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

GABRIELA ZARAGOZA and JOSEPH COYLE,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

- 1. Violation of California Civil Code §1750, *et seq.***
- 2. Violation of California Business and Professions Code § 17200, *et seq.***
- 3. Violation of California Business and Professions Code § 17500, *et seq.***
- 4. Breach of Express Warranty**
- 5. Breach of Implied Warranty**
- 6. Common Law Fraud**
- 7. Quasi-Contract/Restitution**
- 8. Violation of New York General Business Law § 349**
- 9. Violation of New York General Business Law § 350**

JURY TRIAL DEMANDED

1 Plaintiffs Gabriela Zaragoza (“Plaintiff Zaragoza”) and Joseph Coyle (“Plaintiff Coyle”)
 2 (collectively, “Plaintiffs”), by and through their counsel, bring this Class Action Complaint against
 3 Defendant Apple Inc. (“Apple” or “Defendant”), on behalf of themselves and all others similarly
 4 situated, and allege upon personal knowledge as to their own actions, and upon information and belief
 5 as to counsel’s investigations and all other matters, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this consumer protection and false advertising class action lawsuit
 8 against Apple, based on its false and misleading business practices with respect to the marketing and
 9 sale of television show (“TV show(s)”) season bundles offered on Apple’s iTunes store on the Apple
 10 TV 4 and 4k devices (“Apple TVs”).¹

11 2. Through Apple’s iTunes store, consumers can browse a variety of TV shows on their
 12 Apple TVs. Each TV show offered on Apple’s iTunes store has its own home page, providing
 13 consumers with general information regarding their selected TV show.

14 3. On the home page for each TV show on iTunes, Apple offers consumers three
 15 purchasing options² at set prices. First, consumers may purchase episodes individually. Second,
 16 consumers can purchase completed seasons (“Buy Season”). Third, if the TV show’s season has
 17 remaining episodes, a season pass can be purchased, offering all current and future episodes for the
 18 season (“Season Pass”) (collectively, with “Buy Season”, the “Season Features”).

19 4. On each home page, Apple conspicuously represents the number of episodes available
 20 in the season. However, unbeknownst to consumers, many of the “episodes” offered by Apple are not
 21 standard, plot-based episodes of the TV show, but promotional clips.³

22 5. Consumers purchase the Season Features, reasonably believing that each episode is a
 23 standard, plot-based episode and that, by purchasing the Season Features, they are receiving a
 24 significant discount over purchasing each episode individually. However, because many of the
 25 episodes in the Season Features are promotional clips, consumers are not receiving the number of

26 _____
 27 ¹ This action only concerns TV shows sold on Apple TV 4 and 4k.

28 ² Depicted *infra* in paragraphs 20, 24, and 28.

³ *Id.*

2 6. Had Plaintiffs and other consumers known that the Season Features provided fewer
3 standard, plot-based episodes than Apple represented, they would not have purchased the Season
4 Features or would have paid significantly less for them. Therefore, Plaintiffs and consumers have
5 suffered injury in fact as a result of Apple's deceptive practices.

6 7. Plaintiffs bring this class action lawsuit on behalf of themselves and all others similarly
7 situated. Plaintiffs seek to represent a California Subclass, a California Consumer Subclass, a New
8 York Subclass, and a Nationwide Class (defined *infra* in paragraphs 44-48) (collectively referred to
9 as “Classes”).

8. Plaintiffs, on behalf of themselves and other consumers, are seeking damages, restitution, declaratory and injunctive relief, and all other remedies the court deems appropriate.

13 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because
14 this case is a class action where the aggregate claims of all members of the proposed Classes are in
15 excess of the amount in controversy requirement, exclusive of interests and costs, and Plaintiff Coyle,
16 as well as most members of the proposed Classes, which total more than 100 class members, are
17 citizens of states different from the state of Defendant.

18 10. This Court has personal and general jurisdiction over Defendant because Defendant is
19 incorporated in California and maintains its principal place of business, or “nerve center” at its
20 headquarters in Cupertino, California. Further, Defendant has sufficient minimum contacts in
21 California, or otherwise intentionally did avail itself of the markets within California, through its sale
22 of the TV shows and Season Features in California and to California consumers.

11. Venue is proper in this District pursuant to 28 U.S.C. 1391(b)(1) because Defendant resides in Cupertino, California, which is located in this District.

26 12. Plaintiff Gabriela Zaragoza is a citizen of California, residing in Davis. On May 31,
27 2017, Mrs. Zaragoza purchased a Season Pass for Season 1 of the TV show “Genius: Einstein” from

1 Apple's iTunes store. Prior to purchasing the Season Pass, Mrs. Zaragoza saw the home screen for
2 "Genius: Einstein", which represented that Mrs. Zaragoza could purchase a Season Pass for the first
3 season for a total price of \$24.99. According to the home screen for the TV show, the price for a
4 single episode of "Genius: Einstein" was \$2.99. Furthermore, at the time of Mrs. Zaragoza's purchase,
5 Apple represented that Season 1 had 13 episodes so far. For this reason, Mrs. Zaragoza believed that
6 she would receive 13 standard, plot-based episodes, and that purchasing the Season Pass would result
7 in a significant discount over purchasing each episode separately. However, only 6 out of 13
8 "episodes" were standard plot-based episodes. The remaining 7 "episodes" were promotional clips.
9 Mrs. Zaragoza would not have purchased the Season Pass, or would have significantly less for it, had
10 she known that 6 out of 13 "episodes" represented on the "Genius: Einstein" home screen were
11 promotional clips. Mrs. Zaragoza therefore suffered injury in fact and lost money as a result of
12 Defendant's misleading, false, unfair, and fraudulent practices, as described herein.

13 13. Plaintiff Joseph Coyle is a citizen of New York, residing in New York City. On May
14 20, 2018, Mr. Coyle purchased a Season Pass for Season 1 of the TV show "Killing Eve" from
15 Apple's iTunes store. Prior to purchasing the Season Pass, Mr. Coyle saw the home screen for "Killing
16 Eve", which represented that Mr. Coyle could purchase a Season Pass for the season for a total price
17 of \$19.99. According to the home screen for the TV show, the price for a single episode of "Killing
18 Eve" was \$2.99. Furthermore, at the time of Mr. Coyle's purchase, Apple represented that Season 1
19 had 11 episodes so far. For this reason, Mr. Coyle believed that he would receive 11 standard, plot-
20 based episodes, and that purchasing the Season Pass would result in a significant discount over
21 purchasing each episode separately. However, only 5 out of 11 "episodes" were standard plot-based
22 episodes. The remaining 6 "episodes" were promotional clips. Mr. Coyle would not have purchased
23 the Season Pass, or would have significantly less for it, had he known that 6 out of 11 "episodes"
24 represented on the "Killing Eve" home screen were promotional clips. Mr. Coyle therefore suffered
25 injury in fact and lost money as a result of Defendant's misleading, false, unfair, and fraudulent
26 practices, as described herein.

