions with the iOS software Updates. As a result of Apple's actions, Mangano did not  
25 receive the benefit of his bargain and was injured as a result. If Mangano had been told of the  
26 Defect and the deceptive manner in which Apple would damage the Devices after sale,  
27 Mangano would not have purchased the Devices, or would have paid substantially less for them.  
28

**OKLAHOMA**

187. **Plaintiff Sarah Stone** is a resident and citizen of the State of Oklahoma and she purchased an iPhone 6 in or about September 2014. She also purchased an iPhone 7 Plus in or about September 2016. Prior to her purchase of these Devices, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices.

188. Not only did Stone's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Stone's Devices operated to fundamentally change. Stone's Devices did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Stone revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Stone's Devices would operate. Accordingly, not only were Stone's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Stone's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Stone did not receive the benefit of her bargain, and was injured as a result. If Stone had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Stone would not have purchased the Devices, or would have paid substantially less for it.

**OREGON**

189. **Plaintiff Susan Rutan** is a resident and citizen of the State of California and she purchased an iPhone 6s Plus in Oregon in or about November 2016. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device.

190. Not only did Rutan's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Rutan's Device operated to fundamentally change. Rutan's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the

1 marketplace. Additionally, none of the packaging in which the Device was sold to Rutan  
2 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
3 or otherwise regulate the battery power and speed pursuant to which Rutan’s Device would  
4 operate. Accordingly, not only was Rutan’s Device defective at the point of sale due to the  
5 Defect, but Apple exacerbated the problems with Rutan’s Device via its misrepresentations and  
6 omissions with the iOS software Updates. As a result of Apple’s actions, Rutan did not receive  
7 the benefit of her bargain, and was injured as a result. If Rutan had been told of the Defect and  
8 the deceptive manner in which Apple would damage the Device after sale, Rutan would not  
9 have purchased the Device, or would have paid substantially less for it

#### 10 OREGON

11 191. **Plaintiff Megan Mesloh** is a resident and citizen of the State of Oregon and she  
12 purchased an iPhone 5c on June 24, 2014. Prior to her purchase of the Device, she did not  
13 know, nor could she have known through reasonable diligence of the Defect in her Device. At  
14 time of initial purchase, the Device operated on the latest version of iOS. Mesloh downloaded  
15 and installed version 10.2 of iOS on her Device.

16 192. Not only did Mesloh’s Device not operate as Apple warranted and promised  
17 initially, but Apple never represented or warranted that version 10.2 of iOS or any future  
18 versions would cause the way Mesloh’s Device operated to fundamentally change. Mesloh’s  
19 Device, particularly after installation of version 10.2 of iOS, did not operate as promised in  
20 Apple’s advertisements, representations, and the information publicly available in the  
21 marketplace. Additionally, none of the packaging in which the Device was sold to Mesloh  
22 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
23 or otherwise regulate the battery power and speed pursuant to which Mesloh’s Device would  
24 operate. Accordingly, not only was Mesloh’s Device defective at the point of sale due to the  
25 Defect, but Apple exacerbated the problems with Mesloh’s Device via its misrepresentations  
26 and omissions with the iOS software Updates. As a result of Apple’s actions, Mesloh did not  
27 receive the benefit of her bargain, and was injured as a result. If Mesloh had been told of the  
28

1 Defect and the deceptive manner in which Apple would damage the Device after sale, Mesloh  
2 would not have purchased the Device, or would have paid substantially less for it.

3 **PENNSYLVANIA**

4 193. **Plaintiff Beckie Erwin** is a resident and citizen of the Commonwealth of  
5 Pennsylvania and she purchased three iPhone 6s's on or about July 19, 2016, two of which were  
6 for her children. Prior to her purchase of the Devices, she did not know, nor could she have  
7 known through reasonable diligence of the Defect in her Devices.

8 194. Not only did Erwin's Devices not operate as Apple warranted and promised  
9 initially, but Apple never represented or warranted that iOS updates would cause the way  
10 Erwin's Devices operated to fundamentally change. Erwin's Devices did not operate as  
11 promised in Apple's advertisements, representations, and the information publicly available in  
12 the marketplace. Additionally, none of the packaging in which the Devices were sold to Erwin  
13 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
14 or otherwise regulate the battery power and speed pursuant to which Erwin's Devices would  
15 operate. Accordingly, not only was Erwin's Devices defective at the point of sale due to the  
16 Defect, but Apple exacerbated the problems with Erwin's Devices via its misrepresentations  
17 and omissions with the iOS software Updates. As a result of Apple's actions, Erwin did not  
18 receive the benefit of her bargain, and was injured as a result. If Erwin had been told of the  
19 Defect and the deceptive manner in which Apple would damage the Devices after sale, Erwin  
20 would not have purchased the Devices, or would have paid substantially less for it.

21 **PENNSYLVANIA**

22 195. **Plaintiff Darlane Saracina** is a resident and citizen of the Commonwealth of  
23 Pennsylvania and she purchased an iPhone 5s and iPhone 6s Plus on or about February 4, 2016.  
24 Prior to her purchase of the Devices, she did not know, nor could she have known through  
25 reasonable diligence, of the Defect in her Devices. At time of initial purchase, the Devices  
26 operated on various versions of iOS. Saracina downloaded and installed various versions of  
27 iOS on her Devices on various dates.  
28

196. Not only did Saracina's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that versions of iOS or any of the future updates would cause the way Saracina's Devices operated to fundamentally change. Saracina's Devices, particularly after installation of various versions of iOS, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Saracina revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Saracina's Devices would operate. Accordingly, not only were Saracina's Devices defective at the point of sale due to the Defect, but Apple exacerbated the problems with Saracina's Devices via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Saracina did not receive the benefit of her bargain, and was injured as a result. If Saracina had been told of the Defect and the deceptive manner in which Apple would damage the Devices after sale, Saracina would not have purchased the Devices, or would have paid substantially less for them.

## RHODE ISLAND

197. **Plaintiff Stephen Heffner** is a resident and citizen of the State of Rhode Island and he purchased an iPhone 6. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence, of the Defect in his Device. After purchasing the device, Heffner downloaded and installed iOS 8.3 on his Device.

198. Not only did Heffner's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 8.3 or any of the future updates would cause the way Heffner's Device operated to fundamentally change. Heffner's Device, particularly after installation of iOS 8.3, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Heffner revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Heffner's Device would operate. Accordingly, not only was



1 Heffner's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
2 problems with Heffner's Device via its misrepresentations and omissions with the iOS software  
3 Updates. As a result of Apple's actions, Heffner did not receive the benefit of his bargain, and  
4 was injured as a result. If Heffner had been told of the Defect and the deceptive manner in  
5 which Apple would damage the Device after sale, Heffner would not have purchased the  
6 Device, or would have paid substantially less for it.

#### 7 RHODE ISLAND

8 199. **Plaintiff Brian Macinanti** is a resident and citizen of the State of Rhode Island  
9 and he purchased an iPhone 6 on or around September 23, 2015. Prior to his purchase of the  
10 Device, he did not know, nor could he have known through reasonable diligence, of the Defect  
11 in his Device. At time of initial purchase, the Device operated on version of 9.0 of iOS.  
12 Macinanti downloaded and installed version 11.4 of iOS on his Device in or around June 2017.

13 200. Not only did Macinanti's Device not operate as Apple warranted and promised  
14 initially, but Apple never represented or warranted that version 9.0 of iOS or any future updates  
15 would cause the way Macinanti's Device operated to fundamentally change. Macinanti's  
16 Device, after installation of versions of iOS, did not operate as promised in Apple's  
17 advertisements, representations, and the information publicly available in the marketplace.  
18 Additionally, none of the packaging in which the Device was sold to Macinanti revealed that  
19 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
20 regulate the battery power and speed pursuant to which Macinanti's Device would operate.  
21 Accordingly, not only was Macinanti's Device defective at the point of sale due to the Defect,  
22 but Apple exacerbated the problems with Macinanti's Device via its misrepresentations and  
23 omissions with the iOS software Updates. As a result of Apple's actions, Macinanti did not  
24 receive the benefit of his bargain and was injured as a result. If Macinanti had been told of the  
25 Defect and the deceptive manner in which Apple would damage the Device after sale,  
26 Macinanti would not have purchased the Device, or would have paid substantially less for it.

**SOUTH CAROLINA**

201. **Plaintiff Charlene Lowery** is a resident and citizen of the State of South Carolina and she purchased an iPhone 6 on or about September 2014. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device.

202. Not only did Lowery's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Lowery's Device operated to fundamentally change. Lowery's Device did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Lowery revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Lowery's Device would operate. Accordingly, not only was Lowery's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Lowery's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Lowery did not receive the benefit of her bargain, and was injured as a result. If Lowery had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Lowery would not have purchased the Device, or would have paid substantially less for it.

**SOUTH CAROLINA**

203. **Plaintiff Patti Burriss** is a resident and citizen of the State of South Carolina and she purchased an iPhone 7 in or about July 2017. She also purchased an iPad Air in approximately 2014 and two iPad Air 2 Devices in approximately 2016. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Devices.

204. Not only did Burriss's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Burriss's Devices operated to fundamentally change. Burriss's Devices did not operate as

1 promised in Apple's advertisements, representations, and the information publicly available in  
2 the marketplace. Additionally, none of the packaging in which the Devices were sold to Burriss  
3 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
4 or otherwise regulate the battery power and speed pursuant to which Burriss's Devices would  
5 operate. Accordingly, not only was Burriss's Devices defective at the point of sale due to the  
6 Defect, but Apple exacerbated the problems with Burriss's Devices via its misrepresentations  
7 and omissions with the iOS software Updates. As a result of Apple's actions, Burriss did not  
8 receive the benefit of her bargain, and was injured as a result. If Burriss had been told of the  
9 Defect and the deceptive manner in which Apple would damage the Devices after sale, Burriss  
10 would not have purchased the Devices, or would have paid substantially less for them.

#### 11 SOUTH DAKOTA

12 205. **Plaintiff Denise Bakke** is a resident and citizen of the State of South Dakota and  
13 she purchased an iPhone 5s in August 2015 and an iPhone 6 in August 2016. Prior to her  
14 purchase of the Devices, she did not know, nor could she have known through reasonable  
15 diligence of the Defect in her Devices.

16 206. Not only did Bakke's Devices not operate as Apple warranted and promised  
17 initially, but Apple never represented or warranted that iOS updates would cause the way  
18 Bakke's Devices operated to fundamentally change. Bakke's Devices did not operate as  
19 promised in Apple's advertisements, representations, and the information publicly available in  
20 the marketplace. Additionally, none of the packaging in which the Devices were sold to Bakke  
21 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
22 or otherwise regulate the battery power and speed pursuant to which Bakke's Devices would  
23 operate. Accordingly, not only were Bakke's Devices defective at the point of sale due to the  
24 Defect, but Apple exacerbated the problems with Bakke's Devices via its misrepresentations  
25 and omissions with the iOS software Updates. As a result of Apple's actions, Bakke did not  
26 receive the benefit of her bargain, and was injured as a result. If Bakke had been told of the  
27  
28

1 Defect and the deceptive manner in which Apple would damage the Devices after sale, Bakke  
2 would not have purchased the Devices, or would have paid substantially less for it.

3 **TENNESSEE**

4 207. **Plaintiff Jodi Johnson** is a resident and citizen of the State of Tennessee and she  
5 purchased an iPhone 5s in or around 2015 in Tennessee. Prior to her purchase of the Device,  
6 she did not know, nor could she have known through reasonable diligence, of the Defect in her  
7 Device. At time of initial purchase, the Device operated on iOS 7. Johnson downloaded and  
8 installed iOS 11 on her Device in or around November or December 2017.

9 208. Not only did Johnson's Device not operate as Apple warranted and promised  
10 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
11 would cause the way Johnson's Device operated to fundamentally change. Johnson's Device,  
12 particularly after installation of iOS 11, did not operate as promised in Apple's advertisements,  
13 representations, and the information publicly available in the marketplace. Additionally, none  
14 of the packaging in which the Device was sold to Johnson revealed that there was any Defect or  
15 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
16 power and speed pursuant to which Johnson's Device would operate. Accordingly, not only  
17 was Johnson's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
18 problems with Johnson's Device via its misrepresentations and omissions with the iOS software  
19 Updates. As a result of Apple's actions, Johnson did not receive the benefit of her bargain, and  
20 was injured as a result. If Johnson had been told of the Defect and the deceptive manner in  
21 which Apple would damage the Device after sale, Johnson would not have purchased the  
22 Device, or would have paid substantially less for it.

23 **TEXAS**

24 209. **Plaintiff Lillie Reap Diaz** is a resident and citizen of the State of Texas and she  
25 purchased an iPhone 6 in 2015. Prior to her purchase of the Device, she did not know, nor  
26 could she have known through reasonable diligence, of the Defect in her Device.  
27  
28

210. Not only did Diaz’s Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Diaz’s Device operated to fundamentally change. Diaz’s Device, particularly after installation of an iOS update in late 2016/early 2017, did not operate as promised in Apple’s advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Diaz revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery power and speed pursuant to which Diaz’s Device would operate. Accordingly, not only was Diaz’s Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Diaz’s Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple’s actions, Diaz did not receive the benefit of her bargain, and was injured as a result. If Diaz had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Diaz would not have purchased the Device, or would have paid substantially less for it.

**TEXAS**

211. **Plaintiff Craig Jonathan Moore** is a resident and citizen of the State of Texas and he purchased four (4) iPhone 6's in or about May 2016. He purchased an iPhone 6 in or about September 2017. He purchased an iPhone 7 on or about March 23, 2017. He purchased an iPhone 7 Plus on or about August 2017. He purchased an iPhone 7 on or about September 2, 2017. He also purchased an iPhone 7 Plus on or about October 18, 2017. Prior to his purchases of the Devices, he did not know, nor could he have known through reasonable diligence, of the Defect in his Devices.

212. Not only did Moore's Devices not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS updates would cause the way Moore's Devices operated to fundamentally change. Moore's Devices did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Devices were sold to Moore

1 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
2 or otherwise regulate the battery power and speed pursuant to which Moore’s Devices would  
3 operate. Accordingly, not only were Moore’s Devices defective at the point of sale due to the  
4 Defect, but Apple exacerbated the problems with Moore’s Devices via its misrepresentations  
5 and omissions with the iOS software Updates. As a result of Apple’s actions, Moore did not  
6 receive the benefit of his bargain, and was injured as a result. If Moore had been told of the  
7 Defect and the deceptive manner in which Apple would damage the Devices after sale, Moore  
8 would not have purchased the Devices, or would have paid substantially less for it.

#### 9 UTAH

10 213. **Plaintiff Annamarie Vinacco** is a resident and citizen of the State of Utah and  
11 she purchased an iPhone 6 Plus in the fall of 2014 and an iPad Pro in 2016. Prior to her  
12 purchase of the Devices, she did not know, nor could she have known through reasonable  
13 diligence, of the Defect in her Devices. At time of initial purchase, her iPhone 6 Plus operated  
14 on iOS 8 and her iPad Pro operated on iOS 9.

15 214. Not only did Vinacco’s Devices not operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
17 would cause the way Vinacco’s Devices operated to fundamentally change. Vinacco’s Devices,  
18 particularly after installation of iOS 11, did not operate as promised in Apple’s advertisements,  
19 representations, and the information publicly available in the marketplace. Additionally, none  
20 of the packaging in which the Devices were sold to Vinacco revealed that there was any Defect  
21 or that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery  
22 power and speed pursuant to which Vinacco’s Devices would operate. Accordingly, not only  
23 were Vinacco’s Devices defective at the point of sale due to the Defect, but Apple exacerbated  
24 the problems with Vinacco’s Devices via its misrepresentations and omissions with the iOS  
25 software Updates. As a result of Apple’s actions, Vinacco did not receive the benefit of her  
26 bargain and was injured as a result. If Vinacco had been told of the Defect and the deceptive  
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1 manner in which Apple would damage the Devices after sale, Vinacco would not have  
2 purchased the Devices, or would have paid substantially less for them.

### 3 UTAH

4 215. **Plaintiff Henry Becker** is a resident and citizen of the State of Utah and he  
5 purchased an iPhone 6 Plus for himself on March 30, 2015 in Utah and an iPhone 6 for his wife  
6 on June 2, 2015 in Utah. Prior to his purchase of the Devices, he did not know, nor could he  
7 have known through reasonable diligence, of the Defect in his Devices. At time of initial  
8 purchase, their iPhone 6 and 6 Plus operated on iOS 8, and the iPhone X Devices operated on  
9 iOS 11. Becker and his wife downloaded and installed iOS 11 on their iPhone 6 and 6 Plus  
10 Devices in the fall of 2017.

11 216. Not only did Becker's Devices not operate as Apple warranted and promised  
12 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
13 would cause the way Becker's Devices operated to fundamentally change. Becker's Devices,  
14 particularly after installation of iOS 11, did not operate as promised in Apple's advertisements,  
15 representations, and the information publicly available in the marketplace. Additionally, none  
16 of the packaging in which the Devices were sold to Becker revealed that there was any Defect  
17 or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
18 power and speed pursuant to which Becker's Devices would operate. Accordingly, not only  
19 were Becker's Devices defective at the point of sale due to the Defect, but Apple exacerbated  
20 the problems with Becker's Devices via its misrepresentations and omissions with the iOS  
21 software Updates. As a result of Apple's actions, Becker did not receive the benefit of his  
22 bargain and was injured as a result. If Becker had been told of the Defect and the deceptive  
23 manner in which Apple would damage the Devices after sale, Becker would not have purchased  
24 the Devices, or would have paid substantially less for them.

### 25 VERMONT

26 217. **Plaintiff Georgiana D'Alessandro** is a resident and citizen of the State of  
27 Vermont and she purchased an iPhone 6 in or about March 2015. Prior to her purchase of the  
28



1 Device, she did not know, nor could she have known through reasonable diligence, of the  
 2 Defect in her Device. D'Alessandro downloaded and installed iOS updates as recommended.

3 218. Not only did D'Alessandro's Device not operate as Apple warranted and  
 4 promised initially, but Apple never represented or warranted that iOS updates would cause the  
 5 way D'Alessandro's Device operated to fundamentally change. D'Alessandro's Device did not  
 6 operate as promised in Apple's advertisements, representations, and the information publicly  
 7 available in the marketplace. Additionally, none of the packaging in which the Device was sold  
 8 to D'Alessandro revealed that there was any Defect or that Apple would use the Updates to  
 9 "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which  
 10 D'Alessandro's Device would operate. Accordingly, not only was D'Alessandro's Device  
 11 defective at the point of sale due to the Defect, but Apple exacerbated the problems with  
 12 D'Alessandro's Device via its misrepresentations and omissions with the iOS software Updates.  
 13 As a result of Apple's actions, D'Alessandro did not receive the benefit of her bargain, and was  
 14 injured as a result. If D'Alessandro had been told of the Defect and the deceptive manner in  
 15 which Apple would damage the Device after sale, D'Alessandro would not have purchased the  
 16 Device, or would have paid substantially less for it.

## 17 VIRGINIA

18 219. **Plaintiff Aurelia Flores** is a resident and citizen of the Commonwealth of  
 19 Virginia and she purchased an iPhone 6s and iPad Mini. Prior to her purchase of the Devices,  
 20 she did not know, nor could she have known through reasonable diligence of the Defect in her  
 21 Devices. At time of initial purchase, the Devices operated on the current version of iOS at that  
 22 time. Flores downloaded and installed version 11.4 of iOS on her Devices.

23 220. Not only did Flores's Devices not operate as Apple warranted and promised  
 24 initially, but Apple never represented or warranted that version 11.4 of iOS or any of the future  
 25 updates would cause the way Flores's Devices operated to fundamentally change. Flores's  
 26 Devices, particularly after installation of version 11.4 of iOS, did not operate as promised in  
 27 Apple's advertisements, representations, and the information publicly available in the  
 28

1 marketplace. Additionally, none of the packaging in which the Devices were sold to Flores  
2 revealed that there was any Defect or that Apple would use the Updates to “smooth,” “throttle,”  
3 or otherwise regulate the battery power and speed pursuant to which Flore’s Devices would  
4 operate. Accordingly, not only were Flore’s Devices defective at the point of sale due to the  
5 Defect, but Apple exacerbated the problems with Flore’s Devices via its misrepresentations and  
6 omissions with the iOS software Updates. As a result of Apple’s actions, Flores did not receive  
7 the benefit of her bargain, and was injured as a result. If Flores had been told of the Defect and  
8 the deceptive manner in which Apple would damage the Devices after sale, Flores would not  
9 have purchased the Devices, or would have paid substantially less for them.

#### 10 WASHINGTON

11 221. **Plaintiff Thomas Anthony Ciccone** is a resident and citizen of the State of  
12 Washington and he purchased an iPhone 5s on or about June 2014 and an iPhone 6s in or about  
13 June 2017. Prior to his purchase of the Devices, he did not know, nor could he have known  
14 through reasonable diligence, of the Defect in his Devices.

15 222. Not only did Ciccone’s Devices not operate as Apple warranted and promised  
16 initially, but Apple never represented or warranted that iOS updates would cause the way  
17 Ciccone’s Devices operated to fundamentally change. Ciccone’s Devices did not operate as  
18 promised in Apple’s advertisements, representations, and the information publicly available in  
19 the marketplace. Additionally, none of the packaging in which the Devices were sold to  
20 Ciccone revealed that there was any Defect or that Apple would use the Updates to “smooth,”  
21 “throttle,” or otherwise regulate the battery power and speed pursuant to which Ciccone’s  
22 Device would operate. Accordingly, not only was Ciccone’s Devices defective at the point of  
23 sale due to the Defect, but Apple exacerbated the problems with Ciccone’s Devices via its  
24 misrepresentations and omissions with the iOS software Updates. As a result of Apple’s  
25 actions, Ciccone did not receive the benefit of his bargain, and was injured as a result. If  
26 Ciccone had been told of the Defect and the deceptive manner in which Apple would damage  
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1 the Devices after sale, Ciccone would not have purchased the Devices or would have paid  
2 substantially less for them.

### 3 WASHINGTON

4 223. **Plaintiff Kristopher Kingston** is a resident and citizen of the State of  
5 Washington and he purchased an iPhone 6s Plus on June 11, 2016 in Washington. Prior to his  
6 purchase of his Device, he did not know, nor could he have known through reasonable  
7 diligence, of the Defect in his Device. At time of initial purchase, his Device operated on iOS  
8 9. Kingston downloaded and installed iOS 11 on the Device in the fall of 2017.

9 224. Not only did Kingston's Device not operate as Apple warranted and promised  
10 initially, but Apple never represented or warranted that iOS 11 or any of the future updates  
11 would cause the way Kingston's Device operated to fundamentally change. Kingston's Device,  
12 particularly after installation of iOS 11, did not operate as promised in Apple's advertisements,  
13 representations, and the information publicly available in the marketplace. Additionally, none  
14 of the packaging in which the Device was sold to Kingston revealed that there was any Defect  
15 or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
16 power and speed pursuant to which Kingston's Device would operate. Accordingly, not only  
17 was Kingston's Device defective at the point of sale due to the Defect, but Apple exacerbated  
18 the problems with Kingston's Device via its misrepresentations and omissions with the iOS  
19 software Updates. As a result of Apple's actions, Kingston did not receive the benefit of his  
20 bargain, and was injured as a result. If Kingston had been told of the Defect and the deceptive  
21 manner in which Apple would damage the Device after sale, Kingston would not have  
22 purchased the Device, or would have paid substantially less for it.

### 23 WEST VIRGINIA

24 225. **Plaintiff Tonya Margarette Thompson** is a resident and citizen of the State of  
25 West Virginia and she purchased an iPhone 5c and two iPhone 6s Pluses in or about September  
26 2016. Plaintiff also purchased two iPhone 7 Pluses in or about September 2017. Prior to her  
27  
28

1 purchase of the Devices, she did not know, nor could she have known through reasonable  
2 diligence, of the Defect in her Devices.

3 226. Not only did Thompson's Devices not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that iOS would cause the way Thompson's  
5 Devices operated to fundamentally change. Thompson's Devices did not operate as promised in  
6 Apple's advertisements, representations, and the information publicly available in the  
7 marketplace. Additionally, none of the packaging in which the Devices were sold to Thompson  
8 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
9 or otherwise regulate the battery power and speed pursuant to which Thompson's Devices  
10 would operate. Accordingly, not only were Thompson's Devices defective at the point of sale  
11 due to the Defect, but Apple exacerbated the problems with Thompson's Devices via its  
12 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
13 actions, Thompson did not receive the benefit of her bargain, and was injured as a result. If  
14 Thompson had been told of the Defect and the deceptive manner in which Apple would damage  
15 the Devices after sale, Thompson would not have purchased the Devices, or would have paid  
16 substantially less for them.

#### 17 WISCONSIN

18 227. **Plaintiff Dale Johnson** is a resident and citizen of the State of Wisconsin and he  
19 purchased multiple generations of the iPhone in Wisconsin, including an iPhone 6 on April 3,  
20 2015, an iPhone 6s Plus on March 1, 2016, and an iPhone 7 Plus on May 1, 2017. Prior to his  
21 purchase of the Device, he did not know, nor could he have known through reasonable  
22 diligence, of the Defect in his Device. At time of initial purchase, the Device operated on iOS  
23 9. Johnson downloaded and installed iOS 11.2 on his Device in December 2017.

24 228. Not only did Johnson's Device not operate as Apple warranted and promised  
25 initially, but Apple never represented or warranted that iOS 11.2 or any of the future updates  
26 would cause the way Johnson's Device operated to fundamentally change. Johnson's Device,  
27 particularly after installation of iOS 11.2, did not operate as promised in Apple's  
28

1 advertisements, representations, and the information publicly available in the marketplace.  
2 Additionally, none of the packaging in which the Device was sold to Johnson revealed that there  
3 was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise  
4 regulate the battery power and speed pursuant to which Johnson’s Device would operate.  
5 Accordingly, not only was Johnson’s Device defective at the point of sale due to the Defect, but  
6 Apple exacerbated the problems with Johnson’s Device via its misrepresentations and  
7 omissions with the iOS software Updates. As a result of Apple’s actions, Johnson did not  
8 receive the benefit of his bargain and was injured as a result. If Johnson had been told of the  
9 Defect and the deceptive manner in which Apple would damage the Device after sale, Johnson  
10 would not have purchased the Device, or would have paid substantially less for it.

#### 11 WISCONSIN

12 229. **Plaintiff Kyle Herman** is a resident and citizen of the State of Wisconsin and he  
13 purchased an iPhone 6 on March 14, 2016 in Wisconsin. Prior to his purchase of the Device, he  
14 did not know, nor could he have known through reasonable diligence, of the Defect in his  
15 Device. At time of initial purchase, the Device operated on its factory-installed iOS versions.  
16 Herman downloaded and installed iOS 10.0 on his Device in September 2016.

17 230. Not only did Herman’s Device not operate as Apple warranted and promised  
18 initially, but Apple never represented or warranted that iOS 10.0 or any of the future updates  
19 would cause the way Herman’s Device operated to fundamentally change. Herman’s Device,  
20 for example after installation of iOS 10.0, did not operate as promised in Apple’s  
21 advertisements, representations, and the information publicly available in the marketplace.  
22 Additionally, none of the packaging in which the Device was sold to Herman revealed that there  
23 was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise  
24 regulate the battery power and speed pursuant to which Herman’s Device would operate.  
25 Accordingly, not only was Herman’s Device defective at the point of sale due to the Defect, but  
26 Apple exacerbated the problems with Herman’s Devices via its misrepresentations and  
27 omissions with the iOS software Updates. As a result of Apple’s actions, Herman did not  
28

1 receive the benefit of his bargain and was injured as a result. If Herman had been told of the  
 2 Defect and the deceptive manner in which Apple would damage the Devices after sale, Herman  
 3 would not have purchased the Devices, or would have paid substantially less for them.

#### 4 WYOMING

5 231. **Plaintiff Quinn Lewis** is a resident and citizen of the State of Wyoming and he  
 6 purchased an iPhone 6 on November 24, 2017 in Wyoming. Prior to his purchase of the  
 7 Device, he did not know, nor could he have known through reasonable diligence, of the Defect  
 8 in his Device. At time of initial purchase, the Device operated on its factory-installed iOS.  
 9 Lewis downloaded and installed iOS 11.3 on his Device in or around April 2018.

10 232. Not only did Lewis's Device not operate as Apple warranted and promised  
 11 initially, but Apple never represented or warranted that iOS 11.3 or any of the future updates  
 12 would cause the way Lewis's Device operated to fundamentally change. Lewis's Device,  
 13 particularly after installation of iOS 11.3, did not operate as promised in Apple's  
 14 advertisements, representations, and the information publicly available in the marketplace.  
 15 Additionally, none of the packaging in which the Device was sold to Lewis revealed that there  
 16 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
 17 regulate the battery power and speed pursuant to which Lewis's Device would operate.  
 18 Accordingly, not only was Lewis's Device defective at the point of sale due to the Defect, but  
 19 Apple exacerbated the problems with Lewis's Device via its misrepresentations and omissions  
 20 with the iOS software Updates. As a result of Apple's actions, Lewis did not receive the benefit  
 21 of his bargain and was injured as a result. If Lewis had been told of the Defect and the  
 22 deceptive manner in which Apple would damage the Device after sale, Lewis would not have  
 23 purchased the Device, or would have paid substantially less for it.

#### 24 PUERTO RICO

25 233. **Plaintiff Shiriam Torres** is a resident and citizen of Puerto Rico and she  
 26 purchased an iPhone 6s in October 2015 in Puerto Rico and an iPhone 7 Plus in March 2017 in  
 27 Puerto Rico. Prior to her purchase of the Devices, she did not know, nor could she have known  
 28

1 through reasonable diligence, of the Defect in her Devices. At time of initial purchase, her  
2 iPhone 6s operated on iOS 9 and her iPhone 7 Plus operated on iOS 10.

3 234. Not only did Torres's Devices not operate as Apple warranted and promised  
4 initially, but Apple never represented or warranted that any of the future iOS updates would  
5 cause the way Torres's Devices operated to fundamentally change. Torres's Devices,  
6 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
7 advertisements, representations, and the information publicly available in the marketplace.  
8 Additionally, none of the packaging in which the Devices were sold to Torres revealed that  
9 there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
10 regulate the battery power and speed pursuant to which Torres's Devices would operate.  
11 Accordingly, not only were Torres's Devices defective at the point of sale due to the Defect, but  
12 Apple exacerbated the problems with Torres's Devices via its misrepresentations and omissions  
13 with the iOS software Updates. As a result of Apple's actions, Torres did not receive the  
14 benefit of her bargain and was injured as a result. If Torres had been told of the Defect and the  
15 deceptive manner in which Apple would damage the Devices after sale, Torres would not have  
16 purchased the Devices, or would have paid substantially less for them.

#### 17 VIRGIN ISLANDS (US)

18 235. **Plaintiff Adam Shapiro** is a resident and citizen of the United States Virgin  
19 Islands and he purchased two iPhone 6s Devices for his wife and child on October 25, 2015 in  
20 Florida and an iPhone 7 Plus for himself on September 21, 2016 online. Shapiro has also  
21 purchased multiple generations of iPad Devices. Prior to his purchase of the Devices, he did not  
22 know, nor could he have known through reasonable diligence of the Defect in his Devices. At  
23 time of initial purchase, the Devices operated on their factory-installed iOS version.

24 236. Not only did Shapiro's Devices not operate as Apple warranted and promised  
25 initially, but Apple never represented or warranted that any of the future iOS updates would  
26 cause the way Shapiro's Devices operated to fundamentally change. Shapiro's Devices,  
27 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
28



1 advertisements, representations, and the information publicly available in the marketplace.  
2 Additionally, none of the packaging in which the Devices were sold to Shapiro revealed that  
3 there was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise  
4 regulate the battery power and speed pursuant to which Shapiro’s Devices would operate.  
5 Accordingly, not only were Shapiro’s Devices defective at the point of sale due to the Defect,  
6 but Apple exacerbated the problems with Shapiro’s Devices via its misrepresentations and  
7 omissions with the iOS software Updates. As a result of Apple’s actions, Shapiro did not  
8 receive the benefit of his bargain and was injured as a result. If Shapiro had been told of the  
9 Defect and the deceptive manner in which Apple would damage the Devices after sale, Shapiro  
10 would not have purchased the Devices, or would have paid substantially less for them.

#### 11 **BELGIUM**

12 237. **Plaintiff Marianne Wagner** is a resident and citizen of the Country of Belgium  
13 and she purchased an iPhone 6s in June 2017. Prior to her purchase of the Device, she did not  
14 know, nor could she have known through reasonable diligence, of the Defect in her Device.  
15 Wagner downloaded and installed the first iOS update available on her Device.

16 238. Not only did Wagner’s Device not operate as Apple warranted and promised  
17 initially, but Apple never represented or warranted that iOS updates would cause the way  
18 Wagner’s Device operated to fundamentally change. Wagner’s Device, particularly after  
19 installation of her initial iOS update, did not operate as promised in Apple’s advertisements,  
20 representations, and the information publicly available in the marketplace. Additionally, none  
21 of the packaging in which the Device was sold to Wagner revealed that there was any Defect or  
22 that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery  
23 power and speed pursuant to which Wagner’s Device would operate. Accordingly, not only  
24 was Wagner’s Device defective at the point of sale due to the Defect, but Apple exacerbated the  
25 problems with Wagner’s Device via its misrepresentations and omissions with the iOS software  
26 Updates. As a result of Apple’s actions, Wagner did not receive the benefit of her bargain, and  
27 was injured as a result. If Wagner had been told of the Defect and the deceptive manner in  
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1 which Apple would damage the Device after sale, Wagner would not have purchased the  
2 Device, or would have paid substantially less for it.

3 **BRAZIL**

4 239. **Plaintiff Guilherme Canoa de Oliveira** is a resident and citizen of Brazil and  
5 he purchased an iPhone 6s on November 17, 2016. Prior to his purchase of the Device, he did  
6 not know, nor could he have known through reasonable diligence, of the Defect in his Device.  
7 At time of initial purchase, the Device operated on iOS 9. Canoa de Oliveira downloaded and  
8 installed iOS 11.2.2 on his Device in or around January 2018.

9 240. Not only did Canoa de Oliveira's Device not operate as Apple warranted and  
10 promised initially, but Apple never represented or warranted that iOS 11.2.2 or any of the future  
11 updates would cause the way Canoa de Oliveira's Device operated to fundamentally change.  
12 Canoa de Oliveira's Device, particularly after installation of iOS 11.2.2, did not operate as  
13 promised in Apple's advertisements, representations, and the information publicly available in  
14 the marketplace. Additionally, none of the packaging in which the Device was sold to Canoa de  
15 Oliveira revealed that there was any Defect or that Apple would use the Updates to "smooth,"  
16 "throttle," or otherwise regulate the battery power and speed pursuant to which Canoa de  
17 Oliveira's Device would operate. Accordingly, not only was Canoa de Oliveira's Device  
18 defective at the point of sale due to the Defect, but Apple exacerbated the problems with Canoa  
19 de Oliveira's Device via its misrepresentations and omissions with the iOS software Updates.  
20 As a result of Apple's actions, Canoa de Oliveira did not receive the benefit of his bargain and  
21 was injured as a result. If Canoa de Oliveira had been told of the Defect and the deceptive  
22 manner in which Apple would damage the Device after sale, Canoa de Oliveira would not have  
23 purchased the Device, or would have paid substantially less for it.

24 **CANADA**

25 241. **Plaintiff Hanpeng Chen** is a resident and citizen of Canada and he purchased an  
26 iPhone 6 in or around September 2015. Prior to his purchase of the Device, he did not know,  
27 nor could he have known through reasonable diligence, of the Defect in his Device. At time of  
28

1 initial purchase, his Device operated on iOS 8. In or around July 2016, Apple provided a new  
2 iPhone 6 to Chen when his original Device had color distortion on its screen. Chen downloaded  
3 iOS 11 on his new Device in or around October 2017.

4 242. Not only did Chen's Device not operate as Apple warranted and promised  
5 initially, but Apple never represented or warranted that any of the future iOS updates would  
6 cause the way Chen's Device operated to fundamentally change. Chen's Device, particularly  
7 after installation of iOS 11, did not operate as promised in Apple's advertisements,  
8 representations, and the information publicly available in the marketplace. Additionally, none  
9 of the packaging in which the Device was sold to Chen revealed that there was any Defect or  
10 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
11 power and speed pursuant to which Chen's Device would operate. Accordingly, not only were  
12 Chen's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
13 problems with Chen's Device via its misrepresentations and omissions with the iOS software  
14 Updates. As a result of Apple's actions, Chen did not receive the benefit of his bargain and was  
15 injured as a result. If Chen had been told of the Defect and the deceptive manner in which  
16 Apple would damage the Device after sale, Chen would not have purchased the Device, or  
17 would have paid substantially less for it.

#### 18 CANADA

19 243. **Plaintiff Elisa Gaudio** is a resident and citizen of Canada and she purchased an  
20 iPhone 6 Plus November 11, 2014. Prior to her purchase of the Device, she did not know, nor  
21 could she have known through reasonable diligence, of the Defect in her Device. At time of  
22 initial purchase, her Device operated on iOS 9.

23 244. Not only did Gaudio's Device not operate as Apple warranted and promised  
24 initially, but Apple never represented or warranted that any of the future iOS updates would  
25 cause the way Gaudio's Device operated to fundamentally change. Gaudio's Devices,  
26 particularly after installation of subsequent iOS versions, did not operate as promised in Apple's  
27 advertisements, representations, and the information publicly available in the marketplace.  
28

1 Additionally, none of the packaging in which the Device was sold to Gaudio revealed that there  
 2 was any Defect or that Apple would use the Updates to “smooth,” “throttle,” or otherwise  
 3 regulate the battery power and speed pursuant to which Gaudio’s Device would operate.  
 4 Accordingly, not only was Gaudio’s Device defective at the point of sale due to the Defect, but  
 5 Apple exacerbated the problems with Gaudio’s Device via its misrepresentations and omissions  
 6 with the iOS software Updates. As a result of Apple’s actions, Gaudio did not receive the  
 7 benefit of her bargain and was injured as a result. If Gaudio had been told of the Defect and the  
 8 deceptive manner in which Apple would damage the Device after sale, Gaudio would not have  
 9 purchased the Device, or would have paid substantially less for it.

#### 10 CHILE

11 245. **Plaintiff Corporación Nacional de Consumidores y Usuarios de Chile**  
 12 (“CONADECUS”) is a private non-profit organization with its principal place of business in  
 13 Santiago, Chile. CONADECUS has represented hundreds of thousands Chilean consumers in  
 14 collective- or diffuse-interest actions to date. CONADECUS has standing to pursue this action  
 15 on behalf of its members or constituents under *Hunt v. Wash. State Apple Advertising Comm’n*,  
 16 432 U.S. 333 (1977). CONADECUS’s members, Chilean consumers, purchased the iPhone 5,  
 17 5s, 5c, 6, 6 Plus, 6s, 6s Plus, SE, 7, and 7 Plus Devices. Prior to their purchase of the Devices,  
 18 they did not know, nor could they have known through reasonable diligence, of the Defect in  
 19 their Devices.

20 246. Not only did CONADECUS’s members’ Devices not operate as Apple warranted  
 21 and promised initially, but Apple never represented or warranted that any of the future iOS  
 22 updates would cause the way CONADECUS’s members’ Devices operated to fundamentally  
 23 change. CONADECUS’s members’ Devices, particularly after installation of subsequent iOS  
 24 versions, did not operate as promised in Apple’s advertisements, representations, and the  
 25 information publicly available in the marketplace. Additionally, none of the packaging in  
 26 which the Devices were sold to CONADECUS’s members revealed that there was any Defect  
 27 or that Apple would use the Updates to “smooth,” “throttle,” or otherwise regulate the battery  
 28

1 power and speed pursuant to which CONADECUS's members' Devices would operate.  
 2 Accordingly, not only were CONADECUS's members' Devices defective at the point of sale  
 3 due to the Defect, but Apple exacerbated the problems with CONADECUS's members'  
 4 Devices via its misrepresentations and omissions with the iOS software Updates. As a result of  
 5 Apple's actions, CONADECUS's members did not receive the benefit of their bargain and were  
 6 injured as a result. If CONADECUS's members had been told of the Defect and the deceptive  
 7 manner in which Apple would damage the Devices after sale, CONADECUS's members would  
 8 not have purchased the Devices, or would have paid substantially less for them.

### 9 CHINA

10 247. **Plaintiff Kaixuan Ni** is a permanent resident of the United States residing in  
 11 California and a citizen of the People's Republic of China and he purchased an iPhone 6 Plus in  
 12 2015 in China. Prior to his purchases of the Device, he did not know, nor could he have known  
 13 through reasonable diligence, of the Defect in his Device. At time of initial purchase, his  
 14 Device operated on iOS 8.

15 248. Not only did Ni's Device not operate as Apple warranted and promised initially,  
 16 but Apple never represented or warranted that any of the future iOS updates would cause the  
 17 way Ni's Device operated to fundamentally change. Ni's Device, particularly after installation  
 18 of new iOS updates, did not operate as promised in Apple's advertisements, representations, and  
 19 the information publicly available in the marketplace. Additionally, none of the packaging in  
 20 which the Device was sold to Ni revealed that there was any Defect or that Apple would use the  
 21 Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to  
 22 which Ni's Device would operate. Accordingly, not only was Ni's Device defective at the point  
 23 of sale due to the Defect, but Apple exacerbated the problems with Ni's Device via its  
 24 misrepresentations and omissions with the iOS software Updates. As a result of Apple's  
 25 actions, Ni did not receive the benefit of his bargain, and was injured as a result. If Ni had been  
 26 told of the Defect and the deceptive manner in which Apple would damage the Device after  
 27 sale, Ni would not have purchased the Device, or would have paid substantially less for it.  
 28

**COLOMBIA**

249. **Plaintiff Dr. Juliana Caceres** is a citizen of Colombia and she purchased an iPhone 6s on December 1, 2016 at Mac Center in Bogotá, Colombia. Caceres is a pediatric pulmonologist working and residing in Bogotá, Colombia. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence, of the Defect in her Device. At time of initial purchase, the Device operated on iOS 10. Caceres' general practice is to update her software when it becomes available, and she upgraded to iOS 10.2.1.

250. Not only did Caceres' Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 10.2.1 or any of the future updates would cause the Device operation to fundamentally change. Caceres' Device, particularly after installation of iOS 10.2.1, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which the Device would operate. Accordingly, not only was the Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with the Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Caceres did not receive the benefit of her bargain, and was injured as a result. If Caceres had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Caceres would not have purchased the Device, or would have paid substantially less for it

**INDIA**

251. **Plaintiff Nakul Chandra** is a resident and citizen of India and he purchased an iPhone 7 on October 26, 2016. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence of the Defect in his Device. At time of initial purchase, the Device operated on the latest version of iOS at the time.

252. Not only did Chandra's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that any version of iOS or future updates would cause the way Chandra's Device operated to fundamentally change. Chandra's Device, after installation of versions of iOS did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Chandra revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Chandra's Device would operate. Accordingly, not only was Chandra's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Chandra's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Chandra did not receive the benefit of his bargain, and was injured as a result. If Chandra had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Chandra would not have purchased the Device, or would have paid substantially less for it.

## JAPAN

253. **Plaintiff Yuichi Murakami** is a citizen and resident of Japan and he purchased an iPhone 7 on March 10, 2017 in Japan. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence of the Defect in his Device. At time of initial purchase, the Device operated on the latest version of iOS at the time.

254. Not only did Murakami's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that any of the future iOS updates would cause the way Murakami's Device operated to fundamentally change. Murakami's Device, particularly after installation of subsequent iOS versions, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Murakami revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Murakami's Device would operate.



1 Accordingly, not only was Murakami's Device defective at the point of sale due to the Defect,  
2 but Apple exacerbated the problems with Murakami's Device via its misrepresentations and  
3 omissions with the iOS software Updates. As a result of Apple's actions, Murakami did not  
4 receive the benefit of her bargain, and was injured as a result. If Murakami had been told of the  
5 Defect and the deceptive manner in which Apple would damage the Device after sale,  
6 Murakami would not have purchased the Device, or would have paid substantially less for it.

### 7 MEXICO

8 255. **Plaintiff Linda Sonna** is a citizen of the United States and permanent resident of  
9 Mexico, and she purchased an iPhone SE on September 1, 2017. Prior to her purchase of the  
10 Device, she did not know, nor could she have known through reasonable diligence, of the  
11 Defect in her Device.

12 256. Not only did Sonna's Device not operate as Apple warranted and promised  
13 initially, but Apple never represented or warranted that any of the future iOS updates would  
14 cause the way Sonna's Device operated to fundamentally change. Sonna's Device, particularly  
15 after installation of subsequent iOS versions, did not operate as promised in Apple's  
16 advertisements, representations, and the information publicly available in the marketplace.  
17 Additionally, none of the packaging in which the Device was sold to Sonna revealed that there  
18 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
19 regulate the battery power and speed pursuant to which Sonna's Device would operate.  
20 Accordingly, not only was Sonna's Device defective at the point of sale due to the Defect, but  
21 Apple exacerbated the problems with Sonna's Device via its misrepresentations and omissions  
22 with the iOS software Updates. As a result of Apple's actions, Sonna did not receive the benefit  
23 of her bargain, and was injured as a result. If Sonna had been told of the Defect and the  
24 deceptive manner in which Apple would damage the Device after sale, Sonna would not have  
25 purchased the Device, or would have paid substantially less for it.

**THE NETHERLANDS**

257. **Plaintiff Lilav Akrawy** is a resident and citizen of the Netherlands and she purchased an iPhone 6 on November 13, 2014. Prior to her purchase of the Device, she did not know, nor could she have known through reasonable diligence of the Defect in her Device. At time of initial purchase, the Device operated on iOS 8. Akrawy downloaded and installed iOS 11 on her Device in or around September 2017.

258. Not only did Akrawy's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that iOS 11 or any of the future updates would cause the way Akrawy's Device operated to fundamentally change. Akrawy's Device, particularly after installation of iOS 11, did not operate as promised in Apple's advertisements, representations, and the information publicly available in the marketplace. Additionally, none of the packaging in which the Device was sold to Akrawy revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery power and speed pursuant to which Akrawy's Device would operate. Accordingly, not only was Akrawy's Device defective at the point of sale due to the Defect, but Apple exacerbated the problems with Akrawy's Device via its misrepresentations and omissions with the iOS software Updates. As a result of Apple's actions, Akrawy did not receive the benefit of her bargain, and was injured as a result. If Akrawy had been told of the Defect and the deceptive manner in which Apple would damage the Device after sale, Akrawy would not have purchased the Device, or would have paid substantially less for it.

**NORWAY**

259. **Plaintiff Burim Daci** is a resident and citizen of Norway and he purchased an iPhone 6s in December 2016. Prior to his purchase of the Device, he did not know, nor could he have known through reasonable diligence of the Defect in his Device. At time of initial purchase, the Device operated on the latest version of iOS.

260. Not only did Daci's Device not operate as Apple warranted and promised initially, but Apple never represented or warranted that any version of iOS or any future updates

1 would cause the way Daci's Device operated to fundamentally change. Daci's Device, after  
2 installation of various versions of iOS, did not operate as promised in Apple's advertisements,  
3 representations, and the information publicly available in the marketplace. Additionally, none  
4 of the packaging in which the Device was sold to DACI revealed that there was any Defect or  
5 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
6 power and speed pursuant to which Daci's Device would operate. Accordingly, not only was  
7 Daci's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
8 problems with Daci's Device via its misrepresentations and omissions with the iOS software  
9 Updates. As a result of Apple's actions, Daci did not receive the benefit of his bargain, and was  
10 injured as a result. If Daci had been told of the Defect and the deceptive manner in which  
11 Apple would damage the Device after sale, Daci would not have purchased the Device, or  
12 would have paid substantially less for it.

#### 13 PERU

14 261. **Plaintiff Pedro Luis Espejo Miranda** is a resident and citizen of Peru and he  
15 purchased an iPhone 5s at the end of 2013. Prior to his purchase of the Device, he did not  
16 know, nor could she have known through reasonable diligence of the Defect in his Device. At  
17 time of initial purchase, the Device operated on the current version of iOS at that time.

18 262. Not only did Espejo's Device not operate as Apple warranted and promised  
19 initially, but Apple never represented or warranted that any versions of iOS or any of the future  
20 updates would cause the way Espejo's Device operated to fundamentally change. Espejo's  
21 Device, after installation of versions of iOS, did not operate as promised in Apple's  
22 advertisements, representations, and the information publicly available in the marketplace.  
23 Additionally, none of the packaging in which the Device was sold to Espejo revealed that there  
24 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
25 regulate the battery power and speed pursuant to which Espejo's Devices would operate.  
26 Accordingly, not only was Espejo's Device defective at the point of sale due to the Defect, but  
27 Apple exacerbated the problems with Espejo's Device via its misrepresentations and omissions  
28

1 with the iOS software Updates. As a result of Apple's actions, Espejo did not receive the  
2 benefit of his bargain, and was injured as a result. If Espejo had been told of the Defect and the  
3 deceptive manner in which Apple would damage the Devices after sale, ESPEJO would not  
4 have purchased the Device, or would have paid substantially less for it.

