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JESSICA LEE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JESSICA LEE, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

APPLE INC.,

Defendants.

Case No.: 5:18-cv-07235

CLASS ACTION COMPLAINT

- 1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT (“CLRA”), CIVIL CODE §1750, ET SEQ.;**
- 2. VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.;**
- 3. VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW (“FAL”), 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**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Jessica Lee (“Plaintiff”), on behalf of herself and all others similarly
2 situated, by and through her counsel, hereby brings this Class Action Complaint against
3 Apple Inc. (“Defendant” or “Apple”), alleging, upon knowledge as to herself and her
4 known acts, and upon information and belief as to all other matters, the following:

5 **I.**

6 **PARTIES**

7 1. Plaintiff Jessica Lee is a citizen of, and domiciled in, California, and she
8 resides in San Francisco, California.

9 2. Defendant Apple Inc. (“Apple”) is a California corporation with its
10 principal place of business in Cupertino, California. Apple, directly and/or through its
11 employees, agents and representatives, markets and sells various through various
12 distribution channels, including, without limitation, on or more mobile apps.

13 **II.**

14 **JURISDICTION AND VENUE**

15 3. This Court has subject matter jurisdiction over this class action pursuant 28
16 U.S.C. § 1331 because a federal claim is pleaded and pursuant to 28 U.S.C. § 1332, as
17 amended, because: (a) the number of members of the proposed plaintiff class is greater
18 than 100; (b) at least one class member and Defendant are citizens of different states;
19 and (c) the aggregated claims of the individual Class members exceed \$5,000,000.00,
20 exclusive of interest and costs.

21 4. This Court has personal jurisdiction over Plaintiff because Plaintiff resides
22 in California and submits to the Court’s jurisdiction in this case.

23 5. This Court has personal and general jurisdiction over Defendant because
24 Defendant is incorporated in California and maintains its principal place of business /
25 “nerve center” in Cupertino, California, where it is headquartered. Further, Defendants
26 have transacted business in this district, and have violated laws in this judicial district.
27 Defendants have established minimum contacts with this forum and the exercise of
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1 jurisdiction over Defendants would not offend the traditional notions of fair play and
2 substantial justice.

3 6. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b)-(d) for
4 numerous reasons, including, but not limited to, that Defendant is headquartered in this
5 district and conducts a significant amount of business in this district.

6 **III.**

7 **FACTUAL ALLEGATIONS**

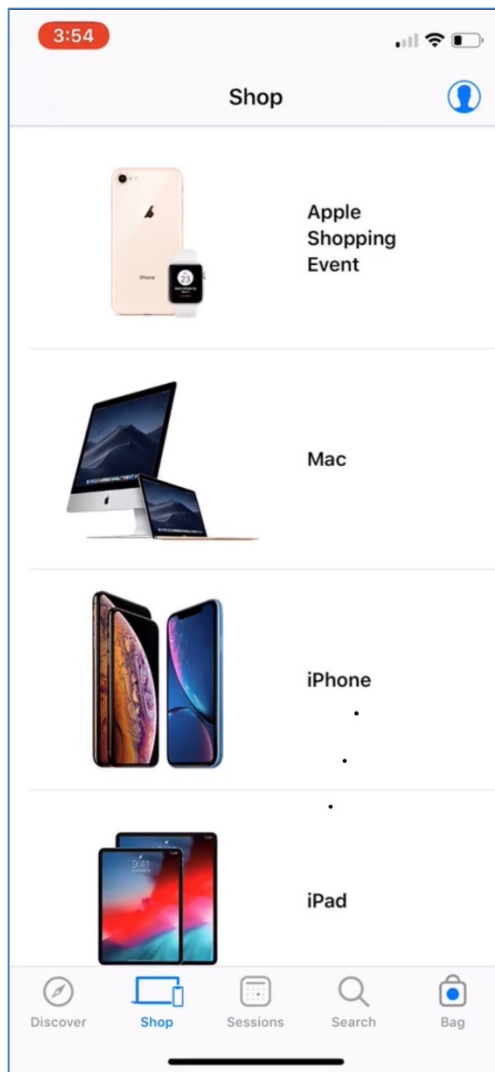
8 7. The day after Thanksgiving, known informally as “Black Friday”, is the
9 busiest shopping day of the year for American consumers. The first Monday after
10 Thanksgiving, known informally as “Cyber Monday” is also an extremely busy
11 shopping day, particularly for technology products. During the time around Black
12 Friday and Cyber Monday, major retailers routinely offer significant discounts on
13 products to entice consumers.

14 8. This past Black Friday through Cyber Monday, Apple held a so-called
15 “Apple Shopping Event” – a four-day-long special holiday sales event (the “Apple
16 Shopping Event”), which lasted from November 23, 2018 through November 26, 2018
17 (the “Sales Period”). During the Sales Period, Apple advertised and marketed a series
18 of its products that, for customers who purchased such products within the Sales Period,
19 purportedly came with an Apple Store Gift Card ranging from \$25 - \$200, depending on
20 the product (each, a “Gift Card”).