27 14. Defendant Apple Inc. is incorporated in California with its principal place of business
28

1 in Cupertino, California. Defendant, directly and/or through its agents, markets, advertises, and sells
2 the Season Features nationwide, including in California and New York, throughout the class period.
3 Defendant has maintained substantial sales in this District. Based on information and belief,
4 Defendant maintains a portion of its marketing, including senior marketing managers in addition to
5 the design and marketing of the Season Features, in California.

6 **FACTUAL ALLEGATIONS**

7 **I. Defendant's False And Misleading Advertising Of The TV Shows**

8 15. The Apple TV 4 and 4K are multi-media, entertainment devices which offer a wide-
9 range of media applications. The Apple TVs broadcast the media applications onto users' televisions.

10 16. Through the Apple TVs, consumers can browse through Apple's iTunes multi-media
11 store ("iTunes"), which offers users the ability to purchase, *inter alia*, movies, music, and television
12 shows.

13 17. Each TV show offered on iTunes has its own home page, providing consumers with
14 general information regarding their selected TV show.

15 18. When browsing the home pages for TV shows available on the iTunes store,
16 consumers are provided three purchasing options. First, consumers can purchase individual episodes
17 at a certain set price per episode (e.g., \$2.99). Second, if a TV show offers a completed season with
18 no episodes awaiting release, consumers may use the "Buy Season" feature and purchase the entire
19 season for a set total price. Third, if the season has released some episodes but is incomplete,
20 consumers may purchase a "Season Pass," giving them access to all current and future episodes for
21 the season at a set total price.

22 19. At all relevant times, Apple conspicuously represents the number of total episodes
23 included in the Season Features.

20. For example, Apple represents that the completed first season of “Genius: Einstein” has 22 episodes:

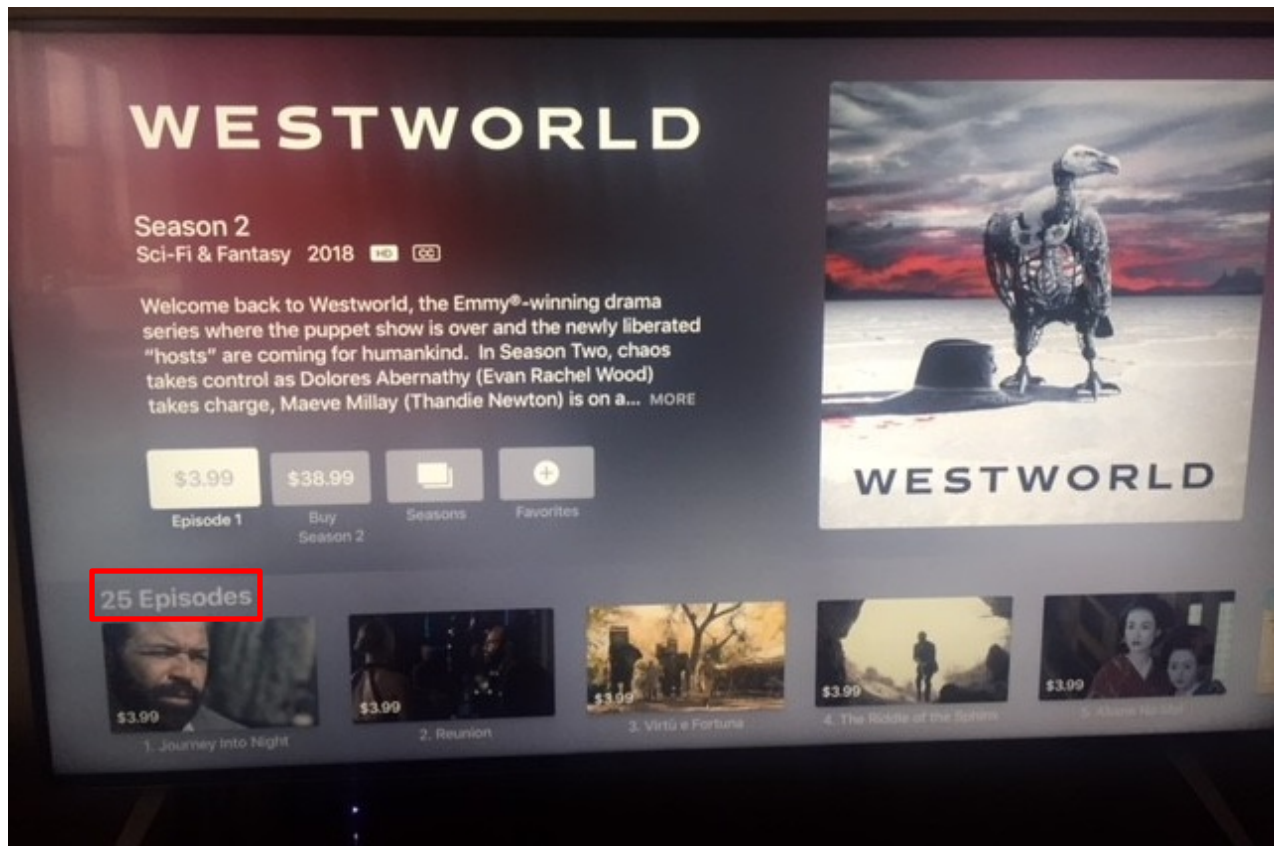


21. Therefore, the Buy Season feature allows consumers to purchase “22 episodes” of “Genius: Einstein” for a set total price: \$14.99.

22. A reasonable consumer purchasing the Buy Season feature for the first season of “Genius: Einstein” would believe he or she is receiving 22 standard, plot-based episodes of the show.

23. However, contrary to the representations made to Plaintiffs and other consumers, the first season of “Genius: Einstein” only contains 10 standard, plot-based episodes. The remaining 12 episodes are promotional clips.

24. As with “Genius: Einstein”, the same false and deceptive practice occurs with Apple’s representation that season two of “Westworld” has 25 episodes:



25. As shown above, Apple represents that consumers may use the Buy Season feature to purchase the entire 25-episode season of “Westworld” for a set total price: \$38.99.

26. A reasonable consumer purchasing the Buy Season feature for the second season of “Westworld” would believe he or she is receiving 25 standard, plot-based episodes of the show.

27. However, the second season of “Westworld” only has 10 standard, plot-based episodes. The remaining 15 “episodes” are promotional clips.

28. These misrepresentations are consistent with Apple’s Season Pass feature. For example, Apple represents the Season Pass for Season 6 of “The Americans” will provide consumers with 11 episodes:



29. As shown above, the Season Pass feature allows consumers to purchase 11 episodes of season six of “The Americans” for a set total price: \$24.99.

30. However, the Season Pass only provides consumers with 10 standard, plot-based episodes.

31. Apple is thereby deceiving consumers who use the Season Features by providing them with fewer standard, plot-based episodes than promised.