#### 5 **RUSSIA**

6 263. **Plaintiff Roman Dubianskii** is a resident and citizen of Russia and he purchased  
7 an iPhone 5s in December 2013. Prior to his purchase of the Device, he did not know, nor  
8 could he have known through reasonable diligence, of the Defect in his Device. At time of  
9 initial purchase, the Device operated on the current version of iOS.

10 264. Not only did Dubianskii's Device not operate as Apple warranted and  
11 promised initially, but Apple never represented or warranted that versions of iOS or any of the  
12 future updates would cause the way Dubianskii's Device operated to fundamentally change.  
13 Dubianskii's Device, after installation of versions of iOS, did not operate as promised in  
14 Apple's advertisements, representations, and the information publicly available in the  
15 marketplace. Additionally, none of the packaging in which the Device was sold to Dubianskii  
16 revealed that there was any Defect or that Apple would use the Updates to "smooth," "throttle,"  
17 or otherwise regulate the battery power and speed pursuant to which Dubianskii's Device would  
18 operate. Accordingly, not only was Dubianskii's Device defective at the point of sale due to the  
19 Defect, but Apple exacerbated the problems with Dubianskii's Device via its misrepresentations  
20 and omissions with the iOS software Updates. As a result of Apple's actions, Dubianskii did  
21 not receive the benefit of his bargain, and was injured as a result. If Dubianskii had been told of  
22 the Defect and the deceptive manner in which Apple would damage the Device after sale,  
23 Dubianskii would not have purchased the Device, or would have paid substantially less for it.

#### 24 **SOUTH KOREA**

25 265. **Plaintiff Heekyung Jo** is a resident and citizen of South Korea and she  
26 purchased an iPhone 6 in or about 2014. Prior to her purchase of the Device, she did not know,  
27  
28

1 nor could she have known through reasonable diligence, of the Defect in her Device. Jo  
2 downloaded and installed iOS updates as recommended.

3 266. Not only did Jo's Device not operate as Apple warranted and promised initially,  
4 but Apple never represented or warranted that iOS updates would cause the way Jo's Device  
5 operated to fundamentally change. Jo's Device did not operate as promised in Apple's  
6 advertisements, representations, and the information publicly available in the marketplace.  
7 Additionally, none of the packaging in which the Device was sold to Jo revealed that there was  
8 any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise regulate  
9 the battery power and speed pursuant to which Jo's Device would operate. Accordingly, not  
10 only was Jo's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
11 problems with Jo's Device via its misrepresentations and omissions with the iOS software  
12 Updates. As a result of Apple's actions, Jo did not receive the benefit of her bargain, and was  
13 injured as a result. If Jo had been told of the Defect and the deceptive manner in which Apple  
14 would damage the Device after sale, Jo would not have purchased the Device, or would have  
15 paid substantially less for it.

#### 16 SOUTH KOREA

17 267. **Plaintiff Youngro Lee** is a resident and citizen of the South Korea, and he  
18 purchased an iPhone 6s on or about November 2015. Prior to his purchase of the Device, he did  
19 not know, nor could he have known through reasonable diligence, of the Defect in her Device.  
20 Lee downloaded and installed the iOS updates on his Device as recommended.

21 268. Not only did Lee's Device not operate as Apple warranted and promised  
22 initially, but Apple never represented or warranted that iOS updates would cause the way Lee's  
23 Device operated to fundamentally change. Lee's Device did not operate as promised in Apple's  
24 advertisements, representations, and the information publicly available in the marketplace.  
25 Additionally, none of the packaging in which the Device was sold to Lee revealed that there  
26 was any Defect or that Apple would use the Updates to "smooth," "throttle," or otherwise  
27 regulate the battery power and speed pursuant to which Lee's Device would operate.  
28

1 Accordingly, not only was Lee's Device defective at the point of sale due to the Defect, but  
2 Apple exacerbated the problems with Lee's Device via its misrepresentations and omissions  
3 with the iOS software Updates. As a result of Apple's actions, Lee did not receive the benefit  
4 of her bargain, and was injured as a result. If Lee had been told of the Defect and the deceptive  
5 manner in which Apple would damage the Device after sale, Lee would not have purchased the  
6 Device, or would have paid substantially less for it.

#### 7 UNITED KINGDOM

8 269. **Plaintiff Kushagra Sharma** is a resident and citizen of the United Kingdom and  
9 he purchased an iPhone 6 Plus in April 2016. Prior to his purchase of the Device, he did not  
10 know, nor could he have known through reasonable diligence of the Defect in his Device. At  
11 time of initial purchase, the Device operated on the latest version of iOS.

12 270. Not only did Sharma's Device not operate as Apple warranted and promised  
13 initially, but Apple never represented or warranted that any version of iOS or any future updates  
14 would cause the way Sharma's Device operated to fundamentally change. Sharma's Device,  
15 after installation of a version of iOS, did not operate as promised in Apple's advertisements,  
16 representations, and the information publicly available in the marketplace. Additionally, none  
17 of the packaging in which the Device was sold to Sharma revealed that there was any Defect or  
18 that Apple would use the Updates to "smooth," "throttle," or otherwise regulate the battery  
19 power and speed pursuant to which Sharma's Device would operate. Accordingly, not only was  
20 Sharma's Device defective at the point of sale due to the Defect, but Apple exacerbated the  
21 problems with Sharma's Device via its misrepresentations and omissions with the iOS software  
22 Updates. As a result of Apple's actions, Sharma did not receive the benefit of his bargain, and  
23 was injured as a result. If Sharma had been told of the Defect and the deceptive manner in  
24 which Apple would damage the Device after sale, Sharma would not have purchased the  
25 Device, or would have paid substantially less for it.

**B. Defendants and Their Relevant Corporate Structure**

271. Apple Inc. (“Apple”), is a corporation that was created under the laws of the State of California, and has its principal place of business in Cupertino, California. Apple is the world’s largest information technology company by revenue and the world’s third-largest mobile phone developer. There are currently over one billion Apple products in active use worldwide.

272. Throughout the events at issue here, Apple has operated through its directors, officers, employees and agents, and each such person acted within the course and scope of such agency, representation or employment and was acting with the consent, permission and authorization of Apple.

273. Apple has represented that the “design, manufacture, and testing” of the Devices “has always been done by [ ] Apple Inc., which is based in California.” *See* Exhibit 4 (Transcript of House of Commons Standing Committee on Industry, Science, and Technology).

**CHOICE OF LAW: DESIGNED BY APPLE IN CUPERTINO, CALIFORNIA**

274. By using their Devices or downloading a software update, Device users are presented with the iOS Software License Agreement. There are separate Software License Agreements for each version of iOS software including: iPhone iOS 3.1, iOS 4.1, iOS 5.0, iOS 5.1, iOS 6.0, iOS 7.0, iOS 8.0, iOS 8.1, iOS 9.0, iOS 9.1, iOS 10, iOS 11, and iOS 11.2. The agreements do not differ in material terms, and provide that California law governs the agreements<sup>8</sup>:

**12. Controlling Law and Severability.** This License will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If you are a consumer based in the United Kingdom, this License will be governed by the laws of the jurisdiction of your residence. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

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<sup>8</sup> California law applies unless the consumer is based in the United Kingdom. A subclass is bringing their claims based upon the United Kingdom’s licensing agreements, and choice of law provisions therein. As will be demonstrated by Plaintiffs in their subsequent class certification



1           275. *See, e.g.*, Exhibits 5, 6 (Samples of Agreements).

2           276. To the extent they apply, the iOS Software Licensing Agreements are effective at  
3 the point of sale—as soon as the customers turn on their Devices—and are thus part of the  
4 benefit of the consumers’ bargain. Without the iOS, for which there is a purported licensing  
5 agreement, the Devices simply do not work.

6           277. Apple elected to have California law govern all claims and disputes concerning  
7 the common software required to operate all of the Devices at issue in this lawsuit.  
8 Accordingly, the application of California law to all of the class members’ claims is fair,  
9 appropriate, and an election affirmatively made by Apple consistent in its agreements.

10          278. By using their Devices, consumers are told that they agree to be bound by  
11 California law as consumers must run Apple’s proprietary iOS to use their Devices.

12          279. Beyond Apple’s election of California law to govern the claims described herein,  
13 the State of California has a significant interest in regulating the conduct of businesses operating  
14 within its borders. California, which seeks to protect the rights and interests of California and  
15 all residents and citizens of the United States against a company headquartered and doing  
16 business in California, has a greater interest in the claims of Plaintiffs and class members than  
17 any other state or country and is most intimately concerned with the claims and outcome of this  
18 litigation.

19          280. The principal place of business of Apple, located at 1 Apple Park Way (formerly  
20 1 Infinite Loop) in Cupertino, California, is the “nerve center” of its business activities—the  
21 place where its high-level officers direct, control, and coordinate the corporation’s activities,  
22 including its marketing, software development, and major policy, financial, and legal decisions.  
23 As admitted by Apple in its Form 10-K for the fiscal period ended September 24, 2016 (the  
24 “2016 Form 10-K”), “most of the Company’s key personnel” are from Silicon Valley.

25  
26  
27 brief(s), trial plans and other techniques can be adopted by the Court to ensure manageability of  
28 such separate classes.



1 cutting edge features loaded onto the Devices.<sup>10</sup> Apple's statements were materially false in  
 2 view of the Defect, and were designed to cause consumers to upgrade their Devices.<sup>11</sup>

3 288. Apple has also marketed its Devices in a fashion to drive consumers to consider  
 4 their Devices, particularly iPhones, as an extension of themselves—something they cannot live  
 5 without, do not have to be weighed down carrying, and do not need to haul around a battery  
 6 cord to intermittently keep powered. Apple CEO Timothy Cook, during the March 21, 2016  
 7 Apple Special Event at the Company's then-current Cupertino headquarters, stated that Apple  
 8 knows iPhones are "deeply personal" and an "extension of ourselves." The Devices, when  
 9 operating as promised, are to be a one-stop location for all forms of personal and business use,  
 10 including, but not limited to, cell phone, e-mail and internet usage, messaging, calendars,  
 11 calculators, photos and photo editing, watching videos, movies and television programming,  
 12 monitoring health, receiving digital print magazine subscriptions, reading digital books, playing  
 13 video games, and a host of other applications (collectively the "Features").

14 289. Apple has thus cultivated a dependent relationship between consumers and their  
 15 Devices, and has exploited that relationship to fuel consumer demand to buy more devices to  
 16 make money.<sup>12</sup> Perhaps borrowing a cue from the car industry, Apple self-created a market

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17  
 18 <sup>10</sup> As stated in Apple's 2016 Form 10-K at 4: "The Company believes that sales of its innovative  
 19 and differentiated products are enhanced by knowledgeable salespersons who can convey the value  
 20 of the hardware and software integration and demonstrate the unique solutions that are available on  
 21 its products. The Company further believes providing direct contact with its targeted customers is  
 an effective way to demonstrate the advantages of its products over those of its competitors and  
 providing a high-quality sales and after-sales support experience is critical to attracting new and  
 retaining existing customers."

22 <sup>11</sup> As admitted by Apple in its 2016 Form 10-K at 5: "The Company's future financial condition  
 23 and operating results depend on the Company's ability to continue to develop and offer new  
 innovative products and services in each of the markets in which it competes." *See also* 2016 Form  
 24 10-K at 9: "Due to the highly volatile and competitive nature of the industries in which the  
 Company competes, the Company must continually introduce new products, services and  
 25 technologies, enhance existing products and services, effectively stimulate customer demand for  
 new and upgraded products and successfully manage the transition to these new and upgraded  
 products."

26 <sup>12</sup> As detailed in the chart herein at Section IV, for nearly every year since at least the fiscal year  
 27 ended 2013, sales of the Devices collectively accounted for at least 70% percent of Apple's  
 28 revenues (2013: 72.1%; 2014: 72.3%; 2015: 76.2%; 2016: 72.8%; 2017: 70%) and totaled nearly  
 \$800 billion.

designed to lure consumers into buying the “latest and greatest” model of the Devices, with the central theme of the marketing ploy being Devices with access to Apple’s iOS system to provide more Features, powerful processor chips, and long lasting battery life, all the while in thinner and more light-weight versions.<sup>13</sup> The parade of Apple’s constant marketing plan for each of the Devices demonstrates the marketing message Apple sought to convey: faster, longer battery life, more Features, all crammed into increasingly thinner and lighter physical boundaries.

#### A. iPhones

##### i. iPhone 5

290. On September 12, 2012, Apple issued a press release from San Francisco, California, captioned “Apple Introduces iPhone 5: Thinnest, Lightest iPhone Ever Features All-New Aluminum Design, Stunning 4-Inch Retina Display, A 6 Chip & Ultrafast Wireless.” The device was slated to run on iOS 6 initially. The press release states, in pertinent part (with emphasis added):

*... the thinnest and lightest iPhone ever . . . an Apple-designed A6 chip for **blazing fast performance**; and ultrafast wireless technology[]—all while delivering **even better battery life**.[]*

\* \* \*

“iPhone 5 is the most beautiful consumer device that we’ve ever created,” said Philip Schiller, Apple’s senior vice president of Worldwide Marketing. “We’ve packed an amazing amount of innovation and advanced technology into a thin and light, jewel-like device with a stunning 4-inch Retina display, **blazing fast A6 chip, ultrafast wireless, even longer battery life**; and we think customers are going to love it.”

iPhone 5 is the thinnest smartphone in the world, . . . 18 percent thinner and 20 percent lighter than iPhone 4S.

\* \* \*

The all-new A6 chip was designed by Apple to maximize performance and power efficiency to support all the incredible new features in iPhone 5, including the stunning

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<sup>13</sup> In addition, with little variation, the key elements of the box packaging for the Devices was substantially similar and included references to Apple’s Cupertino, California address, as well as statements on the box, inserts and/or Devices representing: “Designed by Apple in California.” While the packaging contains certain literature, none of the literature contained disclosures regarding the Defect, making Apple’s omissions and inadequate disclosures materially false and misleading.

new 4-inch Retina display—*all while delivering even better battery life. With up to twice the CPU and graphics performance, almost everything you do on iPhone 5 is blazing fast* for launching apps, loading web pages and downloading email attachments.

291. On September 12, 2012, Apple hosted a Special Event in San Francisco, California to announce the iPhone5.<sup>14</sup> The Special Event underscored the false representations about the device and failed to disclose the Defect.

292. In addition to marketing the iPhone 5 via its press release and Special Event, Apple posted similar advertising on its website and in stores for these products. Apple boasted about its new design being “[t]he thinnest, lightest, fastest iPhone ever”:

All-new design.  
The thinnest,  
lightest, fastest  
iPhone ever.

**Thin, sleek, and very capable.**

It's hard to believe a phone so thin could offer so many features: a larger display, a faster chip, the latest wireless technology, an 8MP iSight camera, and more. All in a beautiful aluminum body designed and made with an unprecedented level of precision. iPhone 5 measures a mere 7.6 millimeters thin and weighs just 112 grams.<sup>1</sup> That's 18 percent thinner and 20 percent lighter than iPhone 4S. The only way to achieve a design like this is by relentlessly considering (and reconsidering) every single detail — including the details you don't see.

[Learn more about the design of iPhone 5 ▶](#)

18%  
Thinner

20%  
Lighter

12%  
Less Volume



<sup>14</sup> As with all Devices (and the majority of the Updates) identified herein, Apple routinely hosts a “Special Event” presentation for the new product and/or iOS. These Special Events are traditionally hosted from a location in California, and are attended by Apple executives and staff, as well as media and other persons in the technology field. These events are videotaped, posted on Apple’s website, and also reposted online by various media or other sources.

293. Apple’s marketing materials further boasted “[p]erformance and graphics up to twice as fast. With battery life to spare.” That is, “even at is accelerated speed, iPhone 5 has more than twice enough battery power to last throughout the day—up to 8 hours of browsing on a cellular connection, up to 8 hours of talk time, and up to 10 hours of video playback time.”

294. As set forth herein, these were materially false statements that failed to warn Plaintiffs and the Class of the known Defect.

## ii. iPhone 5s

295. On September 10, 2013, Apple unveiled the iPhone 5s at its Cupertino, California headquarters. It was released on September 20, 2013, along with its lower-cost counterpart, the iPhone 5C. These devices, upon initial release, operated on iOS 7 software.

296. Apple’s September 10, 2013 press release, issued from Cupertino, California, is captioned “Apple Announces iPhone 5s—The Most Forward-Thinking Smartphone in the World.” The press release states, in pertinent part (with emphasis added):

Apple today announced iPhone 5s, the most forward-thinking iPhone yet, featuring an all-new A7 chip, making iPhone 5s the world’s first smartphone with 64-bit desktop-class architecture for *blazing fast performance* in the palm of your hand. iPhone 5s redefines the best smartphone experience in the world with amazing new features all *packed into a remarkable thin and light design*. . . .

\* \* \*

The all-new A7 chip in iPhone 5s brings 64-bit desktop-class architecture to a smartphone for the first time. With up to twice the CPU and graphics performance, *almost everything you do on iPhone 5s is faster and better than ever*, from launching apps and editing photos to playing graphic-intensive games—*all while delivering great battery life*. . . .

\* \* \*

iPhone 5s features a remarkable *thin and light*, precision-crafted design that customers around the world love, including an anodized aluminum body with diamond cut chamfered edges, a stunning 4-inch Retina display and glass inlays. . . .



297. On September 10, 2013, Apple also hosted a Special Event from Cupertino, California to announce the product. The Special Event simply underscored the false representations about the device and failed to disclose the Defect.<sup>15</sup>

298. In addition to the press release and marketing of the new iPhone 5s, and the Special Event, Apple used similar advertising on its website and in its stores to market the thinness of the phone, its extended battery life, and fast speeds as part of its overall marketing scheme.



### iii. iPhone 5c

299. On September 10, 2013, Apple unveiled the iPhone 5c at its Cupertino, California headquarters. It was released on September 20, 2013, along with its higher-end counterpart, the iPhone 5s. These devices, upon initial release, operated on iOS 7 software.

<sup>15</sup> For example, during the Special Event, Apple's SVP, Worldwide Marketing, stated the following of the iPhone 5s: "What about battery life we're really happy to tell you the team has done a phenomenal job they do have battery life that's equal or greater than the iPhone 5 had 10 hours 3G talktime eight hours 3G browsing 10 hours LTE browsing Wi-Fi browsing video playback 40 hours of music listening up to 250 hours of standby so that's the first of our breakthrough technologies in the iPhone 5s a 64-bit class architecture an incredible performance of a7 and m7." P. Schiller SVP, Worldwide Marketing, Apple, Apple Special Event at 45:22 (Sept. 10, 2013) available at: (<https://www.youtube.com/watch?v=yBX-KpMoxYk>).



300. Apple's September 10, 2013 press release, issued from Cupertino, California, is captioned "Apple Introduces iPhone 5c—The Most Colorful iPhone Yet." The press release states, in pertinent part (with emphasis added):

. . . iPhone 5c is built on a foundation of features people know and love like the beautiful 4-inch Retina display, *blazing fast performance* of the A6 chip, and the 8 megapixel iSight camera—*all while delivering great battery life*. . .

\* \* \*

iPhone 5c comes with all the features customers love in iPhone 5, and more. The Apple-designed A6 chip provides incredible performance and power efficiency, all while delivering great battery life, so almost everything you do on iPhone 5c is blazing fast, from launching apps and loading web pages to downloading email attachments.

301. On September 10, 2013, Apple also hosted a Special Event from Cupertino, California to announce the product. The Special Event simply underscored the false representations about the device and failed to disclose the Defect.<sup>16</sup> In addition to the press release, Special Event and marketing of the new iPhone 5c, Apple used similar advertising on its website and in its stores to market the its extended battery life and fast speeds as part of its overall marketing scheme.

#### iv. iPhone 6 and 6 Plus

302. On September 19, 2014, the iPhone 6 and iPhone 6 Plus were released for sale (with pre-ordering available on September 12, 2014). These devices, on the initial date of release, operated on iOS 8 software.

303. Apple's September 9, 2014 press release for the iPhone 6 and iPhone 6 Plus, issued from Cupertino, California, is captioned "Apple Announces iPhone6 & iPhone 6 Plus—The Biggest Advancements in iPhone History," and states in pertinent part (emphasis added):

Apple today announced iPhone6 and iPhone 6 Plus, the biggest advancements in iPhone history . . . in an all-new *dramatically thin* and seamless design. . . . engineered to be the *thinnest ever* . . . [and include] the Apple-designed A8 chip with

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<sup>16</sup> For example, during the Special Event, P. Schiller, Apple's SVP, Worldwide Marketing stated of the iPhone 5c: "It's powered by an apple designed a6 chip that gives great performance and great battery life in fact the battery inside the iPhone 5c is slightly larger than the battery was in the iPhone 5 before." - P. Schiller SVP, Worldwide Marketing, Apple, Apple Special Event at 25:36 - 25:44 (Sept. 10, 2013) available at: (<https://www.youtube.com/watch?v=yBX-KpMoxYk>).

second generation 64-bit desktop-class architecture for *blazing fast performance and power efficiency* . . . . Both models include iOS8, the latest version of the world's most advanced mobile operating system, featuring a simpler, *faster* and more intuitive user experience . . . .

\* \* \*

iPhone 6 and iPhone 6 Plus are the biggest advancements in iPhone history,” said Tim Cook, Apple’s CEO. “The iPhone is the most loved smartphone in the world with the highest customer satisfaction in the industry and we are making it much better in every way. Only Apple can combine the *best hardware, software* and services at this unprecedented level and we think customers are going to love it.

\* \* \*

With second generation 64-bit desktop-class architecture, the all-new A8 chip offers *faster performance* and is more energy efficient, delivering higher sustained performance with *great battery life*.

304. On September 9, 2014, Apple hosted a Special Event from Cupertino, California to announce iPhone 6 and iPhone 6 Plus. The Special Event simply underscored the false representations about the devices and failed to disclose the Defect.

305. In addition to marketing the iPhone 6 and iPhone 6 Plus via the September 9, 2014 press release and Special Event, Apple posted similar advertising on its website and in stores for these products.

306. Consistent with previous messaging, Apple touted the iPhone 6’s thin design.

Design

iPhone at its largest.  
And thinnest.



In creating iPhone 6, we scrutinized every element and material. That’s how we arrived at a smooth, continuous form. A thinner profile made possible by our thinnest display yet. And intuitively placed buttons. All made with beautiful anodized aluminum, stainless steel, and glass. It’s a thousand tiny details that add up to something big. Or in this case, two big things: iPhone 6 and iPhone 6 Plus.

307. Apple advertised that iPhone 6's A8 chip was the "fastest yet," "power efficient," and could "sustain higher performance—so you can play graphics-intensive games or enjoy video at higher frame rates for longer than ever" with the promise of:

**Great battery life. Even  
while powering great  
new features.**

iPhone 6 is designed to be incredibly efficient. So you can spend your day taking advantage of all its new features and apps while getting better battery life.\*

**v. iPhone 6s and iPhone 6s Plus**

308. On September 25, 2015, the iPhone 6s and iPhone 6s Plus were released for sale (with pre-ordering on September 12, 2015), and initially operated on iOS9 software.

309. Apple's September 9, 2015 press release for the iPhone 6s and iPhone 6s Plus, issued from San Francisco, California is captioned "Apple Introduces iPhone 6s & iPhone 6s Plus," and states in pertinent part (emphasis added):

... the most advanced iPhones ever . . . . iPhone 6s and iPhone 6s Plus also introduce a transformative new approach to photography called Live Photos, bringing still images to life by capturing a moment in motion. Live Photos, 3D Touch and other advancements in the new iPhones are powered by the Apple-designed A9 chip, the most advanced chip ever in a smartphone, ***delivering faster performance and great battery life.***

\* \* \*

A9, Apple's third generation 64-bit chip powers these innovations with 70 percent faster CPU and 90 percent faster GPU performance than the A8, all with gains in ***energy efficiency for great battery life.*** The A9 chip and iOS 9 are architected together for optimal performance where it matters most, in real world usage. M9, Apple's next-generation motion coprocessor, is embedded into A9, allowing more features to ***run all the time at lower power***, including "Hey Siri," without iPhone needing to be plugged in.

\* \* \*

... The foundation of iOS is even stronger with software updates that require less space to install and advanced security features to further protect your devices.

1           310. On September 9, 2015, Apple hosted a Special Event from San Francisco,  
2 California to announce the iPhone 6s and iPhone 6s Plus. The Special Event simply underscored  
3 the false representations about the devices and failed to disclose the Defect.<sup>17</sup>

4           311. In addition to the marketing of the iPhone 6s and iPhone 6s Plus via the  
5 September 9, 2015 press release and Special Event, Apple posted similar advertising on its  
6 website and in stores for these products.

7                       **vi. iPhone SE**

8           312. On March 21, 2016, Apple announced the iPhone SE for release in April 2016.  
9 The iPhone SE operated on iOS 9.3 software upon release.

10           313. Apple's March 21, 2016 press release for the iPhone SE, issued from Cupertino,  
11 California, is captioned "Apple Introduces the iPhone SE—The Most Powerful Phone with a  
12 Four-Inch Display." The press release states, in pertinent part (with emphasis added):

13           Apple today introduced iPhone SE, *the most powerful phone* with a four-inch display  
14 . . . . iPhone SE offers *exceptional performance* with the same 64-bit A9 chip offered  
15 in iPhone 6s and iPhone 6s Plus for *blazing fast speeds, longer battery life*, faster  
16 wireless, a 12-megapixel iSight® camera featuring Live Photos and 4K video, and  
17 Touch ID with Apple Pay.

18                               \*           \*           \*

19           . . . The 64-bit A9 chip, introduced in iPhone 6s and iPhone 6s Plus, offers iPhone SE  
20 customers two times faster CPU and three times faster GPU performance compared to  
21 iPhone 5s, all with gains in energy efficiency for improved battery life.

22           314. The iPhone SE was also introduced at the Apple Special Event held in Cupertino,  
23 California on March 23, 2016. The Special Event simply underscored the false representations

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24 <sup>17</sup> For example, during the Special Event, P. Schiller, SVP, Worldwide Marketing, for Apple stated:  
25 "Thank you, Craig . . . Inside your iPhone is the fastest chip we've ever built into a phone, the new  
26 A9 chip, also our third-generation 64-bit chip. It's built with a new transistor architecture. It means  
27 we can drive faster performance while being more energy efficient. And our software team has  
28 worked together with our chip team to enable it to be maximum performance for the kinds of tasks  
we do every day. And it delivers a big jump in performance. Compared to the A8, it is 70% faster at  
CPU tasks, and at graphics tasks, it's 90% faster. This is a big jump in performance. It's going to  
make using our phone so much faster and a lot more fun." P. Schiller, SVP, Worldwide Marketing,  
Apple Special Event for iPhone 6S, iPhone 6S Plus, at 27 (Sept. 9, 2015).

about the device and failed to disclose the Defect.<sup>18</sup> In addition to the marketing of the iPhone SE via the March 21, 2016 press release, Apple posted similar advertising on its website and in stores for these products.

**vii. iPhone 7 and iPhone 7 Plus**

315. On September 16, 2016, the iPhone 7 and iPhone 7 Plus were released for sale (with pre-ordering on September 9, 2016), initially operating on iOS 10 software.

316. Apple's September 7, 2016 press release for the iPhone 7 and iPhone 7 Plus, issued from San Francisco, California is captioned "Apple introduces iPhone 7 & iPhone 7 Plus, the best, most advanced iPhone ever," and states in pertinent part (emphasis added):

Including Breakthrough New Camera Systems, *the Best Battery Life Ever* in an iPhone and Water & Dust Resistance

\* \* \*

Apple today introduced iPhone 7 and iPhone 7 Plus, *the best, most advanced* iPhone ever, packed with unique innovations that improve all the ways iPhone is used every day. The new iPhone features new advanced camera systems that take pictures like never before, *more power and performance with the best battery life ever* in an iPhone . . . .

\* \* \*

**More Performance & Battery Life**

The new custom-designed Apple A10 Fusion chip features a new architecture that powers these innovations, making it the *most powerful chip* ever in a smartphone, while also getting *more time between charges with the longest battery life ever* in an iPhone. The A10 Fusion's CPU now has four cores, seamlessly integrating two high-

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<sup>18</sup> For example, during the March 2016 Special Event, Apple's Vice President iPhone Product Marketing, Greg Joswiak, stated the following (emphasis added):

. . . the iPhone SE delivers incredible battery improvements across the board.

\* \* \*

But it's on the inside where the iPhone SE really shines. It's got advanced technologies that make this the *most powerful four-inch phone ever. It's incredibly powerful* which makes it even better to do the things that iPhone customers want to do, including playing the most graphic intensive games. So at the heart of the iPhone SE, of course, is our chips: our amazing Apple A9 chip with its embedded M9 motion coprocessor. This means that the iPhone SE has the same processing performance as the iPhone 6S which is literally double the speed of the iPhone 5S.


performance cores that run up to *two times faster* than iPhone 6, and two high-efficiency cores that are capable of running at just one-fifth the power of the high-performance cores. Graphics performance is also *more powerful*, running up to *three times faster* than iPhone 6 at as little as half the power, enabling a new level of gaming and professional apps.

\* \* \*

iPhone 7 and iPhone 7 Plus come with *iOS 10, the biggest release ever of the world's most advanced* mobile operating system.

317. Apple also held a Special Event on September 7, 2016 from San Francisco, California to introduce the iPhone 7 and iPhone 7 Plus. The Special Event simply underscored the false representations about the devices and failed to disclose the Defect.

318. In addition to the marketing of the iPhone 7 and iPhone 7 Plus via the September 7, 2016 press release and Special Event, Apple posted similar advertising on its website and in stores for these products.



iPhone 7 dramatically improves the most important aspects of the iPhone experience. It introduces advanced new camera systems. The best performance and battery life ever in an iPhone. Immersive stereo speakers. The brightest, most colorful iPhone display. Splash and water resistance.<sup>1</sup> And it looks every bit as powerful as it is. This is iPhone 7.

Watch the keynote ▶

319. Apple's CEO Tim Cook raved about the new Devices during the Company's quarterly earnings call with analysts on October 25, 2016 stating:

As for our newest products, we're thrilled with the customer response to iPhone 7 and iPhone 7 Plus. These are the best iPhones we've ever made, with breakthrough camera systems, immersive stereo speakers, and the best iPhone performance in battery life ever, thanks to the custom-designed Apple A10 Fusion chip. They feature the brightest, most colorful iPhone displays to date and come in gorgeous new finishes. Demand continues to outstrip supply, but we're working very hard to get them into customers' hands as quickly as possible.<sup>19</sup>

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<sup>19</sup> In addition to (or a component of) the Defect described herein, certain of the Devices have been reported as causing fire, explosions and/or injuries. See e.g. Anthony Cuthbertson, "Apple Store Evacuated After iPhone Battery Explosion," *Newsweek* (Jan. 10, 2018) (Available online at



1           **B.       iPads**

2           320.    Each iPad described herein sold by Apple to consumers was encased in a box  
3           with labeling and inserts substantially similar to that described in section above for the iPhones.

4                   **i.       Fourth Generation iPad**

5           321.    On October 23, 2012, Apple issued a press release from San Jose, California,  
6           announcing the fourth generation iPad. This iPad initially ran on iOS 6 and was the first iPad to  
7           feature a Retina display.<sup>20</sup> The press release advertised that the iPad included (with emphasis  
8           added):

9                   [A] new Apple-designed A6X chip that delivers up *to twice the CPU performance*  
10                  and up to twice the graphics performance of the A5X chip, all while delivering *an*  
11                  *incredible 10 hours of battery life* in the *same thin and light* iPad design. Other new  
12                  features include a FaceTime HD camera, twice the Wi-Fi performance when  
13                  compared to previous iPad models and support for additional LTE carriers  
14                  worldwide.<sup>6</sup>

15           322.    On October 23, 2012, Apple hosted a Special Event from San Jose, California to  
16           announce the Fourth Generation iPad. The Special Event simply underscored the false  
17           representations about the device, and failed to disclose the Defect.

18                   **ii.     iPad Mini**

19           323.    Simultaneous to the October 23, 2012 announced release of the fourth generation  
20           iPad, Apple also announced the all-new iPad mini. The iPad mini debuted on iOS 6, “the  
21           world’s most advance mobile operating system with over 200 new features.” The press release  
22           contained the following representations, in pertinent part, concerning the iPad mini (with  
23           emphasis added):

24                   

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25                   <http://www.newsweek.com/iphone-battery-mysterious-explosion-causes-apple-store-evacuation-776529>  
26                   (visited June 18, 2018). As recently as May 11, 2018, reports have surfaced of an  
27                   iPhone 6s exploding and catching fire. Upon information and belief, Apple’s throttling of the  
28                   Devices may also have been out of fear of a massive recall akin to what its competitor, Samsung  
                    Electronics Co., Ltd undertook related to one of its phones in 2016 (the “Samsung Recall”) due to  
                    consumer injuries related to lithium-ion batteries contained within their product.

<sup>20</sup> iOS 6 was first announced via an Apple press release issued on June 11, 2012 from San Francisco, California, promising that the update would introduce 200 new features.



[A] completely new iPad design that is **23 percent thinner and 53 percent lighter** than the third generation iPad. The new iPad mini features a stunning 7.9-inch Multi-Touch display . . . **ultrafast** wireless performance<sup>1</sup> and **an incredible 10 hours of battery life**—every inch an iPad, yet in a revolutionary design you can hold in one hand . . . iPad mini is as thin as a pencil and as light as a pad of paper, yet packs a fast A5 chip, FaceTime HD and 5 megapixel iSight cameras and ultrafast wireless—**all while delivering up to 10 hours of battery life** . . . The dual-core **A5 chip delivers responsive graphics and a fast**, fluid Multi-Touch experience, while still providing all-day battery life . . . iPad mini features dual-band 802.11n Wi-Fi support for speeds up to 150 Mbps,[] which is twice the Wi-Fi performance compared to previous iPad models.<sup>21</sup>

### iii. iPad Air

324. On October 22, 2013, Apple issued a press release from San Francisco, California, announcing the release of the iPad Air, which initially ran on iOS 7. The release was captioned as “Apple Announces iPad Air—Dramatically Thinner, Lighter & More Powerful iPad” and included advertising statements (emphasis added) that the iPad Air is:

[T]he latest generation of [Apple’s] category defining device, featuring a stunning 9.7-inch Retina display in a **new thinner and lighter design**, Precision-engineered to weigh just one pound, iPad Air is 20 percent **thinner and 28 percent lighter** than the fourth generation iPad, and with a narrower bezel the borders of iPad Air are **dramatically thinner**—making content even more immersive . . . [The] iPad Air . . . **delivers all-day battery life in the lightest full-sized tablet in the world** . . . [T]he new **power-efficient A7 chip** allows the battery to be even smaller, helping reduce the overall volume by 24 percent from the previous generation while doubling its performance and maintaining its up to 10-hour battery life<sup>1</sup> . . . With up to twice the CPU and graphics performance on iPad Air . . . **almost everything you do is faster and better** than ever, from launching apps and editing photos to playing graphic-intensive games—all while delivering **all-day battery life**.

325. Apple also conducted a Special Event on October 22, 2013. The Special Event simply underscored the false representations about the device and failed to disclose the Defect.<sup>22</sup>

<sup>21</sup> At Apple’s Special Event, held on October 23, 2012 in San Jose, California, it was represented by Apple’s SVP Worldwide Marketing that: “[T]he new iPad Mini with Retina display is also powered by this brand new A7 chip with its 64-bit architecture. This delivers a **huge jump in performance** for iPad Mini up to **four times** faster at CPU tasks and up to **eight times faster** at graphics tasks. You’re going to feel performance across everything you do that’s so fast. And still that great **all day 10-hour battery life**.”

P. Schiller SVP, Worldwide Marketing, Apple Special Event at 1:17:01-1:17:21 (Oct. 22, 2013) available at: (<https://www.youtube.com/watch?v=4FunXnJQxYU>).

<sup>22</sup> For example, during the Special Event, Apple executive J. Ivie stated, in pertinent part (emphasis added) that:

The new A7 chip is **incredibly powerful**. And also, **very power efficient**. Because of this efficiency, the **battery could get smaller yet critically without any loss in battery life**. And of course, by reducing the battery size, the product became significantly lighter. We reduced the dimensions of

1                   iv.       iPad Mini 2<sup>23</sup>

2                   326.     On the same day as the release of the iPad Air, Apple also announced via press  
3                   release from San Francisco, California the new iPad Mini with 7.9-inch Retina display, which  
4                   similarly initially ran on iOS 7. Moreover, the press release stated, in pertinent part, that the  
5                   new iPad Mini had “*the same amazingly thin and light design*,” including that (emphasis  
6                   added):

7                   [F]eature[s] the *powerful and power-efficient* Apple-designed A7 chip with 64-bit  
8                   desktop-class architecture, ultrafast wireless with *faster* built-in Wi-Fi and expanded  
9                   LTE cellular connectivity . . . ‘It is so *thin, light and powerful*, once you hold one in  
10                  your hand you will understand what a tremendous advancement this is,’ said Philip  
11                  Schiller, Apple’s senior vice president of Worldwide Marketing . . . [with] *up to four  
times the CPU and eight times the graphic performance* on iPad mini with Retina  
display, almost everything you do is *faster and better than ever*, from launching apps  
and editing photos to playing graphic-intensive games—all while *delivering all day  
battery life*.

12                  327.     On October 22, 2013, Apple also announced the release of the iPad Mini2 at the  
13                  Special Event. The Special Event simply underscored the false representations about the device  
14                  and failed to disclose the Defect.<sup>24</sup>

15  
16  
17  
18                  the bezel with less mass. The iPad S still retains its structural rigidity. There's a simplicity to it, but  
19                  there's nothing precious about it. This integrity, this durability inspires confidence in a product  
20                  that's meant to be taken places, handled, and really used. With the iPad, we set out to redefine  
21                  mobile computing. Up until now, 64-bit architecture is something you'd normally only find in  
22                  desktop computers. The new Apple-designed A7 chip brings 64-bit technology. All of its advanced  
23                  computing graphics to this ultra-portable, 1-pound device. But even with all of this added  
24                  processing power, *iPad Air still has an impressive 10-hour battery life*.

25                  J. Ive, SVP of Design, Apple Special Event at 1:13:04 (Oct. 22, 2013) *available at:*  
26                  <https://www.youtube.com/watch?v=4FunXnJQxYU>

27                  <sup>23</sup> Initially, Apple called the iPad mini 2 the “iPad mini with Retina® display.”

28                  <sup>24</sup> For example, during the Special Event on October 22, 2013, Apple’s SVP Worldwide Marketing  
(P. Schiller) also stated (emphasis added):

And the new iPad Mini with Retina display is also powered by this brand new A7 chip with its 64-  
bit architecture. This delivers a *huge jump in performance* for iPad Mini up to four times faster at  
CPU tasks and up to *eight times faster* a graphics tasks. You're going to feel performance across  
everything you do that's *so fast*. And still that *great all day 10-hour battery life*.

P. Schiller SVP, Worldwide Marketing, Apple Special Event at 1:17:01-1:17:21 (Oct. 22, 2013)  
*available at:* (<https://www.youtube.com/watch?v=4FunXnJQxYU>).

1                                    **v.        Update to Fourth Generation iPad**

2                    328.    On March 18, 2014, Apple announced through a press release from Cupertino,  
3                    California that the “iPad with Retina display replaces iPad 2 as the most affordable 9.7-inch  
4                    iPad.” The press release, titled “Apple Updates Most Affordable 9.7-inch iPad with Retina  
5                    display, Improved Cameras & Enhanced Performance—Now Available Starting at \$399”  
6                    featured the iPad’s (with emphasis added):

7                    [F]ast A6X chip, and 5MP iSight camera, offering a ***dramatic upgrade in***  
8                    ***performance, power and value*** compared to the iPad 2 it replaces,’ said Philip  
9                    Schiller, Apple’s senior vice president of Worldwide Marketing. The iPad line sets  
10                    the gold-standard in mobile computing and all iPads have access to the largest and  
11                    best ecosystem of more than 500,000 iPad optimized apps from the App Store.

12                                    **vi.        iPad Air 2**

13                    329.    The iPad Air 2 was introduced through a press release issued on October 16,  
14                    2014 from Cupertino, California. The iPad Air 2 initially ran on iOS 8.1, and at the time of its  
15                    release, it was advertised (emphasis added) as:

16                    [T]he ***thinnest and most powerful*** iPad ever. Now just 6.1 mm thin and weighing less  
17                    than a pound, the iPad Air 2 features an improved Retina display for enhanced contrast  
18                    and richer, more vibrant colors . . . [a] second generation 64-bit A8X chip, all-new  
19                    iSight and FaceTime HD cameras, faster WiFi and LTE wireless, and includes the  
20                    revolutionary Touch ID fingerprint identity sensor. Engineered for unmatched  
21                    portability and ease of use, iPad Air 2 offers a beautiful, precision unibody enclosure  
22                    of anodized aluminum for durability and a solid feel . . . the new Apple-designed A8X  
23                    chip [ ] delivers a ***40 percent improvement in CPU performance and 2.5 times the***  
24                    ***graphic performance of iPad Air***, while still delivers the up to ***10-hour battery life***[]  
25                    users expect while working, playing games or surfing the web.

26                    330.    The iPad Air 2 was also discussed at the October 16, 2014 Apple Special Event  
27                    in Cupertino, California. The Special Event simply underscored the false representations about  
28                    the device and failed to disclose the Defect.<sup>25</sup>

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29                    <sup>25</sup> During the Apple Special Event, P. Schiller, SVP of Worldwide Marketing at Apple stated:  
30                    Just look what the team is done the original iPad started with an A4 chip and now we’re ***12X faster***  
31                    than that with iPad air 2. But check out this graphics performance we’re now at a 180x faster. . . .  
32                    And all this power in such a thin package the team has worked to ensure that you have that ***great***  
33                    ***all-day battery life 10 hours of battery*** so you don’t have to give up any of that.

34                    P. Schiller SVP, Worldwide Marketing, Apple Special Event at 45:01 (Oct. 16, 2014) *available at:*  
35                    <https://www.youtube.com/watch?v=sBfvJn-fpnc>.

vii. **The iPad Mini 3**

331. Alongside the iPad Air 2, Apple introduced the iPad Mini 3 on October 16, 2014 in Cupertino, California via press release. The iPad mini 3 similarly ran on iOS 8.1, but continued to feature a “stunning Retina display, amazing A7 chip, 5MP iSight camera, FaceTime HD camera and ultrafast wireless.” Upgrades to the iPad mini 3 included Touch ID “so users can unlock their iPad with just the touch of a finger and make purchases easily and securely within apps using Apple Pay.”<sup>1</sup>”

viii. **iPad Pro and iPad Mini 4**

332. On September 9, 2015, Apple issued a press release from San Francisco, California, announcing the iPad Pro, which came with Apple’s new iOS 9. As stated in the release, in pertinent part (with emphasis added):

Apple today introduced the all-new iPad Pro, featuring a stunning 12.9-inch Retina display with 5.6 million pixels, the most ever in an iOS device, and groundbreaking performance with the new 64-bit A9X chip, rivaling most portable PCs. The new larger iPad Pro is *thin and light* and provides *all-day battery life*.

\* \* \*

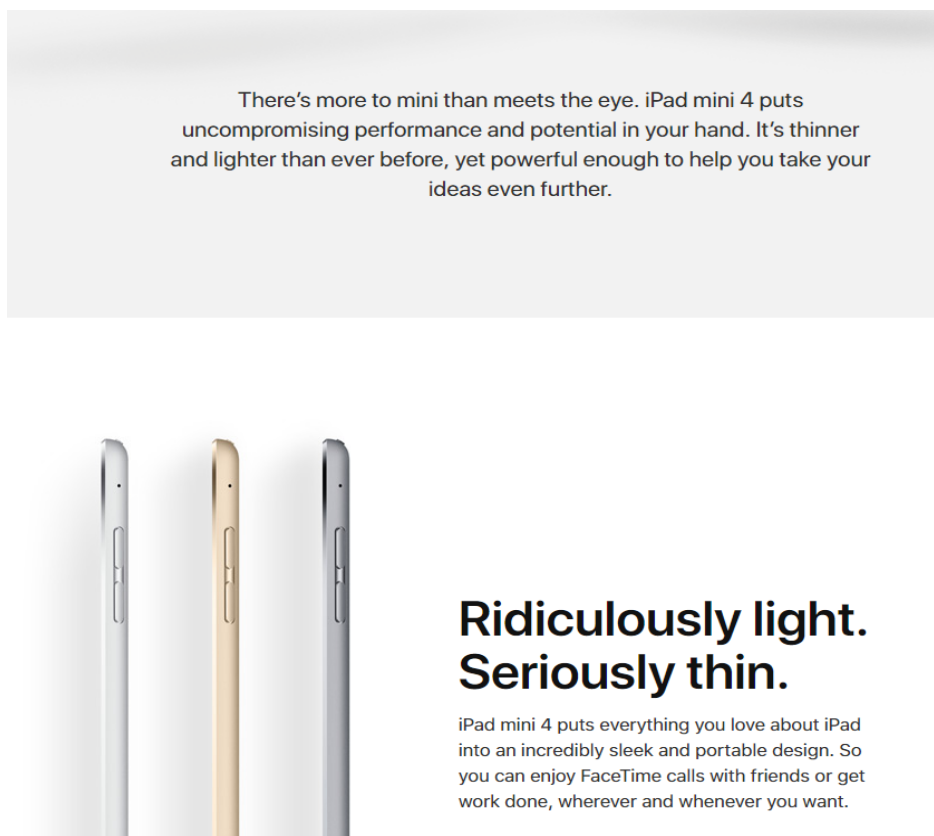
iPad Pro is the *most advanced and powerful iPad* . . . far and away the fastest iOS device we have ever made — its A9X chip beats most portable PCs in both CPU and graphics tasks, but is *thin and light* enough to hold all day . . .

\* \* \*

iPad Pro delivers *groundbreaking performance and energy efficiency, so you can tackle the most demanding tasks*. Apple’s powerful new 64-bit A9X chip, with third-generation 64-bit architecture, provides desktop-class CPU performance and console-class graphics. Ultra-fast wireless connectivity . . . . \*All-day 10-hour battery life\*\* delivers the efficiency that users have come to expect from iPad.

333. On September 9, 2015, Apple hosted a Special Event from San Francisco, California to announce the release of the product, and reportedly the iPad Mini4 as well. The Special Event simply underscored the false representations about the devices and failed to disclose the Defect.

334. Subsequent advertisements, focusing on the thinness and speed of the iPad Mini4, also failed to disclose the Defect.



ix. 9.7-Inch iPad Pro

335. On March 21, 2016, from Cupertino, California, Apple issued a press release that introduced the all-new 9.7-inch iPad Pro, which initially ran on iOS 9.3 (with emphasis added).

The new iPad Pro delivers *incredible performance with the 64-bit A9X chip that rivals most portable PCs*, along with a four-speaker audio system that is twice as powerful<sup>1</sup> . . . 'iPad Pro is a new generation of iPad that is indispensable and immersive, enabling people to be more productive and more creative. It's *incredibly fast, extremely portable* . . .

\* \* \*

Pro Performance

The new iPad Pro is just 6.1mm *thin* and weighs just under one pound, yet delivers *groundbreaking performance*, connectivity and versatility so you can tackle the most demanding tasks wherever you go. The *powerful A9X chip with third-generation 64-bit architecture provides performance that rivals many laptops and console-class graphics, while also delivering all day battery life.*[] Ultrafast wireless connectivity . . .

1           336. On March 21, 2016, Apple hosted a Special Event Keynote from Cupertino,  
2 California, to announce the 9.7-inch iPad Pro. The Special Event simply underscored the false  
3 representations about the device and failed to disclose the Defect. For example, during the  
4 Special Event, Apple's P. Schiller stated (emphasis added) that:

5           iPad Pro changes the way people discover, capture, edit, design and produce. At the  
6 heart of its versatility is its performance. *The A9X chip was designed specifically for*  
7 *iPad Pro to provide more power than most PCs in a thin, light, intuitive device you*  
8 *can take anywhere with you.* The immersive iPad experience starts with its retina  
display. Each one is individually calibrated, so you always see vibrant color, contrast,  
and clarity.

9           **x. Fifth Generation iPad<sup>26</sup>**

10           337. On March 21, 2017, Apple announced via press release from Cupertino,  
11 California it had "updated its most popular-sized iPad, featuring a brighter 9.7-inch Retina  
12 display and best-in-class performance at its most affordable price ever." The new iPad initially  
13 came with iOS 10. As stated by Apple in the press release (emphasis added), the iPad was:

14           [d]esigned for unmatched portability and ease of use, along with *incredible*  
15 *performance and all-day battery life*, iPad is the world's most popular tablet and  
16 primary computing device for millions of customers around the world . . . Philip  
17 Schiller, Apple's senior vice president of Worldwide Marketing[] [stated] 'New  
18 customers and anyone looking to upgrade will love this new iPad for use at home, in  
school, and for work, with its gorgeous Retina display, our *powerful A9* chip, and  
access to more than 1.3 million apps designed specifically for it.' . . . The Apple-  
designed A9 chip with 64-bit desktop-class architecture delivers *fast processing and*  
*graphics performance for apps and games, while maintaining the same all-day*  
*battery life<sup>1</sup> customers have come to expect from iPad.*

19           **xi. iPad Pro in 10.5-inch and 12.9-inch Models**

20           338. The iPad Pro in 10.5-inch and 12.9-inch models was announced in a press  
21 release on June 5, 2017 from San Jose, California. The all-new iPad Pro models were initially  
22 set to be powered by iOS 11, which "will radically change what users can do with the iPad."  
23 Apple further advertised in the press release that the new iPad Pro models featured (with  
24 emphasis added):

25  
26  
27  
28           <sup>26</sup> The fifth generation iPad was introduced as the "9.7-inch iPad."



[T]he world's most advance display with ProMotion technology and incredible performance with the new A10X Fusion chip. The new 10.5-inch model reduces the borders by nearly 40 percent to fit into an incredibly compact package that still weighs just one pound. Combined with powerful new iPad features in iOS 11 coming this fall, like the all-new Files app, customizable Dock, **improved multitasking** and deeper integration of Apple Pencil, iPad Pro gives users the ability to be even more productive and creative.

'These are by far the **most powerful** iPads we've ever created . . .' said Greg Jaswiak, Apple's vice president of Product Marketing.

\* \* \*

#### Groundbreaking Performance Powered by A10X Fusion Chip

iPad Pro delivers **groundbreaking performance**, . . . The powerful new 64-bit A10X Fusion chip provides performance that is faster than most PC laptops shipping today, so tacking complex tasks like editing photos and 4k video, rendering 3D images or playing games feels effortless. A six-core CPU and 12-core GPU deliver **up to 30 percent faster CPU performance and 40 percent faster graphics performance than the industry-leading A9X chip, while delivering-all day battery life.**<sup>27</sup>

339. The iPad Pro model was also discussed at the June 2017 WWDC Keynote, held at the San Jose McEnery Convention Center, with Apple executive Joswiak emphasizing that these iPad Pro models have "amazing performance, again especially for devices so thin and light and a simple one-pound package you can take with you everywhere you go. And what's also cool is, **despite all this performance, the new iPad Pro still delivers the same all day 10-hour battery that our iPad users love.**"<sup>27</sup>

340. Moreover, on Apple's conference call with analysts to release financial results for the third fiscal quarter of 2017, CEO Tim Cook exclaimed that "the all-new 10.5-inch iPad Pro, launched in June, features the world's most advanced display with ProMotion technology and is more powerful than most PC desktops."<sup>28</sup>

#### xii. Sixth Generation iPad<sup>29</sup>

341. The sixth generation iPad was released on March 27, 2018, running on the iOS11.3 software. In a press release from Chicago, Illinois, Apple announced the new iPad

<sup>27</sup> G. Joswiak 2017 WWDC Keynote at 1:43:44-1:43:52, available at: <https://developer.apple.com/videos/play/wwdc2017/101/?time=6229> (emphasis added).

<sup>28</sup> T. Cook 2017 Q3 Earnings Call at 2.

<sup>29</sup> The Sixth Generation iPad is also known as "iPad 2018".



1 would come with “Apple Pencil plus even greater performance, starting at \$329.” The  
 2 announcement also emphasized that:

3 The new iPad is more versatile and capable than ever, features a large Retina display,  
 4 the A10 Fusion chip and advanced sensors that help deliver immersive augmented  
 reality, and provides unmatched portability, ease of use and all-day battery life.[]

5 \* \* \*

6 The new iPad features the Apple-designed A10 Fusion chip with 64-bit desktop-class  
 7 architecture, delivering 40 percent faster CPU and 50 percent faster graphics  
 performance for seamless multitasking and graphics-intensive apps.[]

8 342. On March 27, 2018, Apple hosted a Special Event from Chicago, Illinois, to  
 9 announce this iPad. The Special Event simply underscored the ongoing false representations  
 10 about the device and failed to disclose the Defect.

11 **II. APPLE’S MATERIALLY FALSE STATEMENTS AND OMISSIONS**  
 12 **CONCERNING THE IOS SOFTWARE**

13 343. As admitted by Apple in its 2016 Form 10-K at 9: “The Company’s financial  
 14 condition and operating results depend substantially on the Company’s ability to continually  
 15 improve iOS and iOS devices in order to maintain their functional and design advantages.”

16 344. In line with Apple’s admitted emphasis on iOS, the Company progressively  
 17 issued numerous updates to iOS from the initial sale of each of the Devices and continuing  
 18 through to the present date. As set forth herein, the first of the Devices, largely the iPads, ran  
 19 on iOS6 when initially released. Going forward in time, each new iOS release promised even  
 20 better features and performance, all material misstatements directed to the Class. The following  
 21 outlines the various main versions of iOS released for one or more of the Devices since June 11,  
 22 2012. Major updates to iOS, such as iOS 6, 7, 8, 9, 10, 11 and 12, are generally announced by  
 23 Apple via press releases and Special Event presentations.

24 345. As further detailed above, it was Apple’s constant release of these updates, each  
 25 with new Features and requiring a further draw on the batteries and processor chips of the  
 26 Devices to run that contributed to the Defect.



Apple engineered iOS 7 to take full advantage of the advanced 64-bit technologies in iPhone 5s, including the native 64-bit kernel, libraries and drivers. All the built-in apps have been re-engineered for 64-bit, and iOS 7 provides a seamless developer transition with Xcode support and the ability to run both 32-bit and 64-bit apps.

351. On June 2, 2014, Apple issued a press release from San Francisco, California announcing the “unveiling” of iOS 8, stating, in pertinent part, that it provided a “simpler, faster and more intuitive user experience.” Another press release on iOS 8 was released from Cupertino, California on September 9, 2014 reiterating this statement.

352. Apple also featured iOS 8 during a June 15, 2015 Apple Special Event it hosted in San Francisco, California, wherein Craig Federighi, SVP, Software Engineering stated (with emphasis added):

Next, you guessed it, iOS. Now our current big release of iOS is iOS 8 and iOS 8 was a huge release with tons of new features for users and a phenomenal set of technologies . . . . So, we’re now looking forward to iOS 9 and as we can see of what we wanted to accomplish, first and foremost, we wanted to elevate the foundations of the platform. Things like *extending your battery life, improving performance* and enhancing security to protect customer data.<sup>30</sup>

353. On June 8, 2015, Apple issued a press release from San Francisco, California, announcing the “preview” of iOS 9. The release stated, in pertinent part (emphasis added):

iOS 9 makes the foundation of iOS even stronger with refinements including battery optimization that provides a typical user with an additional hour of battery life\*\*, and a low-power mode to help further extend battery life.

354. On the same day, June 8, 2016, at the Apple WWDC 2015 Keynote, Craig Federighi, SVP Software Engineering at Apple stated the following about iOS 9 (with emphasis added):

Now with battery life, we focused on real-world use cases and *optimized them*, and we’re seeing *an addition of one hour of typical use on a full charge on iPhone*. Now we know that for a lot if you’re running low on power, you start searching all over for switches and turning off features in the hope of extending your battery life, a little bit further. Well now in iOS 9 we give you a single switch in what we call low-power mode. It pulls levers that you didn’t even know existed and is able to extend battery life for *additional three hours of typical use on top of that additional hour. It’s really great.*<sup>31</sup>

<sup>30</sup> C. Federighi, SVP, Software Engineering, Apple Special Event at 23:16-24:28 (June 15, 2015).

<sup>31</sup> C. Federighi, SVP, Software Engineering, Apple, Apple WWDC 2015 Keynote at 63:13-63:57 (emphasis added).

355. Then on September 9, 2016, Apple issued a press release from San Francisco, California, announcing that iOS 9 was available for download starting September 16, 2016.

Apple further represented iOS 9 as (emphasis added):

[T]he world's most advanced mobile operating system, will be available on Wednesday, September 16 as a free update for iPhone, iPad and iPod touch users. iOS 9 makes iOS devices more intelligent and proactive with powerful search and improved Siri features, all while protecting users' privacy.

The way you interact with iPad gets even better with iOS 9, thanks to new multitasking features . . . Built-in apps become more powerful . . .

'iOS 9 is packed with intelligence that makes every experience with iPhone and iPad **even more powerful** — Siri can do more than ever and new proactive assistance helps you get more done before you ask, all while protecting users' privacy,' said Craig Federighi, Apple's senior vice president of Software Engineering. "With iOS 9 we focused on strengthening the foundation of iOS with a deep focus on quality, and with the help of more than one million users who participated in our first ever public beta program, we're excited to release the best version of iOS yet.'

\* \* \*

#### iPad Experience

iOS 9 delivers new multitasking features designed specifically for iPad that allow you to do even more. . .

\* \* \*

This latest release makes the foundation of iOS even stronger with refinements including battery optimization that provides a typical user with an additional hour of battery life, and a low-power mode to further extend battery life.

356. Notably, Apple developed its A9 chip and iOS 9 together "for ***optimal performance where it matters most, in real world usage***."<sup>32</sup>

357. On June 13, 2016, Apple issued a press release from San Francisco, California previewing iOS 10, "the biggest iOS release ever." In iOS 10, Apple purported to make "accessing the information you need is easier and quicker than ever." The release also featured "'beautifully redesigned apps for Music, Maps, and News that are more intuitive and more powerful, making everything you love about your iPhone and iPad even better,' said Craig

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<sup>32</sup> Apple iPhone 6 Press Release (Sept. 9, 2015).

1 Federighi, Apple's senior vice president of Software Engineering." iOS 10 also "increase[ed]  
2 security and privacy with powerful technologies like Differential Privacy."

3 358. On January 23, 2017, Apple issued a press release announcing the release of iOS  
4 10.2.1. Shortly thereafter, Apple caused the issuance of a notification to appear on the Devices  
5 advising that iOS 10.2.1 was available for installation. As alleged herein, iOS 10.2.1 was  
6 designed by Apple to throttle the Devices, contrary to what Apple stated about the update.

7 359. Apple represented as follows concerning the update on the Devices:



**iOS 10.2.1**  
Apple Inc.  
72.1 MB

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

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

16  
17 360. On September 18, 2017, Apple issued a press release announcing the availability  
18 of iOS 11. As stated in the release, in pertinent part:

19 Starting Tuesday, iPhone and iPad customers around the world will be able to update  
20 their devices to iOS 11, a major update to the world's most advanced mobile operating  
system and the biggest software release ever for iPad.

21 361. According to later reports by Apple at the 2018 WWDC: "iOS 11 supports  
22 devices that were introduced as far back as 2013, like the iPhone 5S. And we just love the way  
23 customers race to update to our newest releases. In fact, half of our customers upgraded to iOS  
24 11 in just seven weeks. It's incredible. Now as we stand here today, 81 percent of our over a  
25 billion active iOS devices are running our latest release."<sup>33</sup>

26  
27  
28 <sup>33</sup> C. Federighi 2018 WWDC Keynote at 10:59-11:44.

362. On December 2, 2017, Apple announced the release of iOS 11.2.0. Shortly thereafter, Apple caused the issuance of a notification to appear on the Devices advising that iOS 11.2.0 was available for installation. Apple represented as follows concerning the update:



363. As alleged herein, iOS 11.2.0 was another update designed to throttle the Devices and exacerbate the Defect.

364. Just weeks after the issuance of iOS 11.2.0, Apple was forced to issue the December 20 Admission, followed eight days later by the Apology. In a series of the Updates issues after 11.2.0 (including, but not limited to, 11.2.1, and the 11.3 and 11.4 series), Apple proceeded to attempt to cover its tracks and quell consumer ire, though failing to admit the Defect. Apple's latest software machination is iOS 12.

365. On June 4, 2018, Apple issued a press release from San Jose, California, announcing iOS12, which stated that the update (emphasis added):

[I]s designed to make everyday tasks on iPhone and iPad faster and more responsive with performance improvements across the system. Camera launches up to 70 percent faster, the keyboard appears up to 50 percent faster and typing is more responsive. ***Even when there is a lot going on across the system, apps can launch up to twice as fast.*** From iPhone 5s, introduced in 2013, to the most advanced iPhone ever, iPhone X, iOS 12 brings performance improvements to more devices than any previous version.



1           366. Apple also announced iOS 12 at the 2018 WWDC Keynote held at the San Jose  
2 McEnery Convention Center (at 14:22-14:51) with Apple’s Senior Vice President of Software  
3 Engineering, Craig Federighi, stating in pertinent part (emphasis added):

4           Well now on iOS 12, we’re *much smarter. When we detect that you need a burst of*  
5 *performance, like when you begin scrolling or launching an app, we ramp up*  
6 *processor performance instantly to its highest states, delivering high performance*  
7 *and to ramp it down just as fast to preserve battery life. Now, these are just some of*  
8 *the improvements that are coming to not just our older devices, but the full range of*  
9 *devices, and that’s a quick update on performance.*<sup>34</sup>

10           367. Similarly, at the 2018 WWDC, Apple’s Federighi represented that iOS 12 was  
11 intended to: “[D]eliver[ ] all of these features across such a wide range of devices while  
12 maintaining high performance is a challenge we take really seriously, and so for iOS 12, we are  
13 doubling down on performance. We’re working top to bottom making improvements, to make  
14 your device faster and more responsive, and because we want these changes to be available to  
15 the full range of our customers, iOS12 will be available on all the same devices as iOS 11. This  
16 is the largest base ever supported by an Apple release. And we’re focusing our efforts  
17 especially on the oldest devices.”<sup>35</sup>

18           368. Apple’s iOS12 remains part of its crisis public relations effort. Apple continues  
19 to conceal the Defect inherent in the Devices that caused the need for the Updates. With the  
20 filing of this action, consumers are now able to climb into the driver’s seat to obtain full relief  
21 for the damages they have suffered, and to prevent Apple’s ongoing repetition of the  
22 misconduct. As highlighted in a recent media article “what most users have been asking for” is  
23 for the updates to “focus on improving reliability and performance for the devices people  
24 already own.”<sup>36</sup> Apple knew this was the focus of consumers from the outset—indeed it was

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25           <sup>34</sup> 2018 WWDC Keynote at 14:22-14:51.

26           <sup>35</sup> 2018 WWDC Keynote at 12:09-12:58.

27           <sup>36</sup> Kof Leswing, “The new version of iOS is the strongest sign yet that Apple finally believes the  
28 customer is always right,” *Business Insider* (June 27, 2018) (Available online at  
<https://www.yahoo.com/finance/news/version-ios-strongest-sign-yet-183500270.html>) (“For most  
people, there’s only one feature in the latest version of IOS that matters: a big bump in  
performance.”) (last checked June 27, 2018).



1 the center of its marketing plan—and yet it purposefully denied that to consumers by throttling  
2 the Devices without any disclosure or authorization.

3 **III. APPLE’S DEFECTIVE DEVICES AND ITS SECRET THROTTLING IN IOS**  
4 **UPDATES**

5 **A. The Devices are Defective Resulting in Staggering Levels of UPOs**

6 **i. An Overview**

7 369. 

13 370. 

17 371. 

20 372. Yet, despite knowledge of the wide-spread Defect alleged herein, Apple  
21 continued selling millions more defective Devices to members of the Class as if there was no  
22 problem at all. Apple simultaneously falsely represented the attributes of the Devices to  
23 members of the Class, including as it relates to the Device’s design, processor speed, and  
24 battery.

25 373. 

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 374. Apple did not publicly admit any problem with its Devices for more than a year-  
5 and-a-half (until late December 2017) and did so only after a third-party discovered Apple  
6 released iOS 10.2.1 with the secret purpose of throttling tens of millions of its Devices to  
7 mitigate the rate of UPOs, caused by the Defect. [REDACTED]  
8 [REDACTED]

9 375. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 376. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 377. [REDACTED]  
23 [REDACTED]  
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ii.

378.

[REDACTED]

[REDACTED]

379.

[REDACTED]

<sup>37</sup>

[REDACTED]

<sup>38</sup> Battery resistance is measured in milli-ohms (“mohms” or “mΩ”). While resistance permanently increases based on the chemical age of the battery, it temporarily increases when the battery is at a low state of charge and in a cold temperature environment.

<sup>39</sup>

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 **iii. Representations Regarding Device Performance and Battery Life**

5 380. Apple represented that its Devices:

- 6 • Offered *faster performance* and . . . delivering higher sustained performance with
- 7 *great battery life*;<sup>40</sup>
- 8 • Great battery life. Even while powering great new features;<sup>41</sup>
- 9 • *Delivered faster performance and great battery life*;<sup>42</sup>
- 10 • 90 percent faster . . . all with gains in *energy efficiency for great battery life*;<sup>43</sup>
- 11 and
- 12 • *More power and performance with best battery life ever*.<sup>44</sup>

13 381. Apple also represented that its batteries are “designed to retain up to 80% of its

14 original capacity at 500 complete charge cycles.”<sup>45</sup> [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 382. These representations, however, were materially false because they failed to

19 disclose the known Defect. Specifically, when Apple made these representations it knew the

20 information set forth in ¶¶ 369 - 381 (above) and ¶¶ 383 - 409 (below) concerning the Defect

21 but failed to disclose this information, which as set forth in ¶¶ 410 - 414 (below) would have

22

23 <sup>40</sup> See *supra* at ¶ 303.

24 <sup>41</sup> See *supra* at ¶ 307.

25 <sup>42</sup> See *supra* at ¶ 309.

26 <sup>43</sup> See *supra* at ¶ 309.

27 <sup>44</sup> See *supra* at ¶ 316.

28 <sup>45</sup> Apple, Battery Service and Recycling, <https://www.apple.com/batteries/service-and-recycling> (last visited June 1, 2018).

1 been important and material to reasonable consumers at the time of purchase including, *inter*  
2 *alia*, [REDACTED]

3 iv. [REDACTED]

4 383. [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 These UPOs occurred while consumers used their devices in the ordinary  
8 course.

9 384. [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 385. [REDACTED]  
13 [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 386. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 387. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28

1           388. Where, as here, there is a Defect known to Apple, it is highly misleading to  
2 represent that the battery will maintain 80% of its original capacity at 500 complete charge  
3 cycles

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8           389.

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15           390.

16 [REDACTED]  
17 [REDACTED]  
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25 [REDACTED]

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1 391. [REDACTED]

7 392. [REDACTED]

13 393. Thus, on December 2, 2017, Apple introduced iOS 11.2, which throttled the  
14 speed of the iPhone 7 and 7 Plus to reduce UPOs. [REDACTED]

16 394. The iPhone 5, 5s, and 5c also had the UPO issue. [REDACTED]

19 395. [REDACTED]

25 <sup>47</sup> [REDACTED]



1 396. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 397. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 398. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 399. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 400. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 401. Thus, the representation that the Device's battery is designed to retain up to 80%  
24 of its original capacity at 500 complete charge cycles is materially false and misleading because  
25 it failed to disclose to consumers that millions of its Devices [REDACTED] and  
26 therefore could not perform as represented under normal conditions, which caused millions of  
27  
28

1 owners of those devices to experience UPOs [REDACTED]  
2 [REDACTED]

3 v. [REDACTED]

4 402. Rather than informing the owners of the Devices of the Defect, [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 Apple decided to  
8 surreptitiously imbed code in a software update that would throttle Device performance during  
9 operations that required a high-power demand.

10 403. As alleged herein, Apple did not inform owners of the Devices that software  
11 update 10.2.1 was principally designed to (and did in fact) slow the performance of their  
12 Devices by [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 404. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
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[REDACTED]

405.

[REDACTED]

[REDACTED]

**vi. Apple Failed to Adequately Test the Devices and Had no Basis for Its False Statements**

406.

[REDACTED]

[REDACTED]

407.

[REDACTED]

[REDACTED]

1           408. In fact, [REDACTED]

2           Apple lacked a basis to claim to consumers in its marketing materials that the Devices:

- 3           • Offering *faster performance* and . . . delivering higher sustained performance with
- 4           *great battery life*;
- 5           • Great battery life. Even while powering great new features;
- 6           • *Delivering faster performance and great battery life*;
- 7           • 90 percent faster . . . all with gains in energy efficiency for great battery life; and
- 8           • More power and performance with best battery life ever.<sup>48</sup>

9           409. [REDACTED]

10          [REDACTED]

11          [REDACTED]

12                   **vii. Apple's Statements Were Material to iPhone Consumers**

13           410. Apple's statements were important and material to consumers' purchasing

14           decisions. In a SurveyMonkey® audience survey of 2,063 distinct iPhone users commissioned

15           by Plaintiffs' counsel, 96.95% stated "performance (speed) of the phone" was extremely

16           important, very important, or somewhat important to their "buying decision" while 97.82%

17           stated battery life was extremely important, very important, or somewhat important to their

18           buying decision.

19           411. When asked which of the statements listed were important to their iPhone

20           purchasing decision, 72.86% of those surveyed stated that it would be important to consider

21           whether the smartphone "[o]ffer[ed] faster performance and deliver[ed] higher sustained

22           performance with great battery life" while 76.25% would consider it important to purchase a

23           smartphone with "[g]reat battery life even while performing new great features" and 68.64%

24           would consider it important to purchase a smartphone that had "[m]ore power and performance

25           with the best battery life."

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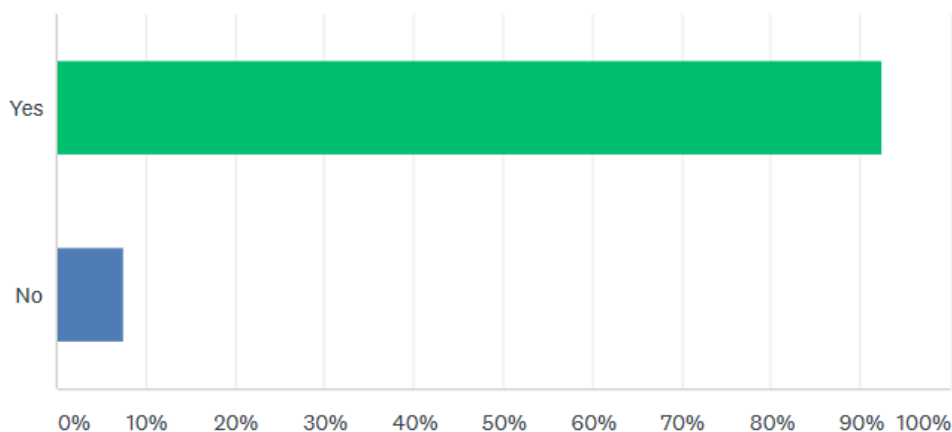
28           <sup>48</sup> See *supra* at n.40-44.

Answer Choices	Responses (percent)	Responses (Number)
Great battery life even while performing great new features	76.25%	1,573
More power and performance with the best battery life ever	68.64%	1,416
Offers faster performance and delivering higher sustained performance with great battery life	72.86%	1,503
<b>Total Respondents: 2,063</b>		

412. Apple's failure to disclose the UPOs would also have been material to iPhone purchasers. Indeed, of those surveyed, 92.44% stated it would be important to their buying decision to know if the iPhone might experience UPOs:

Would it be important to your buying decision to know if the iPhone might experience unexpected shutdowns?

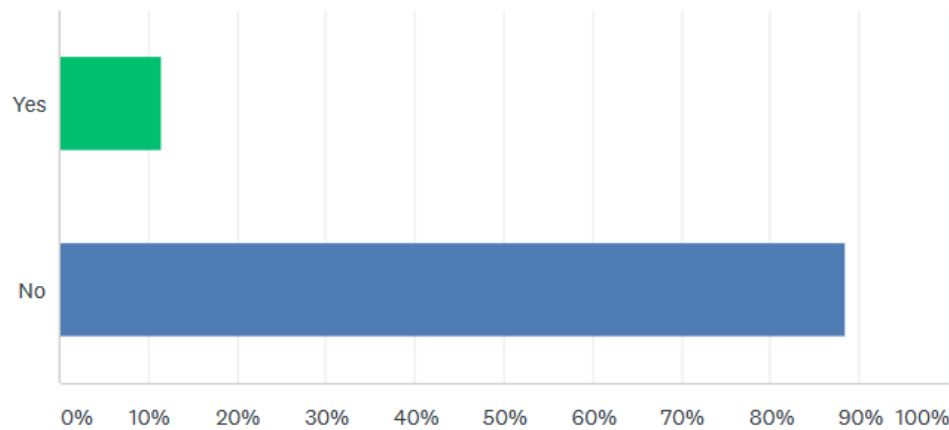
Answered: 2,063 Skipped: 0



413. Moreover, if iPhone users surveyed knew their iPhones would experience UPOs, 66.12% would consider buying a different brand of smartphone entirely while 88.51% would not be willing to pay the same price for the smartphone:

If you knew your iPhone would experience unexpected shutdowns would you be willing to pay the same price?

Answered: 2,063 Skipped: 0



414. The fact that 2 out of 3 individuals surveyed would consider buying a different brand of smartphone based on such a disclosure is surprising compared against Apple's 92% iPhone loyalty (or "retention") rate as of May 17, 2017, according to a study published by investment bank Morgan Stanley.<sup>49</sup> Apple's retention rate was the highest in the industry.<sup>50</sup> The willingness of the surveyed consumers to buy different smartphones if UPOs were disclosed is likely what motivated Apple to conceal the Defect, *i.e.*, to avoid losing consumers and revenue.

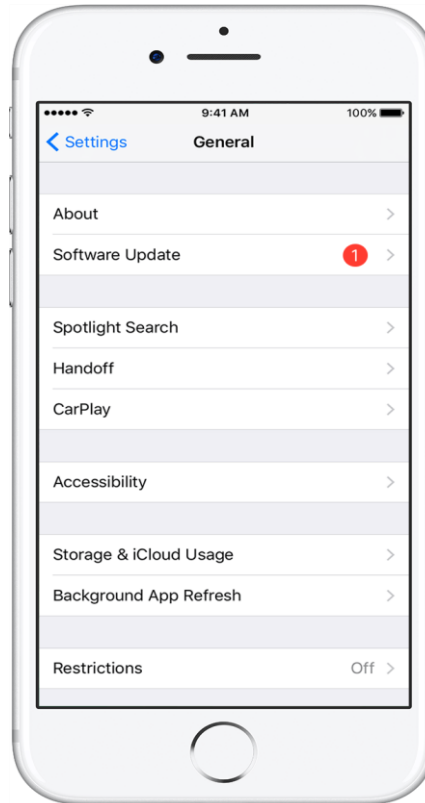
**B. Apple Compounded the Defect by Stressing Device Batteries with Power-Hungry Software: iOS Updates**

415. Apple's battery designs were also inadequate because they could not handle the power demands of the software Apple mandated users to run.

<sup>49</sup> M. Campbell, Apple's iPhone Scores 92% loyalty rate ahead of 'iPhone 8' launch, study finds, Apple Insider (May 17, 2017) (available at: <https://appleinsider.com/articles/17/05/18/apples-iphone-scores-92-loyalty-rate-ahead-of-iphone-8-launch-study-finds>) (last visited, November 27, 2018).

<sup>50</sup> *Id.*

416. When Apple releases a new operating system, it pushes the software directly to the customers' device through a red signal with a number in it that notifies users of the existence of an available "software update."



417. Within minutes, device owners can click on the prompt and download the new operating system.

418. It is very difficult, if not impossible, for typical Apple owners to avoid downloading an iOS update. As one site explains:

The bad news is there's no easy way to stop iOS from repeatedly throwing this alert at you....

To encourage people to get on the latest version of iOS, Apple implemented a feature called Automatic Downloads. This download updates in the background, and once it is downloaded, you are pushed to install it. Apple typically installs the software update at night when the iPhone, or iPad, is plugged in and charging.<sup>51</sup>

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<sup>51</sup> Lucy Hattersley, "How to Stop iOS Nagging You to Update to the Latest Version," MacWorld (July 6, 2016), (available at <https://goo.gl/DQ4LK4>). In this context, "jailbreaking" means to modify the iPhone to remove restrictions imposed by Apple and install apps not unauthorized by Apple. Navid Nield, "What is jailbreaking?" Tech Radar (June 6, 2016) (available at



1           419. Turning off the updates and the daily push notifications requires users to delve  
2 deep into their settings or to forgo WiFi, which ordinary customers would not do.<sup>52</sup>

3           **C. The Release of iOS 10 Was Secretly Designed to Camouflage the Defect**

4           420. In the Fall of 2016, iPhone users reported increasing occurrences of sudden  
5 shutdowns of iPhones 5 and 6 running versions of iOS 10 software, including when their  
6 devices indicated that battery life was still at or above 30%.<sup>53, 54</sup> Even the inventor of the iPod,  
7 Tony Fadell, voiced concern about this problem, commenting that the battery on his own iPhone  
8 kept shutting down despite having a significant amount of charge left in it: “It’s happening to  
9 me every other day-especially while using the mapping app. Have to always carry an external  
10 battery to revive it”<sup>55</sup> and “Issue with battery/shutdown algorithms?!”<sup>56</sup>

11           421. As Apple was aware, and confirmed with the diagnostic information it obtained,  
12 the shutdown problem was the foreseeable consequence of a serious Defect in Apple’s iPhones.  
13 The speed for which Apple’s products are known and marketed to consumers comes from  
14 powerful processing units which are supposed to perform calculations and render graphics on its  
15 smart-phones at top speeds. As these processing units become faster and more powerful,  
16 however, they also require more power from the phone’s battery.

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21 <https://www.techradar.com/how-to/phone-and-communications/mobile-phones/what-is-jailbreaking-1322927>).

22  
23 <sup>52</sup> Hattersly, How to Stop iOS Nagging You, *supra*.

24 <sup>53</sup> Apple Discussion Thread, <https://discussions.apple.com/message/30989226?start=165&tstart=0> (last visited June 30, 2018).

25 <sup>54</sup> Apple Discussion Thread, <https://discussions.apple.com/message/30989226?start=165&tstart=0> (last visited June 30, 2018).

26 <sup>55</sup> Tony Fadell Twitter Comment, (Nov. 30, 2016),  
<https://twitter.com/tfadell/status/804215290871607296?lang=en>.

27 <sup>56</sup> Tony Fadell Twitter Comment, (Nov. 30, 2016),  
28 <https://twitter.com/tfadell/status/804232051595640833>.

1           422. A further complication is that the resistance of lithium-ion batteries used in  
2 iPhones increases as the cells age, resulting in both a reduction in overall battery capacity and a  
3 reduction in the battery's ability to produce peak power output.<sup>57</sup>

4           423. The amount of power that the processing unit requires during its daily operation  
5 varies: sometimes very little; sometimes a great deal; and the battery should be designed and  
6 capable of producing enough peak power to keep pace with even the processor's highest  
7 demands. A battery and processor must be designed such that even as the battery ages and loses  
8 performance, it will still be capable of meeting the processor's peak power demands for years to  
9 come. As noted above, Apple represented that its batteries were designed to last at least 500  
10 charge cycles.

11           424. Electronics manufacturers like Apple are aware of this fact and thus must design  
12 batteries to be more powerful than they need to be so that as they grow weaker, they still have  
13 the ability to meet the processor's peak power demands.

14           425. Apple's iPhone 6, for example, uses Apple's proprietary A8 System on a Chip  
15 ("SoC") as its processor. This processor has low-power cores and high-power cores. The low  
16 power cores perform most of the day-to-day functions of the iPhone, and the high-power cores  
17 handle more graphically intensive activities such as gaming, recording and editing video,  
18 running certain applications at other times.<sup>58</sup>

19           426. When the high-power cores are active, they can draw peak power from the  
20 battery, which the battery should be capable of meeting for the lifetime of the smart-phone.<sup>59</sup>

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23 <sup>57</sup> Apple, iPhone Battery and Performance, <https://support.apple.com/en-us/HT208387> (June 15, 2018) (last visited June 30, 2018).

24 <sup>58</sup> See, e.g., Mike Wuerthele, "'A11 Fusion' in iPhone X appears to be a six core processor,  
25 according to iOS 11 leak," Apple Insider (Sept. 10, 2017),  
26 <https://appleinsider.com/articles/17/09/10/a11-fusion-in-iphone-x-appears-to-be-a-six-core-processor-according-to-ios-11-leak>; Ryan Smith, "Analyzing Apple's A8 SoC: PowerVR GX6450 & More," AnandTech (Sept. 10, 2014), <https://www.anandtech.com/show/8514/analyzing-apples-a8-soc-gx6650-more>.

27 <sup>59</sup> Reddit Thread, PSA: iPhone slow? Try replacing your battery!,  
28 [https://www.reddit.com/r/iphone/comments/7inu45/psa\\_iphone\\_slow\\_try\\_replacing\\_your\\_battery/](https://www.reddit.com/r/iphone/comments/7inu45/psa_iphone_slow_try_replacing_your_battery/).

1 But when the battery ages and is unable to deliver the peak power demanded by the phone's  
2 processor, the processor and phone switch off and will not turn on again until the phone is  
3 plugged into the wall.

4 427. The shutdown problem iPhone users were experiencing in Fall 2016 thus  
5 resulted from a significant Defect: the battery was not designed with enough power to meet the  
6 peak demands of the phone's processor as the battery aged. The result was that iPhones seemed  
7 to operate as designed when new, but as early as a few days or months, began to cease  
8 functioning, i.e., switching off at random intervals, when the iPhone processor required too  
9 much power of its flagging iPhone battery.

#### 10 **D. Apple Released iOS 10.2.1 to Further Conceal the Defect**

11 428. After confirming this Defect with the software diagnostics it surreptitiously  
12 deployed in user's Devices, Apple could have been transparent with its millions of customers  
13 and disclosed the Defect. Instead, Apple released iOS 10.2.1 on January 23, 2017 as a  
14 seemingly routine update of its operating system.

15 429. The alert to download iOS 10.2.1 stated that the update included "bug fixes" and  
16 improvements in device security. A depiction of the original iOS 10.2.1 notification on an  
17 iPhone is set forth below:



1           430. Sometime in February 2017, Apple added to its “Read Me” notes the following  
 2 statement to be displayed on users’ iPhones with the software upgrade: iOS 10.2.1 “also  
 3 improves power management during peak workloads to avoid unexpected shutdowns on  
 4 iPhone.”<sup>60</sup>

5           431. On or about February 23, 2017, Apple issued a statement that “[w]ith iOS 10.2.1,  
 6 Apple made improvements to reduce occurrences of unexpected shutdowns that a small number  
 7 of users were experiencing with their iPhone.”<sup>61</sup>

8           432. Throughout 2017, however, Apple failed to inform customers that the “fix” to  
 9 the shutdown problem in iOS 10.2.1 came with a significant – and undisclosed – tradeoff: the  
 10 update artificially slowed down the processors in Apple’s Devices. The software change Apple  
 11 introduced with iOS 10.2.1 concerns the “*powerd*” system, short for “power daemon,” which  
 12 controls CPU and GPU speed and power.<sup>62</sup> In computer science parlance, Apple concealed  
 13 within the iOS updates secret commands which “underclocked” the processors in the affected  
 14 phones, causing them to perform calculations across the board at a slower rate than the  
 15 hardware was capable of supporting, and slower than they had operated before the iOS updates.

16           433. Running at a slower rate after the update, the processors in Apple’s Devices  
 17 would demand less power during peak operation. This diminished requirement for peak power  
 18 would reduce and eliminate instances where the processor would outpace its battery, meaning  
 19 that even in their weakened condition, the older batteries could supply enough peak power to  
 20 meet the now reduced demands of the processors. Although this “fix” would prevent outright  
 21 shutdowns, it would slow the customers’ product and would scale, meaning as the batteries  
 22

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23 <sup>60</sup> Apple Support, Download iOS 10.0-10.3.3 Information,  
 24 [https://support.apple.com/kb/dl1893?locale=en\\_US](https://support.apple.com/kb/dl1893?locale=en_US); see also Ex. 2 (Feb. 2, 2018 Letter from C.  
 Hogan to Committee on Energy & Commerce, U.S. House of Representatives).

25 <sup>61</sup> Matthew Panzarino, “Apple says iOS 10.2.1 has reduced unexpected iPhone 6s shutdown issues  
 26 by 80%,” Tech Crunch (Feb. 23, 2017), [https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-  
 has-reduced-unexpected-iphone-6s-shutdown-issues-by-80/](https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-has-reduced-unexpected-iphone-6s-shutdown-issues-by-80/).

27 <sup>62</sup> Michael Potuck, “Geekbench developer links iPhone performance issues to battery age and iOS  
 28 updates,” 9 to 5 Mac (Dec. 18, 2017), [http://9to5mac.com/2017/12/18/iphone-battery-performance-  
 issues/](http://9to5mac.com/2017/12/18/iphone-battery-performance-issues/).

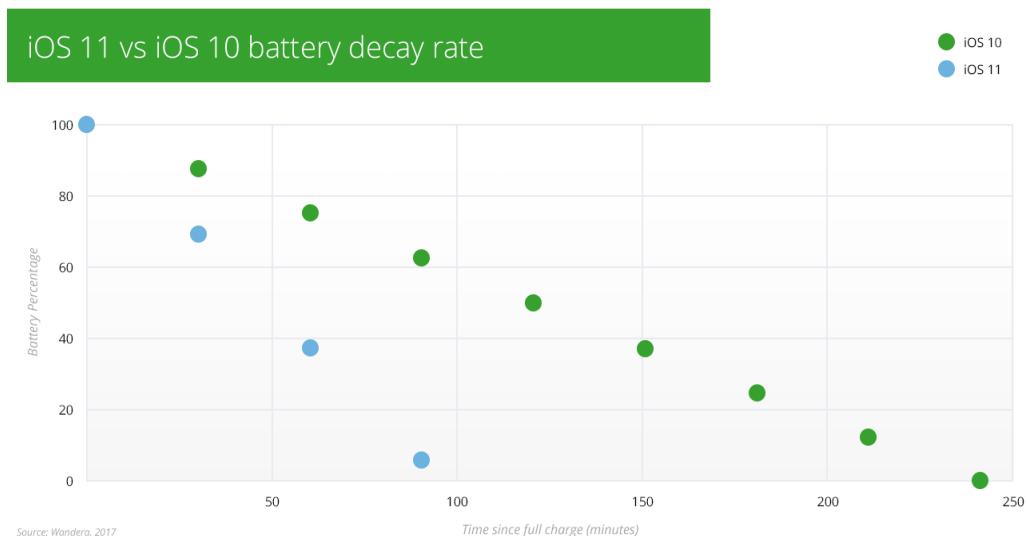
continued to grow weaker, the fix would continue to slow the processors so that demand never outpaced available power.<sup>63</sup>

434. Neither the software update notification nor the software update release notes made any mention of this severe throttling effect. Apple concealed the problem; Apple concealed the solution; and Apple concealed that its solution would slow its customers' products.

435. Users of Apple devices immediately began reporting reduced functionality, but there was no way for ordinary consumers to quantify these inklings or give them credence.

436. As detailed herein, Apple had to continue releasing the "throttling" software in future versions of its iOS as new Devices went to market. On September 19, 2017, Apple released iOS 11. Immediately upon downloading iOS 11, existing Apple iPhone and iPad users began to experience a marked decrease in battery life on their Devices.

437. One study of thousands of iPhone users within a monitored network compared the relative battery life of existing iPhones operating on iOS 10 versus iOS 11. The chart below shows the rate at which an iPhone with a fully charged battery lost battery power:<sup>64</sup>



<sup>63</sup> Reddit Thread, PSA: iPhone slow? Try replacing your battery!, *supra*.

<sup>64</sup> Liarna LA Porta, "iPhone users charged up over iOS 11 battery drain," Wander (Sept. 21, 2017), <https://wandera.com/blog/ios-11-battery-drain/>.

438. This study revealed that existing iPhones operating on the iOS 10 software on average drained to 0% battery after 240 minutes (4 hours), whereas those operating on iOS 11 on average drained to 0% battery after only 96 minutes (just over 1½ hours). In other words, iOS 11 reduced the average iPhone's battery life by more than 60%. The study demonstrates the substantially increased power demands that Apple foist upon users' Devices through its iOS update.

**E. The Defect in Apple's Devices, and the Impact of Throttling, Is Evidenced by Independent Analysis**

439. As set forth above, on December 9, 2017, a Reddit user by the handle "TeckFire" posted online benchmarks (measurements of the speed with which a phone's processor performs its computations) of his iPhone 6 operating on its old battery, and again after he had replaced it with a new battery. The iPhone's processor's speed had remarkably increased over 50%. This was incongruous: a new battery alone should not have had any impact on the processor speed.<sup>65</sup>

440. Then on December 18, 2017, spurred by the ensuing discussion from TeckFire's post, John Poole, a software engineer at Primate Labs, published a report based on an analysis of 100,000 iPhones and concluding that the decrease in performance of the affected iPhones was caused by the iOS 10.2.1 and iOS 11.2 updates, and not the normal decreased function that would be caused by an aging battery.<sup>66</sup>

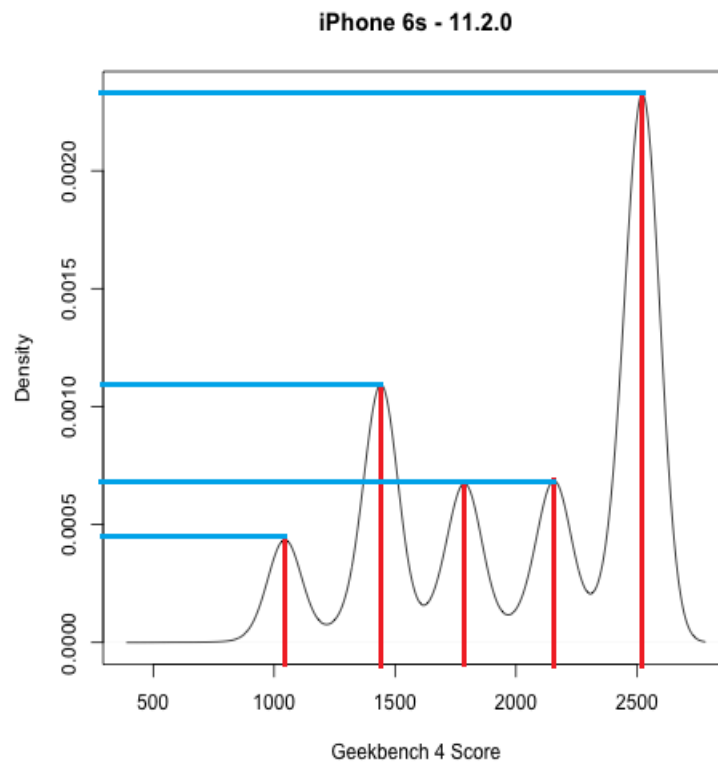
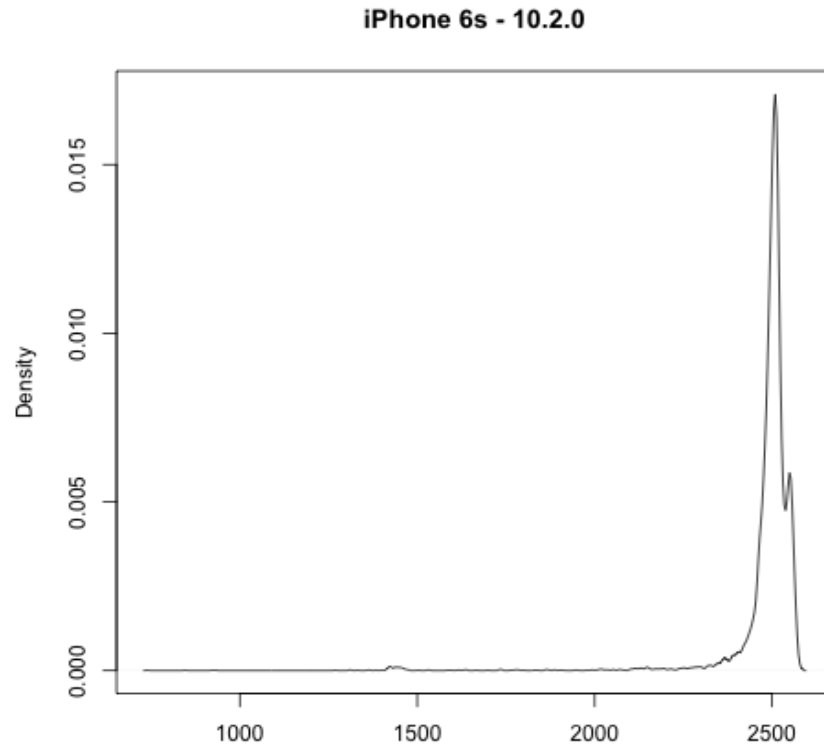
441. Poole's analysis, which measures computer processing benchmarks, showed that after updating an iPhone 6s to an iOS 11, there were more "cluster points" where performance would slow down. The chart below shows phone performance before and after iOS updates that use a "throttling" program. Ordinarily, operations run smoothly until the battery dies. The

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<sup>65</sup> Reddit Thread, PSA: iPhone slow? Try replacing your battery!, *supra*.

<sup>66</sup> John Poole, "iPhone Performance and Battery Age," Primate Labs (Dec. 18, 2017) (available at <https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/>). See also Exhibit 4 (Testimony of John Poole to House of Commons Standing Committee on Industry, Science, and Technology).

“power management” update bottled up user performance at several points to limit the taxing of the battery:





1           442. As Poole explained, “where the peaks happen represents the cluster of phones  
2 running at that particular performance level. And the height of the peaks (in blue) represents the  
3 relative frequency of benchmarks being performed at that performance level.” This translates to  
4 a real loss of performance. For example, “the iPhone 6s is slowed down by nearly 60%.” This  
5 “effectively turns the device’s performance into that of a device 1-2 generations older.”<sup>67</sup>

6           443. A processor’s speed is set, in part, by its clock speed which is measured in Hertz  
7 (Hz); the faster a processor is clocked, the faster a processor will normally perform tasks. For  
8 example, Apple advertises the iPhone 6 as having a processor speed of 1.4 GHz.<sup>68</sup> But  
9 benchmark tests run by iPhone 6 users following the iOS 10.2.1 update revealed a processor  
10 speed of 600MHz;<sup>69</sup> *less than half as fast as Apple advertises.*<sup>70</sup>

11           444. As noted above, on December 20, 2017, Apple admitted to journalists that the  
12 iOS 10.2.1 and iOS 11 software updates included a throttling “feature” to slow down older  
13 iPhone models.

14           445. Attempting to deflect attention from its misdeed, in connection with its  
15 December 2017 “revelations” it also asserted: “We now believe that another contributor to these  
16 user experiences is the continued chemical aging of the batteries in older iPhone 6 and iPhone  
17 6s devices, many of which are still running on their original batteries.”<sup>71</sup>

18           446. Other smart phone manufacturers, however, use similar lithium-ion batteries and  
19 have not experienced the same problems or resorted to throttling their phones’ performance.  
20 Samsung, for example, guarantees its Galaxy S7 and Note & lithium-ion batteries will retain  
21

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22 <sup>67</sup> Paulo Santos, “Apple: All You Wanted to Know on the iPhone Throttling Scandal,” Seeking  
23 Alpha (Dec. 26, 2017), (available at <https://seekingalpha.com/article/4133931-apple-wanted-know-iphone-throttling-scandal>).

24 <sup>68</sup> 1.4 GHz = 1,400,000,000 Hz.

25 <sup>69</sup> 600 MHz = 600,000,000 Hz.

26 <sup>70</sup> Tom Warren and Nick Statt, “Apple confirms iPhones with older batteries will take hits in  
27 performance,” The Verge (Dec. 20, 2017) (available at  
28 <https://www.theverge.com/2017/12/20/16800058/apple-iphone-slow-fix-battery-life-capacity>).

<sup>71</sup> Apple website, “A Message to Our Customers about iPhone Batteries and Performance,” dated  
December 28, 2017, available at: <https://www.apple.com/iphone-battery-and-performance/>.

1 95% of their capacity for at least two years; likewise, LG and Google warranty their smart  
2 phones' batteries for two years. Apple's warranty is shorter:

3 Your battery is designed to retain up to 80% of its original capacity at 500 complete  
4 charge cycles. The one-year warranty includes service coverage for a defective  
5 battery. If it is out of warranty, Apple offers a battery service for \$79, plus \$6.95  
shipping, subject to local tax.<sup>72</sup>

6 447. Apple has failed to address, or deny, the fact that it never asked its purchasers for  
7 their authorization to slow down their devices, nor inform them of this change.<sup>73</sup> As a result,  
8 Plaintiffs and other Class members were not notified when the power management technique  
9 was taking effect and were deceived into thinking that their devices were no longer capable of  
10 providing an adequate level of performance. Furthermore, they were not informed of Apple's  
11 own misgivings about the ability of its batteries to deliver on Apple's representations.