32. Consequently, consumers who utilize the Season Features are not receiving the benefit of the bargain and have been injured as a result of Apple’s false and misleading practices.

II. Plaintiffs And Other Consumers Have Been Deceived And Harmed

33. Plaintiffs and other consumers purchased Season Features from the iTunes store, reasonably relying on Apple’s representations that Plaintiffs and other consumers will receive a certain number of “episodes.”

1 34. Plaintiffs and other consumers reasonably interpret “episodes” to mean standard, plot-
2 based episodes of a show.

3 35. Therefore, when Apple represents that a consumer will receive a certain number of
4 episodes, Plaintiffs and other consumers reasonably believe they will receive that many standard,
5 plot-based episodes of a show.

6 36. Because the TV show seasons do not contain the full number of episodes as
7 represented on the iTunes home screens for the respective shows, as reasonably expected by Plaintiffs
8 and other consumers, Apple’s uniform practice regarding the marketing and sale of the Season
9 Features was and continues to be misleading and deceptive.

10 37. Had Plaintiffs and other consumers known that they would receive fewer standard,
11 plot-based episodes than Apple represented they would receive in purchasing the Season Features,
12 they would not have paid for the Season Features, or would have paid significantly less for them.

13 38. Therefore, Plaintiffs and members of the Classes have been deceived by Apple’s
14 representations and have suffered injury in fact as a result of Apple’s improper and deceptive
15 practices.

16 39. Because Apple and/or its agents marketed and designed the iTunes store, the Season
17 Features, and the information regarding the episodes, Apple knew or should have known that the
18 representations regarding the number of episodes in a season were false and misleading.

19 40. Apple knew or should have known that Plaintiffs and other members of the Classes,
20 in purchasing the Season Features, would rely on Apple’s representation regarding the number of
21 episodes in a season to mean that each episode was a standard, plot-based episode, not a promotional
22 clip.

23 41. Each class member has been exposed to the same or substantially similar deceptive
24 practice, as at all relevant times (1) Apple uniformly represents that its Season Features offer a certain
25 number of episodes; and (2) subsequent to class members’ purchases, Apple provides the class
26 members with fewer episodes than previously represented.

27 42. Despite being deceived by Apple, Plaintiffs wish and are likely to continue purchasing
28

1 Apple's iTunes Season Features, but only if Apple accurately represents the number of episodes to
2 be included by the Season Features. Although Plaintiffs regularly visit Apple's iTunes store, where
3 Apple's Season Features are sold, because Plaintiffs were deceived in the past by Apple, absent an
4 injunction, they will be unable to rely with confidence on Apple's representations in the future and
5 will therefore abstain from purchasing Season Features, even though they would like to purchase
6 them. In addition, members of the proposed classes run the risk of continuing to purchase the Season
7 Features under the assumption that the number of episodes promised by the Season Features would
8 actually be supplied subsequent to purchase. Until Apple redesigns its iTunes store, or Apple is
9 enjoined from making further false and misleading representations, Plaintiffs and other consumers
10 will continue to bear this ongoing injury.

11 43. As a result of its misleading business practice, and the harm caused to Plaintiffs and
12 other consumers, Apple should be required to pay for all damages caused to consumers, including
13 Plaintiffs. Furthermore, Apple should be enjoined from engaging in these deceptive practices.

14 **CLASS ACTION ALLEGATIONS**

15 44. Plaintiffs bring this case as a class action that may be properly maintained under
16 Federal Rule of Civil Procedure 23 on behalf of themselves and all persons in the United States who,
17 within the relevant statute of limitations periods, purchased for personal, family, or household,
18 purposes any of the Season Features on Apple TV 4 or 4k, for TV shows containing fewer episodes
19 than represented at the time of purchase ("Nationwide Class").

20 45. Plaintiff Zaragoza also seeks to represent a subclass defined as all California citizens
21 who, within the relevant statute of limitations periods, purchased any of the Season Features on Apple
22 TV 4 or 4k, for TV shows containing fewer episodes than represented at the time of purchase
23 ("California Subclass").

24 46. Plaintiff Zaragoza also seeks to represent a subclass defined as all California citizens
25 who, within the relevant statute of limitations periods, purchased, for personal, family, or household,
26 purposes any of the Season Features on Apple TV 4 or 4k, for TV shows containing fewer episodes
27 than represented at the time of purchase ("California Consumer Subclass").
28

1 47. Plaintiff Coyle also seeks to represent a subclass defined as all New York citizens who,
2 within the relevant statute of limitations periods, purchased any of the Season Features on Apple TV
3 4 or 4k, for TV shows containing fewer episodes than represented at the time of purchase (“New York
4 Subclass”).

5 48. Excluded from the Classes are Defendant, the officers and directors of the Defendant
6 at all relevant times, members of its immediate families and its legal representatives, heirs, successors
7 or assigns and any entity in which Defendant has or had a controlling interest. Any judge and/or
8 magistrate judge to whom this action is assigned, and any members of such judges’ staffs and
9 immediate families are also excluded from the Classes. Also excluded from the Classes are persons
10 or entities that purchased the Season Features for sole purposes of resale.

11 49. Plaintiffs hereby reserve the right to amend or modify the class definitions with greater
12 specificity or division after having had an opportunity to conduct discovery.

13 50. Plaintiff Zaragoza is a member of the Nationwide Class, California Subclass, and
14 California Consumer Subclass.

15 51. Plaintiff Coyle is a member of the Nationwide Class and the New York Subclass.

16 52. Numerosity: According to information and belief, Defendant has sold tens of
17 thousands of Season Features. The Season Features are sold online via Apple’s iTunes store. Further,
18 members of the Classes are so numerous that their individual joinder herein is impractical. While the
19 precise number of class members and their identities are unknown to Plaintiffs at this time, the number
20 may be determined through discovery.

21 53. Common Questions Predominate: Common questions of law and fact exist as to all
22 members of the Classes and predominate over questions affecting only individual class members.
23 Common legal and factual questions include, but are not limited to, whether Apple’s representations
24 regarding the number of episodes included in its Season Features are false and misleading, and
25 therefore violate various consumer protection statutes and common laws.

26 54. Typicality: Plaintiffs’ claims are typical of the claims of the Classes they seek to
27 represent in that Plaintiffs and members of the Classes were all exposed to the same or substantially
28

1 similar false and misleading representations, purchased the Season Features relying on the uniform
2 false and misleading representations, and suffered losses as a result of such purchases.

3 55. Adequacy: Plaintiffs are adequate representatives of the Classes because their
4 interests do not conflict with the interests of the members of the Classes they seek to represent, they
5 have retained competent counsel experienced in prosecuting class actions, and they intend to
6 prosecute this action vigorously. The interests of the members of the Classes will be fairly and
7 adequately protected by the Plaintiffs and their counsel.