12 **IV. APPLE'S REVENUES DEPEND ON SELLING NEW DEVICES, AND THE**  
13 **"UPGRADE" FINANCIAL MODEL WAS CRITICALLY FAILING IN 2016-2017**

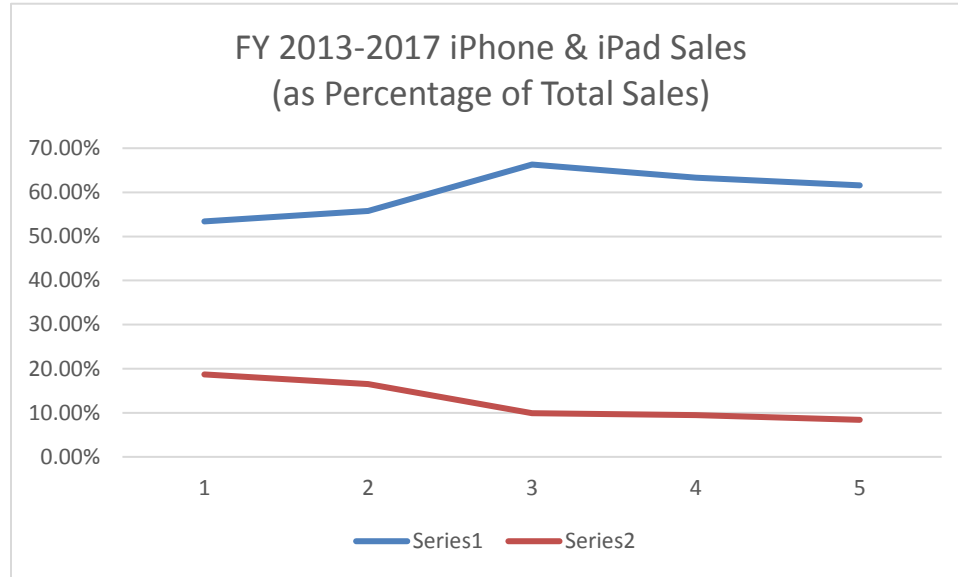
14 448. As set forth above, Plaintiffs and the Class need not plead Apple's motive for  
15 deceit. While the discovery process will be used to hone the reasons for Apple's malfeasance, it  
16 is apparent that Apple was and is financially dependent on selling new versions of the Devices.  
17 Some have even raised concerns that Apple engages in a "planned obsolescence" scheme to  
18 send consumers rushing to upgrade their Devices. Under any scenario, Apple's conduct was  
19 unlawful and fraudulent, and also unfair to consumers by causing them to believe their Devices  
20 were failing.

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24 <sup>72</sup> Apple, Battery Service and Recycling, <https://www.apple.com/batteries/service-and-recycling/>  
25 (last visited June 30, 2018). The iPad battery warranty is also one year, Apple warrants that "Your  
battery is designed to retain up to 80% of its original capacity at 1000 complete charge cycles."

26 <sup>73</sup> Apple website, "A Message to Our Customers about iPhone Batteries and Performance," dated  
27 December 28, 2017, available at: <https://www.apple.com/iphone-battery-and-performance/>. See  
28 also Apple Maximizing Battery Performance Website, <https://www.apple.com/batteries/maximizing-performance/> (last visited December 21, 2017)  
(emphasis added).

449. As detailed in the chart below, sales of the Devices comprised the bulk of Apple's total sales from at least fiscal year ("FY") 2013-2017,<sup>74</sup> and continuing thru the latest Form 10-Q's filed by the Company for FY 2018:<sup>75</sup>



450. In April 2016, news of the pending financial woes Apple faced from declining iPhone sales hit the news media. On April 27, 2016, Apple filed its Form 10-Q for the quarterly fiscal period ending March 26, 2016 ("2Q16") reporting that, for the first time since Apple began selling iPhones in 2007, the company sold fewer iPhones than it had sold in the same quarter the previous year (*i.e.* the second fiscal quarter of 2015, or "2Q15").<sup>76</sup> iPhone sales

<sup>74</sup> Data in this chart is derived from Apple's Form 10-K Annual Reports filed with the SEC for the fiscal years ending 2013-2017. Apple's fiscal year ends on the 52- or 53-week period that ends on the last Saturday of September in a given calendar year. Apple historically also counted on ramped up sales just prior to the holiday season when it released the "latest and greatest" iPhone just before its fiscal year end. This trick worked for Apple in both 2012 and 2014, where the Company enjoyed unit sales jumps of 29% and 46%, respectively, when a "radically new" iPhone was released (iPhone 5 released September 21, 2012) and (iPhones 6 and 6 Plus released September 19, 2014).

<sup>75</sup> Fiscal year 2018 ("FY 2018") cumulative sales of the Devices, as a percentage of Apple's overall revenue, is 66.6% for iPhones and 6.6% for iPads. See Reports on Form 10-Q filed by Apple for the quarterly periods ended December 30, 2017 ("1Q18"), available at: <https://www.sec.gov/Archives/edgar/data/320193/000032019318000007/a10-qq1201812302017.htm>, and March 31, 2018 ("2Q18"), available at: <https://www.sec.gov/Archives/edgar/data/320193/000032019318000070/a10-qq220183312018.htm>.

<sup>76</sup> See Apple Form 10-Q for 2Q16 filed April 27, 2016 at 25. See also Brian Barrett, "Apple's iPhone Sales Just Fell for the First Time—It Won't Be the Last," *Wired* (April 26, 2016) (citing both 16% drop in 2Q16 and 32% drop from 4Q15), <https://www.wired.com/2016/04/iphone-sales-decline/>. The iPhone is "so critical to Apple's balance sheet that its fall led to a **13 percent** drop in

were down 16% in 2Q16 from 2Q15. Indeed, the 2Q16 Form 10-Q reflects that Apple's unit sales in *each* major product line had declined from 2Q15—iPad declined by 19% and Mac by 12%.

451. On July 27, 2016, Apple filed its Form 10-Q for the quarterly fiscal period ended June 25, 2016 (the "3Q16 Form 10Q"). The 3Q16 Form 10Q (at 24-25) also reported an ongoing decline of unit sales across iPhone (15%) and iPad (9%), as compared to the third fiscal quarter of 2015 ("3Q15").

452. These downward unit sales trends ultimately caused Apple to report an annual sales decline for the first time since 2001.<sup>77</sup>

453. As admitted by Apple in its Annual Report on Form 10-K for the fiscal year ended September 24, 2016, filed with the SEC on October 26, 2016 (the "2016 Form 10-K"), iPhones suffered an 8% decline over fiscal year 2015 ("FY15") unit sales:

iPhone net sales decreased during 2016 compared to 2015. The Company believes the sales decline was due primarily to a lower rate of iPhone upgrades during 2016 compared to 2015 and challenging macroeconomic conditions in a number of major markets in 2016.

454. With regard to iPads, which suffered a 17% decline over FY15 unit sales, the 2016 Form 10-K stated:

iPad net sales decreased during 2016 compared to 2015 primarily due to lower unit sales and the effect of weakness in most foreign currencies relative to the U.S. dollar, partially offset by higher ASPs due to a shift in mix to higher-priced iPads. The Company believes the decline in iPad sales is due in part to a longer repurchase cycle for iPads and some level of cannibalization from the Company's other products.

455. By the Fall of 2016, the smartphone industry was facing slowing growth due to a stagnating market with more consumers "holding onto their smartphones longer" and waiting to upgrade their devices. Worse yet, growth in the market was predicted to come from

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the company's revenue." *Id.* (emphasis added). And although Apple still saw room for growth in China, analysts observed that "Apple's not going to double their sales anymore." *Id.*

<sup>77</sup> See Seth Fiegerman, "Apple's annual sales fall for first time since 2001," *CNN Money* (Oct. 25, 2016), <http://money.cnn.com/2016/10/25/technology/apple-earnings-decline/index.html>.

1 international markets favoring lower priced devices from Android vendors, as opposed to the  
2 premium smartphone prices demanded by Apple.<sup>78</sup>

3 456. In addition, in late 2016, Apple was reportedly experiencing increased  
4 competition in the “smartphone” market. Competitors were ramping up their own versions of  
5 smartphones at the end of 2016, just before the Updates were issued. For example, in October  
6 2016, Google was launching its smartphone, known as the “Pixel.” As reported in an October  
7 25, 2016 online article published by Rupert Neate on theguardian.com, entitled, “Apple’s  
8 annual profits fall for first time in 15 years as iPhone sales decline”:

9 The iPhone, which first launched in June 2007, has transformed the telecoms industry  
10 but Apple is now facing more intense competition from the likes of Google, which last  
11 week released its first branded smartphone, the Pixel, and upstart rivals offering much  
cheaper smartphone devices in key markets such as China.<sup>79</sup>

12 457. Therefore, Apple was in a crunch to find ways to increase sales (*i.e.*, consumers  
13 upgrading to buy new versions of the Devices)—and avoid a recall like Samsung — just at the  
14 time it was forced to launch the Updates to mask the Defect.<sup>80</sup>

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17  
18 <sup>78</sup> See, e.g., Elad Natanson, “2016: A Pivotal For The Smartphone Industry,” *Forbes* (Sept. 12,  
2016), <https://www.forbes.com/sites/eladnatanson/2016/09/12/2016-a-pivotal-year-for-the-smartphone-industry/#7b516c68386e>. In addition, between late 2016 and early 2017, third-party  
19 vendors phased out two-year service contracts where consumers could buy the newest iPhone for a  
20 bargain price. See, e.g., Aaron Pressman, “The Death of the \$199 iPhone Marks A New Era for  
Wireless,” *Fortune* (Jan. 11, 2017), <http://fortune.com/2017/01/11/death-of-the-199-iphone-wireless-subsidy> (discussing how the end of two-year service contracts with lower pricing on new  
21 phones was a factor in changing consumer purchasing patterns toward maintaining phones longer).

22 <sup>79</sup> See Rupert Neate, “Apple’s annual profits fall for first time in 15 years as iPhone sales decline,”  
23 *The Guardian* (Oct. 25, 2016), <https://www.theguardian.com/technology/2016/oct/25/apple-profits-sales-decline-2016-iphone-7> (last visited July 2, 2018).

24 <sup>80</sup> See Associated Press, “Sales of iPhones decline, but Apple predicts a better-than-expected  
25 holiday season,” *Los Angeles Times* (Oct. 25, 2016), <http://www.latimes.com/business/la-fi-tn-apple-earns-20161025-snap-story.html> (“After stumbling in 2016, Apple is betting on a better year  
26 ahead. The Silicon Valley tech giant is forecasting a return to growth in iPhone sales this winter  
after a rare slump that depressed Apple’s revenue and stock performance over the last three quarters.  
27 Apple has been struggling with shrinking demand for its signature products at a time when analysts  
say it is increasingly difficult for tech companies to come up with dramatically new features. Many  
28 consumers are holding on to their old smartphones and PCs for longer, seeing little reason to buy a  
new model that’s only slightly better.”).

458. Apple's conduct, described herein, was intentionally deceptive and, separately, was malicious in that it was intended to cause economic injury to Plaintiffs and the Class. On information and belief based on the course of conduct described above, one or more of Apple's officers, directors or managing agents authorized or ratified Apple's misconduct.

## **V. RELATED CASES AND PROCEEDINGS**

### **A. United States – California State Court**

459. There are currently four related class actions pending in California state courts (*Rosalia v. Apple, Inc.*; *Tandel v. Apple, Inc.*; *Santino v. Apple, Inc.*; and *Krueger v. Apple Inc.*) which have been consolidated into *Apple OS Cases*, JCCP No. 4976, and has been assigned to Judge Karnow in the Superior Court for San Francisco County as coordination trial judge. Apple moved to stay proceedings "pending the outcome of the parallel federal litigation" but, on October 30, 2018, Judge Karnow denied the motion. The Superior Court has also set December 20, 2018 as the date for a hearing on the appointment of lead counsel and for a Case Management Conference.

### **B. United States – Federal Cases Not Consolidated**

460. Only one federal *pro se* case has not been consolidated with the MDL. *See Oliver v. Apple Inc.*, No. 5:18-cv-3638-EJD (N.D. Cal.).

### **C. United States – Congressional and Senate Proceedings**

461. On January 12, 2018, the United States House of Representatives Committee on Energy and Commerce wrote a letter to Apple CEO Tim Cook requesting responses to 13 questions. *See* Exhibit 1. On February 2, 2018, Apple responded by letter. *See* Exhibit 2. As of the date of this Complaint, the investigation is ongoing despite reports on February 1, 2018, of related investigations at the Department of Justice and Securities and Exchange Commission (*see* below, Section V.D.) and statements by two members of Congress (Rep. Robin Kelly of Illinois and Emanuel Cleaver II of Missouri) not directly involved in the House investigation

1 who said that “we don’t know what will come of the DOJ and SEC probes” and suggested that  
2 further House action would await word from the DOJ and SEC.

3 462. On January 10, 2018, the United States Senate Committee on Commerce,  
4 Science & Transportation launched an investigation of the Defect and the Update. Chairman  
5 Sen. John Thune sent a letter to Apple CEO Tim Cook posing eight questions, and during an  
6 interview with CNBC said:

7 463. They [Apple] just acknowledged after the holidays that this is actually  
8 happening, which is an admission that we think is long overdue but that being the case, we at  
9 least now want to find out what they are doing to inform consumers. The fact remains there are  
10 a lot of unanswered questions about this practice and obviously I think consumers have a right  
11 to know and so we’re going to make sure that Apple is forthcoming and responsive and we’ll  
12 take additional steps as necessary.

13 464. On February 2, 2018, Apple responded to Sen. Thune’s letter, and promised to  
14 update the Committee. *See Exhibit 3.* The investigation is ongoing.

15 **D. United States – Federal Regulatory Proceedings**

16 465. On January 30, 2018, Bloomberg News reported that both the Securities and  
17 Exchange Commission and the Department of Justice were independently investigating Apple  
18 for how it disclosed information related to the Updates. The agencies have demanded  
19 documents and information, according to anonymous sources who spoke to Bloomberg News.  
20 Although the agencies declined to comment to the reports, Apple confirmed both investigations,  
21 said “we have received questions from some government agencies and we are responding to  
22 them.”

23 **E. Canada – Regulatory Proceedings**

24 466. On March 1, 2018, the Standing Committee on Industry, Science and  
25 Technology in the Canadian House of Commons held hearings on the Defect and Updates. A  
26 transcript of the hearing appears as Exhibit 4 to this Complaint. Those providing testimony  
27 included a representative of the Canadian Competition Bureau (Ms. Alexa Gendron-  
28



O'Donnell), who confirmed that her office is investigating Apple related to the Defect and the Update, and that she has the ability to participate in information-sharing with investigators in the United States, France, Israel and South Korea.

467. Importantly, when Nathaniel Erskine-Smith (Member of Parliament for Beaches-East York) asked Apple to disclose internal communications, opinions or advice given to Apple Canada or Apple Inc. regarding whether the Defect should be made public, Apple's representative refused: "I'm not going to make that undertaking . . . If the committee wants to make a direction about things, we'll reconsider. But the fact is, as people here know, Apple is exposed to a number of class actions in the United States." Member of Parliament Brian Masse, who pushed for the committee to study the issue, said the reason for his push "was about Canada responding to a problem that is obviously international."

#### **F. Canada – Litigation**

468. On February 23, 2018, plaintiff Cherif Saleh filed a statement of claim in the Ontario Superior Court of Justice against Apple Inc. and Apple Canada Inc. alleging eight common law and statutory counts and seeking damages and punitive damages on behalf of a class of Canadian citizens, excluding Quebec, related to the Defect and the Software Updates. On March 2, 2018, plaintiff Antonio Gaudio filed a similar statement of claim against Apple, Inc. and Apple Canada, Inc. in the Ontario Superior Court on behalf of a class that includes all persons, corporations, and other entities in Canada, excluding residents of Quebec, who purchased a Device. The plaintiffs in both cases have agreed to cooperate with each other and have temporarily agreed to hold the action in abeyance in favor of MDL 2827 and are willing to discuss having the Canadian court officially stay the actions in favor of MDL 2827 if the stay would comport with the principles of the cross-border notice protocols set forth by the American Bar Association in August 2011.

#### **G. Canada – Litigation – Quebec**

469. On December 29, 2017, Plaintiff Raphael Badaoui filed a class action in Quebec Superior Court (District of Montreal) against Apple Canada Inc. and Apple Inc., Case No. 500-

1 06-000897-179. The plaintiff is seeking class action status on behalf of all consumers in  
2 Quebec who purchased certain Apple Devices and were injured as a result of the Defect and the  
3 Updates. The case is pending.

#### 4 **H. Israel – Regulatory Proceedings**

5 470. On April 9, 2018, the Israeli Consumer Protection and Fair Trade Authority (part  
6 of the Economy Ministry) announced that it launched an investigation into Apple for possible  
7 breaches of duty to users to disclose that the Updates would slow the performance of certain  
8 model iPhones. Rony Friedman, CEO of Apple Israel, was questioned in a private session  
9 about whether Apple provided “essential” information on the true purpose and effect of the  
10 Software Updates. The investigation continues.

#### 11 **I. Israel – Litigation**

12 471. Five class actions have been filed against Apple in Israel. A hearing was held at  
13 the district court in Tel Aviv on April 10, 2018, in which it was agreed that all five class actions  
14 will be consolidated and an amended motion for class action would be filed within 90 days (in  
15 Israel, the motion for class action precedes the motion to dismiss). As written in the court’s  
16 decision, the reason for 90 days is to follow after the consolidated amended complaint in the  
17 United States. Lead counsel have been appointed by the Court and have conferred with Lead  
18 Counsel in the United States. The case is pending.

#### 19 **J. France – Criminal Proceedings**

20 472. On December 27, 2018, an environmental group called HOP (“Halte à  
21 l’Obsolescence Programmée” or “Stop the Programmed Obsolescence”) filed a complaint with  
22 the Prosecutor of the French Republic asserting counts under Article L. 441-2 of the French  
23 Consumer Code (planned obsolescence) and Article L. 441-1 of the Consumer Code (deception)  
24 against Apple France. Article L. 441-2 prohibits “the practice of planned obsolescence that is  
25 defined by the use of techniques by which the head of the marketing of a product is to  
26 deliberately reduce the life span to increase the replacement rate.” HOP alleged that Apple’s  
27 purposefully slowdown of iPhones via the Updates was done deliberately in violation of the  
28

1 Consumer Code, which is a criminal offense. According to French media, prosecutors accepted  
2 the complaint and opened a formal probe on January 5, 2018.

3 **K. Italy – Regulatory Proceedings**

4 473. On January 18, 2018, Italy’s antitrust enforcer (the Autorit Garante della  
5 Concorrenza e del Mercato) (“AGCM”) announced that it launched an investigation into  
6 consumer complaints that Apple was purposefully slowing certain Devices after software  
7 updates in order to force Italian citizens to buy news ones, based on faked obsolescence. The  
8 AGCM claims that if the behavior were proven, it would violate Articles 20, 21, 22 and 24 of  
9 the consumer code. The investigation is continuing.

10 **L. China – Regulatory Proceedings**

11 474. On January 15, 2018, the Xinhua state news agency reported that the Shanghai  
12 Consumer Council wrote to Apple asking it to explain the reports of the Device Defect and  
13 slowing caused by the Updates. The Council said it received almost three times as many  
14 complaints about Apple products in 2017 compared to just two years prior. The investigation is  
15 continuing.

16 **M. Russia – Litigation**

17 475. Starting in January 2018, individual lawsuits were filed against Apple in the  
18 Tverskoy (Moscow district) court, led by legal services firm Lex Borealis in Moscow. Legal  
19 funding is reportedly being provided by NLF Group. Attorneys at Lex Borealis said in a joint  
20 statement with NLF Group that in addition to the early suits filed, they were handling “at least  
21 several hundred” claims running into “several tens of millions of rubles.” Although the actions  
22 started in Moscow, counsel for the early claimants said they would consider similar litigation in  
23 the provinces.

24 **N. South Korea – Litigation**

25 476. In March 2018, an opt-in class action suit on behalf of more than 60,000 named  
26 plaintiffs was filed in Seoul against Apple Inc. and its Korean subsidiary in the Seoul Central  
27 District Court, alleging purposeful Device degradation. It set a record for the most number of  
28

1 plaintiffs in a single lawsuit. It followed two earlier suits by a consumer advocacy group called  
 2 Citizens United for Consumer Sovereignty brought on behalf of 401 plaintiffs and 122  
 3 plaintiffs, respectively. The plaintiffs are seeking compensation damages on behalf of those  
 4 customers who opt in (out of approximately 10 million Korean buyers of certain Apple  
 5 Devices), and lead counsel in the action reported to the press that they are watching the U.S.  
 6 litigation closely.

#### 7 **O. South Korea – Regulatory Proceedings**

8 477. Following a complaint made by Seoul-based Citizens United for Consumer  
 9 Sovereignty (the same group discussed above) against Apple CEO Tim Cook and the head of  
 10 Apple's Korean subsidiary, the Seoul Central District Prosecutors Office opened a formal probe  
 11 with its intellectual property crime unit. The CUCS claimed that Apple deliberately slowed  
 12 older model iPhones in order to push Apple customers towards newer, more expensive modes  
 13 of the company's phones as part of a planned obsolescence strategy. The probe is continuing.

#### 14 **P. Additional Regulatory Proceedings**

15 478. On November 29, 2018 Defendant Apple stated it and/or its affiliates are  
 16 responding or have responded to the following public government inquiries, criminal referrals,  
 17 or investigations, which relate to the matters alleged herein but are not identified above:

- 18 • Ministry of Justice (Brazil);
- 19 • Procon Maranhao (Brazil);
- 20 • National Telecommunications Agency (ANATEL, Brazil);
- 21 • Procon Porto Alegre (Brazil);
- 22 • Procon Sao Paulo (Brazil);
- 23 • Public Ministry of the State of Sao Paolo (Brazil);
- 24 • State of Minas Gerais Office of the Public Prosecutor (Brazil);
- 25 • State of Parana Office of the Public Prosecutor (Brazil);
- 26 • State of Rio de Janeiro Office of the Public Prosecutor (Brazil);
- 27 • El Servicio Nacional del Consumidor (SERNAC, Chile);
- 28

- State Administration for Industry and Commerce (China);
- Superintendency of Industry and Commerce (SIC, Colombia);
- Ministry of Economy, Trade, and Industry (MEIC, Costa Rica);
- BEUC (the European Consumer Organization);
- Provincial Public Prosecutor of Madrid Section for the Protection of the Rights of Consumers and Users (Spain);
- Spanish Agency for Consumer Affairs, Food Safety and Nutrition (AECOSAN, Spain);
- General Directorate of Consumer Affairs of the Ministry of Economy and Finance of the Community of Madrid (Spain);
- Geneva Prosecutor (Switzerland);
- National Communications Commission (NCC, Taiwan);
- Ministry of Customs and Trade, General Directorate of Consumer Protection and Market Observance (Turkey); and
- The Competition and Consumer Protection Authority of Ministry of Industry and Trade (VCA, Vietnam).

**Q. Additional Related Litigation**

479. On November 29, 2018 Defendant Apple stated it and/or its affiliates are or have been a defendant in the following public litigation proceedings, which relate to the matters alleged herein but are not identified above:

- *Alexander Alexandrovich Gaun v. Apple Rus LLC* Case No. 2-2009/2018 (Russia);
- *Alexei V. Zaporozhets v. Apple Rus LLC* Case No. 2-1439/2018 (Russia);
- *Ali Hibanaura v. Apple Inc. and Apple Canada Inc.* Case No. 1803 02688 (Canada);
- *Andrei Vladimirovich Perkov v. Apple Rus LLC.* Case No. 02-1242/18 (Russia);

- 1 • *Bram v. Apple Inc.* Case No. 47104-12-17 (Israel);
- 2 • *Brasileiro de Política e Direito da Informática ("IBDI") e Ministerio*
- 3 *Publico do Distrito Federal e Territorios v. Apple Computer Brasil Ltda*
- 4 *Case No. 0700899-55 (Brazil);*
- 5 • *Collins-Swartz v. Apple Inc. and Apple Canada Inc.* Case No. CV-18-
- 6 591399 (Canada);
- 7 • *Crema v. Apple Inc. and Apple Canada Inc.* Case No. S-188008
- 8 (Canada);
- 9 • *Elina Yurievna Erlich v. Apple Rus LLC* (Russia);
- 10 • *Hung v. Apple Asia LLC* Case No. 107-Bei-Xiao-Chien-Zi 23 (Taiwan);
- 11 • *Lapid v. Apple Inc.* Case No. 48637-12-17 (Israel);
- 12 • *Levi v. Apple Inc.* Case No. 29438-01-18 (Israel);
- 13 • *Liao Wei v. Apple Inc. & CTE, Perkov* (China);
- 14 • *Lidia Arkadievna Pasenyuk v. Apple Rus LLC* Case No. 2-5201/18
- 15 (Russia);
- 16 • *Liu v. Apple Asia LLC, Taipei 101 and Lisa Lu* (Taiwan);
- 17 • *Marty Jay Blythman v. Apple Inc. and Apple Canada Inc.* Case No. QB6
- 18 302 OT 2018 (Canada);
- 19 • *Noy v. Apple Inc.* Case No. 47087-12-17 (Israel);
- 20 • *Oscar Ivan Guaque Peña y Otros v. Apple Colombia S.A.S.* (Colombia);
- 21 • *Pniel v. Apple Inc.* Case No. 47272-12-17 (Israel);
- 22 • *Simon St-Onge v. Apple Inc. and Apple Canada Inc.* Case No. 500-06-
- 23 000893-178 (Canada);
- 24 • *Stacie Strohmaier v. Apple Inc. and Apple Canada Inc.* Case No. S-
- 25 186592 (Canada);
- 26 • *Seong-Hyun Kwak v. Apple Inc. and Apple Korea Ltd.* Case No.
- 27 2018Gas01250600 (Korea);
- 28

- *Soo-Young Choi v. Apple Korea Ltd.* Case No. 2018Gas01008359 (Korea);
- *Da-Young Kim, et al. v. Apple Inc. and Apple Korea Ltd.* Case No. 2018Gahap263 (Korea);
- *Kyung-Kuk Kang, et al v. Apple Inc. and Apple Korea Ltd.* Case No. 2018Gahap1419 (Korea);
- *Min-Kuk Kim, et al. v. Apple Inc. and Apple Korea Ltd.* Case No. 2018Gadan5017429 (Korea);
- *Seong-Hoon Kim et al. v. Apple Inc. and Apple Korea Ltd.* Case No. 2018Gahap2078 (Korea); and
- Ho Chi Minh City Court Case (Vietnam).

## VI. APPLE'S SOFTWARE LICENSE AGREEMENTS

480. In order to use any Device sold by Apple, consumers must use Apple's proprietary iOS, which provides the code by which the Devices are operated. Without the iOS, the Devices do not work as they are intended.

481. Apple claims that Device users agree to be bound by the iOS Software License Agreement by using their Devices or downloading software updates.<sup>81</sup> Although the iOS Software License Agreements differ slightly based upon country in which the Device was sold and by version of iOS, the material terms are the same, and—with the exception of the United Kingdom and as previously described herein—provide that California law governs the agreement.

482. Consumers do not have a choice in selecting software for use on their Devices other than choosing the timing of a software upgrade; that is, consumers must use Apple's

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<sup>81</sup> Versions of those agreements for each iOS, incorporated herein by reference, are available at <https://www.apple.com/legal/sla/> (last visited June 27, 2018). A sample of these agreements are also attached hereto as Exhibits 5, 6.



1 operating system if they do not want to risk voiding the warranties that are provided with the  
2 sale of any Device.

3 483. Accordingly, consumers must use Apple's operating system, ostensibly subject  
4 to the terms of the iOS Software License Agreement, to use their Devices. The iOS Software  
5 License Agreement is thus part of the benefit of Plaintiffs' and class members' bargains when  
6 purchasing Devices to the extent they apply.

7 484. Because of this, to the extent they apply, the iOS Software License Agreements  
8 are part of the benefit of consumers' bargain when purchasing the Devices, because consumers  
9 expect that their Devices will *operate* as advertised and intended upon purchase of the Devices.

10 485. Apple's iOS Software License Agreement attempts to include language that  
11 disclaims certain warranties; however, the agreement is one-sided, does not allow consumers to  
12 negotiate separate terms, is an unconscionable contract of adhesion, and would essentially  
13 render consumers' Devices incapable of operation—and from performing *any* function—if the  
14 operating software were corrupted, ceased to function, and restricted the use of Devices as they  
15 were intended and marketed to be used.

16 486. Additionally, the limitation period in the iOS Software License Agreement  
17 prevents consumers from discovering any Defect in operating software within the applicable  
18 and unenforceable limitations period even with the use of diligence as Apple is in the exclusive  
19 control of information regarding its proprietary software.

20 487. Any limitations periods in the iOS Software License Agreement are thus  
21 unconscionable and unenforceable.

22 488. Additionally, attempts to limit liability for software Updates that would cause  
23 Devices to become inoperable are unconscionable and unenforceable, as the operating software  
24 is *necessary* in order to use the Devices, and fully realize the benefit of consumers' bargains.  
25  
26  
27  
28

**CLASS ALLEGATIONS**

489. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4), Plaintiffs seek certification of the following class:

**All purchasers, owners, users or lessees of the following Apple Devices: the Apple iPhone 5, 5s, 5c, 6, 6s 6 Plus, 6s Plus, SE, 7, 7 Plus, and the Apple iPad, including the Fourth Generation, Mini, Air, Mini 2, Update to Fourth Generation, Air 2, Mini 3, Mini 4, Pro, and 9.7-Inch Pro, Fifth Generation, 10.5-Inch Pro, 12.9-Inch Pro, and Sixth Generation in the United States and Foreign Countries.<sup>82</sup>**

490. If necessary, Plaintiffs also seek to represent subclasses of individuals who purchased Apple Devices in each of the 50 states and U.S. territories, as well as foreign countries with representative plaintiffs as addressed in this Complaint. As detailed below in their respective causes of action, each state subclass is referenced by the name of its state (i.e., the Alabama Subclass, the Washington Subclass, etc.).

491. Plaintiff Sharma also seeks to represent a separate class of individuals who purchased Apple Devices in the United Kingdom, referred to herein as the “U.K. Subclass.”

492. Collectively, unless otherwise so stated, the above-defined classes and subclasses are referred to herein as the “Class.”

493. Excluded from the Class and U.K. Class are Apple, its subsidiaries, affiliates, officers, directors, and employees and persons who have settled with and validly released Apple from separate, non-class legal actions against Apple based on the conduct alleged herein.

494. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The members of each class are so numerous and geographically dispersed that individual joinder of all class members is impracticable. Plaintiffs are informed and believe—based upon the publicly-available information discussed herein—that there are millions of class members, making joinder

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<sup>82</sup> For purposes of this Consolidated Amended Complaint, “Foreign Countries” refers to Argentina, Australia, Azerbaijan, Belgium, Brazil, Canada, Chile, China, Columbia, the Czech Republic, Denmark, France, Germany, Greece, Hong Kong, India, Italy, Japan, Malaysia, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, Romania, Russia, Saudi Arabia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, the Ukraine, and Venezuela.

1 impracticable. Those individuals' identities are available through Apple's records, and class  
 2 members may be notified of the pendency of this action by recognized, Court-approved notice  
 3 dissemination methods.

4 495. **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2)**  
 5 **and 23(b)(3).** Apple has acted with respect to Plaintiffs and the other members of the proposed  
 6 Class in a manner generally applicable to each of them. There is a well-defined community of  
 7 interest in the questions of law and fact involved, which affect all class members. The questions  
 8 of law and fact common to the Class predominate over the questions that may affect individual  
 9 class members, including the following:

- 10 a. Whether Apple designed, manufactured, advertised, promoted, and sold Devices that  
 11 it knew contained the Defect, and withheld that information from consumers or  
 12 purposefully misrepresented the Devices to consumers;
- 13 b. Whether Apple designed updated iOS to address the Defect in a manner that slowed  
 14 the performance of those Devices;
- 15 c. Whether and to what extent Apple disclosed the effect of iOS Updates to Device  
 16 performance;
- 17 d. Whether Apple used the iOS modification to profit from Plaintiffs and the other  
 18 class members by inducing them to buy new replacements for their Devices;
- 19 e. Whether Apple is subject to liability for fraudulently concealing material facts from  
 20 Plaintiffs and the other class members;
- 21 f. Whether Apple is subject to liability for violating the Consumers Legal Remedies  
 22 Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*, and other applicable and similar  
 23 laws of the United States and territories and laws of foreign countries (such as the  
 24 United Kingdom);
- 25 f. Whether Apple's conduct has violated the Unfair Competition Law ("UCL"), Cal.  
 26 Bus. & Prof. Code §§ 17200, *et seq.*, and other applicable and similar laws of the  
 27 United States and territories and laws of foreign countries (such as the United  
 28

Kingdom);

- g. Whether Apple's conduct has violated the Consumer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*;
- h. Whether Apple's conduct has violated Cal. Penal Code § 502.
- i. Whether Apple's conduct violated any additional federal law, law from any United States state or territory, or similar laws of foreign countries;
- j. Whether Apple has been unjustly enriched as a result of its fraudulent conduct, such that it would be inequitable for Apple to retain the benefits conferred upon it by Plaintiffs and the other class members;
- k. Whether compensatory or consequential damages should be awarded to Plaintiffs and the other class members;
- l. Whether punitive damages should be awarded to Plaintiffs and the other class members;
- m. Whether restitution should be awarded to Plaintiffs and the other class members; and
- n. Whether other, additional relief is appropriate, and what that relief should be.

496. **Typicality: Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of other class members' claims because Plaintiffs and class members were subjected to the same allegedly unlawful conduct and damaged in the same way.

497. **Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate class representatives because their interests do not conflict with the interests of class members who they seek to represent, Plaintiffs have retained counsel competent and experienced in complex class action litigation, and Plaintiffs intend to prosecute this action vigorously. The class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

498. **Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).** The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would

1 establish incompatible standards of conduct for Apple. Such individual actions would create a  
2 risk of adjudications that would be dispositive of the interests of other class members and  
3 impair their interests. Apple has acted and/or refused to act on grounds generally applicable to  
4 the Class, making final injunctive relief or corresponding declaratory relief appropriate.

5 499. Injunctive relief is particularly necessary in this case because: (1) Plaintiffs  
6 desire to purchase products with the same qualities and attributes as Apple advertised the  
7 Devices to have; (2) if Apple actually manufactured Devices with the qualities and attributes as  
8 deceptively represented, Plaintiffs would purchase those Devices; (3) but Plaintiffs do not have  
9 the ability to determine whether Apple's representations are true concerning the Devices if they  
10 purchase such Devices in the future. Indeed, Plaintiffs, and putative class members, in the  
11 future will likely want to purchase Devices manufactured by Apple; however, they expect that  
12 Apple will not misrepresent or conceal defects in those Devices (or subsequently-released  
13 iPhones and iPads), and will provide clear explanations regarding the Updates to those Devices  
14 (without concealing or misrepresenting what the Updates will do).

15 500. **Superiority: Federal Rule of Civil Procedure 23(b)(3).** A class action is  
16 superior to any other available means for the fair and efficient adjudication of this controversy,  
17 and no unusual difficulties are likely to be encountered in the management of this class action.  
18 The damages or other financial detriment suffered by Plaintiffs and class members are relatively  
19 small compared to the burden and expense that would be required to individually litigate their  
20 claims against Apple, so it would be impracticable for class members to individually seek  
21 redress for Apple's wrongful conduct. Even if class members could afford litigation, the court  
22 system could not. Individualized litigation creates a potential for inconsistent or contradictory  
23 judgments and increases the delay and expense to all parties and the court system. By contrast,  
24 the class action device presents far fewer management difficulties and provides the benefits of  
25 single adjudication, economies of scale, and comprehensive supervision by a single court.  
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1                                    **TOLLING OF APPLICABLE LIMITATIONS PERIODS**

2            501.    **Discovery Rule Tolling.** Neither Plaintiffs nor the other class members could  
3 have discovered through the exercise of reasonable diligence that their Devices were defective  
4 within the time period of any applicable statutes of limitation. Nor could they have determined  
5 with the exercise of any reasonable diligence that the Updates to the iOS would further  
6 exacerbate the problems with their Devices.

7            502.    **Fraudulent Concealment Tolling.** Throughout the time period relevant to this  
8 action, Apple concealed from and failed to disclose to Plaintiffs and the other class members  
9 vital information concerning the Defect and problems with the Updates described herein.  
10 Indeed, Apple kept Plaintiffs and the other class members ignorant of vital information essential  
11 to the pursuit of their claims. As a result, neither Plaintiffs nor the other class members could  
12 have discovered the Defect or problems with the iOS Updates, even upon reasonable exercise of  
13 diligence.

14           503.    Despite its knowledge of the above, Apple failed to disclose and concealed, and  
15 continues to conceal, critical information from Plaintiffs and the other class members, even  
16 though, at any point in time, it could have done so through individual correspondence, media  
17 release, or by other means. Although Apple has issued public apologies for throttling Device  
18 speeds in its iOS Updates, it has not fully revealed the true nature of the Device Defect.

19           504.    Plaintiffs and the other Class members justifiably relied on Apple to disclose any  
20 defects in their Devices or issues that the iOS Updates would cause to those Devices, because  
21 same were hidden and not discoverable through reasonable efforts by Plaintiffs and class  
22 members.

23           505.    Thus, the running of all applicable statutes of limitation have been suspended  
24 with respect to any claims that Plaintiffs and the other class members have sustained as a result  
25 of the Defect or iOS Updates, by virtue of the fraudulent concealment doctrine.

26           506.    **Estoppel.** Apple was under a continuous duty to disclose to Plaintiffs and the  
27 other class members the true nature, quality, and character of its Devices and iOS Updates.  
28

Apple, however, concealed the true nature, quality, and character of the Devices and iOS Updates, as described herein. Based upon the foregoing, Apple is estopped from relying on any statutes of limitations in defense of this action.

## **CAUSES OF ACTION**

### **ON BEHALF OF THE CLASS**

#### **COUNT 1**

#### **VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT**

##### *18 U.S.C. § 1030, et seq.*

507. The Plaintiffs identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

508. Apple caused Plaintiff and class members to download and install iOS Updates to their Devices without informing its customers that the iOS Updates contained code that would diminish Device performance, or throttle performance, in order to compensate for the undisclosed Defect in those Devices. Accordingly, Plaintiff and class members did not give permission for Apple to install iOS Updates onto their Devices—nor could they—as Apple did not provide material information to Plaintiff and class members regarding the updates.

509. Apple violated 18 U.S.C. § 1030(a) by knowingly causing the transmission of iOS software Updates to Plaintiff and class members’ devices to access, collect, and transmit information to Devices, which are protected computers as defined in 18 U.S.C. § 1030(e)(2)(B) because they are used in interstate commerce and/or communication. By transmitting information to class members’ Devices, Apple intentionally caused damage without authorization to class members’ devices by impairing the ability of those Devices to operate as warranted, represented, and advertised.

510. Apple violated 18 U.S.C. § 1030(a)(5)(A)(iii) by intentionally accessing Plaintiff and class members’ Devices—protected computers—without authorization, and as a result,



1 caused damage to Plaintiff and class members' Devices by impairing the integrity of those  
2 Devices.

3 511. Apple's conduct has caused loss to Plaintiff and class members in real, economic  
4 damages. Plaintiff and class members have additionally suffered loss by reason of these  
5 violations, in terms of added expense in operating their Devices, which have been throttled, or  
6 in the purchase of new, unthrottled Devices.

7 512. Unless Apple is restrained and enjoined, Apple will continue to commit such  
8 acts. Plaintiff's remedy at law is thus inadequate to compensate for these inflicted and  
9 threatened injuries, entitling Plaintiff to remedies including injunctive relief as provided by §  
10 1030(g).

11 513. Plaintiff and the Class seek all monetary and non-monetary relief allowed by  
12 law, including damages and punitive damages, an order enjoining the acts and practices  
13 described above, attorneys' fees, and costs under the Consumer Fraud and Abuse Act.

## 14 **COUNT 2**

### 15 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**

#### 16 *Cal. Civ. Code § 1750, et seq.*

17 514. The Plaintiffs identified above ("Plaintiff," for purposes of this Count),  
18 individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged  
19 herein. In the alternative, Plaintiff brings this claim on behalf of the California Subclass.

20 515. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* ("CLRA"),  
21 is a comprehensive statutory scheme that is to be liberally construed to protect consumers  
22 against unfair and deceptive business practices in connection with the conduct of businesses  
23 providing goods, property or services to consumers primarily for personal, family, or household  
24 use.

25 516. In accordance with the liberal application and construction of the CLRA,  
26 application of the CLRA to all class members is appropriate, given that Apple's conduct as  
27 described herein originated from California, the Devices and iOS code were designed and  
28

1 originated in California, and Apple's uniform iOS Software License Agreement provides that  
2 California law shall apply.

3 517. Apple's uniform iOS Software License Agreement governs the reach of the  
4 Class's claims because Apple's violations of the CLRA were caused, in part, by the installation  
5 of certain operating software that throttled Device performance in order to further conceal the  
6 Defect in Apple's Devices.

7 518. Apple is a "person" as defined by Civil Code §§ 1761(c) and 1770, and has  
8 provided "services" as defined by Civil Code §§ 1761(b) and 1770.

9 519. Plaintiff and the class members are "consumers" as defined by Civil Code §§  
10 1761(d) and 1770, and have engaged in a "transaction" as defined by Civil Code §§ 1761(e) and  
11 1770.

12 520. Apple's acts and practices were intended to and did result in the sales of products  
13 and services to Plaintiff and the class members in violation of Civil Code § 1770, including:

- 14 a. Representing that goods or services have characteristics that they do not have;
- 15 b. Representing that goods or services are of a particular standard, quality, or grade when  
16 they were not;
- 17 c. Advertising goods or services with intent not to sell them as advertised; and
- 18 d. Representing that the subject of a transaction has been supplied in accordance with a  
19 previous representation when it has not.

20 521. Apple's representations and omissions were material because they were likely to  
21 deceive reasonable consumers.

22 522. Had Apple disclosed to Plaintiffs and class members that it misrepresented the  
23 Devices and operating software, omitted material information regarding the Defect, omitted  
24 material information regarding the operating software, and was otherwise engaged in common  
25 business practices that ultimately hurt consumers, Apple would have been unable to continue in  
26 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
27 Apple represented that its Devices were continually improving in speed and battery life and  
28

1 performed better than other devices on the market. Plaintiff and the class members acted  
 2 reasonably in relying on Apple's misrepresentations and omissions, the truth of which they  
 3 could not have discovered.

4 523. As a direct and proximate result of Apple's violations of California Civil Code §  
 5 1770, Plaintiff and class members have suffered and will continue to suffer injury, ascertainable  
 6 losses of money or property, and monetary and non-monetary damages, including from not  
 7 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
 8 in dealing with Device performance issues.

9 524. Apple has already received notice of the class members' intent to seek damages  
 10 in compliance with California Civil Code § 1782(a), and, on January 24, 2018, responded and  
 11 rejected such Section 1782 notice. Apple also received a supplemental notice pursuant to  
 12 California Civil Code § 1782 concerning its wrongful conduct as alleged herein by Plaintiff and  
 13 class members. Any further notice would be an exercise in futility for Plaintiff.

14 525. Plaintiff and the Class seek all monetary and non-monetary relief allowed by  
 15 law, including damages and punitive damages, an order enjoining the acts and practices  
 16 described above, attorneys' fees, and costs under the CLRA.

### 17 **COUNT 3**

#### 18 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**

##### 19 *Cal. Bus. & Prof. Code § 17200, et seq.*

20 526. The Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
 21 individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged  
 22 herein. In the alternative, Plaintiff brings this claim on behalf of the California Subclass.

23 527. In accordance with the liberal application and construction of the UCL,  
 24 application of the UCL to all class members is appropriate, given that Apple's conduct as  
 25 described herein originated from California, the Devices and iOS code were designed and  
 26 originated in California, and Apple's uniform iOS Software License Agreement provides that  
 27 California law shall apply.  
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1           528. Apple’s uniform iOS Software License Agreement governs the reach of the  
2 Class’s claims because Apple’s violations of the UCL were caused, in part, by the installation of  
3 certain operating software that throttled Device performance in order to further conceal the  
4 Defect in Apple’s Devices.

5           529. Apple is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

6           530. Apple violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”) by engaging in  
7 unlawful, unfair, and deceptive business acts and practices.

8           531. Apple’s “unfair” acts and practices include:

- 9           a. Knowingly designing, developing, manufacturing, advertising, and selling Devices  
10 with a significant Defect that result in the Devices not operating as intended,  
11 represented, or advertised under normal usage;
- 12           b. Developing software Updates that merely hide the aforementioned Defect by  
13 throttling Device performance, resulting in the Devices operating at slower speeds  
14 than intended, represented, or advertised under normal usage;
- 15           c. Concealing material information from consumers regarding its Devices and the  
16 Defect so that consumers were unable to make informed choices when purchasing  
17 the Devices;
- 18           d. Concealing material information from consumers regarding the Updates to operating  
19 software, so that consumers would not nor could they know that the Updates  
20 throttled their Devices; and
- 21           e. Using uniform, deceptive business practices such as throttling software to slow down  
22 Devices, requiring consumers to spend additional money on replacement batteries or  
23 Devices as a result of the Defect.

24           532. Apple has engaged in “unlawful” business practices by violating multiple laws,  
25 including the CLRA, Cal. Civ. Code §§ 1780, *et seq.*, and California common law.

26           533. Apple’s unlawful, unfair, and deceptive acts and practices include:

- 27           a. Knowingly designing, developing, manufacturing, advertising, and selling Devices  
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1 with a significant Defect that result in the Devices not operating as intended,  
2 represented, or advertised under normal usage;

- 3 b. Developing software Updates that merely hide the aforementioned Defect by  
4 throttling Device performance, resulting in the Devices operating at slower speeds  
5 than intended, represented, or advertised under normal usage;
- 6 c. Concealing material information from consumers regarding its Devices and the  
7 Defect so that consumers were unable to make informed choices when purchasing  
8 the Devices;
- 9 d. Concealing material information from consumers regarding the Updates to operating  
10 software, so that consumers would not nor could they know that the Updates  
11 throttled their Devices; and
- 12 e. Using uniform, deceptive business practices such as throttling software to slow down  
13 Devices, requiring consumers to spend additional money on replacement batteries or  
14 Devices as a result of the Defect.

15 534. Apple violated § 17200's prohibition against engaging in unlawful acts and  
16 practices by engaging in false and misleading advertising and by omitting material facts from  
17 purchasers of its Devices. As alleged more fully herein, Apple's marketing and sale of Devices,  
18 and more specifically its failure to inform customers of the negative and throttling impact iOS  
19 Updates would have on those Devices, violated Cal. Civ. Code § 1750, *et seq.*, common law,  
20 and other statutory violations as alleged herein. Plaintiff reserves the right to allege other  
21 violations of the law, which constitute other unlawful business acts and practices. Apple's  
22 conduct is ongoing and continues to this date.

23 535. Apple violated § 17200's prohibition against unfair conduct by failing to inform  
24 its customers about the Defect in the Devices; engaging in a pattern or practice of concealing  
25 those facts and urging its customers to install regular updates to the iOS software to throttle  
26 those devices—thereby depriving those Device owners of the performance of those devices that  
27 existed at the time of purchase. This conduct is substantially injurious to consumers, offends  
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1 public policy, is immoral, unethical, oppressive, and unscrupulous as the gravity of the  
2 conduct—crippling Devices that are, in many instances, consumers’ lifelines—outweighs any  
3 alleged benefit. Specifically, the utility gained by “upgrading” the iOS software of the Devices  
4 was outweighed by the diminishment of the Device functionality. Apple engaged in this  
5 conduct at the expense of its customers’ rights when other, lawful alternatives were available  
6 (such as providing customers’ with full information about the Devices and iOS software, or  
7 offering batteries replacements to customers).

8 536. Apple engaged in this conduct to gain an unfair commercial advantage over its  
9 competitors, seeking to avoid public knowledge of the Defect in its Devices to avoid damage to  
10 its sales or reputation. It withheld critical and material information from Plaintiff and class  
11 members, competitors, and the marketplace, all to its unfair competitive advantage.

12 537. Apple’s business practices, as alleged herein, constitute fraudulent conduct  
13 because they were likely to deceive, and did deceive, class members into purchasing Devices,  
14 and upgrading those Devices with iOS Updates, when those Devices were defective and the  
15 Updates would only throttle the Devices instead of fixing them.

16 538. Apple’s representations and omissions—all which emanated from California—  
17 were material because they were likely to deceive reasonable consumers.

18 539. California law prohibits unauthorized computer access and fraud pursuant to Cal.  
19 Penal Code § 502.

20 540. As a result of Apple’s installation of iOS Upgrades on Plaintiff’s and class  
21 members’ devices, Apple knowingly accessed and without permission altered, damaged,  
22 deleted, destroyed, and otherwise used any data stored on Plaintiff’s and class members’  
23 devices.

24 541. Plaintiff and class members did not know that Apple’s iOS Update would throttle  
25 Device performance; accordingly, Apple did not have permission to install iOS Updates on  
26 class members’ Devices.

1           542. Apple accessed and without permission altered and used data on class members’  
2 Devices to execute a scheme or artifice to defraud the class members’ by, among other things,  
3 maintaining market share, convincing Plaintiff and class members to purchase new Devices, and  
4 to otherwise ensure that Plaintiff and class members would not discover Apple’s underlying  
5 fraud regarding its omissions and misrepresentations regarding the Devices. As a result, Apple  
6 violated Cal. Penal Code § 502.

7           543. The iOS Updates led to the deterioration of the Devices and functionality of the  
8 Devices as a whole, driving customers to purchase new Devices who would not have outlaid the  
9 additional costs had they known the truth, and Apple not concealed the Device Defect.

10          544. As a direct and proximate result of Apple’s unfair, unlawful, and fraudulent acts  
11 and practices, Plaintiff and class members were injured and lost money or property, including  
12 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
13 and expense in dealing with Device performance issues.

14          545. Apple acted intentionally, knowingly, and maliciously to violate California’s  
15 Unfair Competition Law, and recklessly disregarded Plaintiff and class members’ rights.  
16 Apple’s knowledge of the Devices’ performance issues, and release of software to throttle  
17 phone performance, put it on notice that the Devices were not as it advertised.

18          546. Plaintiff and class members seek all monetary and non-monetary relief allowed  
19 by law, including restitution of all profits stemming from Apple’s unfair, unlawful, and  
20 fraudulent business practices; declaratory relief; reasonable attorneys’ fees and costs under  
21 California Code of Civil Procedure § 1021.5; injunctive relief; and other appropriate equitable  
22 relief.  
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**COUNT 4****VIOLATIONS OF CALIFORNIA'S FALSE AND MISLEADING ADVERTISING LAW****Cal. Bus. & Prof. Code § 17500, et seq.**

547. The Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the California Subclass.

548. Apple's acts and practices, as described herein, have deceived and/or are likely to continue to deceive class members and the public. As described in Counts I and II above, and throughout this Complaint, Apple misrepresented the Devices, concealed the Devices' Defect, concealed the throttling capabilities of its updated operational software, and misrepresented the purpose of iOS Updates.

549. By its actions, Apple disseminated uniform advertising regarding iOS Updates based out of California, and governed by California law. The advertising was, by its very nature, unfair, deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code § 17500, *et seq.* Such advertisements were intended to and likely did deceive the consuming public for the reasons detailed herein.

550. The above-described false, misleading, and deceptive advertising Apple disseminated continues to have a likelihood to deceive in that Apple failed to disclose the true nature of the iOS Updates and the Devices. Apple failed to instigate a public information campaign to alert consumers of the Defect and the iOS Updates. Instead, Apple continued to misrepresent the true nature of the iOS Updates and the Devices, continuing to deceive consumers.

551. Apple continued to misrepresent to consumers that its Devices were fast and had long battery lives, however, the Devices contained the Defect. Had Apple disclosed those issues, rather than falsely advertising the Devices' properties, consumers would have not purchased or paid significantly less for the Devices.



1           558. When Apple provided iOS Updates to consumers—Plaintiffs and class  
2 members—they did not know, nor could they in the exercise of reasonable diligence know, that  
3 the software Updates contained code that would throttle their Devices, designed solely to further  
4 conceal the Defect in those Devices.

5           559. Because consumers did not know that the iOS Updates contained such throttling  
6 code, they did not give Apple permission to access their Devices to alter the data or computer  
7 systems on those Devices.

8           560. Apple provided the iOS Updates to consumers as part of a scheme or artifice to  
9 defraud and deceive, because it provided the Updates to consumers *instead of* informing them  
10 of the Defect inherent on their Devices. Indeed, Apple could have informed consumers that the  
11 issues they were having with their Devices could be resolved via a battery replacement. Apple  
12 instead chose concealment, and throttling Devices via the installation of software that would do  
13 so.

14           561. Apple offered iOS Updates to consumers to throttle their Devices as a means to  
15 encourage consumers to purchase new devices, wrongfully obtaining money from those  
16 consumers.

17           562. By offering the iOS Updates to consumers, instead of revealing the truth, Apple  
18 disrupted or caused the disruption of consumer services when it improperly and unlawfully  
19 throttled users and class members' Devices. Plaintiffs and class members did not consent to  
20 having their Devices throttled, and had they known that the iOS Updates would throttle their  
21 Devices, they would not have installed the iOS Updates.

22           563. As a result of Apple's unlawful conduct, Plaintiffs and class members were  
23 damaged in an amount to be determined at trial.

24           564. Plaintiff and the Class seek all monetary and non-monetary relief allowed by  
25 law, including damages and punitive damages, an order enjoining the acts and practices  
26 described above, attorneys' fees, and costs under the CDAFA  
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**COUNT 6****TRESPASS TO CHATTELS**

565. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

566. California common law prohibits the intentional intermeddling with personal property in the possession of another, without consent, that results in either a) the deprivation of the use of that personal property; or b) the impairment of the condition, quality, or usefulness of the property.

567. Apple impaired the condition, quality, and usefulness of Plaintiff and class members’ Devices, or parts of them, without their knowledge or consent. Such acts constituted an intentional interference with the use and enjoyment of the Devices.

568. Apple acted intentionally, because it knew that Plaintiff and class members were downloading computer software onto their Devices that reduced the performance of the Devices. Plaintiff and other class members only consented to the installation of iOS Updates that would improve performance, not diminish performance.

569. Apple engaged in deception to gain access to the Devices and install new computer software or iOS Updates.

570. Plaintiff and class members suffered actual damages as a result of Apple’s actions in an amount to be determined at trial.

571. Furthermore, Plaintiff seeks punitive damages because Apple’s trespass was committed from wanton or malicious motives, or reckless disregard of the rights of Plaintiff and the Class, for the purpose of concealing the Defect.

**COUNT 7****FRAUD**

572. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

573. At the time Plaintiff and class members purchased their Devices, Apple did not disclose, but instead concealed and misrepresented, the Defect in the Devices as discussed herein.

574. Further, Apple represented that Updates to its iOS were designed to improve Device performance, and otherwise resolve issues that could have a negative impact on Plaintiffs’ and class members’ device experiences.

575. Apple omitted that the Updates to its iOS were actually designed to further conceal the Defect in the Devices. Further, Apple omitted and affirmatively misrepresented the true reason for the Updates for its Devices—that such Updates were designed to downgrade Device speed and processing capabilities in order to disguise the fundamental Device Defect.

576. Apple knew, or should have known, that these Updates were falsely portrayed to the consumer public.

577. Apple also knew that its omissions and misrepresentations regarding the Updates and Devices were material, and that a reasonable consumer would rely upon Apple’s representations (and corresponding omissions) in making purchasing decisions.

578. Apple, by its clear admissions in December 2017, in fact intended to deceive Plaintiff and class members.

579. Plaintiff and class members did not know—nor could they have known through reasonable diligence—about the Defect in the Devices, nor could they have known about what the Upgrades were designed to really do.

1           580. Plaintiff and class members would have been reasonable in relying on Apple's  
2 misrepresentations (and corresponding omissions) in making their purchasing decisions and  
3 downloading Updates.

4           581. Plaintiff and class members had a right to rely upon Apple's representations (and  
5 corresponding omissions) as Apple maintained a monopolistic control over what the Updates to  
6 the iOS included, and what information was available regarding the Defect in the Devices, when  
7 Updates were provided to consumers, how those Updates were promoted to consumers, and  
8 why consumers should update their iOS.

9           582. Plaintiff and class members sustained damages as a result of their reliance on  
10 Apple's omissions and misrepresentations, thus causing Plaintiff and class members to sustain  
11 actual losses and damages in a sum to be determined at trial, including punitive damages.

## 12                                   **COUNT 8**

### 13                                   **CONSTRUCTIVE FRAUD**

14           583. The Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
15 individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged  
16 herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses. This cause of  
17 action is brought in the alternative to fraud.

18           584. At the time Plaintiff and class members purchased their Devices, Apple did not  
19 disclose, but instead concealed and misrepresented, the Defect in the Devices as discussed  
20 herein.

21           585. Further, Apple represented that Updates to its iOS were designed to improve  
22 Device performance, and otherwise resolve issues that could have a negative impact on  
23 Plaintiff's and class members' device experiences.

24           586. Apple omitted that the Updates to its iOS were actually designed to further  
25 conceal the Defect in the Devices. Further, Apple omitted and affirmatively misrepresented the  
26 true reason for the Updates for its Devices—that such Updates were designed to downgrade  
27 Device speed and processing capabilities in order to disguise the fundamental Device Defect.  
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1           587. Apple knew, or should have known, that these Updates were falsely portrayed to  
2 the consumer public.

3           588. Apple also knew that its omissions and misrepresentations regarding the Updates  
4 and Devices were material, and that a reasonable consumer would rely upon Apple's  
5 representations (and corresponding omissions) in making purchasing decisions.

6           589. Apple had an obligation not to omit or misrepresent the Defect or the purpose of  
7 Updates because: (a) it was in the sole possession of such information; (b) it made partial  
8 representations regarding the quality of Devices and Updates; (c) Plaintiff and class members  
9 relied upon Apple to make full disclosures based upon the relationship between Plaintiff and  
10 class members, who relied upon Apple's representations and omissions, and were reasonable in  
11 doing so, with the full knowledge of Apple that they did and would have been reasonable in  
12 doing so.

13           590. Plaintiff and class members did not know—nor could they have known through  
14 reasonable diligence—about the Defect in the Devices, nor could they have known about what  
15 the Upgrades were designed to really do.

16           591. Plaintiff and class members would have been reasonable in relying on Apple's  
17 misrepresentations (and corresponding omissions) in making their purchasing decisions and  
18 downloading Updates.

19           592. Plaintiff and class members had a right to rely upon Apple's representations (and  
20 corresponding omissions) as Apple maintained a monopolistic control over what the Updates to  
21 the iOS included, and what information was available regarding the Defect in the Devices, when  
22 Updates were provided to consumers, how those Updates were promoted to consumers, and  
23 why consumers should update their iOS.

24           593. Apple breached its duty to Plaintiff and class members to make full disclosures  
25 of the Defect and Updates.



594. Plaintiff and class members sustained damages as a result of their reliance on Apple's omissions and misrepresentations, and Apple's breach of its duty, thus causing Plaintiff and class members to sustain actual losses and damages in a sum to be determined at trial.

**COUNT 9**

## FRAUDULENT INDUCEMENT

595. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

596. At the time Plaintiff and class members purchased their Devices, Apple did not disclose, but instead concealed and misrepresented, the Defect in the Devices as discussed herein.

597. Further, Apple represented that Updates to its iOS were designed to improve Device performance, and otherwise resolve issues that could have a negative impact on Plaintiff's and class members' device experiences.

598. Apple omitted that the Updates to its iOS were actually designed to further conceal the Defect in the Devices. Further, Apple omitted and affirmatively misrepresented the true reason for the Updates for its Devices—that such Updates were designed to downgrade Device speed and processing capabilities in order to disguise the fundamental Device Defect.

599. Apple knew, or should have known, that these Updates were falsely portrayed to the consumer public.

600. Apple also knew that its omissions and misrepresentations regarding the Updates and Devices were material, and that a reasonable consumer would rely upon Apple's representations (and corresponding omissions) in making purchasing decisions.

601. Apple, by its clear admissions in December 2017, in fact intended to deceive Plaintiff and class members.

1           602. Plaintiff and class members did not know—nor could they have known through  
2 reasonable diligence—about the Defect in the Devices, nor could they have known about what  
3 the Upgrades were designed to really do.

4           603. Plaintiff and class members would have been reasonable in relying on Apple’s  
5 misrepresentations (and corresponding omissions) in making their purchasing decisions and  
6 downloading Updates.

7           604. Plaintiff and class members had a right to rely upon Apple’s representations (and  
8 corresponding omissions) as Apple maintained a monopolistic control over what the Updates to  
9 the iOS included, and what information was available regarding the Defect in the Devices, when  
10 Updates were provided to consumers, how those Updates were promoted to consumers, and  
11 why consumers should update their iOS.

12           605. Apple intended to induce—and did, indeed, induce—Plaintiff and class members  
13 from purchasing Devices and downloading Updates based upon its affirmative representations  
14 and omissions.

15           606. Plaintiff and class members sustained damages as a result of their reliance on  
16 Apple’s omissions and misrepresentations, thus causing Plaintiff and class members to sustain  
17 actual losses and damages in a sum to be determined at trial.

18                           **COUNT 10**

19                           **BREACH OF CONTRACT**

20           607. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count),  
21 individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged  
22 herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

23           608. Apple solicited and invited Plaintiffs and class members to buy new Devices.  
24 Plaintiff and class members accepted Apple’s offers and bought Devices from Apple.

25           609. Plaintiff and class members formed contracts with Apple at the time they  
26 purchased their Apple Devices. The terms of the contracts include promises and affirmations  
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1 made by Apple on its website and through marketing that the Devices would perform as  
2 advertised, even after updating the latest iOS.

3 610. Further, Plaintiff and class members entered into implied contracts with Apple  
4 wherein Apple agreed not to purposefully interfere with, negatively affect, or otherwise harm  
5 Plaintiff's and class members' Devices or usage of the Devices.

6 611. Updates to the iOS are governed by an agreement that provides that California  
7 law shall govern the agreement between Plaintiff and class members on one hand, and Apple on  
8 the other.

9 612. Plaintiff reasonably relied upon representations that the Devices would perform  
10 as advertised and warranted, and class members would be reasonable in relying upon those  
11 same representations.

12 613. Plaintiff and class members performed their obligations under their contracts  
13 with Apple.

14 614. Apple's Devices did not perform as advertised or promised. Accordingly, Apple  
15 breached its contract with customers.

16 615. As a result of Apple's breach, Plaintiff and class members have been damaged in  
17 an amount equal to the purchase price of the Devices.

18 616. All conditions precedent to Apple's liability under its contractual obligations,  
19 including notice, have been performed by Plaintiff and the Class.

20 **COUNT 11**

21 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

22 617. The Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
23 individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged  
24 herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

25 618. In every contract or agreement there is an implied promise of good faith and fair  
26 dealing under California law.

1           619. As described herein, contracts with California choice of law provisions govern  
2 the agreements between Apple and its customers.

3           620. In dealings between Apple and its customers, Apple has power affecting the  
4 rights of its users.

5           621. Apple entered into contracts with the class members at the Plaintiff at the time of  
6 the download of the iOS Updates.

7           622. Apple contractually promised in the iOS 10.2.1 update and later Updates to  
8 “deliver the best experience for its customers, which includes overall performance and  
9 prolonging the life of their devices.”

10          623. Each Plaintiff did all, or substantially all, of the things that the contracts required  
11 them to do.

12          624. The iOS 10.2.1 update throttled Device performance as a means to mitigate  
13 issues customers were experiencing with UPOs.

14          625. Apple did not inform customers that, rather than throttling devices by installing  
15 iOS 10.2.1, those customers could replace the batteries in their Devices.

16          626. Despite its contractual promises to prolong the life of the devices, Apple instead  
17 purposefully took actions to reduce the life of the devices, and purposefully failed to notify  
18 customers that replacing the battery would restore performance that had been artificially  
19 throttled by iOS 10.2.1 and later updates to iOS.

20          627. Apple’s actions were objectively unreasonable given Apple’s promises.

21          628. Apple’s conduct evaded the spirit of the bargain made between Apple and the  
22 Plaintiff and class members.

23          629. As a result of Apple’s misconduct and breach of its duty of good faith and fair  
24 dealing, Plaintiff and the Class suffered damages. Plaintiff and the class members did not  
25 receive the benefit of the bargain for which they contracted and for which they paid valuable  
26 consideration.

**COUNT 12****MONEY HAD AND RECEIVED**

630. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

631. As a result of the Plaintiff’s and class members’ purchase of the Devices, Apple obtained money for its own use and benefit, and, as a result of its breaches of contract and breaches of the good faith and fair dealing implied in those agreements, became indebted to the Plaintiff and class members in an amount to be determined at trial.

632. No part of any of the monies due and owing to Plaintiff and class members has been repaid, although Plaintiff and class members demand repayment, leaving the balance due, owing, and unpaid in an amount to be determined at trial plus interest.

**COUNT 13****FRAUDULENT OMISSION OR CONCEALMENT**

633. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

634. At all relevant times, Apple was engaged in the business of designing, manufacturing, distributing, and selling the Devices.

635. Apple, acting through its representatives or agents, delivered Devices to its own retail stores, distributors, and various other distribution channels.

636. Apple willfully, falsely, and knowingly omitted various material facts regarding the quality and character of the Devices and iOS Updates.

637. Rather inform consumers of the truth regarding the Device Defect, and that the iOS Updates would degrade Device performance, Apple concealed material information related to the Device Defect and that iOS Updates would throttle Devices.

1           638. Apple omitted this material information to drive up sales and maintain its market  
2 power, as consumers would not purchase Devices, or would pay substantially less for them, had  
3 consumers known the truth.

4           639. Plaintiff and the class members accepted the terms of use, which were silent on  
5 the performance-throttling features that Apple installed in their Devices. Plaintiff and class  
6 members had no way of knowing about the Devices' Defect or that the iOS Updates would  
7 throttle their Devices.

8           640. Plaintiff and class members could not have discovered the above information on  
9 their own, because Apple was in the exclusive possession of such information.

10          641. Although Apple had a duty to ensure the accuracy of the release statements  
11 published with respect to iOS Updates, and to ensure accuracy of information regarding the  
12 performance of its Devices, it did not fulfill these duties.

13          642. Plaintiff and class members sustained injury due to the purchase of Devices that  
14 did not live up to performance representations, and the installation of iOS Updates that throttled  
15 Devices without their knowledge. Plaintiff and class members are entitled to recover full or  
16 partial refunds for Devices or batteries they purchased due to Apple's misrepresentations, or  
17 they are entitled to damages for the diminished value of their Devices, amounts to be  
18 determined at trial.

19          643. Apple's acts were done maliciously, oppressively, deliberately, and with intent to  
20 defraud, and in reckless disregard of Plaintiff's and class members' rights and well-being, and  
21 in part to enrich itself in California at the expense of consumers. Apple's acts were done to gain  
22 commercial advantage over competitors, and to drive consumers away from consideration of  
23 competitor devices. Apple's conduct warrants an assessment of punitive damages in an amount  
24 sufficient to deter such conduct in the future.

**COUNT 14****FRAUDULENT MISREPRESENTATION**

644. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

645. At all relevant times, Apple was engaged in the business of designing, manufacturing, distributing, and selling the Devices.

646. Apple, acting through its representatives or agents, delivered Devices to its own retail stores, distributors, and various other distribution channels.

647. Apple willfully, falsely, and knowingly omitted various material facts regarding the quality and character of the Devices and iOS Updates.

648. Rather inform consumers of the truth regarding the Device Defect, and that the iOS Updates would degrade Device performance, Apple misrepresented the Devices’ speed, power, and battery life, and misrepresented the content of pertinent iOS Updates, telling its customers that the iOS Updates would *improve* the overall functionality of the Devices.

649. Apple made these material misrepresentations to boost or maintain sales of the Devices, and in order to falsely assure purchasers of Devices that Apple is a reputable company and that its Devices and iOS Updates are reliable and able to perform as promised. The false representations were material to consumers because the representations played a significant role in the value of the Devices purchased.

650. Plaintiff and the class members accepted the terms of use, which were silent on the performance-throttling features that Apple installed in their Devices. Plaintiff and class members had no way of knowing that Apple’s misrepresentations as to the contents of the subject iOS Updates were misleading.

651. Plaintiff and class members could not have discovered the misleading nature of Apple’s misrepresentations on their own, because Apple was in the exclusive possession of such information.



1           652. Although Apple had a duty to ensure the accuracy of the release statements  
2 published with respect to iOS Updates, and to ensure accuracy of information regarding the  
3 performance of its Devices, it did not fulfill these duties.

4           653. Apple misrepresented material facts partly to pad and protect its profits, as it saw  
5 that profits and sales for its Devices were falling and to maintain and grow its reputation as a  
6 premier designer and vendor of the Devices. Such benefits came at the expense of Plaintiff and  
7 class members.

8           654. Plaintiff and class members were unaware of these material misrepresentations,  
9 and they would not have acted as they did had they known the truth. Plaintiff's and class  
10 members' actions were justified given Apple's misrepresentations. Apple was in the exclusive  
11 control of material facts, and such facts were not known to the public.

12           655. Due to Apple's misrepresentations, Plaintiff and class members sustained injury  
13 due to the purchase of Devices that did not live up to performance representations, and the  
14 installation of iOS Updates that throttled Devices without their knowledge. Plaintiff and class  
15 members are entitled to recover full or partial refunds for Devices or batteries they purchased  
16 due to Apple's misrepresentations, or they are entitled to damages for the diminished value of  
17 their Devices, amounts to be determined at trial.

18           656. Apple's acts were done maliciously, oppressively, deliberately, and with intent to  
19 defraud, and in reckless disregard of Plaintiff's and class members' rights and well-being, and  
20 in part to enrich itself in California at the expense of consumers. Apple's acts were done to gain  
21 commercial advantage over competitors, and to drive consumers away from consideration of  
22 competitor devices. Apple's conduct warrants an assessment of punitive damages in an amount  
23 sufficient to deter such conduct in the future.  
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**COUNT 15****NEGLIGENT MISREPRESENTATION**

657. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses.

658. Apple negligently and recklessly omitted certain material facts regarding the Devices and impact of the iOS Upgrade on those Devices. Apple failed to warn consumers that its Devices contained a material Defect that resulted in the Devices not performing as warranted or advertised. Additionally, Apple then failed to warn consumers that the iOS Update it designed to address the Defect would actually degrade Device performance, resulting in a loss of functionality and performance so that the Devices did not perform as advertised or warranted.

659. The advertisements and warranties, which were made expressly through uniform representations from Apple that emanated from its corporate headquarters in California, were material and would have been considered by a reasonable consumer in making purchasing decisions.

660. Plaintiff and class members acquired Devices and downloaded iOS Updates believing that the Devices would function as advertised.

661. As a result, Plaintiff and class members were directly and proximately injured by Apple’s negligence in failing to inform Plaintiff and class members of the material Defect in the Devices and that the iOS Updates would cause Device performance degradation.

**COUNT 16****QUASI-CONTRACT / UNJUST ENRICHMENT**

662. The Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Class, repeats and alleges Paragraphs 1-472, as if fully alleged herein. In the alternative, Plaintiff brings this claim on behalf of the Subclasses. This claim is brought in the alternative to contract-based causes of action.

663. Plaintiff and class members purchased Devices from Apple, and those Devices were not as Apple represented them to be, enticing Plaintiff and the Class to purchase the Devices. Had Plaintiff and the Class known of the Defect, they would have paid less for their Devices and would not have paid for repairs, service or upgrades caused by the Defect.

664. Accordingly, Plaintiff and class members were damaged, and Apple was unjustly enriched by the purchase price of those Devices.

665. Plaintiff and class members are entitled to damages in the amount Apple was unjustly enriched, to be determined at trial.

666. Furthermore, Apple's conduct was willful, intentionally deceptive, and intended to cause economic injury to Plaintiff and the Class. Apple is therefore liable to pay punitive damages under California law.

## **CLAIMS ON BEHALF OF THE UNITED KINGDOM SUBCLASS**

### **COUNT 17**

#### **VIOLATION OF THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 (2008 No. 1277)**

##### **(on behalf of the United Kingdom Subclass)**

667. The United Kingdom Plaintiff identified above ("Plaintiff," for purposes of this Count and the following Count under United Kingdom law), individually and on behalf of the United Kingdom Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

668. The Consumer Protection from Unfair Trading Regulations 2008 (2008 No. 1277) (the "Regulations") prohibits unfair commercial practices and misleading commercial practices, whether through misleading actions or omissions. Plaintiff asserts a claim against Defendant for violation of the Regulations, on behalf of the United Kingdom Subclass.

669. Plaintiff and members of the United Kingdom Subclass were, at all relevant times, "consumers" as defined in Part 1, Provision 2 of the Regulations.

670. Defendant was, at all relevant times, a "trader" as defined in Part 1, Provision 2 of the Regulations.

1           671. Defendant's actions constitute unfair commercial practices as defined in Part 2,  
2 Provisions 3 of the Regulations, as they contravened the requirements of professional diligence  
3 and materially distorted or were likely to materially distort the economic behavior of average  
4 consumers in the United Kingdom.

5           672. Similarly, Defendant's actions constituted misleading actions and/or omissions  
6 as defined in Part 2, Provisions 5 and 6 of the Regulations.

7           673. In particular, and without limitation, Defendant knowingly or recklessly made  
8 the following representations contrary to the Consumer Protection from Unfair Trading  
9 Regulations:

10           a. Defendant falsely represented that the Devices were of a particular standard,  
11 quality, or grade when they were of another;

12           b. Defendant falsely represented that the Devices had performance,  
13 characteristics, uses, or benefits they did not have; and

14           c. Defendant falsely gave to the public warranties and guarantees of the  
15 performance, efficacy, or length of life of the Devices that were not based on an adequate or  
16 proper test thereof.

17           674. Defendant expressly but falsely warranted to Plaintiff and the United Kingdom  
18 Subclass the qualities of the Devices. Defendant materially misrepresented these qualities by  
19 providing a product that Defendant has admitted it knew suffered a Defect, knew to suffer  
20 unexpected shutdowns, and knew—and intended—to suffer slow processing after the iOS  
21 10.2.1 and iOS 11 Software Updates.

22           675. Defendant knowingly sold defective Devices without informing consumers of  
23 the Defect of which it knew.

24           676. Defendant knew that the iOS 10 and iOS 11 Updates would slow the Devices'  
25 processing speed, weaken the Devices' processing power, and deteriorate the Devices'  
26 performance and functionality.  
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677. Defendant fraudulently omitted to disclose facts within its knowledge to Plaintiff and United Kingdom Subclass, including: (i) that the iOS 10.2.1 and iOS 11 Updates would cause the Devices to run more slowly, and (ii) that the decrease in processing speed could be ameliorated, at least in part, by replacing the battery.

678. Defendant falsely, misleadingly, and deceptively made representations about the iOS 10.2.1 and iOS 11 Updates by highlighting only the positive aspects of these updates and intentionally concealing the updates' performance-degrading, negative effects.

679. Specifically, Defendant made identical or substantially similar false, misleading and deceptive marketing statements as those cited above throughout the United Kingdom.

680. In the absence of Defendant's unfair and misleading commercial practices alleged hereinabove, Plaintiff and the United Kingdom Subclass would not have purchased the Devices, or would not have paid as much as they in fact paid for the Devices.

681. Plaintiff and the United Kingdom Subclass seek redress for Defendant's unfair and misleading commercial practices pursuant to section 27K the Regulations, as amended by The Consumer Protection (Amendment) Regulations 2014 (2014 No. 870).

682. As a result of Defendant's unfair and misleading commercial practices, Plaintiff and the United Kingdom Subclass were damaged in amounts to be proven at trial.

### **COUNT 18**

#### **VIOLATION OF THE CONSUMER RIGHTS ACT 2015 (2015 C. 15)**

##### **(on behalf of United Kingdom Subclass)**

683. Plaintiff reasserts and realleges the allegations contained in Paragraphs 1-472 of this Complaint.

684. The Consumer Rights Act 2015 (the "Act") requires that written, oral or implied contracts for goods, digital content or services in the United Kingdom be of satisfactory quality on the standard of a "reasonable person."

685. Plaintiff asserts a claim against Defendant for violation of the Act, on behalf of the United Kingdom Subclass for purchases on or after March 26, 2015.

1           686. Plaintiff and members of the United Kingdom Subclass were, at all relevant  
2 times, “consumers” as defined in Chapter 1, section 2 of the Act.

3           687. Defendant was, at all relevant times, a “trader” as defined in Chapter 1, section 2  
4 of the Act.

5           688. The Devices are “goods” as defined in Chapter 1, section 2 of the Act.

6           689. The iOS 10.2.1 and later Software Updates are “digital content” as defined in  
7 Chapter 1, section 2 of the Act.

8           690. Pursuant to Chapter 2, section 9 and Chapter 3, section 34 of the Act,  
9 Defendant’s contract for sale of the Affected Phones and its provision of the Software Updates  
10 to Plaintiff and the members of the United Kingdom Subclass included terms that required the  
11 Devices and the Software Updates to be of a satisfactory quality.

12           691. Pursuant to Chapter 2, section 10 and Chapter 3, section 35, Defendant’s contract  
13 for sale of the Devices and its provision of the Software Updates to Plaintiff and the members of  
14 the United Kingdom Subclass included terms that required the Devices and the Software  
15 Updates to be for a particular purpose.

16           692. Pursuant to Chapter 2, section 11 and Chapter 3, section 36, Defendant’s contract  
17 for sale of the Devices and its provision of the Software Updates to Plaintiff and the members of  
18 the United Kingdom Subclass included terms that required the Devices and the Software  
19 Updates to be as described.

20           693. The Devices, which suffered from the Defect, were not of a satisfactory quality,  
21 were not fit for their particular purpose and were not as described and breached the terms  
22 described in Chapter 2, sections 9, 10 and 11.

23           694. The Software Updates, which slowed the Affected Phones’ processing speed,  
24 weakened the Devices’ processing power, and deteriorated the Devices’ performance and  
25 functionality, were not of a satisfactory quality, were not fit for their particular purpose and  
26 were not as described and breached the terms described in Chapter 3, sections 34, 35 and 36.  
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695. Plaintiff and the United Kingdom Subclass have a right to enforce the breached terms under Chapter 2, section 19 and Chapter 3, section 42 of the Act.

696. As a result of Defendant's conduct, Plaintiffs and the United Kingdom Subclass were damaged in amounts to be proven at trial.

## **CLAIMS ON BEHALF OF THE ALABAMA SUBCLASS**

### **COUNT 19**

#### **ALABAMA DECEPTIVE TRADE PRACTICES ACT**

##### *Ala. Code §§ 8-19-1, et seq.*

697. The Alabama Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Alabama Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

698. Apple is a "person" as defined by Ala. Code § 8-19-3(5).

699. Plaintiff and Alabama Subclass members are "consumers" as defined by Ala. Code § 8-19-3(2).

700. Apple received notice pursuant to Ala. Code § 8-19-10(e) concerning its wrongful conduct as alleged herein by Plaintiff and Alabama Subclass members. However, sending pre-suit notice pursuant to Ala. Code § 8-19-10(e) would have been an exercise in futility for Plaintiff, as Apple has already been informed of the allegedly unfair and unlawful conduct as described herein as of the date of the first-filed lawsuit in December 2017, and has yet to offer class members remedy in accordance with similar consumer protection statutes.

701. Apple advertised, offered, or sold goods or services in Alabama, and engaged in trade or commerce directly or indirectly affecting the people of Alabama.

702. Apple engaged in deceptive acts and practices in the conduct of trade or commerce, in violation of the Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-5, including:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have;



- 1           b. Representing that goods or services are of a particular standard, quality, or grade, or that  
2           goods are of a particular style or model, if they are of another; and  
3           c. Engaging in any other unconscionable, false, misleading, or deceptive act or practice in  
4           the conduct of trade or commerce.

5           703. Apple's representations and omissions were material because they were likely to  
6           deceive reasonable consumers.

7           704. Apple intended to mislead Plaintiff and Alabama Subclass members and induce  
8           them to rely on its misrepresentations and omissions.

9           705. Had Apple disclosed to Plaintiff and Alabama Subclass members that it  
10          misrepresented the Devices and operating software, omitted material information regarding the  
11          Defect, omitted material information regarding the operating software, and was otherwise  
12          engaged in deceptive, common business practices, Apple would have been unable to continue in  
13          business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
14          Apple represented that its Devices were continually improving in speed and battery life and  
15          performed better than other devices on the market. Plaintiff and the Alabama Subclass  
16          members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
17          which they could not have discovered.

18          706. Apple acted intentionally, knowingly, and maliciously to violate the Alabama  
19          Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Alabama Subclass  
20          members' rights. Apple's knowledge of the Devices' performance issues, and release of  
21          software to throttle phone performance, put it on notice that the Devices were not as it  
22          advertised.

23          707. As a direct and proximate result of Apple's deceptive acts and practices, Plaintiff  
24          and Alabama Subclass members have suffered and will continue to suffer injury, ascertainable  
25          losses of money or property, and monetary and non-monetary damages, including from not  
26          receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
27          in dealing with Device performance issues.  
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708. Apple's deceptive acts and practices caused substantial injury to Plaintiff and Alabama Subclass members, which they could not reasonably avoid, and which outweighed any benefits to consumers or to competition.

709. Plaintiff and the Alabama Subclass seek all monetary and non-monetary relief allowed by law, including the greater of (a) actual damages or (b) statutory damages of \$100; treble damages; injunctive relief; attorneys' fees, costs, and any other relief that is just and proper.

### **CLAIMS ON BEHALF OF THE ALASKA SUBCLASS**

#### **COUNT 20**

#### **ALASKA CONSUMER PROTECTION ACT**

*Alaska Stat. §§ 45.50.471, et seq.*

710. The Alaska Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Alaska Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

711. Apple advertised, offered, or sold goods or services in Alaska and engaged in trade or commerce directly or indirectly affecting the people of Alaska.

712. Alaska Subclass members are "consumers" as defined by Alaska Stat. § 45.50.561(4).

713. Apple received notice pursuant to Alaska Stat. § 45.50.535 concerning its wrongful conduct as alleged herein by Plaintiff and Alaska Subclass members. However, sending pre-suit notice pursuant to Alaska Stat. § 45.50.535 is an exercise in futility for Plaintiff, as Apple has already been informed of the allegedly unfair and unlawful conduct as described herein as of the date of the first-filed lawsuit in December 2017, and has yet to offer class members remedy in accordance with similar consumer protection statutes.

714. Apple engaged in unfair or deceptive acts and practices in the conduct of trade or commerce, in violation Alaska Stat. § 45.50.471, including:

a. Representing that goods or services have sponsorship, approval, characteristics,

- 1 ingredients, uses, benefits, or qualities that they do not have;
- 2 b. Representing that goods or services are of a particular standard, quality, or grade,
- 3 when they are of another;
- 4 c. Advertising goods or services with intent not to sell them as advertised;
- 5 d. Engaging in any other conduct creating a likelihood of confusion or of
- 6 misunderstanding and which misleads, deceives, or damages a buyer in connection
- 7 with the sale or advertisements of its goods or services; and
- 8 e. Using or employing deception, fraud, false pretense, false promise,
- 9 misrepresentation, or knowingly concealing, suppressing, or omitting a material fact
- 10 with intent that others rely upon the concealment, suppression, or omission in
- 11 connection with the sale or advertisement of its goods or services whether or not a
- 12 person was in fact misled, deceived, or damaged.

13 715. Apple's representations and omissions were material because they were likely to

14 deceive reasonable consumers.

15 716. Apple intended to mislead Plaintiff and Alaska Subclass members and induce

16 them to rely on its misrepresentations and omissions.

17 717. Apple acted intentionally, knowingly, and maliciously to violate Alaska's

18 Consumer Protection Act, and recklessly disregarded Plaintiff and Alaska Subclass members'

19 rights. Apple's knowledge of the Devices' performance issues, and release of software to

20 throttle phone performance, put it on notice that the Devices were not as it advertised.

21 718. As a direct and proximate result of Apple's unfair and deceptive acts and

22 practices, Plaintiff and Alaska Subclass members have suffered and will continue to suffer

23 injury, ascertainable losses of money or property, and monetary and non-monetary damages,

24 including from not receiving the benefit of their bargain in purchasing the Devices, and

25 increased time and expense in dealing with Device performance issues.

26 719. Plaintiff and the Alaska Subclass seek all monetary and non-monetary relief

27 allowed by law, including the greater of (a) three times their actual damages or (b) statutory

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1 damages in the amount of \$500; punitive damages; reasonable attorneys' fees and costs;  
 2 injunctive relief; and any other relief that is necessary and proper.

3 **CLAIMS ON BEHALF OF THE ARIZONA SUBCLASS**

4 **COUNT 21**

5 **ARIZONA CONSUMER FRAUD ACT**

6 *A.R.S. §§ 44-1521, et seq.*

7 720. The Arizona Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
 8 individually and on behalf of the Arizona Subclass, repeats and alleges Paragraphs 1-472, as if  
 9 fully alleged herein.

10 721. Apple is a "person" as defined by A.R.S. § 44-1521(6).

11 722. Apple advertised, offered, or sold goods or services in Arizona and engaged in  
 12 trade or commerce directly or indirectly affecting the people of Arizona.

13 723. Apple engaged in deceptive and unfair acts and practices, misrepresentation, and  
 14 the concealment, suppression, and omission of material facts affecting the people of Arizona in  
 15 connection with the sale and advertisement of "merchandise" (as defined in Arizona Consumer  
 16 Fraud Act, A.R.S. § 44-1521(5)) in violation of A.R.S. § 44-1522(A).

17 724. Apple's representations and omissions were material because they were likely to  
 18 deceive reasonable consumers.

19 725. Apple intended to mislead Plaintiff and Arizona Subclass members and induce  
 20 them to rely on its misrepresentations and omissions.

21 726. Had Apple disclosed to Plaintiff and Arizona Subclass members that it  
 22 misrepresented the Devices and operating software, omitted material information regarding the  
 23 Defect, omitted material information regarding the operating software, and was otherwise  
 24 engaged in deceptive, common business practices, Apple would have been unable to continue in  
 25 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
 26 Apple represented that its Devices were continually improving in speed and battery life and  
 27 performed better than other devices on the market. Plaintiff and the Arizona Subclass members  
 28

acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which they could not have discovered.

727. Apple acted intentionally, knowingly, and maliciously to violate Arizona's Consumer Fraud Act, and recklessly disregarded Plaintiff and Arizona Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

728. As a direct and proximate result of Apple's unfair and deceptive acts and practices, Plaintiff and Arizona Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

729. Plaintiff and Arizona Subclass members seek all monetary and non-monetary relief allowed by law, including compensatory damages; disgorgement; punitive damages; injunctive relief; and reasonable attorneys' fees and costs.

## **CLAIMS ON BEHALF OF THE ARKANSAS SUBCLASS**

### **COUNT 22**

#### **ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

##### **A.C.A. §§ 4-88-101, et seq.**

730. The Arkansas Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Arkansas Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

731. Apple is a "person" as defined by A.C.A. § 4-88-102(5).

732. Apple's products and services are "goods" and "services" as defined by A.C.A. §§ 4-88-102(4) and (7).

733. Apple advertised, offered, or sold goods or services in Arkansas and engaged in trade or commerce directly or indirectly affecting the people of Arkansas.

1           734. The Arkansas Deceptive Trade Practices Act (“ADTPA”), A.C.A. §§ 4-88-101,  
2 *et seq.*, prohibits unfair, deceptive, false, and unconscionable trade practices.

3           735. Apple engaged in acts of deception and false pretense in connection with the sale  
4 and advertisement of services in violation of A.C.A. § 4-88-1-8(1) and concealment,  
5 suppression and omission of material facts, with intent that others rely upon the concealment,  
6 suppression or omission in violation of A.C.A. § 4-88-1-8(2), and engaged in the following  
7 deceptive and unconscionable trade practices defined in A.C.A. § 4-88-107:

- 8           a. Knowingly making a false representation as to the characteristics, ingredients, uses,  
9 benefits, alterations, source, sponsorship, approval, or certification of goods or services  
10 and as to goods being of a particular standard, quality, grade, style, or model;
- 11           b. Advertising goods or services with the intent not to sell them as advertised;
- 12           c. Employing consistent bait-and-switch advertising of an attractive but insincere offer to  
13 sell a product or service which the seller in truth does not intend or desire to sell, as  
14 evidenced by acts demonstrating an intent not to sell the advertised product or services;
- 15           d. Knowingly taking advantage of a consumer who is reasonably unable to protect his or  
16 her interest because of ignorance; and
- 17           e. Engaging in other unconscionable, false, or deceptive acts and practices in business,  
18 commerce, or trade.

19           736. Apple’s representations and omissions were material because they were likely to  
20 deceive reasonable consumers.

21           737. Apple intended to mislead Plaintiff and Arkansas Subclass members and induce  
22 them to rely on its misrepresentations and omissions.

23           738. Had Apple disclosed to Plaintiffs and class members that it misrepresented the  
24 Devices and operating software, omitted material information regarding the Defect, omitted  
25 material information regarding the operating software, and was otherwise engaged in deceptive,  
26 common business practices, Apple would have been unable to continue in business and it would  
27 have been forced to disclose the uniform Defect in its Devices. Instead, Apple represented that  
28

1 its devices were continually improving in speed and battery life and performed better than other  
 2 devices on the market. Plaintiff and the Arkansas Subclass members acted reasonably in  
 3 relying on Apple's misrepresentations and omissions, the truth of which they could not have  
 4 discovered.

5 739. Apple acted intentionally, knowingly, and maliciously to violate Arkansas's  
 6 Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Arkansas Subclass  
 7 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
 8 software to throttle phone performance, put it on notice that the Devices were not as it  
 9 advertised.

10 740. As a direct and proximate result of Apple's unconscionable, unfair, and  
 11 deceptive acts or practices and Plaintiff and Arkansas Subclass members' reliance thereon,  
 12 Plaintiff and Arkansas Subclass members have suffered and will continue to suffer injury,  
 13 ascertainable losses of money or property, and monetary and non-monetary damages, including  
 14 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
 15 and expense in dealing with Device performance issues.

16 741. Plaintiff and the Arkansas Subclass members seek all monetary and non-  
 17 monetary relief allowed by law, including actual financial losses; injunctive relief; and  
 18 reasonable attorneys' fees and costs.

## 19 **CLAIMS ON BEHALF OF THE COLORADO SUBCLASS**

### 20 **COUNT 23**

#### 21 **COLORADO CONSUMER PROTECTION ACT**

22 *Colo. Rev. Stat. §§ 6-1-101, et seq.*

23 742. The Colorado Plaintiff(s) identified above ("Plaintiff," for purposes of this  
 24 Count), individually and on behalf of the Colorado Subclass, repeats and alleges Paragraphs 1-  
 25 472, as if fully alleged herein.

26 743. Apple is a "person" as defined by Colo. Rev. Stat. § 6-1-102(6).

27 744. Apple engaged in "sales" as defined by Colo. Rev. Stat. § 6-1-102(10).  
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1           745. Plaintiff and Colorado Subclass members, as well as the general public, are  
2 actual or potential consumers of the products and services offered by Apple or successors in  
3 interest to actual consumers.

4           746. Apple engaged in deceptive trade practices in the course of its business, in  
5 violation of Colo. Rev. Stat. § 6-1-105(1), including:

- 6           a. Knowingly making a false representation as to the characteristics of products and  
7 services;
- 8           b. Representing that services are of a particular standard, quality, or grade, though  
9 Apple knew or should have known that there were or another;
- 10          c. Advertising services with intent not to sell them as advertised; and
- 11          d. Failing to disclose material information concerning its services which was known at  
12 the time of an advertisement or sale when the failure to disclose the information was  
13 intended to induce the consumer to enter into the transaction.

14          747. Apple's representations and omissions were material because they were likely to  
15 deceive reasonable consumers.

16          748. Apple intended to mislead Plaintiff and Colorado Subclass members and induce  
17 them to rely on its misrepresentations and omissions.

18          749. Had Apple disclosed to Plaintiff and Colorado Subclass members that it  
19 misrepresented the Devices and operating software, omitted material information regarding the  
20 Defect, omitted material information regarding the operating software, and was otherwise  
21 engaged in deceptive, common business practices, Apple would have been unable to continue in  
22 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
23 Apple represented that its Devices were continually improving in speed and battery life and  
24 performed better than other devices on the market. Plaintiff and the Colorado Subclass  
25 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
26 which they could not have discovered.

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750. Apple acted intentionally, knowingly, and maliciously to violate Colorado's Consumer Protection Act, and recklessly disregarded Plaintiff and Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

751. As a direct and proximate result of Apple's deceptive trade practices, Colorado Subclass members suffered injuries to their legally protected interests.

752. Apple's deceptive trade practices significantly impact the public, because Apple is the second-largest Device manufacturer in the world, with hundreds of thousands of sales of those Devices to Colorado consumers.

753. Plaintiff and Colorado Subclass members seek all monetary and non-monetary relief allowed by law, including the greater of: (a) actual damages, or (b) \$500, or (c) three times actual damages (for Apple's bad faith conduct); injunctive relief; and reasonable attorneys' fees and costs.

## **CLAIMS ON BEHALF OF THE CONNECTICUT SUBCLASS**

### **COUNT 24**

#### **CONNECTICUT UNFAIR TRADE PRACTICES ACT**

##### **C.G.S.A. § 42-110g**

754. The Connecticut Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Connecticut Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

755. Apple is a "person" as defined by C.G.S.A. § 42-110a(3).

756. Apple is engaged in "trade" or "commerce" as those terms are defined by C.G.S.A. § 42-110a(4).

757. At the time of filing this Complaint, Plaintiff has sent notice to the Attorney General and Commissioner of Consumer Protection pursuant to C.G.S.A. § 42-110g(c). Plaintiff will provide a file-stamped copy of the Complaint to the Attorney General and Commissioner of Consumer Protection.

1           758. Apple advertised, offered, or sold goods or services in Connecticut, and engaged  
2 in trade or commerce directly or indirectly affecting the people of Connecticut.

3           759. Apple engaged in deceptive acts and practices and unfair acts and practices in the  
4 conduct of trade or commerce, in violation of the C.G.S.A. § 42-110b, including:

- 5           a. Representing that goods or services have sponsorship, approval, characteristics,  
6 ingredients, uses, benefits, or qualities that they do not have;
- 7           b. Representing that goods or services are of a particular standard, quality, or grade, or  
8 that goods are of a particular style or model, if they are of another; and
- 9           c. Engaging in any other unconscionable, false, misleading, or deceptive act or practice  
10 in the conduct of trade or commerce.

11           760. Apple's representations and omissions were material because they were likely to  
12 deceive reasonable consumers.

13           761. Apple intended to mislead Plaintiff and Connecticut Subclass members and  
14 induce them to rely on its misrepresentations and omissions.

15           762. Had Apple disclosed to Plaintiff and Connecticut Subclass members that it  
16 misrepresented the Devices and operating software, omitted material information regarding the  
17 Defect, omitted material information regarding the operating software, and was otherwise  
18 engaged in deceptive, common business practices, Apple would have been unable to continue in  
19 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
20 Apple represented that its Devices were continually improving in speed and battery life and  
21 performed better than other devices on the market. Plaintiff and the Connecticut Subclass  
22 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
23 which they could not have discovered.

24           763. Apple acted intentionally, knowingly, and maliciously to violate the Connecticut  
25 Unfair Trade Practices Act, and recklessly disregarded Plaintiff and Connecticut Subclass  
26 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
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1 software to throttle phone performance, put it on notice that the Devices were not as it  
2 advertised.

3 764. As a direct and proximate result of Apple's deceptive acts and practices, Plaintiff  
4 and Connecticut Subclass members have suffered and will continue to suffer injury,  
5 ascertainable losses of money or property, and monetary and non-monetary damages, including  
6 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
7 and expense in dealing with Device performance issues.

8 765. Apple's deceptive acts and practices caused substantial, ascertainable injury to  
9 Plaintiff and Connecticut Subclass members, which they could not reasonably avoid, and which  
10 outweighed any benefits to consumers or to competition.

11 766. Apple's violations of Connecticut law were done with reckless indifference to  
12 the Plaintiff and the Connecticut Subclass or was with an intentional or wanton violation of  
13 those rights.

14 767. Plaintiff requests damages in the amount to be determined at trial, including  
15 statutory and common law damages, attorneys' fees, and punitive damages.

16 **CLAIMS ON BEHALF OF THE DELAWARE SUBCLASS**

17 **COUNT 25**

18 **DELAWARE CONSUMER FRAUD ACT**

19 *6 Del. Code §§ 2513, et seq.*

20 768. The Delaware Plaintiff(s) identified above ("Plaintiff," for purposes of this  
21 Count), individually and on behalf of the Delaware Subclass, repeats and alleges Paragraphs 1-  
22 472, as if fully alleged herein.

23 769. Apple is a "person" that is involved in the "sale" of "merchandise," as defined by  
24 6 Del. Code § 2511(7), (8), and (6).

25 770. Apple advertised, offered, or sold goods or services in Delaware and engaged in  
26 trade or commerce directly or indirectly affecting the people of Delaware.  
27  
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1           771. Apple used and employed deception, fraud, false pretense, false promise,  
2           misrepresentation, and the concealment, suppression, and omission of material facts with intent  
3           that others rely upon such concealment, suppression and omission, in connection with the sale  
4           and advertisement of merchandise, in violation of 6 Del. Code § 2513(a).