8 56. Superiority: A class action is superior to other available means for the fair and efficient
9 adjudication of the claims of the members of the Classes. The size of each claim is too small to pursue
10 individually, and each individual Class member will lack the resources to undergo the burden and
11 expense of individual prosecution of the complex and extensive litigation necessary to establish
12 Defendant's liability. Individualized litigation increases the delay and expense to all parties and
13 multiplies the burden on the judicial system presented by the complex legal and factual issues of this
14 case. Individualized litigation also presents a potential for inconsistent or contradictory judgments.
15 The class action mechanism is designed to remedy harms like this one that are too small in value,
16 although not insignificant, to file individual lawsuits for.

17 57. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
18 23(b)(2) because Defendant has acted or refused to act on grounds that are generally applicable to the
19 class members, thereby making final injunctive relief appropriate with respect to all Classes.

20 58. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
21 23(b)(3) because the questions of law and fact common to the members of the Classes predominate
22 over any questions that affect only individual members, and because the class action mechanism is
23 superior to other available methods for the fair and efficient adjudication of the controversy.

FIRST CLAIM FOR RELIEF

Violation of California's Consumers Legal Remedies Act ("CLRA"),
California Civil Code §§ 1750, et seq.
(for the Nationwide Class; in the alternative, for the California Consumer Subclass)

59. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth herein.

60. Plaintiffs bring this claim individually and on behalf of the Nationwide Class, or in the alternative, for the California Consumer Subclass, against Defendant.

61. The Season Features are "services" pursuant to California Civil Code ("Cal. Civ. Code") § 1761(b), and the purchases of the Season Features by Plaintiffs and members of the Nationwide and California Consumer Subclass constitute "transactions" pursuant to Cal. Civ. Code § 1761(e). Further, Plaintiffs and members of the proposed Nationwide and California Consumer Subclass are consumers within the meaning of Cal. Civ. Code § 1761(d).

62. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have" By representing that the Season Features offer a specific number of episodes with consumers' purchase, Apple represents that the Season Features have a specific characteristic or quantity of episodes. However, the Season Features provide fewer episodes than represented. Apple also represents that the episodes included in the Season Features are standard, plot-based episodes and thereby are of a particular characteristic. However, many of the episodes included in the Season Features are not standard, plot-based episodes but promotional clips. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

63. Cal. Civ. Code § 1770(a)(7) prohibits "[r]epresenting 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." By representing that the Season Features offer a specific number of episodes with consumers' purchase, Apple represents that its services are of a particular standard or quality. Specifically, Apple represents that the Season Features have the standard or quality of containing the same number of episodes as represented to consumers prior to purchase. However, the Season Features provide fewer episodes than represented. Apple also represents that the episodes included in the Season Features are standard, plot-based episodes and thereby are of a particular standard, quality, and grade. However, many of the episodes included in

1 the Season Features are not standard, plot-based episodes but promotional clips. Therefore, Defendant has
2 violated section 1770(a)(7) of the CLRA.

3 64. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
4 to sell them as advertised.” Apple represents that the Season Features offer a specific number of episodes
5 with consumers’ purchase. However, the Season Features provide fewer episodes than represented. By
6 intentionally providing fewer episodes than represented to consumers, Apple has violated section
7 1770(a)(9) of the CLRA.

8 65. At all relevant times, Apple knew or reasonably should have known that the Season
9 Features did not supply all the episodes originally promised, and that Plaintiffs and other members of
10 the Nationwide and California Consumer Subclass would reasonably and justifiably rely on the
11 Season Features’ representations as to the number of episodes in purchasing the Season Features.

12 66. Plaintiffs and members of the Nationwide and California Consumer Subclass
13 reasonably and justifiably relied on Apple’s misleading and fraudulent representations about the
14 Season Features when purchasing them. Moreover, based on the very materiality of Apple’s
15 fraudulent and misleading conduct, reliance on such conduct as a material reason for the decision to
16 purchase the Season Features may be presumed or inferred for Plaintiffs and members of the
17 Nationwide and California Consumer Subclass.

18 67. Plaintiffs and members of the Nationwide and California Consumer Subclass suffered
19 injuries caused by Apple because they would not have purchased the Season Features, or would have
20 paid significantly less for the Season Features, had they known that Apple’s conduct was misleading
21 and fraudulent.

22 68. Under Cal. Civ. Code § 1780(a), Plaintiffs and members of the Nationwide and
23 California Consumer Subclass seek damages, restitution, declaratory and injunctive relief, and all
24 other remedies the Court deems appropriate for Apple’s violations of the CLRA.

25 69. Pursuant to Cal. Civ. Code § 1782, on July 31, 2018, counsel for Plaintiffs mailed a
26 notice and demand letter by certified mail, with return receipt requested, to Defendant.⁴ Defendant

27 ⁴ See **Exhibit “A”**.

received the notice and demand letter on August 2, 2018.⁵ Because Defendant has failed to fully rectify or remedy the damages caused within 30 days after receipt of the notice and demand letter, Plaintiffs timely filed the Class Action Complaint for a claim for damages under the CLRA.

SECOND CLAIM FOR RELIEF
Violation of California’s Unfair Competition Law (“UCL”),
California Business & Professions Code §§ 17200, et seq.
(for the Nationwide Class; in the alternative, for the California Subclass)

70. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth herein.

71. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class, or in the alternative, the California Subclass against Defendant.

72. UCL § 17200 provides, in pertinent part, that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising” California Business and Professional Code (“Cal. Bus. & Prof. Code”) §§ 17200.

73. Under the UCL, a business act or practice is “unlawful” if it violates any established state or federal law.

74. Apple’s false and misleading representations surrounding the number of episodes offered by the Season Features therefore was and continues to be “unlawful” because it violates the CLRA, California’s False Advertising Law (“FAL”), and other applicable laws as described herein.

75. As a result of Apple’s unlawful business acts and practices, Apple has and continues to unlawfully obtain money from Plaintiffs and members of both the Nationwide Class and California Subclass.

76. Under the UCL, a business act or practice is “unfair” if the defendant’s conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity of the harm to the alleged victims.

⁵ *Id.*

1 77. Apple's conduct was and continues to be of no benefit to purchasers of the Season
2 Features, as it is misleading, unfair, unlawful, and is injurious to consumers who rely on the
3 representations about the Season Features but do not get what they were expecting. Deceiving
4 consumers about the contents of the Season Features is of no benefit to the consumers. Therefore,
5 Defendant's conduct was and continues to be "unfair."

6 78. As a result of Apple's unfair business acts and practices, Apple has and continues to
7 unfairly obtain money from Plaintiff, and members of both the Nationwide Class and California
8 Subclass.

9 79. Under the UCL, a business act or practice is "fraudulent" if it actually deceives or is
10 likely to deceive members of the consuming public.

11 80. Apple's conduct here was and continues to be fraudulent because it has and will
12 continue to likely deceive consumers into believing that the Season Features would provide the same
13 number of episodes as represented prior to purchase, when they do not. Because Apple misled and
14 will likely continue to mislead Plaintiffs and members of both the Nationwide Class and California
15 Subclass, Apple's conduct was "fraudulent."

16 81. As a result of Apple's fraudulent business acts and practices, Apple has and continues
17 to fraudulently obtain money from Plaintiffs, and members of both the Nationwide Class and
18 California Subclass.

19 82. Plaintiffs request that this Court cause Apple to restore this unlawfully, unfairly, and
20 fraudulently obtained money to Plaintiffs, and members of both the Nationwide Class and California
21 Subclass, to disgorge the profits Apple made on these transactions, and to enjoin Apple from violating
22 the UCL or violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff,
23 and members of both the Nationwide Class and California Subclass may be irreparably harmed and/or
24 denied an effective and complete remedy if such an order is not granted.

25 83. Monetary damages are an inadequate remedy at law because injunctive relief is
26 necessary to deter Defendant from continuing its false and deceptive conduct regarding the Season
27 Features.

THIRD CLAIM FOR RELIEF
Violation of California’s False Advertising Law (“FAL”),
California Business & Professions Code §§ 17500, et seq.
(for the Nationwide Class; in the alternative, for the California Subclass)

84. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth herein.

85. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class, or in the alternative, for the California Subclass against Apple.

86. California’s FAL makes it “unlawful for any person . . . to make or disseminate or cause to be made or disseminated before the public in . . . any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or . . . services, professional or otherwise . . . or performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code §§ 17500.

87. Apple has represented and continues to represent to the public, including Plaintiffs and members of both the Nationwide Class and California Subclass, that the Season Features contain a specific number of standard episodes. Apple’s representations are false and misleading because the Season Features do not provide consumers with the full number of episodes represented prior to purchase. Because Apple has disseminated false and misleading information regarding their Season Features, and Apple knew or should have known, through the exercise of reasonable care, that the information was and continues to be false and misleading, Apple has violated the FAL and continues to do so.

88. As a result of Apple’s false advertising, Apple has and continues to fraudulently obtain money from Plaintiffs and members of both the Nationwide Class and California Subclass.

89. Plaintiffs request that this Court cause Apple to restore this fraudulently obtained money to Plaintiffs and members of both the Nationwide Class and California Subclass, to disgorge the profits Apple made on these transactions, and to enjoin Apple from violating the FAL or violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiffs and members of both the Nationwide Class and California Subclass may be irreparably harmed and/or denied an effective

1 and complete remedy if such an order is not granted.

2 90. Monetary damages are an inadequate remedy at law because injunctive relief is
3 necessary to deter Apple from continuing its false and deceptive conduct regarding the Season
4 Features.

5 **FOURTH CLAIM FOR RELIEF**
6 **Breach of Express Warranty**
(for the Nationwide Class; in the alternative, for the California Subclass
and New York Subclass)

7 91. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth
8 herein.

9 92. Plaintiffs bring this claim individually and on behalf of the members of the proposed
10 Nationwide Class. In the alternative, Plaintiffs bring this claim individually and on behalf of the
11 proposed California Subclass and New York Subclass.

12 93. California Commercial Code (“Cal. Comm. Code”) § 2313 provides that “(a) Any
13 affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes
14 part of the basis of the bargain creates an express warranty that the goods shall conform to the
15 affirmation or promise,” and “(b) Any description of the goods which is made part of the basis of the
16 bargain creates an express warranty that the goods shall conform to the description.” Cal. Comm.
17 Code § 2313. New York’s express warranty law is identical. *See* New York Uniform Commercial
18 Code (“N.Y. U.C.C.”) § 2-313.

19 94. Defendant has expressly warranted that the Season Features contain a specific number
20 of episodes, which consumers understand to mean standard, plot-based episodes. These
21 representations about the Season Features: (1) are affirmations of fact or promises made by Apple, to
22 consumers, that the Season Features will provide a specific number of standard, content-based
23 episodes; (2) became part of the basis of the bargain to purchase the Season Features; and (3) created
24 an express warranty that the Season Features would conform to the affirmation of fact or promise. In
25 the alternative, the representations are descriptions of goods, which were made as part of the basis of
26 the bargain to purchase the Season Features, and which created an express warranty that the Season
27 Features would conform to the Season Features’ description.

1 95. Plaintiffs and members of the Classes reasonably and justifiably relied on the
2 foregoing express warranty in purchasing the Season Features, believing that that the Season Features
3 did in fact conform to the warranty.

4 96. Apple has breached the express warranty made to Plaintiffs and members of the
5 Classes by failing to sell the Season Features to satisfy the warranty that the Season Features would
6 provide a specific number of standard, plot-based episodes.

7 97. Plaintiffs and members of the Classes did not obtain the full value of the Season
8 Features as represented. If Plaintiffs and members of the Classes had known of the true nature of the
9 Season Features, they would not have purchased the Season Features or would have paid less for
10 them.

11 98. As a result, Plaintiffs and members of the Classes have suffered injury and deserve to
12 recover all damages afforded under the law.

13
14 **FIFTH CLAIM FOR RELIEF**
15 **Breach of Implied Warranty**
16 *(for the Nationwide Class; in the alternative, for the California Subclass*
17 *and New York Subclass)*

18 99. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth
19 herein.

20 100. Plaintiffs bring this claim individually and on behalf of the members of the proposed
21 Nationwide Class. In the alternative, Plaintiffs bring this claim individually and on behalf of the
22 proposed California Subclass and New York Subclass.

23 101. California Commercial Code § 2314(1) provides that “a warranty that the goods shall
24 be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods
25 of that kind.” Cal. Comm. Code § 2314(1). New York implied warranty law is identical in this
26 respect. *See* N.Y. U.C.C. § 2-314(1).

27 102. Furthermore, California Commercial Code § 2314(2) provides that “[g]oods to be
28 merchantable must be at least such as . . . [c]onform to the promises or affirmations of fact made on
the container or label if any.” Cal. Comm. Code § 2314(2)(f). New York implied warranty law is

1 identical in this respect. *See* N.Y. U.C.C. § 2-314(2)(f).

2 103. Apple is a merchant with respect to the sale of TV shows and TV show season bundles,
3 such as the Season Features in this action. Therefore, a warranty of merchantability is implied in
4 every contract for sale of the Season Features to consumers.

5 104. In representing on the home page of the TV shows that the Season Features contain a
6 specific number of episodes, Apple has provided a promise or affirmation of fact to consumers that
7 the Season Features would provide consumers with the same number of episodes.

8 105. However, many of these “episodes” are not true episodes, but rather promotional clips
9 which consumers do not interpret as episodes.

10 106. Therefore, Apple has breached its implied warranty of merchantability regarding the
11 Products.

12 107. If Plaintiffs and members of both the Classes had known that the Season Features did
13 not conform to Apple’s promise or affirmation of fact, they would not have purchased the Season
14 Features or would have paid less for them. Therefore, as a direct and/or indirect result of Defendant’s
15 breach, Plaintiffs and members of the Classes have suffered injury and deserve to recover all damages
16 afforded under the law.