5           772. Apple's representations and omissions were material because they were likely to  
6           deceive reasonable consumers.

7           773. Apple acted intentionally, knowingly, and maliciously to violate Delaware's  
8           Consumer Fraud Act, and recklessly disregarded Plaintiff and Delaware Subclass members'  
9           rights. Apple's knowledge of the Devices' performance issues, and release of software to  
10          throttle phone performance, put it on notice that the Devices were not as it advertised.

11          774. Had Apple disclosed to Plaintiff and Delaware Subclass members that it  
12          misrepresented the Devices and operating software, omitted material information regarding the  
13          Defect, omitted material information regarding the operating software, and was otherwise  
14          engaged in deceptive, common business practices, Apple would have been unable to continue in  
15          business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
16          Apple represented that its Devices were continually improving in speed and battery life and  
17          performed better than other devices on the market. Plaintiff and the Delaware Subclass  
18          members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
19          which they could not have discovered.

20          775. Apple's unlawful trade practices were gross, oppressive, and aggravated, and  
21          Apple breached the trust of Plaintiff and the Delaware Subclass members.

22          776. As a direct and proximate result of Apple's unlawful acts and practices, Plaintiff  
23          and Delaware Subclass members have suffered and will continue to suffer injury, ascertainable  
24          losses of money or property, and monetary and non-monetary damages, including from not  
25          receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
26          in dealing with Device performance issues.

777. Plaintiff and Delaware Subclass members seek all monetary and non-monetary relief allowed by law, including damages under 6 Del. Code § 2525 for injury resulting from the direct and natural consequences of Apple’s unlawful conduct; injunctive relief; and reasonable attorneys’ fees and costs.

**CLAIMS ON BEHALF OF THE DISTRICT OF COLUMBIA SUBCLASS**

**COUNT 26**

**DISTRICT OF COLUMBIA CONSUMER PROTECTION**

**PROCEDURES ACT**

*D.C. Code §§ 28-3904, et seq.*

778. The District of Columbia Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the District of Columbia Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

779. Apple is a “person” as defined by D.C. Code § 28-3901(a)(1).

780. Apple is a “merchant” as defined by D.C. Code § 28-3901(a)(3).

781. Plaintiff and District of Columbia Subclass members are “consumers” who purchased or received goods or services for personal, household, or family purposes, as defined by D.C. Code § 28-3901.

782. Apple advertised, offered, or sold goods or services in District of Columbia and engaged in trade or commerce directly or indirectly affecting the people of District of Columbia.

783. Apple engaged in unfair, unlawful, and deceptive trade practices, misrepresentations, and the concealment, suppression, and omission of material facts with respect to the sale and advertisement of goods and services in violation of D.C. Code § 28-3904, including:

- a. Representing that goods or services have characteristics that they do not have;
- b. Representing that goods or services are of a particular standard, quality, grade, style, or model, when they are of another;
- c. Misrepresenting a material fact that has a tendency to mislead;

- d. Failing to state a material fact where the failure is misleading;
- e. Advertising or offering goods or services without the intent to sell them as advertised or offered; and
- f. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

784. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

785. Apple intended to mislead Plaintiff and District of Columbia Subclass members and induce them to rely on its misrepresentations and omissions.

786. The above unfair and deceptive practices and acts by Apple were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and District of Columbia Subclass members that they could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

787. Apple acted intentionally, knowingly, and maliciously to violate the District of Columbia's Consumer Protection Procedures Act, and recklessly disregarded Plaintiff and District of Columbia Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

788. As a direct and proximate result of Apple's unfair, unlawful, and deceptive trade practices, Plaintiff and District of Columbia Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

789. Plaintiff and District of Columbia Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages, restitution, injunctive relief, punitive damages, attorneys' fees and costs, the greater of treble damages or \$1500 per violation, and any other relief that the Court deems proper.



**CLAIMS ON BEHALF OF THE FLORIDA SUBCLASS**

**COUNT 27**

**FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

*Fla. Stat. §§ 501.201, et seq.*

790. The Florida Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Florida Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

791. Plaintiff and Florida Subclass members are “consumers” as defined by Fla. Stat. § 501.203.

792. Apple advertised, offered, or sold goods or services in Florida and engaged in trade or commerce directly or indirectly affecting the people of Florida.

793. Apple engaged in unconscionable, unfair, and deceptive acts and practices in the conduct of trade and commerce, in violation of Fla. Stat. § 501.204(1).

794. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

795. Had Apple disclosed to Plaintiff and Florida Subclass members that it misrepresented the Devices and operating software, omitted material information regarding the Defect, omitted material information regarding the operating software, and was otherwise engaged in deceptive, common business practices, Apple would have been unable to continue in business and it would have been forced to disclose the uniform Defect in its Devices. Instead, Apple represented that its Devices were continually improving in speed and battery life and performed better than other devices on the market. Plaintiff and the Florida Subclass members acted reasonably in relying on Apple’s misrepresentations and omissions, the truth of which they could not have discovered.

796. As a direct and proximate result of Apple’s unconscionable, unfair, and deceptive acts and practices, Plaintiff and Florida Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-

monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

797. Plaintiff and Florida Subclass members seek all monetary and non-monetary relief allowed by law, including actual or nominal damages under Fla. Stat. § 501.21; declaratory and injunctive relief; reasonable attorneys' fees and costs, under Fla. Stat. § 501.2105(1); and any other relief that is just and proper.

## **CLAIMS ON BEHALF OF THE GEORGIA SUBCLASS**

### **COUNT 28**

#### **GEORGIA UNIFORM DECEPTIVE TRADE PRACTICES ACT**

*O.C.G.A. §§ 10-1-390, et seq.*

798. The Georgia Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Georgia Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

799. Apple, Plaintiff, and Georgia Subclass members are "persons" within the meaning of § 10-1-371(5) of the Georgia Uniform Deceptive Trade Practices Act ("Georgia UDTPA").

800. Apple received notice pursuant to O.C.G.A. § 10-1-399 concerning its wrongful conduct as alleged herein by Plaintiff and Georgia Subclass members. However, sending pre-suit notice pursuant to O.C.G.A. § 10-1-399 is an exercise in futility for Plaintiff, as Apple has already been informed of the allegedly unfair and unlawful conduct as described herein as of the date of the first-filed lawsuit in December 2017, and has yet to offer class members remedy in accordance with similar consumer protection statutes.

801. Apple engaged in deceptive trade practices in the conduct of its business, in violation of O.C.G.A. § 10-1-372(a), including:

- a. Representing that goods or services have characteristics that they do not have;
- b. Representing that goods or services are of a particular standard, quality, or grade if they are of another;

- c. Advertising goods or services with intent not to sell them as advertised; and
- d. Engaging in other conduct that creates a likelihood of confusion or misunderstanding.

802. Apple's deceptive trade practices include:

- a. Knowingly designing, developing, manufacturing, advertising, and selling Devices with a significant Defect that result in the Devices not operating as intended, represented, or advertised under normal usage;
- b. Developing software Updates that merely hide the aforementioned Defect by throttling Device performance, resulting in the Devices operating at slower speeds than intended, represented, or advertised under normal usage;
- c. Concealing material information from consumers regarding its Devices and the Defect so that consumers were unable to make informed choices when purchasing the Devices;
- d. Concealing material information from consumers regarding the Updates to operating software, so that consumers would not nor could they know that the Updates throttled their Devices; and
- e. Using uniform, deceptive business practices such as throttling software to slow down Devices, requiring consumers to spend additional money on replacement batteries or Devices as a result of the Defect.

803. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

804. Apple intended to mislead Plaintiff and Georgia Subclass members and induce them to rely on its misrepresentations and omissions.

805. In the course of its business, Apple engaged in activities with a tendency or capacity to deceive.

806. Apple acted intentionally, knowingly, and maliciously to violate Georgia's Uniform Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Georgia

1 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
2 of software to throttle phone performance, put it on notice that the Devices were not as it  
3 advertised.

4 807. Had Apple disclosed to Plaintiff and Georgia Subclass members that it  
5 misrepresented the Devices and operating software, omitted material information regarding the  
6 Defect, omitted material information regarding the operating software, and was otherwise  
7 engaged in deceptive, common business practices, Apple would have been unable to continue in  
8 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
9 Apple represented that its Devices were continually improving in speed and battery life and  
10 performed better than other devices on the market. Plaintiff and the Georgia Subclass members  
11 acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which  
12 they could not have discovered.

13 808. As a direct and proximate result of Apple's deceptive trade practices, Plaintiff  
14 and Georgia Subclass members have suffered and will continue to suffer injury, ascertainable  
15 losses of money or property, and monetary and non-monetary damages, including from not  
16 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
17 in dealing with Device performance issues.

18 809. Plaintiff and Georgia Subclass members seek all relief allowed by law, including  
19 injunctive relief, and reasonable attorneys' fees and costs, under O.C.G.A. § 10-1-373.

20 **CLAIMS ON BEHALF OF THE HAWAII SUBCLASS**

21 **COUNT 29**

22 **HAWAII UNFAIR PRACTICES AND UNFAIR COMPETITION ACT**

23 *Haw. Rev. Stat. §§ 480-1, et seq.*

24 810. The Hawaii Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
25 individually and on behalf of the Hawaii Subclass, repeats and alleges Paragraphs 1-472, as if  
26 fully alleged herein.  
27  
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1           811. Plaintiff and Hawaii Subclass members are “consumers” as defined by Haw.  
2 Rev. Stat. § 480-1.

3           812. Plaintiffs, the Hawaii Subclass members, and Apple are “persons” as defined by  
4 Haw. Rev. Stat. § 480-1.

5           813. Apple advertised, offered, or sold goods or services in Hawaii and engaged in  
6 trade or commerce directly or indirectly affecting the people of Hawaii.

7           814. Apple engaged in unfair or deceptive acts or practices, misrepresentations, and  
8 the concealment, suppression, and omission of material facts with respect to the sale and  
9 advertisement of the goods and services purchased by Hawaii Subclass members in violation of  
10 Haw. Rev. Stat. § 480-2(a).

11           815. Apple’s representations and omissions were material because they were likely to  
12 deceive reasonable consumers.

13           816. Apple intended to mislead Plaintiff and Hawaii Subclass members and induce  
14 them to rely on its misrepresentations and omissions.

15           817. The foregoing unlawful and deceptive acts and practices were immoral,  
16 unethical, oppressive, and unscrupulous.

17           818. Apple acted intentionally, knowingly, and maliciously to violate Hawaii’s Unfair  
18 Practices and Unfair Competition Act, and recklessly disregarded Plaintiff and Hawaii Subclass  
19 members’ rights. Apple’s knowledge of the Devices’ performance issues, and release of  
20 software to throttle phone performance, put it on notice that the Devices were not as it  
21 advertised.

22           819. As a direct and proximate result of Apple’s deceptive acts and practices, Plaintiff  
23 and Hawaii Subclass members have suffered and will continue to suffer injury, ascertainable  
24 losses of money or property, and monetary and non-monetary damages, including from not  
25 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
26 in dealing with Device performance issues.

820. Plaintiff and Hawaii Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages, benefit of the bargain damages, treble damages, injunctive relief, and reasonable attorneys' fees and costs.

### **COUNT 30**

#### **HAWAII UNIFORM DECEPTIVE TRADE PRACTICE ACT**

*Haw. Rev. Stat. §§ 481A-3, et seq.*

821. The Hawaii Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Hawaii Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

822. Plaintiff and Hawaii Subclass members are "persons" as defined by Haw. Rev. Stat. § 481A-2.

823. Apple engaged in unfair and deceptive trade practices in the conduct of its business, violating Haw. Rev. Stat. § 481A-3, including:

- a. Representing that goods or services have characteristics that they do not have;
- b. Representing that goods or services are of a particular standard, quality, or grade if they are of another;
- c. Advertising goods or services with intent not to sell them as advertised; and
- d. Engaging in other conduct that creates a likelihood of confusion or misunderstanding.

824. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

825. The above unfair and deceptive practices and acts by Apple were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and Hawaii Subclass members that they could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

826. As a direct and proximate result of Apple's unfair, unlawful, and deceptive trade practices, Plaintiff and Hawaii Subclass members have suffered and will continue to suffer

injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

827. Plaintiff and Hawaii Subclass members seek all monetary and non-monetary relief allowed by law, including injunctive relief, attorneys' fees and costs, and any other relief that the Court deems proper.

## **CLAIMS ON BEHALF OF THE IDAHO SUBCLASS**

### **COUNT 31**

#### **IDAHO CONSUMER PROTECTION ACT**

*Idaho Code §§ 48-601, et seq.*

828. The Idaho Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Idaho Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

829. Apple is a "person" as defined by Idaho Code § 48-602(1).

830. Apple's conduct as alleged herein pertained to "goods" and "services" as defined by Idaho Code § 48-602(6) and (7).

831. Apple advertised, offered, or sold goods or services in Idaho and engaged in trade or commerce directly or indirectly affecting the people of Idaho.

832. Apple engaged in unfair and deceptive acts or practices, and unconscionable acts and practices, in the conduct of trade and commerce with respect to the sale and advertisement of goods and services, in violation of Idaho Code §§ 48-603 and 48-603(C), including:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- b. Representing that goods are of a particular standard, quality, or grade when they are of another;
- c. Advertising goods or services with intent not to sell them as advertised;
- d. Engaging in other acts and practices that are otherwise misleading, false, or



1           deceptive to consumers; and

2           e. Engaging in unconscionable methods, acts or practices in the conduct of trade or  
3           commerce.

4           833. Apple's representations and omissions were material because they were likely to  
5           deceive reasonable consumers.

6           834. Apple intended to mislead Plaintiff and Idaho Subclass members and induce  
7           them to rely on its misrepresentations and omissions. Apple knew its representations and  
8           omissions were false.

9           835. Apple acted intentionally, knowingly, and maliciously to violate Idaho's  
10          Consumer Protection Act, and recklessly disregarded Plaintiff and Idaho Subclass members'  
11          rights. Apple's knowledge of the Devices' performance issues, and release of software to  
12          throttle phone performance, put it on notice that the Devices were not as it advertised.

13          836. As a direct and proximate result of Apple's unfair, deceptive, and  
14          unconscionable conduct, Plaintiff and Idaho Subclass members have suffered and will continue  
15          to suffer injury, ascertainable losses of money or property, and monetary and non-monetary  
16          damages, including from not receiving the benefit of their bargain in purchasing the Devices,  
17          and increased time and expense in dealing with Device performance issues.

18          837. Plaintiff and Idaho Subclass members seek all monetary and non-monetary relief  
19          allowed by law, including damages, punitive damages, injunctive relief, costs, and attorneys'  
20          fees.

21                           **CLAIMS ON BEHALF OF THE ILLINOIS SUBCLASS**

22   **COUNT 32**

23                   **ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

24   *815 ILCS §§ 505, et seq.*

25          838. The Illinois Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
26          individually and on behalf of the Illinois Subclass, repeats and alleges Paragraphs 1-472, as if  
27          fully alleged herein.

1           839. Apple is a “person” as defined by 815 ILCS §§ 505/1(c).

2           840. Plaintiff and Illinois Subclass members are “consumers” as defined by 815 ILCS  
3 §§ 505/1(e).

4           841. Apple’s conduct as described herein was in the conduct of “trade” or  
5 “commerce” as defined by 815 ILCS § 505/1(f). Apple’s conduct is described in full detail  
6 above.

7           842. Apple’s deceptive, unfair, and unlawful trade acts or practices, in violation of  
8 815 ILCS § 505/2.

9           843. Apple’s representations and omissions were material because they were likely to  
10 deceive reasonable consumers.

11           844. Apple intended to mislead Plaintiff and Illinois Subclass members and induce  
12 them to rely on its misrepresentations and omissions.

13           845. The above unfair and deceptive practices and acts by Apple were immoral,  
14 unethical, oppressive, and unscrupulous. These acts caused substantial injury that these  
15 consumers could not reasonably avoid; this substantial injury outweighed any benefit to  
16 consumers or to competition.

17           846. Apple acted intentionally, knowingly, and maliciously to violate Illinois’s  
18 Consumer Fraud Act, and recklessly disregarded Plaintiff and Illinois Subclass members’ rights.  
19 Apple’s knowledge of the Devices’ performance issues, and release of software to throttle  
20 phone performance, put it on notice that the Devices were not as it advertised.

21           847. As a direct and proximate result of Apple’s unfair, unlawful, and deceptive acts  
22 and practices, Plaintiff and Illinois Subclass members have suffered and will continue to suffer  
23 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
24 including from not receiving the benefit of their bargain in purchasing the Devices, and  
25 increased time and expense in dealing with Device performance issues.

848. Plaintiff and Illinois Subclass members seek all monetary and non-monetary relief allowed by law, including damages, restitution, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

### **COUNT 33**

#### **ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT**

##### **815 ILCS §§ 510/2, et seq.**

849. The Illinois Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Illinois Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

850. Apple is a "person" as defined by 815 ILCS §§ 510/1(5).

851. Apple engaged in deceptive trade practices in the conduct of its business, in violation of 815 ILCS §§ 510/2(a), including:

- a. Representing that goods or services have characteristics that they do not have;
- b. Representing that goods or services are of a particular standard, quality, or grade if they are of another;
- c. Advertising goods or services with intent not to sell them as advertised; and
- d. Engaging in other conduct that creates a likelihood of confusion or misunderstanding.

852. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

853. The above unfair and deceptive practices and acts by Apple were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and Illinois Subclass members that they could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

854. As a direct and proximate result of Apple's unfair, unlawful, and deceptive trade practices, Plaintiff and Illinois Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages,

1 including from not receiving the benefit of their bargain in purchasing the Devices, and  
 2 increased time and expense in dealing with Device performance issues.

3 855. Plaintiff and Illinois Subclass members seek all monetary and non-monetary  
 4 relief allowed by law, including injunctive relief and reasonable attorney's fees.

5 **CLAIMS ON BEHALF OF THE INDIANA SUBCLASS**

6 **COUNT 34**

7 **INDIANA DECEPTIVE CONSUMER SALES ACT**

8 *Ind. Code §§ 24-5-0.5-1, et seq.*

9 856. The Indiana Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
 10 individually and on behalf of the Indiana Subclass, repeats and alleges Paragraphs 1-472, as if  
 11 fully alleged herein.

12 857. Apple is a "person" as defined by Ind. Code § 24-5-0.5-2(a)(2).

13 858. Apple is a "supplier" as defined by § 24-5-0.5-2(a)(1), because it regularly  
 14 engages in or solicits "consumer transactions" within the meaning of § 24-5-0.5-2(a)(3)(A).

15 859. Apple engaged in unfair, abusive, and deceptive acts, omissions, and practices in  
 16 connection with consumer transactions, in violation of Ind. Code § 24-5-0.5-3(a).

17 860. Apple's representations and omissions include both implicit and explicit  
 18 representations and were carried out as a scheme or artifice to defraud.

19 861. Apple's acts and practices were "unfair" because they caused or were likely to  
 20 cause substantial injury to consumers which was not reasonably avoidable by consumers  
 21 themselves and not outweighed by countervailing benefits to consumers or to competition.

22 862. The injury to consumers from Apple's conduct was and is substantial because it  
 23 was non-trivial and non-speculative; and involved a monetary injury. The injury to consumers  
 24 was substantial not only because it inflicted harm on a significant and unprecedented number of  
 25 consumers, but also because it inflicted a significant amount of harm on each consumer.

26 863. Consumers could not have reasonably avoided injury because Apple's business  
 27 acts and practices unreasonably created or took advantage of an obstacle to the free exercise of  
 28

1 consumer decision-making. By withholding important information from consumers about the  
 2 performance of its Devices, and the Defect within those Devices, Apple created an asymmetry  
 3 of information between it and consumers that precluded consumers from taking action to avoid  
 4 or mitigate injury.

5 864. Apple's business practices, in concealing material information or  
 6 misrepresenting the qualities, characteristics, and performance of its Devices, had no  
 7 countervailing benefit to consumers or to competition.

8 865. Apple's acts and practices were "abusive" for numerous reasons, including:

- 9 a. Because they materially interfered with consumers' ability to understand a term or  
 10 condition in a consumer transaction, interfering with consumers' decision-making.
- 11 b. Because they took unreasonable advantage of consumers' lack of understanding  
 12 about the material risks, costs, or conditions of a consumer transaction; consumers  
 13 lacked an understanding of the material risks and costs of a variety of their  
 14 transactions.
- 15 c. Because they took unreasonable advantage of consumers' inability to protect their  
 16 own interests; consumers could not protect their interests due to the asymmetry in  
 17 information between them and Apple concerning Apple's Devices.
- 18 d. Because Apple took unreasonable advantage of consumers' reasonable reliance that  
 19 it was providing truthful and accurate information about its Devices.

20 866. Apple also engaged in "deceptive" acts and practices in violation of Indiana  
 21 Code § 24-5-0.5-3(a) and § 24-5-0.5-3(b), including:

- 22 a. Misrepresenting that the subject of a consumer transaction has sponsorship,  
 23 approval, performance, characteristics, accessories, uses, or benefits it does not have  
 24 which the supplier knows or should reasonably know it does not have;
- 25 b. Misrepresenting that the subject of a consumer transaction is of a particular standard,  
 26 quality, grade, style, or model, if it is not and if the supplier knows or should  
 27 reasonably know that it is not; and  
 28

1 c. Misrepresenting that the subject of a consumer transaction will be supplied to the  
2 public in greater quantity (i.e., greater speed, longer battery life) than the supplier  
3 intends or reasonably expects.

4 867. Apple intended to mislead Plaintiff and Indiana Subclass members and induce  
5 them to rely on its misrepresentations and omissions.

6 868. Apple's representations and omissions were material because they were likely to  
7 deceive reasonable consumers.

8 869. Had Apple disclosed to Plaintiff and Indiana Subclass members that it  
9 misrepresented the Devices and operating software, omitted material information regarding the  
10 Defect, omitted material information regarding the operating software, and was otherwise  
11 engaged in deceptive, common business practices, Apple would have been unable to continue in  
12 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
13 Apple represented that its Devices were continually improving in speed and battery life and  
14 performed better than other devices on the market. Plaintiff and the Indiana Subclass members  
15 acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which  
16 they could not have discovered.

17 870. Apple had a duty to disclose the above-described facts due to the circumstances  
18 of this case, the sensitivity and extensiveness of the Defect in its Devices, and the generally-  
19 accepted standards regarding product safety. Apple's duty to disclose also arose from its:

- 20 a. Possession of exclusive knowledge regarding the Defect in its Devices;
- 21 b. Possession of exclusive knowledge regarding throttling code in its operating  
22 software;
- 23 c. Active concealment of the Devices Defect;
- 24 d. Active concealment of the fact that its operating software throttled Device  
25 performance;
- 26 e. Incomplete representations about Device safety and performance, while purposefully  
27 withholding material facts from Plaintiff and the Indiana Subclass that contradicted  
28

1           these representations.

2           871. Apple acted intentionally, knowingly, and maliciously to violate Indiana's  
3 Deceptive Consumer Sales Act, and recklessly disregarded Plaintiff and Indiana Subclass  
4 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
5 software to throttle phone performance, put it on notice that the Devices were not as it  
6 advertised.

7           872. Apple received notice pursuant to Ind. Code § 24-5-0.5-5 concerning its  
8 wrongful conduct as alleged herein by Plaintiff and Indiana Subclass members. Apple has had  
9 constructive notice of Plaintiff's demand for relief for the Indiana Subclass pursuant to Ind.  
10 Code § 24-5-0.5-5 since the filing of the first case, which contained substantially similar  
11 allegations. Accordingly, sending pre-suit notice pursuant to Ind. Code § 24-5-0.5-5 is an  
12 exercise in futility for Plaintiff, as Apple has not cured its unfair, abusive, and deceptive acts  
13 and practices, or its violations of Indiana Deceptive Consumer Sales Act were incurable.

14           873. Apple's conduct includes incurable deceptive acts that Apple engaged in as part  
15 of a scheme, artifice, or device with intent to defraud or mislead, under Ind. Code § 24-5-0.5-  
16 2(a)(8).

17           874. As a direct and proximate result of Apple's uncured or incurable unfair, abusive,  
18 and deceptive acts or practices, Plaintiff and Indiana Subclass members have suffered and will  
19 continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
20 monetary damages, including from not receiving the benefit of their bargain in purchasing the  
21 Devices, and increased time and expense in dealing with Device performance issues.

22           875. Apple's violations present a continuing risk to Plaintiff and Indiana Subclass  
23 members as well as to the general public.

24           876. Plaintiff and Indiana Subclass members seek all monetary and non-monetary  
25 relief allowed by law, including the greater of actual damages or \$500 for each non-willful  
26 violation; the greater of treble damages or \$1,000 for each willful violation; restitution;  
27 reasonable attorneys' fees and costs; injunctive relief; and punitive damages.  
28



**CLAIMS ON BEHALF OF THE IOWA SUBCLASS**

**COUNT 35**

**IOWA PRIVATE RIGHT OF ACTION FOR CONSUMER FRAUDS ACT**

**Iowa Code § 714H**

877. The Iowa Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Iowa Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

878. Apple is a “person” as defined by Iowa Code § 714H.2(7).

879. Plaintiff and Iowa Subclass members are “consumers” as defined by Iowa Code § 714H.2(3).

880. Apple’s conduct described herein related to the “sale” or “advertisement” of “merchandise” as defined by Iowa Code §§ 714H.2(2), (6), & (8).

881. Apple engaged in unfair, deceptive, and unconscionable trade practices, in violation of the Iowa Private Right of Action for Consumer Frauds Act, as described throughout and herein.

882. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

883. Apple intended to mislead Plaintiff and Iowa Subclass members and induce them to rely on its misrepresentations and omissions.

884. Apple acted intentionally, knowingly, and maliciously to violate Iowa’s Private Right of Action for Consumer Frauds Act, and recklessly disregarded Plaintiff and Iowa Subclass members’ rights. Apple’s knowledge of the Devices’ performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

885. As a direct and proximate result of Apple’s unfair, deceptive, and unconscionable conduct, Plaintiff and Iowa Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary

1 damages, including from not receiving the benefit of their bargain in purchasing the Devices,  
2 and increased time and expense in dealing with Device performance issues.

3 886. Plaintiff has provided the requisite notice to the Iowa Attorney General, the  
4 office of which approved the filing of this class action lawsuit pursuant to Iowa Code § 714H.7.

5 887. Plaintiff and Iowa Subclass members seek all monetary and non-monetary relief  
6 allowed by law, including injunctive relief, damages, punitive damages, and reasonable  
7 attorneys' fees and costs.

8 **CLAIMS ON BEHALF OF THE KANSAS SUBCLASS**

9 **COUNT 36**

10 **KANSAS CONSUMER PROTECTION ACT**

11 *K.S.A. §§ 50-623, et seq.*

12 888. The Kansas Plaintiff(s) identified above ("Plaintiff," for purposes of this Count),  
13 individually and on behalf of the Kansas Subclass, repeats and alleges Paragraphs 1-472, as if  
14 fully alleged herein.

15 889. K.S.A. §§ 50-623, *et seq.* is to be liberally construed to protect consumers from  
16 suppliers who commit deceptive and unconscionable practices.

17 890. Plaintiff and Kansas Subclass members are "consumers" as defined by K.S.A. §  
18 50-624(b).

19 891. The acts and practices described herein are "consumer transactions," as defined  
20 by K.S.A. § 50-624(c).

21 892. Apple is a "supplier" as defined by K.S.A. § 50-624(l).

22 893. Apple advertised, offered, or sold goods or services in Kansas and engaged in  
23 trade or commerce directly or indirectly affecting the people of Kansas.

24 894. Apple's representations and omissions were material because they were likely to  
25 deceive reasonable consumers.

26 895. Apple intended to mislead Plaintiff and Kansas Subclass members and induce  
27 them to rely on its misrepresentations and omissions.  
28

1           896. Had Apple disclosed to Plaintiff and Kansas Subclass members that it  
2 misrepresented the Devices and operating software, omitted material information regarding the  
3 Defect, omitted material information regarding the operating software, and was otherwise  
4 engaged in deceptive, common business practices, Apple would have been unable to continue in  
5 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
6 Apple represented that its Devices were continually improving in speed and battery life and  
7 performed better than other devices on the market. Plaintiff and the Kansas Subclass members  
8 acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which  
9 they could not have discovered.

10           897. Apple also engaged in unconscionable acts and practices in connection with a  
11 consumer transaction, in violation of K.S.A. § 50-627, including: knowingly taking advantage  
12 of the inability of Plaintiff and the Kansas Subclass to reasonably protect their interests, due to  
13 their lack of knowledge (*see* K.S.A. § 50-627(b)(1)); and requiring Plaintiff and the Kansas  
14 Subclass to enter into a consumer transaction on terms that Apple knew were substantially one-  
15 sided in favor of Apple (*see* K.S.A. § 50-627(b)(5)).

16           898. Plaintiff and the Kansas Subclass had unequal bargaining power with respect to  
17 their purchase and/or use of Apple's Devices because of Apple's omissions and  
18 misrepresentations.

19           899. The above unfair, deceptive, and unconscionable practices and acts by Apple  
20 were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to  
21 Plaintiff and Kansas Subclass members that they could not reasonably avoid; this substantial  
22 injury outweighed any benefits to consumers or to competition.

23           900. Apple acted intentionally, knowingly, and maliciously to violate Kansas's  
24 Consumer Protection Act, and recklessly disregarded Plaintiff and Kansas Subclass members'  
25 rights. Apple's knowledge of the Devices' performance issues, and release of software to  
26 throttle phone performance, put it on notice that the Devices were not as it advertised.  
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901. As a direct and proximate result of Apple's unfair, deceptive, and unconscionable trade practices, Plaintiff and Kansas Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

902. Plaintiff and Kansas Subclass members seek all monetary and non-monetary relief allowed by law, including civil penalties or actual damages (whichever is greater), under K.S.A. §§ 50-634 and 50-636; injunctive relief; and reasonable attorneys' fees and costs.

### **CLAIMS ON BEHALF OF THE KENTUCKY SUBCLASS**

#### **COUNT 37**

#### **KENTUCKY CONSUMER PROTECTION ACT**

*Ky. Rev. Stat. §§ 367.110, et seq.*

903. The Kentucky Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Kentucky Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

904. Apple is a "person" as defined by Ky. Rev. Stat. § 367.110(1).

905. Apple advertised, offered, or sold goods or services in Kentucky and engaged in trade or commerce directly or indirectly affecting the people of Kentucky, as defined by Ky. Rev. Stat. § 367.110(2).

906. Apple engaged in unfair, false, misleading, deceptive, and unconscionable acts or practices, in violation of Ky. Rev. Stat. § 367.170, as described herein.

907. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

908. Apple intended to mislead Plaintiff and Kentucky Subclass members and induce them to rely on its misrepresentations and omissions.

1           909. Plaintiff and Kentucky Subclass members' purchased goods or services for  
2 personal, family, or household purposes and suffered ascertainable losses of money or property  
3 as a result of Apple's unlawful acts and practices.

4           910. The above unlawful acts and practices by Apple were immoral, unethical,  
5 oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and Kentucky  
6 Subclass members that they could not reasonably avoid; this substantial injury outweighed any  
7 benefits to consumers or to competition.

8           911. Apple acted intentionally, knowingly, and maliciously to violate Kentucky's  
9 Consumer Protection Act, and recklessly disregarded Plaintiff and Kentucky Subclass  
10 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
11 software to throttle phone performance, put it on notice that the Devices were not as it  
12 advertised.

13           912. As a direct and proximate result of Apple's unlawful acts and practices, Plaintiff  
14 and Kentucky Subclass members have suffered and will continue to suffer injury, ascertainable  
15 losses of money or property, and monetary and non-monetary damages, including from not  
16 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
17 in dealing with Device performance issues.

18           913. Plaintiff and Kentucky Subclass members seek all monetary and non-monetary  
19 relief allowed by law, including damages, punitive damages, restitution or other equitable relief,  
20 injunctive relief, and reasonable attorneys' fees and costs.  
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**CLAIMS ON BEHALF OF THE LOUISIANA SUBCLASS**

**COUNT 38**

**LOUISIANA UNFAIR TRADE PRACTICES AND  
CONSUMER PROTECTION LAW**

*La. Rev. Stat. Ann. §§ 51:1401, et seq.*

914. The Louisiana Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Louisiana Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

915. Apple, Plaintiff, and the Louisiana Subclass members are “persons” within the meaning of the La. Rev. Stat. Ann. § 51:1402(8).

916. Plaintiff and Louisiana Subclass members are “consumers” within the meaning of La. Rev. Stat. Ann. § 51:1402(1).

917. Apple engaged in “trade” or “commerce” within the meaning of La. Rev. Stat. Ann. § 51:1402(10).

918. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “unfair or deceptive acts or practices in the conduct of any trade or commerce.” La. Rev. Stat. Ann. § 51:1405(A). Unfair acts are those that offend established public policy, while deceptive acts are practices that amount to fraud, deceit, or misrepresentation.

919. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

920. Apple intended to mislead Plaintiff and Louisiana Subclass members and induce them to rely on its misrepresentations and omissions.

921. Apple’s unfair and deceptive acts and practices were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and Kentucky Subclass members that they could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

1           922. Apple acted intentionally, knowingly, and maliciously to violate Unfair Trade  
2 Practices and Consumer Protection Law, and recklessly disregarded Plaintiff and Louisiana  
3 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
4 of software to throttle phone performance, put it on notice that the Devices were not as it  
5 advertised.

6           923. Had Apple disclosed to Plaintiff and Louisiana Subclass members that it  
7 misrepresented the Devices and operating software, omitted material information regarding the  
8 Defect, omitted material information regarding the operating software, and was otherwise  
9 engaged in deceptive, common business practices, Apple would have been unable to continue in  
10 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
11 Apple represented that its Devices were continually improving in speed and battery life and  
12 performed better than other devices on the market. Plaintiff and the Louisiana Subclass  
13 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
14 which they could not have discovered.

15           924. As a direct and proximate result of Apple's unfair and deceptive acts and  
16 practices, Plaintiff and Louisiana Subclass members have suffered and will continue to suffer  
17 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
18 including from not receiving the benefit of their bargain in purchasing the Devices, and  
19 increased time and expense in dealing with Device performance issues.

20           925. Plaintiff and Louisiana Subclass members seek all monetary and non-monetary  
21 relief allowed by law, including actual damages; treble damages for Apple's knowing violations  
22 of the Louisiana CPL; declaratory relief; attorneys' fees; and any other relief that is just and  
23 proper.



**CLAIMS ON BEHALF OF THE MAINE SUBCLASS**

**COUNT 39**

**MAINE UNFAIR TRADE PRACTICES ACT**

*5 Me. Rev. Stat. §§ 205, 213, et seq.*

926. The Maine Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Maine Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

927. Apple is a “person” as defined by 5 Me. Stat. § 206(2).

928. Apple’s conduct as alleged herein related was in the course of “trade and commerce” as defined by 5 Me. Stat. § 206(3).

929. Plaintiff and Maine Subclass members purchased goods and/or services for personal, family, and/or household purposes.

930. A demand for relief in the form substantially similar to that required by 5 Me. Rev. Stat. § 213(1-A) was already sent at the commencement of this lawsuit but Apple has not made a written tender of settlement or offer of judgment. Apple received supplemental notice pursuant to 5 Me. Rev. Stat. § 213(1-A) concerning its wrongful conduct as alleged herein by Plaintiff and Maine Subclass members, but this and any subsequent demand was and would be an exercise in futility.

931. Apple engaged in unfair and deceptive trade acts and practices in the conduct of trade or commerce, in violation of 5 Me. Rev. Stat. §207.

932. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

933. Had Apple disclosed to Plaintiff and Maine Subclass members that it misrepresented the Devices and operating software, omitted material information regarding the Defect, omitted material information regarding the operating software, and was otherwise engaged in deceptive, common business practices, Apple would have been unable to continue in business and it would have been forced to disclose the uniform Defect in its Devices. Instead,

Apple represented that its Devices were continually improving in speed and battery life and performed better than other devices on the market. Plaintiff and the Maine Subclass members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which they could not have discovered.

934. As a direct and proximate result of Apple's unfair and deceptive acts and conduct, Plaintiff and Maine Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

935. Plaintiff and the Maine Subclass members seek all monetary and non-monetary relief allowed by law, including damages or restitution, injunctive and other equitable relief, and attorneys' fees and costs.

#### **COUNT 40**

#### **MAINE UNIFORM DECEPTIVE TRADE PRACTICES ACT**

##### **10 Me. Rev. Stat. §§ 1212, et seq.**

936. The Maine Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Maine Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

937. Apple is a "person" as defined by 10 Me. Rev. Stat. § 1211(5).

938. Apple advertised, offered, or sold goods or services in Maine and engaged in trade or commerce directly or indirectly affecting the people of Maine.

939. Apple engaged in deceptive trade practices in the conduct of its business, in violation of 10 Me. Rev. Stat. §1212, including: representing that goods or services have characteristics that they do not have; representing that goods or services are of a particular standard, quality, or grade if they are of another; advertising goods or services with intent not to sell them as advertised; and engaging in other conduct that creates a likelihood of confusion or misunderstanding.

1           940. Apple's representations and omissions were material because they were likely to  
2 deceive reasonable consumers.

3           941. Apple intended to mislead Plaintiff and Maine Subclass members and induce  
4 them to rely on its misrepresentations and omissions.

5           942. Had Apple disclosed to Plaintiff and Maine Subclass members that it  
6 misrepresented the Devices and operating software, omitted material information regarding the  
7 Defect, omitted material information regarding the operating software, and was otherwise  
8 engaged in deceptive, common business practices, Apple would have been unable to continue in  
9 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
10 Apple represented that its Devices were continually improving in speed and battery life and  
11 performed better than other devices on the market. Plaintiff and the Maine Subclass members  
12 acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which  
13 they could not have discovered.

14           943. As a direct and proximate result of Apple's deceptive trade practices, Plaintiff  
15 and Maine Subclass members have suffered and will continue to suffer injury, ascertainable  
16 losses of money or property, and monetary and non-monetary damages, including from not  
17 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
18 in dealing with Device performance issues.

19           944. Maine Subclass members are likely to be damaged by Apple's ongoing deceptive  
20 trade practices.

21           945. Plaintiff and the Maine Subclass members seek all monetary and non-monetary  
22 relief allowed by law, including damages or restitution, injunctive or other equitable relief, and  
23 attorneys' fees and costs.

**CLAIMS ON BEHALF OF THE MARYLAND SUBCLASS**

**COUNT 41**

**MARYLAND CONSUMER PROTECTION ACT**

*Md. Comm. Code §§ 13-301, et seq.*

946. The Maryland Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Maryland Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

947. Apple is a person as defined by Md. Comm. Code § 13-101(h).

948. Apple’s conduct as alleged herein related to “sales,” “offers for sale,” or “bailment” as defined by Md. Comm. Code § 13-101(i) and § 13-303.

949. Maryland Subclass members are “consumers” as defined by Md. Comm. Code § 13-101(c).

950. Apple advertises, offers, or sell “consumer goods” or “consumer services” as defined by Md. Comm. Code § 13-101(d).

951. Apple advertised, offered, or sold goods or services in Maryland and engaged in trade or commerce directly or indirectly affecting the people of Maryland.

952. Apple engaged in unfair and deceptive trade practices, in violation of Md. Comm. Code § 13-301, including:

- a. False or misleading oral or written representations that have the capacity, tendency, or effect of deceiving or misleading consumers;
- b. Representing that consumer goods or services have a characteristic that they do not have;
- c. Representing that consumer goods or services are of a particular standard, quality, or grade that they are not;
- d. Failing to state a material fact where the failure deceives or tends to deceive;
- e. Advertising or offering consumer goods or services without intent to sell, lease, or rent them as advertised or offered;

1 f. Deception, fraud, false pretense, false premise, misrepresentation, or knowing  
2 concealment, suppression, or omission of any material fact with the intent that a  
3 consumer rely on the same in connection with the promotion or sale of consumer  
4 goods or services or the subsequent performance with respect to an agreement, sale  
5 lease or rental.

6 953. Apple engaged in these unfair and deceptive trade practices in connection with  
7 offering for sale or selling consumer goods or services or with respect to the extension of  
8 consumer credit, in violation of Md. Comm. Code § 13-303.

9 954. Apple's representations and omissions were material because they were likely to  
10 deceive reasonable consumers.

11 955. Apple intended to mislead Plaintiff and Maryland Subclass members and induce  
12 them to rely on its misrepresentations and omissions.

13 956. Had Apple disclosed to Plaintiff and Maryland Subclass members that it  
14 misrepresented the Devices and operating software, omitted material information regarding the  
15 Defect, omitted material information regarding the operating software, and was otherwise  
16 engaged in deceptive, common business practices, Apple would have been unable to continue in  
17 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
18 Apple represented that its Devices were continually improving in speed and battery life and  
19 performed better than other devices on the market. Plaintiff and the Maryland Subclass  
20 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
21 which they could not have discovered.

22 957. Apple acted intentionally, knowingly, and maliciously to violate Maryland's  
23 Consumer Protection Act, and recklessly disregarded Plaintiff and Maryland Subclass  
24 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
25 software to throttle phone performance, put it on notice that the Devices were not as it  
26 advertised.

958. As a direct and proximate result of Apple's unfair and deceptive acts and practices, Plaintiff and Maryland Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

959. Plaintiff and Maryland Subclass members seek all monetary and non-monetary relief allowed by law, including damages, disgorgement, injunctive relief, and attorneys' fees and costs.

## **CLAIMS ON BEHALF OF THE MASSACHUSETTS SUBCLASS**

### **COUNT 42**

#### **MASSACHUSETTS CONSUMER PROTECTION ACT**

*Mass. Gen. Laws Ann. Ch. 93A, §§ 1, et seq.*

960. The Massachusetts Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Massachusetts Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

961. Apple and Massachusetts Subclass members are "persons" as meant by Mass. Gen. Laws. Ann. Ch. 93A, § 1(a).

962. Apple operates in "trade or commerce" as meant by Mass. Gen. Laws Ann. Ch. 93A, § 1(b).

963. Apple advertised, offered, or sold goods or services in Massachusetts and engaged in trade or commerce directly or indirectly affecting the people of Massachusetts, as defined by Mass. Gen. Laws Ann. Ch. 93A, § 1(b).

964. Demand for relief in a form substantially similar to that required by Mass. Gen. Laws Ann. Ch. 93A § 9(3) was sent to Apple upon the commencement of the original lawsuit in this matter; however, Apple did not remedy its unfair and deceptive acts and practices, nor did it offer relief to the class members by way of settlement or judgment. Apple received supplemental notice pursuant to Mass. Gen. Laws Ch. 93A § 9(3) concerning its wrongful

1 conduct as alleged herein by Plaintiff and Massachusetts Subclass members, but this and any  
2 additional demand are and would be futile.

3 965. Apple engaged in unfair methods of competition and unfair and deceptive acts  
4 and practices in the conduct of trade or commerce, in violation of Mass. Gen. Laws Ann. Ch.  
5 93A, § 2(a).

6 966. Apple's acts and practices were "unfair" because they fall within the penumbra  
7 of common law, statutory, and established concepts of unfairness, given that Apple solely held  
8 the true facts about its defective Devices and throttling software.

9 967. Consumers could not have reasonably avoided injury because Apple's business  
10 acts and practices unreasonably created or took advantage of an obstacle to the free exercise of  
11 consumer decision-making. By withholding important information from consumers about the  
12 Defect in its Devices and the subsequent implementation of operating software meant to throttle  
13 device performance in light of the Defect, Apple created an asymmetry of information between  
14 it and consumers that precluded consumers from taking action to avoid or mitigate injury.

15 968. Apple's practices, omissions, and misrepresentations had no countervailing  
16 benefit to consumers or to competition.

17 969. Apple intended to mislead Plaintiff and Massachusetts Subclass members and  
18 induce them to rely on its misrepresentations and omissions. Apple's representations and  
19 omissions were material because they were likely to deceive reasonable consumers.

20 970. Apple acted intentionally, knowingly, and maliciously to violate Massachusetts's  
21 Consumer Protection Act, and recklessly disregarded Plaintiff and Massachusetts Subclass  
22 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
23 software to throttle phone performance, put it on notice that the Devices were not as it  
24 advertised.

25 971. As a direct and proximate result of Apple's unfair and deceptive practices,  
26 Plaintiff and Massachusetts Subclass members have suffered and will continue to suffer injury,  
27 ascertainable losses of money or property, and monetary and non-monetary damages, including  
28

1 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
2 and expense in dealing with Device performance issues.

3 972. Plaintiff and Massachusetts Subclass members seek all monetary and non-  
4 monetary relief allowed by law, including actual damages, double or treble damages, injunctive  
5 or other equitable relief, and attorneys' fees and costs.

## 6 **CLAIMS ON BEHALF OF THE MICHIGAN SUBCLASS**

### 7 **COUNT 43**

#### 8 **MICHIGAN CONSUMER PROTECTION ACT**

9 *Mich. Comp. Laws Ann. §§ 445.903, et seq.*

10 973. The Michigan Plaintiff(s) identified above ("Plaintiff," for purposes of this  
11 Count), individually and on behalf of the Michigan Subclass, repeats and alleges Paragraphs 1-  
12 472, as if fully alleged herein.

13 974. Apple and Michigan Subclass members are "persons" as defined by Mich.  
14 Comp. Laws Ann. § 445.903(d).

15 975. Apple advertised, offered, or sold goods or services in Michigan and engaged in  
16 trade or commerce directly or indirectly affecting the people of Michigan, as defined by Mich.  
17 Comp. Laws Ann. § 445.903(g).

18 976. Apple engaged in unfair, unconscionable, and deceptive practices in the conduct  
19 of trade and commerce, in violation of Mich. Comp. Laws Ann. § 445.903(1), including:

- 20 a. Representing that its goods and services have characteristics, uses, and benefits that  
21 they do not have, in violation of Mich. Comp. Laws Ann. § 445.903(1)(c);
- 22 b. Representing that its goods and services are of a particular standard or quality if they  
23 are of another in violation of Mich. Comp. Laws Ann. § 445.903(1)(e);
- 24 c. Making a representation or statement of fact material to the transaction such that a  
25 person reasonably believes the represented or suggested state of affairs to be other  
26 than it actually is, in violation of Mich. Comp. Laws Ann. § 445.903(1)(bb); and
- 27 d. Failing to reveal facts that are material to the transaction in light of representations  
28



1 of fact made in a positive matter, in violation of Mich. Comp. Laws Ann. §  
2 445.903(1)(cc).

3 977. Apple's representations and omissions were material because they were likely to  
4 deceive reasonable consumers.

5 978. Apple intended to mislead Plaintiff and Michigan Subclass members and induce  
6 them to rely on its misrepresentations and omissions.

7 979. Apple acted intentionally, knowingly, and maliciously to violate Michigan's  
8 Consumer Protection Act, and recklessly disregarded Plaintiff and Michigan Subclass members'  
9 rights. Apple's knowledge of the Devices' performance issues, and release of software to  
10 throttle phone performance, put it on notice that the Devices were not as it advertised.

11 980. As a direct and proximate result of Apple's unfair, unconscionable, and  
12 deceptive practices, Plaintiff and Michigan Subclass members have suffered and will continue  
13 to suffer injury, ascertainable losses of money or property, and monetary and non-monetary  
14 damages, including from not receiving the benefit of their bargain in purchasing the Devices,  
15 and increased time and expense in dealing with Device performance issues.

16 981. Plaintiff and Michigan Subclass members seek all monetary and non-monetary  
17 relief allowed by law, including the greater of actual damages or \$250, injunctive relief, and any  
18 other relief that is just and proper.

19 **CLAIMS ON BEHALF OF THE MINNESOTA SUBCLASS**

20 **COUNT 44**

21 **MINNESOTA CONSUMER FRAUD ACT**

22 *Minn. Stat. §§ 325F.68, et seq. and Minn. Stat. §§ 8.31, et seq.*

23 982. The Minnesota Plaintiff(s) identified above ("Plaintiff," for purposes of this  
24 Count), individually and on behalf of the Minnesota Subclass, repeats and alleges Paragraphs 1-  
25 472, as if fully alleged herein.

26 983. Apple, Plaintiff, and members of the Minnesota Subclass are each a "person" as  
27 defined by Minn. Stat. § 325F.68(3).  
28

985. Apple engaged in “sales” as defined by Minn. Stat. § 325F.68(4).

987. Apple's representations and omissions were material because they were likely to be reasonable consumers.

989. Apple's fraudulent, misleading, and deceptive practices affected the public  
t, including millions of Minnesotans who purchased and/or used Apple's Devices.

991. Plaintiff and Minnesota Subclass members seek all monetary and non-monetary  
allowed by law, including damages, injunctive or other equitable relief, and attorneys’  
disbursements, and costs.

# MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT

992. The Minnesota Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Minnesota Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1           993. By engaging in deceptive trade practices in the course of its business and  
2 vocation, directly or indirectly affecting the people of Minnesota, Apple violated Minn. Stat. §  
3 325D.44, including the following provisions: representing that its goods and services had  
4 characteristics, uses, and benefits that they did not have, in violation of Minn. Stat. §  
5 325D.44(1)(5); representing that goods and services are of a particular standard or quality when  
6 they are of another, in violation of Minn. Stat. § 325D.44(1)(7); advertising goods and services  
7 with intent not to sell them as advertised, in violation of Minn. Stat. § 325D.44(1)(9); and  
8 engaging in other conduct which similarly creates a likelihood of confusion or  
9 misunderstanding, in violation of Minn. Stat. § 325D.44(1)(13).

10           994. Apple's representations and omissions were material because they were likely to  
11 deceive reasonable consumers.

12           995. Apple intended to mislead Plaintiff and Minnesota Subclass members and induce  
13 them to rely on its misrepresentations and omissions.

14           996. Had Apple disclosed to Plaintiff and Minnesota Subclass members that it  
15 misrepresented the Devices and operating software, omitted material information regarding the  
16 Defect, omitted material information regarding the operating software, and was otherwise  
17 engaged in deceptive, common business practices, Apple would have been unable to continue in  
18 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
19 Apple represented that its Devices were continually improving in speed and battery life and  
20 performed better than other devices on the market. Plaintiff and the Minnesota Subclass  
21 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
22 which they could not have discovered.

23           997. Apple acted intentionally, knowingly, and maliciously to violate Minnesota's  
24 Uniform Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Minnesota  
25 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
26 of software to throttle phone performance, put it on notice that the Devices were not as it  
27 advertised.  
28

998. As a direct and proximate result of Apple's deceptive trade practices, Plaintiff and Minnesota Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

999. Plaintiff and Minnesota Subclass members seek all monetary and non-monetary relief allowed by law, including injunctive relief and attorneys' fees and costs.

### **CLAIMS ON BEHALF OF THE MISSISSIPPI SUBCLASS**

#### **COUNT 46**

#### **MISSISSIPPI CONSUMER PROTECTION ACT**

*Miss. Code §§ 75-24-1, et seq.*

1000. The Mississippi Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Mississippi Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1001. Apple is a "person," as defined by Miss. Code § 75-24-3.

1002. Apple advertised, offered, or sold goods or services in Mississippi and engaged in trade or commerce directly or indirectly affecting the people of Mississippi, as defined by Miss. Code § 75-24-3.

1003. Prior to filing suit, Plaintiff made reasonable attempts to resolve Plaintiff's claims via informal dispute resolution processes; however, such processes were unsuccessful.

1004. The above-described conduct violated Miss. Code Ann. § 75-24-5(2), including: representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have; representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and advertising goods or services with intent not to sell them as advertised.

1005. Apple intended to mislead Plaintiff and Mississippi Subclass members and induce them to rely on its misrepresentations and omissions.

1           1006. Apple's representations and omissions were material because they were likely to  
2 deceive reasonable consumers.

3           1007. Had Apple disclosed to Plaintiff and Mississippi Subclass members that it  
4 misrepresented the Devices and operating software, omitted material information regarding the  
5 Defect, omitted material information regarding the operating software, and was otherwise  
6 engaged in deceptive, common business practices, Apple would have been unable to continue in  
7 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
8 Apple represented that its Devices were continually improving in speed and battery life and  
9 performed better than other devices on the market. Plaintiff and the Mississippi Subclass  
10 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
11 which they could not have discovered.

12           1008. Apple had a duty to disclose the above-described facts due to the circumstances  
13 of this case. Apple's duty to disclose arose from its: possession of exclusive knowledge  
14 regarding the Defect in its Devices; possession of exclusive knowledge regarding the operating  
15 software it developed to throttle performance in its Devices as a result of the Defect; active  
16 concealment of the Defect in its Devices and purpose of the throttling operating software; and  
17 incomplete representations about its Devices, Device performance, battery life of Devices, and  
18 the throttling software.

19           1009. Apple acted intentionally, knowingly, and maliciously to violate Mississippi's  
20 Consumer Protection Act, and recklessly disregarded Plaintiff and Mississippi Subclass  
21 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
22 software to throttle phone performance, put it on notice that the Devices were not as it  
23 advertised.

24           1010. As a direct and proximate result of Apple's unfair and deceptive acts or practices  
25 and Plaintiff and Mississippi Subclass members' purchase of goods or services primarily for  
26 personal, family, or household purposes, Plaintiff and Mississippi Subclass members have  
27 suffered and will continue to suffer injury, ascertainable losses of money or property, and  
28

1 monetary and non-monetary damages, including from not receiving the benefit of their bargain  
 2 in purchasing the Devices, and increased time and expense in dealing with Device performance  
 3 issues.

4 1011. Apple's violations present a continuing risk to Plaintiff and Mississippi Subclass  
 5 members as well as to the general public as, *inter alia*, its omissions and misrepresentations  
 6 have not been corrected.

7 1012. Plaintiff and Mississippi Subclass members seek all monetary and non-monetary  
 8 relief allowed by law, including actual damages, restitution and other relief under Miss. Code §  
 9 75-24-11, injunctive relief, punitive damages, and reasonable attorneys' fees and costs.

### 10 **CLAIMS ON BEHALF OF THE MISSOURI SUBCLASS**

#### 11 **COUNT 47**

#### 12 **MISSOURI MERCHANDISE PRACTICES ACT**

13 *Mo. Rev. Stat. §§ 407.010, et seq.*

14 1013. The Missouri Plaintiff(s) identified above ("Plaintiff," for purposes of this  
 15 Count), individually and on behalf of the Missouri Subclass, repeats and alleges Paragraphs 1-  
 16 472, as if fully alleged herein.

17 1014. Apple is a "person" as defined by Mo. Rev. Stat. § 407.010(5).

18 1015. Apple advertised, offered, or sold goods or services in Missouri and engaged in  
 19 trade or commerce directly or indirectly affecting the people of Missouri, as defined by Mo.  
 20 Rev. Stat. § 407.010(4), (6) and (7).

21 1016. Plaintiff and Missouri Subclass members purchased or leased goods or services  
 22 primarily for personal, family, or household purposes.

23 1017. Apple engaged in unlawful, unfair, and deceptive acts and practices, in  
 24 connection with the sale or advertisement of merchandise in trade or commerce, in violation of  
 25 Mo. Rev. Stat. § 407.020(1), as described herein.

26 1018. Apple's representations and omissions were material because they were likely to  
 27 deceive reasonable consumers.  
 28

1           1019. Apple intended to mislead Plaintiff and Missouri Subclass members and induce  
2           them to rely on its misrepresentations and omissions.

3           1020. Apple acted intentionally, knowingly, and maliciously to violate Missouri's  
4           Merchandise Practices Act, and recklessly disregarded Plaintiff and Missouri Subclass  
5           members' rights. Apple's knowledge of the Devices' performance issues, and release of  
6           software to throttle phone performance, put it on notice that the Devices were not as it  
7           advertised.

8           1021. As a direct and proximate result of Apple's unlawful, unfair, and deceptive acts  
9           and practices, Plaintiff and Missouri Subclass members have suffered and will continue to  
10          suffer injury, ascertainable losses of money or property, and monetary and non-monetary  
11          damages, including from not receiving the benefit of their bargain in purchasing the Devices,  
12          and increased time and expense in dealing with Device performance issues.

13          1022. Plaintiff and Missouri Subclass members seek all monetary and non-monetary  
14          relief allowed by law, including actual damages, punitive damages, attorneys' fees and costs,  
15          injunctive relief, and any other appropriate relief.

16                   **CLAIMS ON BEHALF OF THE MONTANA SUBCLASS**

17                           **COUNT 48**

18                   **MONTANA UNFAIR TRADE PRACTICES AND CONSUMER**  
19                   **PROTECTION ACT**

20                           **M.C.A. §§ 30-14-101, et seq.**

21          1023. The Montana Plaintiff(s) identified above ("Plaintiff," for purposes of this  
22          Count), individually and on behalf of the Montana Subclass, repeats and alleges Paragraphs 1-  
23          472, as if fully alleged herein.

24          1024. Apple is a "person" as defined by MCA § 30-14-102(6).

25          1025. Plaintiff and Montana Subclass members are "consumers" as defined by M.C.A.  
26          § 30-14-102(1).

1           1026. Apple advertised, offered, or sold goods or services in Montana and engaged in  
2 trade or commerce directly or indirectly affecting the people of Montana, as defined by M.C.A.  
3 § 30-14-102(8).

4           1027. Apple engaged in unfair and deceptive acts and practices in the conduct of trade  
5 or commerce, in violation M.C.A. § 30-14-103, as described herein.

6           1028. Apple's representations and omissions were material because they were likely to  
7 deceive reasonable consumers.

8           1029. Had Apple disclosed to Plaintiff and Montana class members that it  
9 misrepresented the Devices and operating software, omitted material information regarding the  
10 Defect, omitted material information regarding the operating software, and was otherwise  
11 engaged in deceptive, common business practices, Apple would have been unable to continue in  
12 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
13 Apple represented that its Devices were continually improving in speed and battery life and  
14 performed better than other devices on the market. Plaintiff and the Montana Subclass  
15 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
16 which they could not have discovered.

17           1030. Apple's acts described above are unfair and offend public policy; they are  
18 immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

19           1031. Apple acted intentionally, knowingly, and maliciously to violate Montana's  
20 Unfair Trade Practices and Consumer Protection Act, and recklessly disregarded Plaintiff and  
21 Montana Subclass members' rights. Apple's knowledge of the Devices' performance issues,  
22 and release of software to throttle phone performance, put it on notice that the Devices were not  
23 as it advertised.

24           1032. As a direct and proximate result of Apple's unfair methods of competition and  
25 unfair and deceptive acts and practices in the conduct of trade or commerce, Plaintiff and  
26 Montana Subclass members have suffered and will continue to suffer injury, ascertainable  
27 losses of money or property, and monetary and non-monetary damages, including from not  
28



1 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
2 in dealing with Device performance issues.

3 1033. Plaintiff and Montana Subclass members seek all monetary and non-monetary  
4 relief allowed by law, including the greater of (a) actual damages or (b) statutory damages of  
5 \$500, treble damages, restitution, attorneys' fees and costs, injunctive relief, and other relief that  
6 the Court deems appropriate.

7 **CLAIMS ON BEHALF OF THE NEBRASKA SUBCLASS**

8 **COUNT 49**

9 **NEBRASKA CONSUMER PROTECTION ACT**

10 *Neb. Rev. Stat. §§ 59-1601, et seq.*

11 1034. The Nebraska Plaintiff(s) identified above ("Plaintiff," for purposes of this  
12 Count), individually and on behalf of the Nebraska Subclass, repeats and alleges Paragraphs 1-  
13 472, as if fully alleged herein.

14 1035. Apple and Nebraska Subclass members are each a "person" as defined by Neb.  
15 Rev. Stat. § 59-1601(1).

16 1036. Apple advertised, offered, or sold goods or services in Nebraska and engaged in  
17 trade or commerce directly or indirectly affecting the people of Nebraska, as defined by Neb.  
18 Rev. Stat. § 59-1601.

19 1037. Apple engaged in unfair and deceptive acts and practices in conducting trade and  
20 commerce, in violation of Neb. Rev. Stat. § 59-1602, as described herein.

21 1038. Apple's representations and omissions were material because they were likely to  
22 deceive reasonable consumers.

23 1039. As a direct and proximate result of Apple's unfair and deceptive acts and  
24 practices, Plaintiff and Nebraska Subclass members have suffered and will continue to suffer  
25 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
26 including from not receiving the benefit of their bargain in purchasing the Devices, and  
27 increased time and expense in dealing with Device performance issues.  
28

1040. Apple's unfair and deceptive acts and practices complained of herein affected the public interest, including the large percentage of Nebraskans who have purchased and/or used Apple Devices.

1041. Plaintiff and Nebraska Subclass members seek all monetary and non-monetary relief allowed by law, including injunctive relief, the greater of either (1) actual damages or (2) \$1,000, civil penalties, and reasonable attorneys' fees and costs.

### **COUNT 50**

#### **NEBRASKA UNIFORM DECEPTIVE TRADE PRACTICES ACT**

*Neb. Rev. Stat. §§ 87-301, et seq.*

1042. The Nebraska Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Nebraska Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1043. Apple and Nebraska Subclass members are "persons" as defined by Neb. Rev. Stat. § 87-301(19).

1044. Apple advertised, offered, or sold goods or services in Nebraska and engaged in trade or commerce directly or indirectly affecting the people of Nebraska.

1045. Apple engaged in deceptive trade practices in the course of its business, in violation of Neb. Rev. Stat. §§ 87-302(a)(5), (8), and (10), including: represented that goods and services have characteristics, uses, benefits, or qualities that they do not have; represented that goods and services are of a particular standard, quality, or grade if they are of another; and advertised its goods and services with intent not to sell them as advertised and in a manner calculated or tending to mislead or deceive.

1046. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

1047. Apple intended to mislead Plaintiff and Nebraska Subclass members and induce them to rely on its misrepresentations and omissions.

1           1048. Had Apple disclosed to Plaintiff and Nebraska Subclass members that it  
2 misrepresented the Devices and operating software, omitted material information regarding the  
3 Defect, omitted material information regarding the operating software, and was otherwise  
4 engaged in deceptive, common business practices, Apple would have been unable to continue in  
5 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
6 Apple represented that its Devices were continually improving in speed and battery life and  
7 performed better than other devices on the market. Plaintiff and the Nebraska Subclass  
8 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
9 which they could not have discovered.

10           1049. Apple acted intentionally, knowingly, and maliciously to violate Nebraska's  
11 Uniform Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Nebraska  
12 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
13 of software to throttle phone performance, put it on notice that the Devices were not as it  
14 advertised.

15           1050. As a direct and proximate result of Apple's deceptive trade practices, Plaintiff  
16 and Nebraska Subclass members have suffered and will continue to suffer injury, ascertainable  
17 losses of money or property, and monetary and non-monetary damages, including from not  
18 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
19 in dealing with Device performance issues.

20           1051. Apple's deceptive trade practices complained of herein affected consumers at  
21 large, including the large percentage of Nebraskans who purchased and/or used Apple Devices.

22           1052. Plaintiff and Nebraska Subclass members seek all monetary and non-monetary  
23 relief allowed by law, including injunctive relief, other equitable relief, civil penalties, and  
24 attorneys' fees and costs.  
25  
26  
27  
28

**CLAIMS ON BEHALF OF THE NEVADA SUBCLASS**

**COUNT 51**

**NEVADA DECEPTIVE TRADE PRACTICES ACT**

*Nev. Rev. Stat. Ann. §§ 598.0903, et seq.*

1053. The Nevada Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Nevada Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1054. Apple advertised, offered, or sold goods or services in Nevada and engaged in trade or commerce directly or indirectly affecting the people of Nevada.

1055. Apple engaged in deceptive trade practices in the course of its business or occupation, in violation of Nev. Rev. Stat. §§ 598.0915 and 598.0923, including:

- a. Knowingly making a false representation as to the characteristics, uses, and benefits of goods or services for sale in violation of Nev. Rev. Stat. § 598.0915(5);
- b. Representing that goods or services for sale are of a particular standard, quality, or grade when Apple knew or should have known that they are of another standard, quality, or grade in violation of Nev. Rev. Stat. § 598.0915(7);
- c. Advertising goods or services with intent not to sell them as advertised in violation of Nev. Rev. Stat § 598.0915(9);
- d. Failing to disclose a material fact in connection with the sale of goods or services in violation of Nev. Rev. Stat. § 598.0923(A)(2); and
- e. Violating state and federal statutes or regulations relating to the sale of goods or services in violation of Nev. Rev. Stat. § 598.0923(A)(3).

1056. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

1057. Had Apple disclosed to Plaintiff and Nevada Subclass members that it misrepresented the Devices and operating software, omitted material information regarding the Defect, omitted material information regarding the operating software, and was otherwise

engaged in deceptive, common business practices, Apple would have been unable to continue in business and it would have been forced to disclose the uniform Defect in its Devices. Instead, Apple represented that its Devices were continually improving in speed and battery life and performed better than other devices on the market. Plaintiff and the Nevada Subclass members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which they could not have discovered.

1058. Apple acted intentionally, knowingly, and maliciously to violate Nevada's Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Nevada Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

1059. As a direct and proximate result of Apple's deceptive trade practices, Plaintiff and Nevada Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1060. Plaintiff and Nevada Subclass members seek all monetary and non-monetary relief allowed by law, including damages, punitive damages, and attorneys' fees and costs.

## **CLAIMS ON BEHALF OF THE NEW HAMPSHIRE SUBCLASS**

### **COUNT 52**

#### **NEW HAMPSHIRE CONSUMER PROTECTION ACT**

*N.H.R.S.A. §§ 358-A, et seq.*

1061. The New Hampshire Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the New Hampshire Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1062. Apple is a "person" under the New Hampshire Consumer Protection statute.

1           1063. Apple advertised, offered, or sold goods or services in New Hampshire and  
2 engaged in trade or commerce directly or indirectly affecting the people of New Hampshire, as  
3 defined by N.H.R.S.A. § 358-A:1.

4           1064. Apple engaged in unfair and deceptive acts or practices in the ordinary conduct  
5 of its trade or business, in violation of N.H.R.S.A. § 358-A:2, including:

- 6           a. Representing that its goods or services have characteristics, uses, or benefits that  
7 they do not have in violation of N.H.R.S.A. § 358-A:2.V;  
8           b. Representing that its goods or services are of a particular standard or quality if they  
9 are of another in violation of N.H.R.S.A. § 358-A:2.VII; and  
10          c. Advertising its goods or services with intent not to sell them as advertised in  
11 violation of N.H.R.S.A. § 358-A:2.IX.

12          1065. Apple's representations and omissions were material because they were likely to  
13 deceive reasonable consumers.

14          1066. Apple acted intentionally, knowingly, and maliciously to violate New  
15 Hampshire's Consumer Protection Act, and recklessly disregarded Plaintiff and New  
16 Hampshire Subclass members' rights. Apple's knowledge of the Devices' performance issues,  
17 and release of software to throttle phone performance, put it on notice that the Devices were not  
18 as it advertised. Apple's acts and practices went beyond the realm of strictly private  
19 transactions.

20          1067. As a direct and proximate result of Apple's unfair and deceptive acts and  
21 practices, Plaintiff and New Hampshire Subclass members have suffered and will continue to  
22 suffer injury, ascertainable losses of money or property, and monetary and non-monetary  
23 damages, including from not receiving the benefit of their bargain in purchasing the Devices,  
24 and increased time and expense in dealing with Device performance issues.

25          1068. Plaintiff and New Hampshire Subclass members seek all monetary and non-  
26 monetary relief allowed by law, including actual damages, punitive damages, equitable relief  
27 (including injunctive relief), restitution, civil penalties, and attorneys' fees and costs.  
28

**CLAIMS ON BEHALF OF THE NEW JERSEY SUBCLASS**

**COUNT 53**

**NEW JERSEY CONSUMER FRAUD ACT**

*N.J. Stat. Ann. §§ 56:8-1, et seq.*

1069. The New Jersey Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the New Jersey Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1070. Apple is a “person,” as defined by N.J. Stat. Ann. § 56:8-1(d).

1071. Apple sells “merchandise,” as defined by N.J. Stat. Ann. § 56:8-1(c) & (e).

1072. The New Jersey Consumer Fraud Act, N.J. Stat. §§ 56:8-1, *et seq.*, prohibits unconscionable commercial practices, deception, fraud, false pretense, false promise, misrepresentation, as well as the knowing concealment, suppression, or omission of any material fact with the intent that others rely on the concealment, omission, or fact, in connection with the sale or advertisement of any merchandise.

1073. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

1074. Apple intended to mislead Plaintiff and New Jersey Subclass members and induce them to rely on its misrepresentations and omissions.

1075. Apple acted intentionally, knowingly, and maliciously to violate New Jersey’s Consumer Fraud Act, and recklessly disregarded Plaintiff and New Jersey Subclass members’ rights. Apple’s knowledge of the Devices’ performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

1076. As a direct and proximate result of Apple’s unconscionable and deceptive practices, Plaintiff and New Jersey Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1077. Plaintiff and New Jersey Subclass members seek all monetary and non-monetary relief allowed by law, including injunctive relief, other equitable relief, actual damages, treble damages, restitution, and attorneys' fees, filing fees, and costs.

## **CLAIMS ON BEHALF OF THE NEW MEXICO SUBCLASS**

### **COUNT 54**

#### **NEW MEXICO UNFAIR PRACTICES ACT**

*N.M. Stat. Ann. §§ 57-12-2, et seq.*

1078. The New Mexico Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the New Mexico Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1079. Apple is a "person" as meant by N.M. Stat. Ann. § 57-12-2.

1080. Apple was engaged in "trade" and "commerce" as meant by N.M. Stat. Ann. § 57-12-2(C) when engaging in the conduct alleged.

1081. The New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-2, *et seq.*, prohibits both unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce.

1082. Apple engaged in unconscionable, unfair, and deceptive acts and practices in connection with the sale of goods or services in the regular course of its trade or commerce, including the following:

- a. Knowingly representing that its goods and services have characteristics, benefits, or qualities that they do not have, in violation of N.M. Stat. Ann. § 57-12-2(D)(5);
- b. Knowingly representing that its goods and services are of a particular standard or quality when they are of another in violation of N.M. Stat. Ann. § 57-12-2(D)(7);
- c. Knowingly using exaggeration, innuendo, or ambiguity as to a material fact or failing to state a material fact where doing so deceives or tends to deceive in violation of N.M. Stat. Ann. § 57-12-2(D)(14);
- d. Taking advantage of the lack of knowledge, experience, or capacity of its consumers



1 to a grossly unfair degree to Plaintiff's and the New Mexico Subclass' detriment in  
2 violation of N.M. Stat. Ann. § 57-2-12(E)(1); and

- 3 e. Performing these acts and practices in a way that results in a gross disparity between  
4 the value received by Plaintiff and the New Mexico Subclass and the price paid, to  
5 their detriment, in violation of N.M. Stat. § 57-2-12(E)(2).

6 1083. Apple's representations and omissions were material because they were likely to  
7 deceive reasonable consumers.

8 1084. Apple intended to mislead Plaintiff and New Mexico Subclass members and  
9 induce them to rely on its misrepresentations and omissions.

10 1085. Apple acted intentionally, knowingly, and maliciously to violate New Mexico's  
11 Unfair Practices Act, and recklessly disregarded Plaintiff and New Mexico Subclass members'  
12 rights. Apple's knowledge of the Devices' performance issues, and release of software to  
13 throttle phone performance, put it on notice that the Devices were not as it advertised.

14 1086. As a direct and proximate result of Apple's unfair, deceptive, and  
15 unconscionable trade practices, Plaintiff and New Mexico Subclass members have suffered and  
16 will continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
17 monetary damages, including from not receiving the benefit of their bargain in purchasing the  
18 Devices, and increased time and expense in dealing with Device performance issues.

19 1087. Plaintiff and New Mexico Subclass members seek all monetary and non-  
20 monetary relief allowed by law, including injunctive relief, actual damages or statutory damages  
21 of \$100 (whichever is greater), treble damages or statutory damages of \$300 (whichever is  
22 greater), and reasonable attorneys' fees and costs.

**CLAIMS ON BEHALF OF THE NEW YORK SUBCLASS**

**COUNT 55**

**NEW YORK GENERAL BUSINESS LAW**

*N.Y. Gen. Bus. Law §§ 349, et seq.*

1088. The New York Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the New York Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1089. Apple engaged in deceptive acts or practices in the conduct of its business, trade, and commerce or furnishing of services, in violation of N.Y. Gen. Bus. Law § 349, as described herein.

1090. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

1091. Apple acted intentionally, knowingly, and maliciously to violate New York’s General Business Law, and recklessly disregarded Plaintiff and New York Subclass members’ rights. Apple’s knowledge of the Devices’ performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

1092. As a direct and proximate result of Apple’s deceptive and unlawful acts and practices, Plaintiff and New York Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1093. Apple’s deceptive and unlawful acts and practices complained of herein affected the public interest and consumers at large, including the millions of New Yorkers who purchased and/or used Apple’s Devices.

1094. The above deceptive and unlawful practices and acts by Apple caused substantial injury to Plaintiff and New York Subclass members that they could not reasonably avoid.

1095. Plaintiff and New York Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages or statutory damages of \$50 (whichever is greater), treble damages, injunctive relief, and attorney's fees and costs.

**CLAIMS ON BEHALF OF THE NORTH CAROLINA SUBCLASS**

**COUNT 56**

**NORTH CAROLINA UNFAIR TRADE PRACTICES ACT**

*N.C. Gen. Stat. Ann. §§ 75-1.1, et seq.*

1096. The North Carolina Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the North Carolina Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1097. Apple advertised, offered, or sold goods or services in North Carolina and engaged in trade or commerce directly or indirectly affecting the people of North Carolina, as defined by N.C. Gen. Stat. Ann. § 75-1.1(b).

1098. Apple engaged in unfair and deceptive acts and practices in or affecting commerce, in violation of N.C. Gen. Stat. Ann. § 75-1.1, as described herein.

1099. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

1100. Apple intended to mislead Plaintiff and North Carolina Subclass members and induce them to rely on its misrepresentations and omissions.

1101. Had Apple disclosed to Plaintiff and North Carolina Subclass members that it misrepresented the Devices and operating software, omitted material information regarding the Defect, omitted material information regarding the operating software, and was otherwise engaged in deceptive, common business practices, Apple would have been unable to continue in business and it would have been forced to disclose the uniform Defect in its Devices. Instead, Apple represented that its Devices were continually improving in speed and battery life and performed better than other devices on the market. Plaintiff and the North Carolina Subclass

1 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
2 which they could not have discovered.

3 1102. Apple acted intentionally, knowingly, and maliciously to violate North  
4 Carolina's Unfair Trade Practices Act, and recklessly disregarded Plaintiff and North Carolina  
5 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
6 of software to throttle phone performance, put it on notice that the Devices were not as it  
7 advertised.

8 1103. As a direct and proximate result of Apple's unfair and deceptive acts and  
9 practices, Plaintiff and North Carolina Subclass members have suffered and will continue to  
10 suffer injury, ascertainable losses of money or property, and monetary and non-monetary  
11 damages, including from not receiving the benefit of their bargain in purchasing the Devices,  
12 and increased time and expense in dealing with Device performance issues.

13 1104. Apple's conduct as alleged herein was continuous, such that after the first  
14 violations of the provisions pled herein, each week that the violations continued constitute  
15 separate offenses pursuant to N.C. Gen. Stat. Ann. § 75-8.

16 1105. Plaintiff and North Carolina Subclass members seek all monetary and non-  
17 monetary relief allowed by law, including actual damages, treble damages, and attorneys' fees  
18 and costs.

19 **CLAIMS ON BEHALF OF THE NORTH DAKOTA SUBCLASS**

20 **COUNT 57**

21 **NORTH DAKOTA UNLAWFUL SALES OR ADVERTISING ACT**

22 *N.D. Cent. Code §§ 51-15-01, et seq.*

23 1106. The North Dakota Plaintiff(s) identified above ("Plaintiff," for purposes of this  
24 Count), individually and on behalf of the North Dakota Subclass, repeats and alleges Paragraphs  
25 1-472, as if fully alleged herein.

26 1107. Apple, Plaintiff, and each member of the North Dakota Subclass is a "person," as  
27 defined by N.D. Cent. Code § 51-15-01(4).  
28

1 1108. Apple sells and advertises “merchandise,” as defined by N.D. Cent. Code § 51-  
2 15-01(3) and (5).

3 1109. Apple advertised, offered, or sold goods or services in North Dakota and  
4 engaged in trade or commerce directly or indirectly affecting the people of North Dakota.

5 1110. Apple engaged in deceptive, false, fraudulent, misrepresentative,  
6 unconscionable, and substantially injurious acts and practices in connection with the sale and  
7 advertisement of merchandise, in violation of N.D. Cent. Code § 51-15-01, as described herein.

8 1111. Apple’s representations and omissions were material because they were likely to  
9 deceive reasonable consumers.

10 1112. Apple’s above-described acts and practices caused substantial injury to Plaintiff  
11 and North Dakota Subclass members that they could not reasonably avoid; this substantial  
12 injury outweighed any benefits to consumers or to competition.

13 1113. Apple intended to mislead Plaintiff and North Dakota Subclass members and  
14 induce them to rely on its misrepresentations and omissions.

15 1114. Apple acted intentionally, knowingly, and maliciously to violate North Dakota’s  
16 Unlawful Sales or Advertising Law, and recklessly disregarded Plaintiff and North Dakota  
17 Subclass members’ rights. Apple’s knowledge of the Devices’ performance issues, and release  
18 of software to throttle phone performance, put it on notice that the Devices were not as it  
19 advertised.

20 1115. As a direct and proximate result of Apple’s deceptive, unconscionable, and  
21 substantially injurious practices, Plaintiff and North Dakota Subclass members have suffered  
22 and will continue to suffer injury, ascertainable losses of money or property, and monetary and  
23 non-monetary damages, including from not receiving the benefit of their bargain in purchasing  
24 the Devices, and increased time and expense in dealing with Device performance issues.

25 1116. Plaintiff and North Dakota Subclass members seek all monetary and non-  
26 monetary relief allowed by law, including injunctive relief, damages, restitution, treble  
27 damages, civil penalties, and attorneys’ fees, costs, and disbursements.  
28

**CLAIMS ON BEHALF OF THE OHIO SUBCLASS**

**COUNT 58**

**OHIO CONSUMER SALES PRACTICES ACT**

*Ohio Rev. Code §§ 1345.01, et seq.*

1117. The Ohio Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Ohio Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1118. Plaintiff and Ohio Subclass members are “persons,” as defined by Ohio Rev. Code § 1345.01(B).

1119. Apple was a “supplier” engaged in “consumer transactions,” as defined by Ohio Rev. Code §§ 1345.01(A) & (C).

1120. Apple advertised, offered, or sold goods or services in Ohio and engaged in trade or commerce directly or indirectly affecting the people of Ohio.

1121. Apple engaged in unfair and deceptive acts and practices in connection with a consumer transaction, in violation of Ohio Rev. Code §§ 1345.02, including:

- a. Apple represented that its goods, services, and intangibles had performance characteristics, uses, and benefits that it did not have, in violation of Ohio Rev. Code § 1345.02(B)(1); and
- b. Apple represented that its goods, services, and intangibles were of a particular standard or quality when they were not, in violation of Ohio Rev. Code § 1345(B)(2).

1122. Apple engaged in unconscionable acts and practices in connection with a consumer transaction, in violation of Ohio Rev. Code Ann. § 1345.03, including:

- a. Knowingly taking advantage of the inability of Plaintiff and the Ohio Subclass to reasonably protect their interest because of their ignorance of the issues discussed herein (Ohio Rev. Code Ann. § 1345.03(B)(1)); and
- b. Requiring Plaintiff and the Ohio Subclass to enter into a consumer transaction on

terms that Apple knew were substantially one-sided in favor of Apple (Ohio Rev. Code Ann. § 1345.03(B)(5)).

1123. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

1124. Apple intended to mislead Plaintiff and Ohio Subclass members and induce them to rely on its misrepresentations and omissions.

1125. Apple acted intentionally, knowingly, and maliciously to violate Ohio's Consumer Sales Practices Act, and recklessly disregarded Plaintiff and Ohio Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised.

1126. Apple's unfair, deceptive, and unconscionable acts and practices complained of herein affected the public interest, including the millions of Ohioans who purchased and/or used Apple's Devices.

1127. As a direct and proximate result of Apple's unfair, deceptive, and unconscionable acts and practices, Plaintiff and Ohio Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1128. Plaintiff and the Ohio Subclass members seek all monetary and non-monetary relief allowed by law, including declaratory and injunctive relief, the greater of actual and treble damages or statutory damages, attorneys' fees and costs, and any other appropriate relief.

## **COUNT 59**

### **OHIO DECEPTIVE TRADE PRACTICES ACT**

*Ohio Rev. Code §§ 4165.01, et seq.*

1129. The Ohio Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Ohio Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1 1130. Apple, Plaintiff, and Ohio Subclass members are a “person,” as defined by Ohio  
2 Rev. Code § 4165.01(D).

3 1131. Apple advertised, offered, or sold goods or services in Ohio and engaged in trade  
4 or commerce directly or indirectly affecting the people of Ohio.

5 1132. Apple engaged in deceptive trade practices in the course of its business and  
6 vocation, in violation of Ohio Rev. Code § 4165.02, including:

- 7 a. Representing that its goods and services have characteristics, uses, benefits, or  
8 qualities that they do not have, in violation of Ohio Rev. Code § 4165.02(A)(7);  
9 b. Representing that its goods and services are of a particular standard or quality when  
10 they are of another, in violation of Ohio Rev. Code § 4165.02(A)(9); and  
11 c. Advertising its goods and services with intent not to sell them as advertise, in  
12 violation of Ohio Rev. Code § 4165.02(A)(11).

13 1133. Apple’s representations and omissions were material because they were likely to  
14 deceive reasonable consumers.

15 1134. Apple intended to mislead Plaintiff and Ohio Subclass members and induce them  
16 to rely on its misrepresentations and omissions.

17 1135. Apple acted intentionally, knowingly, and maliciously to violate Ohio’s  
18 Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Ohio Subclass  
19 members’ rights. Apple’s knowledge of the Devices’ performance issues, and release of  
20 software to throttle phone performance, put it on notice that the Devices were not as it  
21 advertised.

22 1136. As a direct and proximate result of Apple’s deceptive trade practices, Plaintiff  
23 and Ohio Subclass members have suffered and will continue to suffer injury, ascertainable  
24 losses of money or property, and monetary and non-monetary damages, including from not  
25 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
26 in dealing with Device performance issues.



1137. Plaintiff and Ohio Subclass members seek all monetary and non-monetary relief allowed by law, including injunctive relief, actual damages, attorneys' fees, and any other relief that is just and proper.

**CLAIMS ON BEHALF OF THE OKLAHOMA SUBCLASS**

**COUNT 60**

**OKLAHOMA CONSUMER PROTECTION ACT**

*Okla. Stat. Tit. 15, §§ 751, et seq.*

1138. The Oklahoma Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Oklahoma Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1139. Apple is a "person," as meant by Okla. Stat. tit. 15, § 752(1).

1140. Apple's advertisements, offers of sales, sales, and distribution of goods, services, and other things of value constituted "consumer transactions" as meant by Okla. Stat. tit. 15, § 752(2).

1141. Apple, in the course of its business, engaged in unlawful practices in violation of Okla. Stat. tit. 15, § 753, including the following:

- a. Making false representations, knowingly or with reason to know, as to the characteristics, uses, and benefits of the subjects of its consumer transactions, in violation of Okla. Stat. tit. 15, § 753(5);
- b. Representing, knowingly or with reason to know, that the subjects of its consumer transactions were of a particular standard when they were of another, in violation of Okla. Stat. tit 15, § 753(7);
- c. Advertising, knowingly or with reason to know, the subjects of its consumer transactions with intent not to sell as advertised, in violation of Okla. Stat. tit 15, § 753 (8);
- d. Committing unfair trade practices that offend established public policy and was immoral, unethical, oppressive, unscrupulous, and substantially injurious to

1 consumers as defined by section 752(14), in violation of Okla. Stat. tit. 15,  
2 § 753(20); and

- 3 e. Committing deceptive trade practices that deceived or could reasonably be expected  
4 to deceive or mislead a person to the detriment of that person as defined by section  
5 752(13), in violation of Okla. Stat. tit. 15, § 753(20).

6 1142. Apple's representations and omissions were material because they were likely to  
7 deceive reasonable consumers.

8 1143. Apple intended to mislead Plaintiff and Oklahoma Subclass members and induce  
9 them to rely on its misrepresentations and omissions.

10 1144. Had Apple disclosed to Plaintiff and Oklahoma Subclass members that it  
11 misrepresented the Devices and operating software, omitted material information regarding the  
12 Defect, omitted material information regarding the operating software, and was otherwise  
13 engaged in deceptive, common business practices, Apple would have been unable to continue in  
14 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
15 Apple represented that its Devices were continually improving in speed and battery life and  
16 performed better than other devices on the market. Plaintiff and the Oklahoma Subclass  
17 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
18 which they could not have discovered.

19 1145. The above unlawful practices and acts by Apple were immoral, unethical,  
20 oppressive, unscrupulous, and substantially injurious. These acts caused substantial injury to  
21 Plaintiff and Oklahoma Subclass members.

22 1146. Apple acted intentionally, knowingly, and maliciously to violate Oklahoma's  
23 Consumer Protection Act, and recklessly disregarded Plaintiff and Oklahoma Subclass  
24 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
25 software to throttle phone performance, put it on notice that the Devices were not as it  
26 advertised.

1147. As a direct and proximate result of Apple's unlawful practices, Plaintiff and Oklahoma Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1148. Plaintiff and Oklahoma Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages, civil penalties, and attorneys' fees and costs.

### **CLAIMS ON BEHALF OF THE OREGON SUBCLASS**

#### **COUNT 61**

#### **OREGON UNLAWFUL TRADE PRACTICES ACT**

*Or. Rev. Stat. §§ 646.608, et seq.*

1149. The Oregon Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Oregon Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1150. Apple is a "person," as defined by Or. Rev. Stat. § 646.605(4).

1151. Apple engaged in the sale of "goods and services," as defined by Or. Rev. Stat. § 646.605(6)(a).

1152. Apple sold "goods or services," as defined by Or. Rev. Stat. § 646.605(6)(a).

1153. Apple advertised, offered, or sold goods or services in Oregon and engaged in trade or commerce directly or indirectly affecting the people of Oregon.

1154. Apple engaged in unlawful practices in the course of its business and occupation, in violation of Or. Rev. Stat. § 646.608, included the following:

a. Representing that its goods and services have approval, characteristics, uses, benefits, and qualities that they do not have, in violation of Or. Rev. Stat. § 646.608(1)(e);

b. Representing that its goods and services are of a particular standard or quality if they are of another, in violation of Or. Rev. Stat. § 646.608(1)(g);

1 c. Advertising its goods or services with intent not to provide them as advertised, in  
2 violation of Or. Rev. Stat. § 646.608(1)(i); and

3 d. Concurrent with tender or delivery of its goods and services, failing to disclose any  
4 known material defect, in violation of Or. Rev. Stat. § 646.608(1)(t).

5 1155. Apple's representations and omissions were material because they were likely to  
6 deceive reasonable consumers.

7 1156. Apple intended to mislead Plaintiff and Oregon Subclass members and induce  
8 them to rely on its misrepresentations and omissions.

9 1157. Had Apple disclosed to Plaintiffs and Oregon Subclass members that it  
10 misrepresented the Devices and operating software, omitted material information regarding the  
11 Defect, omitted material information regarding the operating software, and was otherwise  
12 engaged in deceptive, common business practices, Apple would have been unable to continue in  
13 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
14 Apple represented that its Devices were continually improving in speed and battery life and  
15 performed better than other devices on the market. Plaintiff and the Oregon Subclass members  
16 acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which  
17 they could not have discovered.

18 1158. Apple acted intentionally, knowingly, and maliciously to violate Oregon's  
19 Unlawful Trade Practices Act, and recklessly disregarded Plaintiff and Oregon Subclass  
20 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
21 software to throttle phone performance, put it on notice that the Devices were not as it  
22 advertised.

23 1159. As a direct and proximate result of Apple's unlawful practices, Plaintiff and  
24 Oregon Subclass members have suffered and will continue to suffer injury, ascertainable losses  
25 of money or property, and monetary and non-monetary damages, including from not receiving  
26 the benefit of their bargain in purchasing the Devices, and increased time and expense in  
27 dealing with Device performance issues.  
28

1160. Plaintiff and Oregon Subclass members seek all monetary and non-monetary relief allowed by law, including equitable relief, actual damages or statutory damages of \$200 per violation (whichever is greater), punitive damages, and reasonable attorneys' fees and costs.

**CLAIMS ON BEHALF OF THE PENNSYLVANIA SUBCLASS**

**COUNT 62**

**PENNSYLVANIA UNFAIR TRADE PRACTICES AND  
CONSUMER PROTECTION LAW**

*73 Pa. Cons. Stat. §§ 201-2 & 201-3, et seq.*

1161. The Pennsylvania Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Pennsylvania Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1162. Apple is a "person," as meant by 73 Pa. Cons. Stat. § 201-2(2).

1163. Plaintiff and Pennsylvania Subclass members purchased goods and services in "trade" and "commerce," as meant by 73 Pa. Cons. Stat. § 201-2(3), primarily for personal, family, and/or household purposes.

1164. Apple engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of its trade and commerce in violation of 73 Pa. Cons. Stat. Ann. § 201-3, including the following:

- a. Representing that its goods and services have characteristics, uses, benefits, and qualities that they do not have (73 Pa. Stat. Ann. § 201-2(4)(v));
- b. Representing that its goods and services are of a particular standard or quality if they are another (73 Pa. Stat. Ann. § 201-2(4)(vii)); and
- c. Advertising its goods and services with intent not to sell them as advertised (73 Pa. Stat. Ann. § 201-2(4)(ix)).

1165. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

1 1166. Apple intended to mislead Plaintiff and Pennsylvania Subclass members and  
2 induce them to rely on its misrepresentations and omissions.

3 1167. Had Apple disclosed to Plaintiffs and Pennsylvania Subclass members that it  
4 misrepresented the Devices and operating software, omitted material information regarding the  
5 Defect, omitted material information regarding the operating software, and was otherwise  
6 engaged in deceptive, common business practices, Apple would have been unable to continue in  
7 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
8 Apple represented that its Devices were continually improving in speed and battery life and  
9 performed better than other devices on the market. Plaintiff and the Pennsylvania Subclass  
10 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
11 which they could not have discovered.

12 1168. Apple acted intentionally, knowingly, and maliciously to violate Pennsylvania  
13 Unfair Trade Practices and Consumer Protection Law, and recklessly disregarded Plaintiff and  
14 Pennsylvania Subclass members' rights. Apple's knowledge of the Devices' performance  
15 issues, and release of software to throttle phone performance, put it on notice that the Devices  
16 were not as it advertised.

17 1169. As a direct and proximate result of Apple's unfair methods of competition and  
18 unfair or deceptive acts or practices and Plaintiff's and the Pennsylvania Subclass' reliance on  
19 them, Plaintiff and Pennsylvania Subclass members have suffered and will continue to suffer  
20 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
21 including from not receiving the benefit of their bargain in purchasing the Devices, and  
22 increased time and expense in dealing with Device performance issues.

23 1170. Plaintiff and Pennsylvania Subclass members seek all monetary and non-  
24 monetary relief allowed by law, including actual damages or statutory damages of \$100  
25 (whichever is greater), treble damages, attorneys' fees and costs, and any additional relief the  
26 Court deems necessary or proper.

**CLAIMS ON BEHALF OF THE RHODE ISLAND SUBCLASS**

**COUNT 63**

**RHODE ISLAND DECEPTIVE TRADE PRACTICES ACT**

*R.I. Gen. Laws §§ 6-13.1, et seq.*

1171. The Rhode Island Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Rhode Island Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1172. Plaintiff and Rhode Island Subclass members are each a “person,” as defined by R.I. Gen. Laws § 6-13.1-1(3).

1173. Plaintiff and Rhode Island Subclass members purchased goods and services for personal, family, or household purposes.

1174. Apple advertised, offered, or sold goods or services in Rhode Island and engaged in trade or commerce directly or indirectly affecting the people of Rhode Island, as defined by R.I. Gen. Laws § 6-13.1-1(5).

1175. Apple engaged in unfair and deceptive acts and practices, in violation of R.I. Gen. Laws § 6-13.1-2, including:

- a. Representing that its goods and services have characteristics, uses, and benefits that they do not have (R.I. Gen. Laws § 6-13.1-52(6)(v));
- b. Representing that its goods and services are of a particular standard or quality when they are of another (R.I. Gen. Laws § 6-13.1-52(6)(vii));
- c. Advertising goods or services with intent not to sell them as advertised (R.I. Gen. Laws § 6-13.1-52(6)(ix));
- d. Engaging in any other conduct that similarly creates a likelihood of confusion or misunderstanding (R.I. Gen. Laws § 6-13.1-52(6)(xii));
- e. Engaging in any act or practice that is unfair or deceptive to the consumer (R.I. Gen. Laws § 6-13.1-52(6)(xiii)); and
- f. Using other methods, acts, and practices that mislead or deceive members of the

1 public in a material respect (R.I. Gen. Laws § 6-13.1-52(6)(xiv)).

2 1176. Apple's representations and omissions were material because they were likely to  
3 deceive reasonable consumers.

4 1177. Apple intended to mislead Plaintiff and Rhode Island Subclass members and  
5 induce them to rely on its misrepresentations and omissions.

6 1178. Apple acted intentionally, knowingly, and maliciously to violate Rhode Island's  
7 Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Rhode Island Subclass  
8 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
9 software to throttle phone performance, put it on notice that the Devices were not as it  
10 advertised.

11 1179. As a direct and proximate result of Apple's unfair and deceptive acts, Plaintiff  
12 and Rhode Island Subclass members have suffered and will continue to suffer injury,  
13 ascertainable losses of money or property, and monetary and non-monetary damages, including  
14 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
15 and expense in dealing with Device performance issues.

16 1180. Plaintiff and Rhode Island Subclass members seek all monetary and non-  
17 monetary relief allowed by law, including actual damages or statutory damages of \$200 per  
18 Subclass Member (whichever is greater), punitive damages, injunctive relief, other equitable  
19 relief, and attorneys' fees and costs.

20 **CLAIMS ON BEHALF OF THE SOUTH CAROLINA SUBCLASS**

21 **COUNT 64**

22 **SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

23 *S.C. Code Ann. §§ 39-5-10, et seq.*

24 1181. The South Carolina Plaintiff(s) identified above ("Plaintiff," for purposes of this  
25 Count), individually and on behalf of the South Carolina Subclass, repeats and alleges  
26 Paragraphs 1-472, as if fully alleged herein.

27 1182. Apple is a "person," as defined by S.C. Code Ann. § 39-5-10(a).



1           1183. South Carolina’s Unfair Trade Practices Act (SC UTPA) prohibits “unfair or  
2       deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. § 39-5-  
3       20.

4           1184. Apple advertised, offered, or sold goods or services in South Carolina and  
5       engaged in trade or commerce directly or indirectly affecting the people of South Carolina, as  
6       defined by S.C. Code Ann. § 39-5-10(b).

7           1185. Apple’s acts and practices had, and continue to have, the tendency or capacity to  
8       deceive.

9           1186. Apple’s representations and omissions were material because they were likely to  
10      deceive reasonable consumers.

11          1187. Apple intended to mislead Plaintiff and South Carolina Subclass members and  
12      induce them to rely on its misrepresentations and omissions.

13          1188. Had Apple disclosed to Plaintiffs and South Carolina Subclass members that it  
14      misrepresented the Devices and operating software, omitted material information regarding the  
15      Defect, omitted material information regarding the operating software, and was otherwise  
16      engaged in deceptive, common business practices, Apple would have been unable to continue in  
17      business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
18      Apple represented that its Devices were continually improving in speed and battery life and  
19      performed better than other devices on the market. Plaintiff and the South Carolina Subclass  
20      members acted reasonably in relying on Apple’s misrepresentations and omissions, the truth of  
21      which they could not have discovered.

22          1189. Apple had a duty to disclose the above-described facts due to the circumstances  
23      of this case. Apple’s duty to disclose also arose from its:

- 24           a. Possession of exclusive knowledge regarding the Defect in its Devices;  
25           b. Possession of exclusive knowledge regarding the operating software it used to  
26           throttle the Devices;  
27           c. Active concealment or misrepresentations regarding the operating software it used to  
28

1 throttle the Devices or the Defect in the Devices; and

- 2 d. Incomplete representations about the Devices and operating software, while  
3 purposefully withholding material facts from Plaintiff and the South Carolina  
4 Subclass that contradicted these representations.

5 1190. Apple's business acts and practices offend an established public policy, or are  
6 immoral, unethical, or oppressive.

7 1191. Apple's unfair and deceptive acts or practices adversely affected the public  
8 interest because such acts or practices have the potential for repetition; Apple engages in such  
9 acts or practices as a general rule; and such acts or practices impact the public at large,  
10 including millions of South Carolina Subclass members that purchased and/or used an Apple  
11 Device.

12 1192. Apple unfair and deceptive acts or practices have the potential for repetition  
13 because the same kinds of actions occurred in the past, as described herein, thus making it likely  
14 that these acts or practices will continue to occur if left undeterred. Additionally, Apple's  
15 policies and procedures create the potential for recurrence of the complained-of business acts  
16 and practices.

17 1193. Apple's violations present a continuing risk to Plaintiff and South Carolina  
18 Subclass members as well as to the general public.

19 1194. Apple intended to mislead Plaintiff and South Carolina Subclass members and  
20 induce them to rely on its misrepresentations and omissions.