17 **SIXTH CLAIM FOR RELIEF**

Common Law Fraud

18 *(for the Nationwide Class; in the alternative, for the California Subclass
and New York Subclass)*

19 108. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth
20 herein.

21 109. Plaintiffs bring this claim individually and on behalf of the members of the Classes
22 against Defendant.

23 110. Apple has willfully, falsely, and knowingly over-represented the number of episodes
24 included in the sale of its Season Features. Therefore, Apple has made knowing misrepresentations
25 as to the Season Features.

26 111. Apple’s misrepresentations were material (i.e., the type of misrepresentations to which
27 a reasonable person would attach importance and would be induced to act thereon in making purchase
28

1 decisions), because they relate to the composition of the Season Features, the number of episodes
2 included in the purchase.

3 112. Apple knew or recklessly disregarded the fact that the Season Features would provide
4 consumers with fewer episodes than what was represented to consumers before their purchase.

5 113. Apple intended that Plaintiffs and other consumers rely on these representations, as
6 the representations are made prominently on the home screen of TV shows sold on Apple's iTunes
7 store.

8 114. Plaintiffs and members of the Classes have reasonably and justifiably relied on
9 Defendant's misrepresentations when purchasing the Season Features and had the correct facts been
10 known, would not have purchased the Season Features or would not have purchased them at the prices
11 at which they were offered.

12 115. Therefore, as a direct and proximate result of Apple's fraud, Plaintiffs and members
13 of the Classes have suffered economic losses and other general and specific damages, including but
14 not limited to the amounts paid for the Products, and any interest that would have accrued on those
15 monies, all in an amount to be proven at trial.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Quasi-Contract/Restitution**

18 *(for the Nationwide Class; in the alternative, for the California Subclass
and New York Subclass)*

19 116. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth
20 herein.

21 117. Plaintiffs bring this claim individually and on behalf of the members of the Classes
22 against Defendant.

23 118. As alleged herein, Apple intentionally, recklessly, and/or negligently made a
24 misleading representation about the Season Features to Plaintiffs and members of the Classes to
25 induce them to purchase the Products. Plaintiffs and members of the Classes have reasonably relied
26 on the misleading representation and have not received all of the benefits promised by Apple.
27 Plaintiffs and members of the Classes therefore have been induced by Apple's misleading and false
28

1 representations about the Season Features, and paid for them when they would and/or should not
 2 have, or paid more money to Apple for the Season Features than they otherwise would and/or should
 3 have paid.

4 119. Plaintiffs and members of the Classes have conferred a benefit upon Apple as Apple
 5 have retained monies paid to them by Plaintiffs and members of the Classes.

6 120. The monies received were obtained under circumstances that were at the expense of
 7 Plaintiffs and members of the Classes – i.e., Plaintiffs and members of the Classes did not receive the
 8 full value of the benefit conferred upon Apple because Apple did not provide the same number of
 9 episodes as originally represented to consumers.

10 121. Therefore, it is inequitable and unjust for Apple to retain the profit, benefit, or
 11 compensation conferred upon them without paying Plaintiffs and the members of the Classes back
 12 for the difference of the full value of the benefit compared to the value actually received.

13 122. As a direct and proximate result of Apple's unjust enrichment, Plaintiffs and members
 14 of the Classes are entitled to restitution, disgorgement, and/or the imposition of a constructive trust
 15 upon all profits, benefits, and other compensation obtained by Apple from its deceptive, misleading,
 16 and unlawful conduct as alleged herein.

17 123. Monetary damages are an inadequate remedy at law because injunctive relief is
 18 necessary to deter Apple from continuing its false and deceptive conduct regarding the Products.

19 **EIGHTH CLAIM FOR RELIEF**
 20 **Violation of New York's General Business Law ("GBL"),**
 21 **New York Gen. Bus. Law § 349**
(for the New York Subclass)

22 124. Plaintiff Coyle repeats the allegations contained in paragraphs 1-58 above as if fully
 23 set forth herein.

24 125. Plaintiff Coyle brings this claim individually and on behalf of the members of the
 25 proposed New York Subclass against Defendant.

26 126. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts
 27 and practices by making the material misrepresentations regarding the number of episodes included
 28

1 in the sale of its Season Features.

2 127. The foregoing deceptive acts and practices were directed at consumers.

3 128. The foregoing deceptive acts and practices are misleading in a material way because
4 they fundamentally misrepresent the number of episodes of the Season Features to induce consumers
5 to purchase them.

6 129. Plaintiff Coyle and members of the New York Subclass were injured because they
7 paid for the Season Features, which they would not have done, or they would have paid less for had
8 they known that the Season Features carried fewer episodes than represented.

9 130. On behalf of himself and the members of the New York Subclass, Plaintiff Coyle seeks
10 to enjoin the unlawful acts and practices described herein, to recover their actual damages or fifty
11 dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

12 **NINTH CLAIM FOR RELIEF**
13 **Violation of New York's GBL,**
14 **New York Gen. Bus. Law § 350**
(for the New York Subclass)

15 131. Plaintiff Coyle repeats the allegations contained in paragraphs 1-58 above as if fully
16 set forth herein.

17 132. Plaintiff Coyle brings this claim individually and on behalf of the members of the
18 proposed New York Subclass against Defendant.

19 133. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is
20 deceptive and misleading in a material way and which constitutes false advertising in violation of
21 Section 350 of the GBL.

22 134. Defendant's false, misleading, and deceptive representations of fact, including but not
23 limited to the misrepresentations regarding the Season Features, were and are directed to consumers.

24 135. Defendant's false, misleading, and deceptive representations of fact, including but not
25 limited to the misrepresentations regarding the Season Features, were and are likely to mislead a
26 reasonable consumer acting reasonably under the circumstances.

27 136. Defendant's false, misleading, and deceptive representations of fact, including but not
28

1 limited to the misrepresentations regarding the Season Features, have resulted in consumer injury or
2 harm to the public interest.

3 137. As a result of Defendant's false, misleading, and deceptive representations of fact,
4 including but not limited to the misrepresentation regarding the Season Features, Plaintiff Coyle and
5 members of the New York Subclass have suffered and continue to suffer economic injury.

6 138. Plaintiff Coyle and members of the New York Subclass suffered an ascertainable loss
7 caused by Defendant's misrepresentations because they paid for the Season Features when they would
8 not have done so, or would have paid less for them, had they known the Season Features had fewer
9 episodes than represented.