21 1195. Apple acted intentionally, knowingly, and maliciously to violate South  
22 Carolina's Unfair Trade Practices Act, and recklessly disregarded Plaintiff and South Carolina  
23 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
24 of software to throttle phone performance, put it on notice that the Devices were not as it  
25 advertised. In light of this conduct, punitive damages would serve the interest of society in  
26 punishing and warning others not to engage in such conduct and would deter Apple and others  
27 from committing similar conduct in the future.  
28

1196. As a direct and proximate result of Apple's unfair and deceptive acts or practices, Plaintiff and South Carolina Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1197. Plaintiff and South Carolina Subclass members seek all monetary and non-monetary relief allowed by law, including damages for their economic losses, treble damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

**CLAIMS ON BEHALF OF THE SOUTH DAKOTA SUBCLASS**

**COUNT 65**

**SOUTH DAKOTA DECEPTIVE TRADE PRACTICES**

**AND CONSUMER PROTECTION ACT**

*S.D. Codified Laws §§ 37-24-1, et seq.*

1198. The South Dakota Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the South Dakota Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1199. Apple is a "person," as defined by S.D. Codified Laws § 37-24-1(8).

1200. Apple advertises and sells "merchandise," as defined by S.D. Codified Laws § 37-24-1(6), (7), & (13).

1201. Apple advertised, offered, or sold goods or services in South Dakota and engaged in trade or commerce directly or indirectly affecting the people of South Dakota, as defined by S.D. Codified Laws § 37-24-1(6), (7), & (13).

1202. Apple knowingly engaged in deceptive acts or practices, misrepresentation, concealment, suppression, or omission of material facts in connection with the sale and advertisement of goods or services, in violation of S.D. Codified Laws § 37-24-6, as described herein.

1           1203. Apple intended to mislead Plaintiff and South Dakota Subclass members and  
2 induce them to rely on its misrepresentations and omissions.

3           1204. Apple representations and omissions were material because they were likely to  
4 deceive reasonable consumers.

5           1205. Had Apple disclosed to Plaintiff and South Dakota class members that it  
6 misrepresented the Devices and operating software, omitted material information regarding the  
7 Defect, omitted material information regarding the operating software, and was otherwise  
8 engaged in deceptive, common business practices, Apple would have been unable to continue in  
9 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
10 Apple represented that its Devices were continually improving in speed and battery life and  
11 performed better than other devices on the market. Plaintiff and the South Dakota Subclass  
12 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
13 which they could not have discovered.

14           1206. Apple had a duty to disclose the above facts because members of the public,  
15 including Plaintiff and the South Dakota Subclass. Apple's duty to disclose also arose from its:

- 16           a. Possession of exclusive knowledge regarding the Defect in Apple's Devices;  
17           b. Possession of exclusive knowledge regarding operating software created to throttle  
18           Device performance;  
19           c. Active concealment of the Defect in its Devices or regarding operating software to  
20           throttle performance of such Devices; and  
21           d. Incomplete representations about the Devices and operating software, while  
22           purposefully withholding material facts from Plaintiff and the South Dakota  
23           Subclass that contradicted these representations.

24           1207. As a direct and proximate result of Apple's deceptive acts or practices,  
25 misrepresentations, and concealment, suppression, and/or omission of material facts, Plaintiff  
26 and South Dakota Subclass members have suffered and will continue to suffer injury,  
27 ascertainable losses of money or property, and monetary and non-monetary damages, including  
28

1 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
2 and expense in dealing with Device performance issues.

3 1208. Apple's violations present a continuing risk to Plaintiff and South Dakota  
4 Subclass members as well as to the general public.

5 1209. Plaintiff and South Dakota Subclass members seek all monetary and non-  
6 monetary relief allowed by law, including actual damages, injunctive relief, and reasonable  
7 attorneys' fees and costs.

8 **CLAIMS ON BEHALF OF THE TENNESSEE SUBCLASS**

9 **COUNT 66**

10 **TENNESSEE CONSUMER PROTECTION ACT**

11 *Tenn. Code Ann. §§ 47-18-101, et seq.*

12 1210. The Tennessee Plaintiff(s) identified above ("Plaintiff," for purposes of this  
13 Count), individually and on behalf of the Tennessee Subclass, repeats and alleges Paragraphs 1-  
14 472, as if fully alleged herein.

15 1211. Apple is a "person," as defined by Tenn. Code § 47-18-103(13).

16 1212. Plaintiff and Tennessee Subclass members are "consumers," as meant by Tenn.  
17 Code § 47-18-103(2).

18 1213. Apple advertised and sold "goods" or "services" in "consumer transaction[s]," as  
19 defined by Tenn. Code §§ 47-18-103(7), (18) & (19).

20 1214. Apple advertised, offered, or sold goods or services in Tennessee and engaged in  
21 trade or commerce directly or indirectly affecting the people of Tennessee, as defined by Tenn.  
22 Code §§ 47-18-103(7), (18) & (19). And Apple's acts or practices affected the conduct of trade  
23 or commerce, under Tenn. Code § 47-18-104.

24 1215. Apple intended to mislead Plaintiff and Tennessee Subclass members and induce  
25 them to rely on its misrepresentations and omissions.

26 1216. Apple's representations and omissions were material because they were likely to  
27 deceive reasonable consumers.  
28

1           1217. Had Apple disclosed to Plaintiffs and Tennessee Subclass members that it  
2 misrepresented the Devices and operating software, omitted material information regarding the  
3 Defect, omitted material information regarding the operating software, and was otherwise  
4 engaged in deceptive, common business practices, Apple would have been unable to continue in  
5 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
6 Apple represented that its Devices were continually improving in speed and battery life and  
7 performed better than other devices on the market. Plaintiff and the Tennessee Subclass  
8 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
9 which they could not have discovered.

10           1218. Apple had a duty to disclose the above facts due to the circumstances of this  
11 case. Apple's duty to disclose arose from its:

- 12           a. Possession of exclusive knowledge regarding the Defect in the Devices;
- 13           b. Possession of exclusive knowledge regarding the operating software that throttles  
14 performance of the Devices;
- 15           c. Active concealment of the Defect in the Devices and operating software that throttles  
16 performance of those Devices; and
- 17           d. Incomplete representations about the Defect in the Devices and operating software  
18 that throttles performance of those Devices, while purposefully withholding material  
19 facts from Plaintiff and the Tennessee Subclass that contradicted these  
20 representations.

21           1219. Apple's "unfair" acts and practices caused or were likely to cause substantial  
22 injury to consumers, which was not reasonably avoidable by consumers themselves and not  
23 outweighed by countervailing benefits to consumers or to competition.

24           1220. The injury to consumers was and is substantial because it was non-trivial and  
25 non-speculative and involved a monetary injury. The injury to consumers was substantial not  
26 only because it inflicted harm on a significant and unprecedented number of consumers, but  
27 also because it inflicted a significant amount of harm on each consumer.

1 1221. Consumers could not have reasonably avoided injury because Apple's business  
2 acts and practices unreasonably created or took advantage of an obstacle to the free exercise of  
3 consumer decision-making. By withholding important information from consumers as described  
4 herein, Apple created an asymmetry of information between it and consumers that precluded  
5 consumers from taking action to avoid or mitigate injury.

6 1222. Apple's business practices had no countervailing benefit to consumers or to  
7 competition.

8 1223. By misrepresenting and omitting material facts, Apple violated the following  
9 provisions of Tenn. Code § 47-18-104(b):

- 10 a. Representing that goods or services have sponsorship, approval, characteristics,  
11 ingredients, uses, benefits or quantities that they do not have;  
12 b. Representing that goods or services are of a particular standard, quality or grade, if  
13 they are of another;  
14 c. Advertising goods or services with intent not to sell them as advertised; and  
15 d. Representing that a consumer transaction confers or involves rights, remedies or  
16 obligations that it does not have or involve.

17 1224. Apple acted intentionally, knowingly, and maliciously to violate Tennessee's  
18 Consumer Protection Act, and recklessly disregarded Plaintiff and Tennessee Subclass  
19 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
20 software to throttle phone performance, put it on notice that the Devices were not as it  
21 advertised.

22 1225. As a direct and proximate result of Apple's unfair and deceptive acts or  
23 practices, Plaintiff and Tennessee Subclass members have suffered and will continue to suffer  
24 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
25 including from not receiving the benefit of their bargain in purchasing the Devices, and  
26 increased time and expense in dealing with Device performance issues.

1226. Apple's violations present a continuing risk to Plaintiff and Tennessee Subclass members as well as to the general public.

1227. Plaintiff and Tennessee Subclass members seek all monetary and non-monetary relief allowed by law, including injunctive relief, actual damages, treble damages for each willful or knowing violation, attorneys' fees and costs, and any other relief that is necessary and proper.

## **CLAIMS ON BEHALF OF THE TEXAS SUBCLASS**

### **COUNT 67**

#### **TEXAS DECEPTIVE TRADE PRACTICES — CONSUMER PROTECTION ACT**

##### *Texas Bus. & Com. Code §§ 17.41, et seq.*

1228. The Texas Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Texas Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1229. Apple is a "person," as defined by Tex. Bus. & Com. Code § 17.45(3).

1230. Plaintiffs and the Texas Subclass members are "consumers," as defined by Tex. Bus. & Com. Code § 17.45(4).

1231. Apple advertised, offered, or sold goods or services in Texas and engaged in trade or commerce directly or indirectly affecting the people of Texas, as defined by Tex. Bus. & Com. Code § 17.45(6).

1232. Apple engaged in false, misleading, or deceptive acts and practices, in violation of Tex. Bus. & Com. Code § 17.46(b), including:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have;
- b. Representing that goods or services are of a particular standard, quality or grade, if they are of another; and
- c. Advertising goods or services with intent not to sell them as advertised.



1 1233. Apple intended to mislead Plaintiff and Texas Subclass members and induce  
2 them to rely on its misrepresentations and omissions.

3 1234. Apple's representations and omissions were material because they were likely to  
4 deceive reasonable consumers.

5 1235. Had Apple disclosed to Plaintiff and Texas Subclass members that it  
6 misrepresented the Devices and operating software, omitted material information regarding the  
7 Defect, omitted material information regarding the operating software, and was otherwise  
8 engaged in deceptive, common business practices, Apple would have been unable to continue in  
9 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
10 Apple represented that its Devices were continually improving in speed and battery life and  
11 performed better than other devices on the market. Plaintiff and the Texas Subclass members  
12 acted reasonably in relying on Apple's misrepresentations and omissions, the truth of which  
13 they could not have discovered.

14 1236. Apple had a duty to disclose the above facts due to the circumstances of this  
15 case. Apple's duty to disclose arose from its:

- 16 a. Possession of exclusive knowledge regarding the Defect in its Devices;
- 17 b. Possession of exclusive knowledge regarding the operating software it developed to  
18 throttle performance in its Devices as a result of the Defect;
- 19 c. Active concealment of the Defect in its Devices and purpose of the throttling  
20 operating software; and
- 21 d. Incomplete representations about its Devices, Device performance, battery life of  
22 Devices, and the throttling software.

23 1237. Apple engaged in unconscionable actions or courses of conduct, in violation of  
24 Tex. Bus. & Com. Code Ann. § 17.50(a)(3). Apple engaged in acts or practices which, to  
25 consumers' detriment, took advantage of consumers' lack of knowledge, ability, experience, or  
26 capacity to a grossly unfair degree.

1           1238. Consumers, including Plaintiffs and Texas Subclass members, lacked knowledge  
2 about the above business practices, omissions, and misrepresentations because this information  
3 was known exclusively by Apple.

4           1239. Apple intended to take advantage of consumers' lack of knowledge, ability,  
5 experience, or capacity to a grossly unfair degree, with reckless disregard of the unfairness that  
6 would result. The unfairness resulting from Apple's conduct is glaringly noticeable, flagrant,  
7 complete, and unmitigated.

8           1240. Apple acted intentionally, knowingly, and maliciously to violate Texas's  
9 Deceptive Trade Practices-Consumer Protection Act, and recklessly disregarded Plaintiff and  
10 Texas Subclass members' rights. Apple's knowledge of the Devices' performance issues, and  
11 release of software to throttle phone performance, put it on notice that the Devices were not as it  
12 advertised.

13           1241. As a direct and proximate result of Apple's unconscionable and deceptive acts or  
14 practices, Plaintiffs and Texas Subclass members have suffered and will continue to suffer  
15 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
16 including from not receiving the benefit of their bargain in purchasing the Devices, and  
17 increased time and expense in dealing with Device performance issues. Apple's  
18 unconscionable and deceptive acts or practices were a producing cause of Plaintiffs' and Texas  
19 Subclass members' injuries, ascertainable losses, economic damages, and non-economic  
20 damages.

21           1242. Apple's violations present a continuing risk to Plaintiffs and Texas Subclass  
22 members as well as to the general public.

23           1243. Plaintiffs and the Texas Subclass seek all monetary and non-monetary relief  
24 allowed by law, including economic damages, damages for mental anguish, treble damages for  
25 each act committed intentionally or knowingly, court costs, reasonably and necessary attorneys'  
26 fees, injunctive relief, and any other relief which the court deems proper.

**CLAIMS ON BEHALF OF THE UTAH SUBCLASS**

**COUNT 68**

**UTAH CONSUMER SALES PRACTICES ACT**

*Utah Code §§ 13-11-1, et seq.*

1244. The Utah Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Utah Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1245. Apple is a “person,” as defined by Utah Code § 13-11-1(5).

1246. Apple is a “supplier,” as defined by Utah Code § 13-11-1(6), because it regularly solicits, engages in, or enforces “consumer transactions,” as defined by Utah Code § 13-11-1(2).

1247. Apple engaged in deceptive and unconscionable acts and practices in connection with consumer transactions, in violation of Utah Code § 13-11-4 and Utah Code § 13-11-5, as described herein.

1248. Apple intended to mislead Plaintiff and Utah Subclass members and induce them to rely on its misrepresentations and omissions.

1249. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

1250. Had Apple disclosed to Plaintiffs and class members that it misrepresented the Devices and operating software, omitted material information regarding the Defect, omitted material information regarding the operating software, and was otherwise engaged in deceptive, common business practices, Apple would have been unable to continue in business and it would have been forced to disclose the uniform Defect in its Devices. Instead, Apple represented that its Devices were continually improving in speed and battery life and performed better than other devices on the market. Plaintiff and the Utah Subclass members acted reasonably in relying on Apple’s misrepresentations and omissions, the truth of which they could not have discovered.

1251. Apple had a duty to disclose the above facts due to the circumstances of this case. Apple’s duty to disclose arose from its:

- a. Possession of exclusive knowledge regarding the Defect in its Devices;
- b. Possession of exclusive knowledge regarding the operating software it developed to throttle performance in its Devices as a result of the Defect;
- c. Active concealment of the Defect in its Devices and purpose of the throttling operating software; and
- d. Incomplete representations about its Devices, Device performance, battery life of Devices, and the throttling software.

1252. Apple intentionally or knowingly engaged in deceptive acts or practices, violating Utah Code § 13-11-4(2) by:

- a. Indicating that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;
- b. Indicating that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;
- c. Indicating that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;
- d. Indicating that the subject of a consumer transaction will be supplied in greater quantity (e.g. more data security) than the supplier intends.

1253. Apple engaged in unconscionable acts and practices that were oppressive and led to unfair surprise, as shown in the setting, purpose, and effect of those acts and practices.

1254. In addition, there was an overall imbalance in the obligations and rights imposed by the consumer transactions in question, based on the mores and industry standards of the time and place where they occurred. There is a substantial imbalance between the obligations and rights of consumers, such as Plaintiff and the Utah Subclass, who purchase Devices based upon the publicly-available information in the marketplace, and Apple, which has exclusive knowledge of any defects in those Devices and software developed to address those defects.

1255. Apple's acts and practices were also procedurally unconscionable because consumers, including Plaintiff and the Utah Subclass, had no practicable option but to purchase

1 Devices based upon publicly-available information, despite Apple's omissions and  
 2 misrepresentations. Apple exploited this imbalance in power, and the asymmetry of  
 3 information, to profit by selling defective Devices, throttling them, and then encouraging  
 4 consumers to spend more money on new devices when the throttling became unbearable.

5 1256. As a direct and proximate result of Apple's unconscionable and deceptive acts or  
 6 practices, Plaintiffs and Utah Subclass members have suffered and will continue to suffer  
 7 injury, ascertainable losses of money or property, and monetary and non-monetary damages  
 8 including from not receiving the benefit of their bargain in purchasing the Devices, and  
 9 increased time and expense in dealing with Device performance issues.

10 1257. Apple's violations present a continuing risk to Plaintiffs and Utah Subclass  
 11 members as well as to the general public.

12 1258. Plaintiff and Utah Subclass members seek all monetary and non-monetary relief  
 13 allowed by law, including actual damages, statutory damages of \$2,000 per violation, amounts  
 14 necessary to avoid unjust enrichment, under Utah Code §§ 13-11-19, *et seq.*, injunctive relief,  
 15 and reasonable attorneys' fees and costs.

## 16 **CLAIMS ON BEHALF OF THE VERMONT SUBCLASS**

### 17 **COUNT 69**

#### 18 **VERMONT CONSUMER FRAUD ACT**

19 *Vt. Stat. Ann. tit. 9, §§ 2451, et seq.*

20 1259. The Vermont Plaintiff(s) identified above ("Plaintiff," for purposes of this  
 21 Count), individually and on behalf of the Vermont Subclass, repeats and alleges Paragraphs 1-  
 22 472, as if fully alleged herein.

23 1260. Plaintiff and Vermont Subclass members are "consumers," as defined by Vt.  
 24 Stat. Ann. tit. 9, § 2451a(a).

25 1261. Apple's conduct as alleged herein related to "goods" or "services" for personal,  
 26 family, or household purposes, as defined by Vt. Stat. Ann. tit. 9, § 2451a(b).

27 1262. Apple is a "seller," as defined by Vt. Stat. Ann. tit. 9, § 2451a(c).

1           1263. Apple advertised, offered, or sold goods or services in Vermont and engaged in  
2 trade or commerce directly or indirectly affecting the people of Vermont.

3           1264. Apple engaged in unfair and deceptive acts or practices, in violation of Vt. Stat.  
4 tit. 9, § 2453(a), as described herein.

5           1265. Apple intended to mislead Plaintiff and Vermont Subclass members and induce  
6 them to rely on its misrepresentations and omissions.

7           1266. Apple's representations and omissions were material because they were likely to  
8 deceive reasonable consumers.

9           1267. Under the circumstances, consumers had a reasonable interpretation of Apple's  
10 representations and omissions.

11           1268. Apple had a duty to disclose these facts due to the circumstances of this case.  
12 Apple's duty to disclose also from its:

- 13           a. Possession of exclusive knowledge regarding the Defect in its Devices;
- 14           b. Possession of exclusive knowledge regarding the operating software it developed to  
15 throttle performance in its Devices as a result of the Defect;
- 16           c. Active concealment of the Defect in its Devices and purpose of the throttling  
17 operating software; and
- 18           d. Incomplete representations about its Devices, Device performance, battery life of  
19 Devices, and the throttling software.

20           1269. Apple's acts and practices caused or were likely to cause substantial injury to  
21 consumers, which was not reasonably avoidable by consumers themselves and not outweighed  
22 by countervailing benefits to consumers or to competition.

23           1270. The injury to consumers was and is substantial because it was non-trivial and  
24 non-speculative; and involved a concrete monetary injury. The injury to consumers was  
25 substantial not only because it inflicted harm on a significant and unprecedented number of  
26 consumers, but also because it inflicted a significant amount of harm on each consumer.

1           1271. Consumers could not have reasonably avoided injury because Apple's business  
2 acts and practices unreasonably created or took advantage of an obstacle to the free exercise of  
3 consumer decision-making. By withholding important information from consumers, Apple  
4 created an asymmetry of information between it and consumers that precluded consumers from  
5 taking action to avoid or mitigate injury.

6           1272. Apple's business practices had no countervailing benefit to consumers or to  
7 competition.

8           1273. Apple is presumed, as a matter of law under Vt. Stat. Ann. tit. 9, § 2457, to have  
9 intentionally violated the Vermont Consumer Protection Act because it failed to sell goods or  
10 services in the manner and of the nature advertised or offered.

11           1274. Apple acted intentionally, knowingly, and maliciously to violate Vermont's  
12 Consumer Fraud Act, and recklessly disregarded Plaintiff and Vermont Subclass members'  
13 rights. Apple's knowledge of the Devices' performance issues, and release of software to  
14 throttle phone performance, put it on notice that the Devices were not as it advertised.

15           1275. As a direct and proximate result of Apple's unfair and deceptive acts or  
16 practices, Plaintiffs and Vermont Subclass members have suffered and will continue to suffer  
17 injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
18 including from not receiving the benefit of their bargain in purchasing the Devices, and  
19 increased time and expense in dealing with Device performance issues.

20           1276. Apple's violations present a continuing risk to Plaintiffs and Vermont Subclass  
21 members as well as to the general public.

22           1277. Apple received notice pursuant to Tex. Bus. & Com. Code Ann. § 17.505  
23 concerning its wrongful conduct as alleged herein by Plaintiff and Texas Subclass members.  
24 However, sending pre-suit notice pursuant to Tex. Bus. & Com. Code Ann. § 17.505 is an  
25 exercise in futility for Plaintiff, as Apple has already been informed of the allegedly unfair and  
26 unlawful conduct as described herein as of the date of the first-filed lawsuit in December 2017,  
27  
28

1 and has yet to offer class members remedy in accordance with similar consumer protection  
2 statutes.

3 1278. Plaintiff and Vermont Subclass members seek all monetary and non-monetary  
4 relief allowed by law, including injunctive relief, restitution, actual damages, disgorgement of  
5 profits, treble damages, punitive/exemplary damages, and reasonable attorneys' fees and costs.

6 **CLAIMS ON BEHALF OF THE VIRGIN ISLANDS SUBCLASS**

7 **COUNT 70**

8 **VIRGIN ISLANDS CONSUMER FRAUD AND DECPETIVE BUSINESS PRACTICES ACT**

9 *V.I. Code tit. 12A, §§ 301, et seq.*

10 1279. Plaintiffs, on behalf of the Virgin Islands Subclass, repeat and allege Paragraphs  
11 1-472, as if fully alleged herein.

12 1280. Apple is a "person," as defined by V.I. Code tit. 12A, § 303(h).

13 1281. Plaintiff and Virgin Islands Subclass members are "consumers," as defined by  
14 V.I. Code tit. 12A, § 303(d).

15 1282. Apple advertised, offered, or sold goods or services in the Virgin Islands and  
16 engaged in trade or commerce directly or indirectly affecting the people of the Virgin Islands.

17 1283. Apple engaged in unfair and deceptive acts and practices, in violation of V.I.  
18 Code tit. 12A, § 304, as described herein.

19 1284. Apple's acts and practices were "unfair" under V.I. Code tit. 12A, § 304 because  
20 they caused or were likely to cause substantial injury to consumers which was not reasonably  
21 avoidable by consumers themselves and not outweighed by countervailing benefits to  
22 consumers or to competition.

23 1285. The injury to consumers from Apple's conduct was and is substantial because it  
24 was non-trivial and non-speculative; and involved a monetary injury. The injury to consumers  
25 was substantial not only because it inflicted harm on a significant and unprecedented number of  
26 consumers, but also because it inflicted a significant amount of harm on each consumer.



1           1286. Consumers could not have reasonably avoided injury because Apple's business  
2 acts and practices unreasonably created or took advantage of an obstacle to the free exercise of  
3 consumer decision-making. By withholding important information from consumers, Apple  
4 created an asymmetry of information between it and consumers that precluded consumers from  
5 taking action to avoid or mitigate injury.

6           1287. Apple's inadequate data security had no countervailing benefit to consumers or  
7 to competition.

8           1288. Apple's acts and practices were "deceptive" under V.I. Code tit. 12A, §§ 303 &  
9 304 because Apple made representations or omissions of material facts that had the capacity,  
10 tendency or effect of deceiving or misleading consumers, including Plaintiff and Virgin Islands  
11 Subclass members.

12           1289. Apple intended to mislead Plaintiff and Virgin Island Subclass members and  
13 induce them to rely on its misrepresentations and omissions.

14           1290. Apple's representations and omissions were material because they were likely to  
15 unfairly influence or deceive reasonable consumers.

16           1291. Apple had a duty to disclose the above-described facts due to the circumstances  
17 of this case. Apple's duty to disclose arose from its:

- 18           a. Possession of exclusive knowledge regarding the Defect in its Devices;
- 19           b. Possession of exclusive knowledge regarding the operating software it developed to  
20 throttle performance in its Devices as a result of the Defect;
- 21           c. Active concealment of the Defect in its Devices and purpose of the throttling  
22 operating software; and
- 23           d. Incomplete representations about its Devices, Device performance, battery life of  
24 Devices, and the throttling software.

25           1292. Apple acted intentionally, knowingly, and maliciously to violate the Virgin  
26 Island's Consumer Fraud and Deceptive Business Practices Act, and recklessly disregarded  
27 Plaintiff and Virgin Islands Subclass members' rights. Apple's knowledge of the Devices'  
28

performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised. Apple intentionally hid this information, callously disregarding the rights of consumers.

1293. As a direct and proximate result of Apple's unfair and deceptive acts or practices, Plaintiff and Virgin Islands Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1294. Apple's violations present a continuing risk to Plaintiff and Virgin Islands Subclass members as well as to the general public.

1295. Plaintiff and Virgin Islands Subclass members seek all monetary and non-monetary relief allowed by law, including compensatory, consequential, treble, punitive, and equitable damages under V.I. Code tit. 12A, § 331, injunctive relief, and reasonable attorneys' fees and costs.

### **COUNT 71**

#### **VIRGIN ISLANDS CONSUMER PROTECTION LAW**

##### **V.I. Code tit. 12A, §§101, et seq.**

1296. Plaintiffs, on behalf of the Virgin Islands Subclass, repeat and allege Paragraphs 1-472, as if fully alleged herein.

1297. Apple is a "merchant," as defined by V.I. Code tit. 12A, § 102(e).

1298. Plaintiff and Virgin Islands Subclass members are "consumers," as defined by V.I. Code tit. 12A, § 102(d).

1299. Apple sells and offers for sale "consumer goods" and "consumer services," as defined by V.I. Code tit. 12A, § 102(c).

1300. Apple engaged in deceptive acts and practices, in violation of V.I. Code tit. 12A, § 101, as described herein.

1301. Apple's acts and practices were "deceptive trade practices" under V.I. Code tit. 12A, § 102(a) because Apple:

- a. Represented that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; or that goods or services are of particular standard, quality, grade, style or model, if they are of another;
- b. Used exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive;
- c. Offered goods or services with intent not to sell them as offered; and
- d. Stated that a consumer transaction involves consumer rights, remedies or obligations that it does not involve.

1302. Apple's acts and practices were also "deceptive" under V.I. Code tit. 12A, § 101 because Apple made representations or omissions of material facts that had the capacity, tendency or effect of deceiving or misleading consumers, including Plaintiff and Virgin Islands Subclass members.

1303. Apple intended to mislead Plaintiff and Virgin Islands Subclass members and induce them to rely on its misrepresentations and omissions.

1304. Apple's representations and omissions were material because they were likely to deceive reasonable consumers.

1305. Apple had a duty to disclose the above-described facts due to the circumstances of this case. Apple's duty to disclose arose from its:

- a. Possession of exclusive knowledge regarding the Defect in its Devices;
- b. Possession of exclusive knowledge regarding the operating software it developed to throttle performance in its Devices as a result of the Defect;
- c. Active concealment of the Defect in its Devices and purpose of the throttling operating software; and
- d. Incomplete representations about its Devices, Device performance, battery life of

1 Devices, and the throttling software.

2 1306. Apple acted intentionally, knowingly, and maliciously to violate the Virgin  
3 Island's Consumer Protection Law, and recklessly disregarded Plaintiff and Virgin Island  
4 Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release  
5 of software to throttle phone performance, put it on notice that the Devices were not as it  
6 advertised.

7 1307. As a direct and proximate result of Apple's deceptive acts or practices, Plaintiff  
8 and Virgin Islands Subclass members have suffered and will continue to suffer injury,  
9 ascertainable losses of money or property, and monetary and non-monetary damages, including  
10 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
11 and expense in dealing with Device performance issues.

12 1308. Apple's violations present a continuing risk to Plaintiff and Virgin Islands  
13 Subclass members as well as to the general public.

14 1309. Plaintiff and Virgin Islands Subclass members seek all monetary and non-  
15 monetary relief allowed by law, including declaratory relief; injunctive relief, the greater of  
16 actual damages or \$500 per violation, compensatory, consequential, treble, and punitive  
17 damages; disgorgement, and reasonable attorneys' fees and costs.

18 **CLAIMS ON BEHALF OF THE VIRGINIA SUBCLASS**

19 **COUNT 72**

20 **VIRGINIA CONSUMER PROTECTION ACT**

21 *Va. Code Ann. §§ 59.1-196, et seq.*

22 1310. The Virginia Plaintiff(s) identified above ("Plaintiff," for purposes of this  
23 Count), individually and on behalf of the Virginia Subclass, repeats and alleges Paragraphs 1-  
24 472, as if fully alleged herein.

25 1311. The Virginia Consumer Protection Act prohibits "[u]sing any . . . deception,  
26 fraud, false pretense, false promise, or misrepresentation in connection with a consumer  
27 transaction." Va. Code Ann. § 59.1-200(14).  
28

1 1312. Apple is a “person” as defined by Va. Code Ann. § 59.1-198.

2 1313. Apple is a “supplier,” as defined by Va. Code Ann. § 59.1-198.

3 1314. Apple engaged in the complained-of conduct in connection with “consumer  
4 transactions” with regard to “goods” and “services,” as defined by Va. Code Ann. § 59.1-198.  
5 Apple advertised, offered, or sold goods or services used primarily for personal, family or  
6 household purposes.

7 1315. Apple engaged in deceptive acts and practices by using deception, fraud, false  
8 pretense, false promise, and misrepresentation in connection with consumer transactions,  
9 described herein.

10 1316. Apple intended to mislead Plaintiff and Virginia Subclass members and induce  
11 them to rely on its misrepresentations and omissions.

12 1317. Apple’s representations and omissions were material because they were likely to  
13 deceive reasonable consumers.

14 1318. Had Apple disclosed to Plaintiff and Virginia Subclass members that it  
15 misrepresented the Devices and operating software, omitted material information regarding the  
16 Defect, omitted material information regarding the operating software, and was otherwise  
17 engaged in deceptive, common business practices, Apple would have been unable to continue in  
18 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
19 Apple represented that its Devices were continually improving in speed and battery life and  
20 performed better than other devices on the market. Plaintiff and the Virginia Subclass members  
21 acted reasonably in relying on Apple’s misrepresentations and omissions, the truth of which  
22 they could not have discovered.

23 1319. Apple had a duty to disclose these facts due to the circumstances of this case.  
24 Apple’s duty to disclose also arose from its:

- 25 a. Possession of exclusive knowledge regarding the Defect in its Devices;  
26 b. Possession of exclusive knowledge regarding the operating software it developed to  
27 throttle performance in its Devices as a result of the Defect;  
28

- c. Active concealment of the Defect in its Devices and purpose of the throttling operating software; and
- d. Incomplete representations about its Devices, Device performance, battery life of Devices, and the throttling software.

1320. The above-described deceptive acts and practices also violated the following provisions of VA Code § 59.1-200(A):

- a. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- b. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; and
- c. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell them upon the terms advertised.

1321. Apple acted intentionally, knowingly, and maliciously to violate Virginia's Consumer Protection Act, and recklessly disregarded Plaintiff and Virginia Subclass members' rights. Apple's knowledge of the Devices' performance issues, and release of software to throttle phone performance, put it on notice that the Devices were not as it advertised. An award of punitive damages would serve to punish Apple for its wrongdoing and warn or deter others from engaging in similar conduct.

1322. As a direct and proximate result of Apple's deceptive acts or practices, Plaintiffs and Virginia Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1323. Apple's violations present a continuing risk to Plaintiffs and Virginia Subclass members as well as to the general public.

1324. Plaintiff and Virginia Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages; statutory damages in the amount of \$1,000 per

1 violation if the conduct is found to be willful or, in the alternative, \$500 per violation,  
 2 restitution, injunctive relief, punitive damages, and attorneys' fees and costs.

3 **CLAIMS ON BEHALF OF THE WASHINGTON SUBCLASS**

4 **COUNT 73**

5 **WASHINGTON CONSUMER PROTECTION ACT**

6 *Wash. Rev. Code Ann. §§ 19.86.020, et seq.*

7 1325. The Washington Plaintiff(s) identified above ("Plaintiff," for purposes of this  
 8 Count), individually and on behalf of the Washington Subclass, repeats and alleges Paragraphs  
 9 1-472, as if fully alleged herein.

10 1326. Apple is a "person," as defined by Wash. Rev. Code Ann. § 19.86.010(1).

11 1327. Apple advertised, offered, or sold goods or services in Washington and engaged  
 12 in trade or commerce directly or indirectly affecting the people of Washington, as defined by  
 13 Wash. Rev. Code Ann. § 19.86.010 (2).

14 1328. Apple engaged in unfair or deceptive acts or practices in the conduct of trade or  
 15 commerce, in violation of Wash. Rev. Code Ann. § 19.86.020, as described herein.

16 1329. Apple's representations and omissions were material because they were likely to  
 17 deceive reasonable consumers.

18 1330. Apple acted intentionally, knowingly, and maliciously to violate Washington's  
 19 Consumer Protection Act, and recklessly disregarded Plaintiff and Washington Subclass  
 20 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
 21 software to throttle phone performance, put it on notice that the Devices were not as it  
 22 advertised.

23 1331. Apple's conduct is injurious to the public interest because it violates Wash. Rev.  
 24 Code Ann. § 19.86.020, violates a statute that contains a specific legislation declaration of  
 25 public interest impact, and/or injured persons and had and has the capacity to injure persons.  
 26 Further, its conduct affected the public interest, including the at least hundreds of thousands of  
 27 Washingtonians affected by Apple's deceptive business practices.

1332. As a direct and proximate result of Apple's unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and Washington Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1333. Plaintiff and Washington Subclass members seek all monetary and non-monetary relief allowed by law, including actual damages, treble damages, injunctive relief, civil penalties, and attorneys' fees and costs.

### **CLAIMS ON BEHALF OF THE WEST VIRGINIA SUBCLASS**

#### **COUNT 74**

#### **WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT**

*W. Va. Code §§ 46A-6-101, et seq.*

1334. The West Virginia Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the West Virginia Subclass, repeats and alleges Paragraphs 1-472, as if fully alleged herein.

1335. Plaintiff and West Virginia Subclass members are "consumers," as defined by W. Va. Code § 46A-6-102(2).

1336. Apple engaged in "consumer transactions," as defined by W. Va. Code § 46A-6-102(2).

1337. Apple advertised, offered, or sold goods or services in West Virginia and engaged in trade or commerce directly or indirectly affecting the people of West Virginia, as defined by W. Va. Code § 46A-6-102(6).

1338. Apple received notice pursuant to W. Va. Code § 46A-6-106(c) concerning its wrongful conduct as alleged herein by Plaintiff and West Virginia Subclass members. However, sending pre-suit notice pursuant to W. Va. Code § 46A-6-106(c) is an exercise in futility for Plaintiff, because, despite being on knowledge of the deceptive acts and practices



1 complained of herein in this lawsuit as of the date of the first-filed lawsuit in December 2017,  
2 Apple has not cured its unfair and deceptive acts and practices.

3 1339. Apple engaged in unfair and deceptive business acts and practices in the conduct  
4 of trade or commerce, in violation of W. Va. Code § 46A-6-104, as described herein.

5 1340. Apple's unfair and deceptive acts and practices also violated W. Va. Code §  
6 46A-6-102(7), including:

- 7 a. Representing that goods or services have sponsorship, approval, characteristics,  
8 ingredients, uses, benefits or quantities that they do not have;
- 9 b. Representing that goods or services are of a particular standard, quality or grade, or  
10 that goods are of a particular style or model if they are of another;
- 11 c. Advertising goods or services with intent not to sell them as advertised;
- 12 d. Engaging in any other conduct which similarly creates a likelihood of confusion or  
13 of misunderstanding;
- 14 e. Using deception, fraud, false pretense, false promise or misrepresentation, or the  
15 concealment, suppression or omission of any material fact with intent that others rely  
16 upon such concealment, suppression or omission, in connection with the sale or  
17 advertisement of goods or services, whether or not any person has in fact been  
18 misled, deceived or damaged thereby; and
- 19 f. Advertising, displaying, publishing, distributing, or causing to be advertised,  
20 displayed, published, or distributed in any manner, statements and representations  
21 with regard to the sale of goods, which are false, misleading or deceptive or which  
22 omit to state material information which is necessary to make the statements therein  
23 not false, misleading or deceptive.

24 1341. Apple's unfair and deceptive acts and practices were unreasonable when  
25 weighed against the need to develop or preserve business, and were injurious to the public  
26 interest, under W. Va. Code § 46A-6-101.

1           1342. Apple’s acts and practices were additionally “unfair” under W. Va. Code § 46A-  
2           6-104 because they caused or were likely to cause substantial injury to consumers which was  
3           not reasonably avoidable by consumers themselves and not outweighed by countervailing  
4           benefits to consumers or to competition.

5           1343. The injury to consumers from Apple’s conduct was and is substantial because it  
6           was non-trivial and non-speculative; and involved a monetary injury. The injury to consumers  
7           was substantial not only because it inflicted harm on a significant and unprecedented number of  
8           consumers, but also because it inflicted a significant amount of harm on each consumer.

9           1344. Consumers could not have reasonably avoided injury because Apple’s business  
10          acts and practices unreasonably created or took advantage of an obstacle to the free exercise of  
11          consumer decision-making. By withholding important information from consumers, Apple  
12          created an asymmetry of information between it and consumers that precluded consumers from  
13          taking action to avoid or mitigate injury.

14          1345. Apple’s business practices had no countervailing benefit to consumers or to  
15          competition.

16          1346. Apple’s acts and practices were additionally “deceptive” under W. Va. Code §  
17          46A-6-104 because Apple made representations or omissions of material facts that misled or  
18          were likely to mislead reasonable consumers, including Plaintiff and West Virginia Subclass  
19          members.

20          1347. Apple intended to mislead Plaintiff and West Virginia Subclass members and  
21          induce them to rely on its misrepresentations and omissions.

22          1348. Apple representations and omissions were material because they were likely to  
23          deceive reasonable consumers.

24          1349. Had Apple disclosed to Plaintiff and West Virginia Subclass members that it  
25          misrepresented the Devices and operating software, omitted material information regarding the  
26          Defect, omitted material information regarding the operating software, and was otherwise  
27          engaged in deceptive, common business practices, Apple would have been unable to continue in  
28

1 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
2 Apple represented that its Devices were continually improving in speed and battery life and  
3 performed better than other devices on the market. Plaintiff and the West Virginia Subclass  
4 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
5 which they could not have discovered.

6 1350. Apple had a duty to disclose the above-described facts due to the circumstances  
7 of this case. Apple's duty to disclose arose from its:

- 8 a. Possession of exclusive knowledge regarding the Defect in its Devices;
- 9 b. Possession of exclusive knowledge regarding the operating software it developed to  
10 throttle performance in its Devices as a result of the Defect;
- 11 c. Active concealment of the Defect in its Devices and purpose of the throttling  
12 operating software; and
- 13 d. Incomplete representations about its Devices, Device performance, battery life of  
14 Devices, and the throttling software.

15 1351. Apple's omissions were legally presumed to be equivalent to active  
16 misrepresentations because Apple intentionally prevented Plaintiff and West Virginia Subclass  
17 members from discovering the truth regarding Apple's Device Defect and operating system  
18 throttling capabilities.

19 1352. Apple acted intentionally, knowingly, and maliciously to violate West Virginia's  
20 Consumer Credit and Protection Act, and recklessly disregarded Plaintiff and West Virginia  
21 Subclass members' rights. Apple's unfair and deceptive acts and practices were likely to cause  
22 serious harm, and Apple knew that its deceptive acts would cause harm based upon its business  
23 practices and exclusive knowledge of the omissions and misrepresentations herein.

24 1353. As a direct and proximate result of Apple's unfair and deceptive acts or  
25 practices and Plaintiff and West Virginia Subclass members' purchase of goods or services,  
26 Plaintiff and West Virginia Subclass members have suffered and will continue to suffer injury,  
27 ascertainable losses of money or property, and monetary and non-monetary damages, including  
28

1 from not receiving the benefit of their bargain in purchasing the Devices, and increased time  
2 and expense in dealing with Device performance issues.

3 1354. Apple's violations present a continuing risk to Plaintiff and West Virginia  
4 Subclass members as well as to the general public.

5 1355. Plaintiff and West Virginia Subclass members seek all monetary and non-  
6 monetary relief allowed by law, including the greater of actual damages or \$200 per violation  
7 under W. Va. Code § 46A-6-106(a), restitution, injunctive and other equitable relief, punitive  
8 damages, and reasonable attorneys' fees and costs.

9 **CLAIMS ON BEHALF OF THE WISCONSIN SUBCLASS**

10 **COUNT 75**

11 **WISCONSIN DECEPTIVE TRADE PRACTICES ACT**

12 *Wis. Stat. § 100.18, et seq.*

13 1356. The Wisconsin Plaintiff(s) identified above ("Plaintiff," for purposes of this  
14 Count), individually and on behalf of the Wisconsin Subclass, repeats and alleges Paragraphs 1-  
15 472, as if fully alleged herein.

16 1357. Apple is a "person, firm, corporation or association," as defined by Wis. Stat.  
17 § 100.18(1).

18 1358. Plaintiff and Wisconsin Subclass members are members of "the public," as  
19 defined by Wis. Stat. § 100.18(1).

20 1359. With intent to sell, distribute, or increase consumption of merchandise, services,  
21 or anything else offered by Apple to members of the public for sale, use, or distribution, Apple  
22 made, published, circulated, placed before the public or caused (directly or indirectly) to be  
23 made, published, circulated, or placed before the public in Wisconsin advertisements,  
24 announcements, statements, and representations to the public which contained assertions,  
25 representations, or statements of fact which are untrue, deceptive, and/or misleading, in  
26 violation of Wis. Stat. § 100.18(1).

1           1360. Apple also engaged in the above-described conduct as part of a plan or scheme,  
2 the purpose or effect of which was to sell, purchase, or use merchandise or services not as  
3 advertised, in violation of Wis. Stat. § 100.18(9).

4           1361. Apple intended to mislead Plaintiff and Wisconsin Subclass members and induce  
5 them to rely on its misrepresentations and omissions.

6           1362. Apple's representations and omissions were material because they were likely to  
7 deceive reasonable consumers.

8           1363. Apple had a duty to disclose the above-described facts due to the circumstances  
9 of this case. Apple's duty to disclose arose from its:

- 10           a. Possession of exclusive knowledge regarding the Defect in its Devices;
- 11           b. Possession of exclusive knowledge regarding the operating software it developed to  
12 throttle performance in its Devices as a result of the Defect;
- 13           c. Active concealment of the Defect in its Devices and purpose of the throttling  
14 operating software; and
- 15           d. Incomplete representations about its Devices, Device performance, battery life of  
16 Devices, and the throttling software.

17           1364. Apple's failure to disclose the above-described facts is the same as actively  
18 representing that those facts do not exist.

19           1365. Apple acted intentionally, knowingly, and maliciously to violate the Wisconsin  
20 Deceptive Trade Practices Act, and recklessly disregarded Plaintiff and Wisconsin Subclass  
21 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
22 software to throttle phone performance, put it on notice that the Devices were not as it  
23 advertised.

24           1366. As a direct and proximate result of Apple's deceptive acts or practices, Plaintiff  
25 and Wisconsin Subclass members have suffered and will continue to suffer injury, ascertainable  
26 losses of money or property, and monetary and non-monetary damages, including from not  
27  
28

1 receiving the benefit of their bargain in purchasing the Devices, and increased time and expense  
2 in dealing with Device performance issues.

3 1367. Apple had an ongoing duty to all Apple customers to refrain from deceptive acts,  
4 practices, plans, and schemes under Wis. Stat. § 100.18.

5 1368. Plaintiff and Wisconsin Subclass members seek all monetary and non-monetary  
6 relief allowed by law, including damages, reasonable attorneys' fees, and costs under Wis. Stat.  
7 § 100.18(11)(b)(2), injunctive relief, and punitive damages.

8 **CLAIMS ON BEHALF OF THE WYOMING SUBCLASS**

9 **COUNT 76**

10 **WYOMING CONSUMER PROTECTION ACT**

11 *Wyo. Stat. Ann. §§ 40-12-101, et seq.*

12 1369. The Wyoming Plaintiff(s) identified above ("Plaintiff," for purposes of this  
13 Count), individually and on behalf of the Wyoming Subclass, repeats and alleges Paragraphs 1-  
14 472, as if fully alleged herein.

15 1370. Apple is a "person" as defined by Wyo. Stat. Ann. § 42-12-102(i).

16 1371. Plaintiff and Wyoming Subclass members engaged in "consumer transactions"  
17 as defined by Wyo. Stat. Ann. § 40-12-102(ii).

18 1372. Apple is engaged in an "uncured unlawful deceptive trade practice" in  
19 accordance with Wyo. Stat. Ann. § 40-12-105 in that it had actual notice of its deceptive acts  
20 and practices when the first-filed case in this multidistrict litigation was filed in December  
21 2017; however, it has not offered to adjust or modified the consumer transactions at issue in this  
22 case, nor has it offered to rescind the consumer transactions. Accordingly, although notice was  
23 sent to Apple pursuant to Wyo. Stat. Ann. § 40-12-109, notice is an exercise in futility for  
24 Plaintiff.

25 1373. Apple advertised, offered, or sold goods or services in Wyoming, and engaged in  
26 trade or commerce directly or indirectly affecting the people of Wyoming.

1           1374. Apple engaged in deceptive acts and practices in the conduct of trade or  
2 commerce, in violation of the Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-  
3 101, *et seq.*, including:

- 4           a. Representing that goods or services have sponsorship, approval, characteristics,  
5 ingredients, uses, benefits, or qualities that they do not have;  
6           b. Representing that goods or services are of a particular standard, quality, or grade, or  
7 that goods are of a particular style or model, if they are of another; and  
8           c. Engaging in any other unconscionable, false, misleading, or deceptive act or practice  
9 in the conduct of trade or commerce.

10           1375. Apple's representations and omissions were material because they were likely to  
11 deceive reasonable consumers.

12           1376. Apple intended to mislead Plaintiff and Wyoming Subclass members and induce  
13 them to rely on its misrepresentations and omissions.

14           1377. Had Apple disclosed to Plaintiff and Wyoming Subclass members that it  
15 misrepresented the Devices and operating software, omitted material information regarding the  
16 Defect, omitted material information regarding the operating software, and was otherwise  
17 engaged in deceptive, common business practices, Apple would have been unable to continue in  
18 business and it would have been forced to disclose the uniform Defect in its Devices. Instead,  
19 Apple represented that its Devices were continually improving in speed and battery life and  
20 performed better than other devices on the market. Plaintiff and the Wyoming Subclass  
21 members acted reasonably in relying on Apple's misrepresentations and omissions, the truth of  
22 which they could not have discovered.

23           1378. Apple acted intentionally, knowingly, and maliciously to violate the Wyoming  
24 Consumer Protection Act, and recklessly disregarded Plaintiff and Wyoming Subclass  
25 members' rights. Apple's knowledge of the Devices' performance issues, and release of  
26 software to throttle phone performance, put it on notice that the Devices were not as it  
27 advertised.  
28

1379. As a direct and proximate result of Apple's deceptive acts and practices, Plaintiff and Wyoming Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Devices, and increased time and expense in dealing with Device performance issues.

1380. Apple's deceptive acts and practices caused substantial injury to Plaintiff and Wyoming Subclass members, which they could not reasonably avoid, and which outweighed any benefits to consumers or to competition.

1381. Plaintiff and the Wyoming Subclass seek all monetary and non-monetary relief allowed by law, actual damages, injunctive relief, attorneys' fees, costs, and any other relief that is just and proper.

#### **PRAYER FOR RELIEF**

1382. WHEREFORE, Plaintiffs, individually and on behalf of all other class members, respectfully request that the Court enter an Order:

- a. Declaring that this action is a proper class action, certifying the Classes and/or Subclasses as requested herein, designating Plaintiffs as Class Representatives, and appointing Plaintiffs' attorneys as Class Counsel;
- b. Enjoining Apple from continuing the unfair business practices alleged in this Complaint;
- c. Ordering Apple to pay actual and statutory damages (including punitive damages) and restitution to Plaintiffs and the other class members, as allowable by law;
- d. Ordering Apple to pay both pre- and post-judgment interest on any amounts awarded;
- e. Ordering Apple to pay attorneys' fees and costs of suit; and
- f. Ordering such other and further relief as may be just and proper.

#### **JURY DEMAND**

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



Respectfully submitted,

DATED: November 30, 2018

s/ Laurence D. King

Laurence D. King

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DATED: November 30, 2018

s/ Joseph W. Cotchett

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of November 2018, at San Francisco, California.

/s/ Laurence D. King  
Laurence D. King