10 139. On behalf of himself and the members of the New York Subclass, Plaintiff Coyle seeks
11 to enjoin the unlawful acts and practices described herein, to recover their actual damages or five
12 hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek
15 judgment against Defendant as follows:

16 a) For an order certifying the Nationwide Class, the New York Subclass, the
17 California Subclass, and the California Consumer Subclass, under Rule 23 of the Federal Rules of
18 Civil Procedure; naming Plaintiffs as representatives of all Classes, and; naming Plaintiffs'
19 attorneys as Class Counsel to represent all Classes;

20 b) For an order declaring that Apple's conduct violates the statutes and laws
21 referenced herein;

22 c) For an order finding in favor of Plaintiffs, and all Classes, on all counts asserted
23 herein;

24 d) For an order awarding all damages in amounts to be determined by the Court and/or
25 jury;

26 e) For prejudgment interest on all amounts awarded;

27 f) For interest on the amount of any and all economic losses, at the prevailing legal
28

1 rate;

2 g) For an order of restitution and all other forms of equitable monetary relief;

3 h) For injunctive relief as pleaded or as the Court may deem proper;

4 i) For an order awarding Plaintiffs and all Classes their reasonable attorneys' fees,
5 expenses and costs of suit, including as provided by statute such as under Fed. R. Civ. P. 23(h),
6 New York Gen. Bus. Law §§ 349 and 350, and California Code of Civil Procedure section 1021.5;
7 and

8 j) For any other such relief as the Court deems just and proper.

9 **DEMAND FOR TRIAL BY JURY**

10 Plaintiffs demands a trial by jury on all issues so triable.

11
12 Dated: October 5, 2018

FARUQI & FARUQI, LLP

13
14 By: /s/ Benjamin Heikali
Benjamin Heikali, Bar No. 307466
15 Joshua Nassir, Bar No. 318344
10866 Wilshire Blvd., Suite 1470
16 Los Angeles, CA 90024
Telephone: 424.256.2884
17 Fax: 424.256.2885
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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Gabriela Zaragoza, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because Defendant conducts a substantial amount of business in this District, Defendant is incorporated in California, and Defendant maintains its principal place of business in Cupertino, California, which is located in this District.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, executed on October 4, 2017 at Davis, California.



Gabriela Zaragoza

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Joseph Coyle, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of New York. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because Defendant conducts a substantial amount of business in this District, Defendant is incorporated in California, and Defendant maintains its principal place of business in Cupertino, California, which is located in this District.

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct, executed on October 4, 2017 at New York City, New York.



Joseph Coyle

EXHIBIT A



FARUQI & FARUQI
LLP
ATTORNEYS AT LAW

NEW YORK

CALIFORNIA

DELAWARE

PENNSYLVANIA

GEORGIA

Ben Heikali
bheikali@faruqilaw.com

July 31, 2018

Via Certified U.S. Mail
Return Receipt Requested

Apple Inc.
1 Infinite Loop
Cupertino, California 95014

Re: *Class Action Notification and Pre-Lawsuit Demand Pursuant to California Civil Code Section 1782 and All Other Applicable Laws Requiring Pre-Suit Notice Concerning iTunes Season Feature Options*

To Whom It May Concern:

Please be advised that Faruqi & Faruqi, LLP represents Gabriela Hidalgo Zaragoza and Joseph Coyle (together, "Clients"), purchasers of Apple iTunes Season Passes. Our Clients seek to represent a class of consumers ("Class") who, within the relevant time-period,¹ purchased any completed TV show season ("Buy Season") or Apple iTunes Season Pass ("Season Pass") (collectively, the "Season Features") on iTunes. All further communications intended for our Clients must be directed through this office. Furthermore, this demand and notice letter to Apple Inc. ("Apple") is meant to comply with the requirements of California Civil Code §1782, and all other laws requiring a pre-suit demand and notice prior to litigation, on behalf of our Clients and all others similarly situated should this matter proceed to litigation.

During the relevant time-period, Apple was, and continues to be, responsible for the marketing and sale of the Season Features, which can be purchased by consumers via iTunes on media platforms such as Apple TV or on consumers' personal computers. When browsing the home screen for any TV show available on the iTunes store, Apple gives consumers three purchase options. First, consumers may purchase individual episodes at a set cost per episode. Second, if Apple offers a completed season with no episodes remaining, consumers may use the "Buy Season" feature to purchase the entire season for a set total price. Third, if Apple offers an incomplete season, where future episodes will be released at a later date, consumers may purchase the "Season Pass" to receive all current and future episodes for the season at a set total price.

¹ From four years prior to the date of a prospective complaint filed by our Clients.



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On May 31, 2017, Ms. Zaragoza, a consumer residing in Davis, California, purchased a Season Pass for the show “Genius: Einstein” on her Apple TV. Based on Apple’s representation that there were 13 episodes in the season so far, Ms. Zaragoza purchased the entire season at once reasonably believing that season had at least 13 standard episodes and that she was therefore going to receive at least 13 standard episodes for that season. Only after her purchase did Ms. Zaragoza find out that there were not 13 standard episodes included in her purchase at the time, but rather only 6 standard episodes and 7 “behind the scenes” clips. Moreover, once all the episodes were released, there were only 10 standard episodes.

On May 20, 2018, Mr. Coyle, a consumer residing in New York, New York, purchased a Season Pass for the show “Killing Eve” on his Apple TV. Mr. Coyle made his decision to purchase the Season Pass based on Apple’s representation that there were 11 episodes in the season so far, believing that he was therefore going to receive at least 11 standard episodes for that season. Only after the purchase did Mr. Coyle find out that there were not 11 standard episodes included in his purchase at the time, but rather only 5 standard episodes and 6 “behind the scenes” clips. Moreover, once all the episodes were released, there were only a total of 8 standard episodes.

As an example, Apple represents that the Season Pass for Season 6 of “The Americans” will provide consumers with eleven episodes:





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As shown above, Apple represents that consumers may purchase the Season Pass for season 6 of *The Americans* for \$24.99. Despite representing that this season contains “11 Episodes”, the complete sixth season of *The Americans* only contains 10 standard episodes. Apple is thereby deceiving consumers who use the Season Features by providing them with fewer episodes than promised. Consequently, consumers who utilize the Season Features are not receiving the benefit of the bargain and have been injured as a result of Apple’s false and misleading practices.

These misrepresentations are consistent with Apple’s Buy Season feature as well. For example, Apple represents the Buy Season feature for Season 2 of “*Westworld*” will provide consumers with 25 episodes:



As shown above, Apple represents that consumers may purchase the Buy Season feature for season 2 of *Westworld* for \$38.99. Despite representing that this season contains “25 Episodes,” the complete second season of *Westworld* only contains ten standard episodes.

These business practices violate several California consumer protection statutes and laws. Pursuant to California Civil Code §1782(a)(1), our Clients and the Class further provide notice that



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they believe Apple has violated, and continues to violate, the California Consumers Legal Remedies Act (“CLRA”), and specifically California Civil Code §1770, in at least the following manner:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have (Section 1770(a)(5));
2. 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 (Section 1770(a)(7)); and
3. Advertising goods or services with intent not to sell them as advertised (Section 1770(a)(9)).

Additionally, these business practices violate, *inter alia*, several New York statutes and laws. Pursuant to N.Y. U.C.C. § 2-607, our Clients and the Class further provide notice that they believe Apple has violated, and continues to violate, N.Y. U.C.C. §§ 2-313 and 2-314 in at least the following manner:

1. Breach of express warranty that the Season Features provide the number of episodes as represented on the home screens for TV shows sold on Apple’s iTunes platform; and
2. Breach of implied warranty that the Season Features provide the number of episodes as represented on the home screens for TV shows sold on Apple’s iTunes platform.

This letter not only serves as notification of Apple’s alleged violations of California Civil Code § 1770, *et seq.* and N.Y. U.C.C. §§ 2-313 and 2-314 as outlined above, but also as our Clients’ demand, and the demand of all others similarly situated, that Apple immediately correct, repair, refund and otherwise rectify the violations of Cal. Civ. Code § 1770, N.Y. U.C.C. §§ 2-313 and 2-314, and the other statutes and causes of action referenced above, on a class-wide basis.

It is also our opinion that Apple has also violated, and continues to violate, California Business and Professions Code §§ 17200 and 17500, the New York Consumer Protection From Deceptive Trade Practices Act, N.Y. Gen. Bus. § 349, *et seq.*, in addition to common law and other statutory violations.

To cure the harmful conduct noted herein, we demand that Apple: (1) cease and desist from advertising and selling of the Season Features in a false and misleading manner; and (2) make full restitution to the Class of all money obtained from the sales thereof.



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We further demand that Apple preserve all documents, emails, other electronically stored information and other evidence which refer or relate to any of the above-described practices, including, but not limited to:

1. All documents concerning the Season Features;
2. All documents concerning the decision to promise a given number of episodes per season;
3. All documents concerning communications with purchasers of the Season Features;
4. All documents concerning the sales volume of the Season Features (in units and/or dollars), and the revenues derived therefrom; and
5. All documents concerning the identities and location of potential class members who purchased the Season Features.

Further, this letter serves as a thirty (30) day notice and demand requirement under §1782 for damages. Accordingly, should Apple fail to rectify the unfair and deceptive scheme within thirty (30) days of receipt of this letter, our Clients will file a class action complaint for actual damages, punitive damages, and all other damages permitted under the CLRA and the other statutes and causes of action available to them, along with interest, attorneys' fees and costs for Apple's violations.

We are willing to discuss an appropriate way to remedy the demands asserted in this letter. If Apple wishes to enter into such a discussion, please contact our firm immediately. If we do not hear from Apple promptly, we will conclude that Apple is not interested in resolving this dispute short of litigation in the form of a class action lawsuit. If Apple contends that any statement in this letter is inaccurate in any respect, please provide our firm with Apple's contentions and supporting documents promptly.

Please contact the undersigned if there are any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ben Heikali'.

Ben Heikali, Esq.

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 Street & Apt. No., or PO Box No. **1 INFINITE LOOP**
 City, State, ZIP+4[®] **CUPERTINO, CA 95014**

PS Form 3800, July 2014 See Reverse for Instructions

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1 INFINITE LOOP
CUPERTINO, CA 95014

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
Gabriela Zaragoza and Joseph Coyle, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Faruqi & Faruqi, LLP
10866 Wilshire Boulevard, Suite 1470, Los Angeles, CA 90024
Tel: 424-256-2884

DEFENDANTS
Apple Inc.

County of Residence of First Listed Defendant Santa Clara
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment Of Veteran's Benefits</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div> <div>153 Recovery of Overpayment of Veteran's Benefits</div> <div>160 Stockholders' Suits</div> <div>190 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div> <div>REAL PROPERTY</div> <div>210 Land Condemnation</div> <div>220 Foreclosure</div> <div>230 Rent Lease & Ejectment</div> <div>240 Torts to Land</div> <div>245 Tort Product Liability</div> <div>290 All Other Real Property</div>	<div>PERSONAL INJURY</div> <div>310 Airplane</div> <div>315 Airplane Product Liability</div> <div>320 Assault, Libel & Slander</div> <div>330 Federal Employers' Liability</div> <div>340 Marine</div> <div>345 Marine Product Liability</div> <div>350 Motor Vehicle</div> <div>355 Motor Vehicle Product Liability</div> <div>360 Other Personal Injury</div> <div>362 Personal Injury -Medical Malpractice</div> <div>CIVIL RIGHTS</div> <div>440 Other Civil Rights</div> <div>441 Voting</div> <div>442 Employment</div> <div>443 Housing/ Accommodations</div> <div>445 Amer. w/Disabilities-- Employment</div> <div>446 Amer. w/Disabilities--Other</div> <div>448 Education</div> <div>PERSONAL INJURY</div> <div>365 Personal Injury -- Product Liability</div> <div>367 Health Care/ Pharmaceutical Personal Injury Product Liability</div> <div>368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div><input checked="" type="checkbox"/> 370 Other Fraud</div> <div>371 Truth in Lending</div> <div>380 Other Personal Property Damage</div> <div>385 Property Damage Product Liability</div> <div>PRISONER PETITIONS</div> <div>HABEAS CORPUS</div> <div>463 Alien Detainee</div> <div>510 Motions to Vacate Sentence</div> <div>530 General</div> <div>535 Death Penalty</div> <div>OTHER</div> <div>540 Mandamus & Other</div> <div>550 Civil Rights</div> <div>555 Prison Condition</div> <div>560 Civil Detainee-- Conditions of Confinement</div>	<div>625 Drug Related Seizure of Property 21 USC § 881</div> <div>690 Other</div> <div>LABOR</div> <div>710 Fair Labor Standards Act</div> <div>720 Labor/Management Relations</div> <div>740 Railway Labor Act</div> <div>751 Family and Medical Leave Act</div> <div>790 Other Labor Litigation</div> <div>791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div>462 Naturalization Application</div> <div>465 Other Immigration Actions</div>	<div>422 Appeal 28 USC § 158</div> <div>423 Withdrawal 28 USC § 157</div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights</div> <div>830 Patent</div> <div>835 Patent--Abbreviated New Drug Application</div> <div>840 Trademark</div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff)</div> <div>862 Black Lung (923)</div> <div>863 DIWC/DIWW (405(g))</div> <div>864 SSID Title XVI</div> <div>865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant)</div> <div>871 IRS--Third Party 26 USC § 7609</div>	<div>375 False Claims Act</div> <div>376 Qui Tam (31 USC § 3729(a))</div> <div>400 State Reapportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced & Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>490 Cable/Sat TV</div> <div>850 Securities/Commodities/ Exchange</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>893 Environmental Matters</div> <div>895 Freedom of Information Act</div> <div>896 Arbitration</div> <div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div> <div>950 Constitutionality of State Statutes</div>

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

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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)
Brief description of cause:
Violation of California and New York state laws, breach of express warranty, breach of implied warranty, common law fraud, and quasi-contract/restitution.

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 10/05/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Benjamin Heikali

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

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

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

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