21 9. The Apple Shopping Event was advertised and marketed in Apple stores,
22 on the Apple internet website, and on the Apple Store mobile application (the “App”).

23 10. However, in advertising and marketing the Apple Shopping Event on the
24 App, Apple advertised and marketed certain of its products in a manner that falsely and
25 misleadingly led customers to believe that the purchase of such products included the
26 applicable Gift Card.

1 11. Specifically, the App displayed on its “Shop” page a series of large,
2 clickable image links, the top one being for the “Apple Shopping Event”, with other
3 links further down the page being for “Mac”, “iPhone” and other products:



22 12. When consumers clicked on the “Apple Shopping Event” link, they were
23 led to believe that the products accessed by such link are part of the “Apple Shopping
24 Event”, including any sales or special rebates, etc., applied thereto. This is especially
25 true since the other links on the “Shop” page of the App allowed consumers to buy the
26 same products irrespective of whether they were subject to the Apple Shopping Event.
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1 13. After clicking on the Apple Shopping Event link on the App, consumers
2 reached a page listing specific Apple products that were represented by Apple to be part
3 of the Apple Shopping Event:



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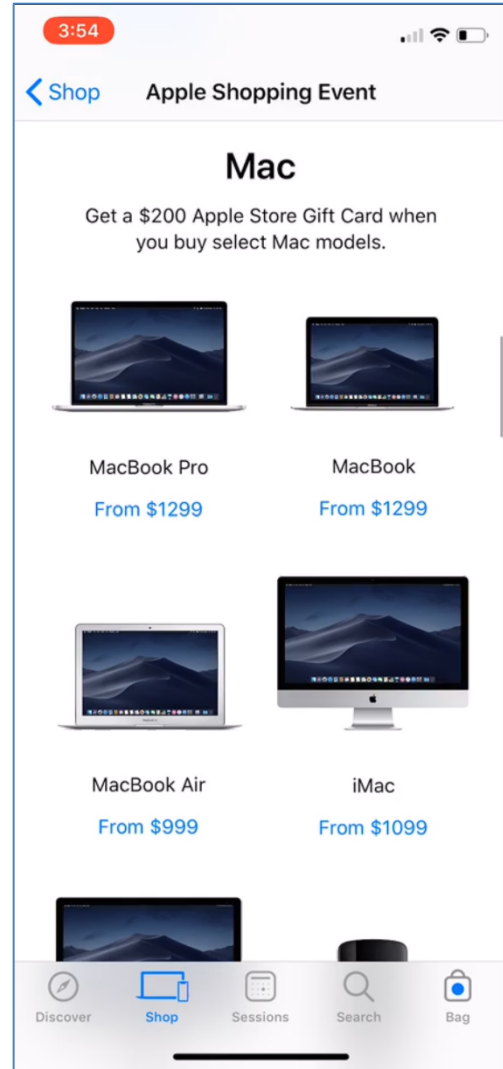
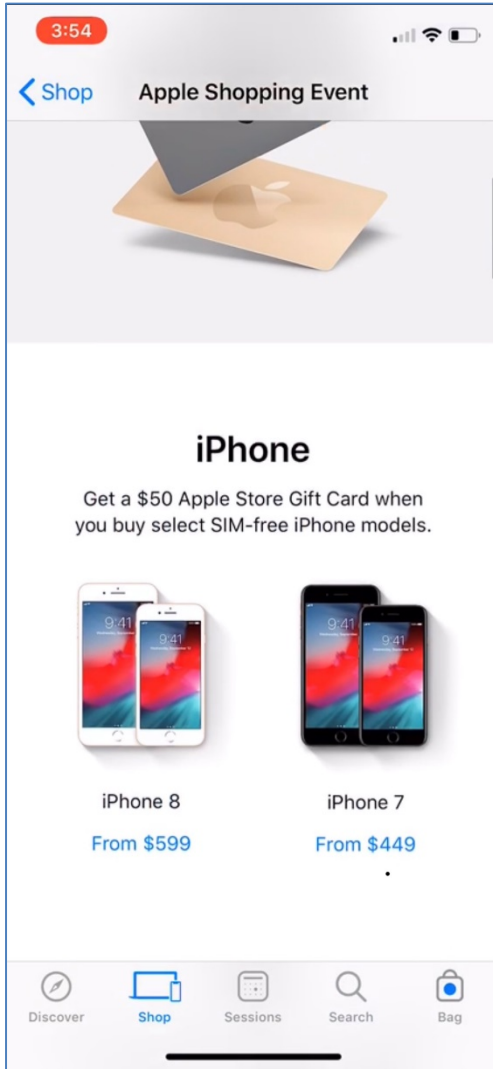
22 14. Scrolling down on the page, consumers could click on different Apple
23 products that were again represented by Apple to be included in the special Apple
24 Shopping Event:

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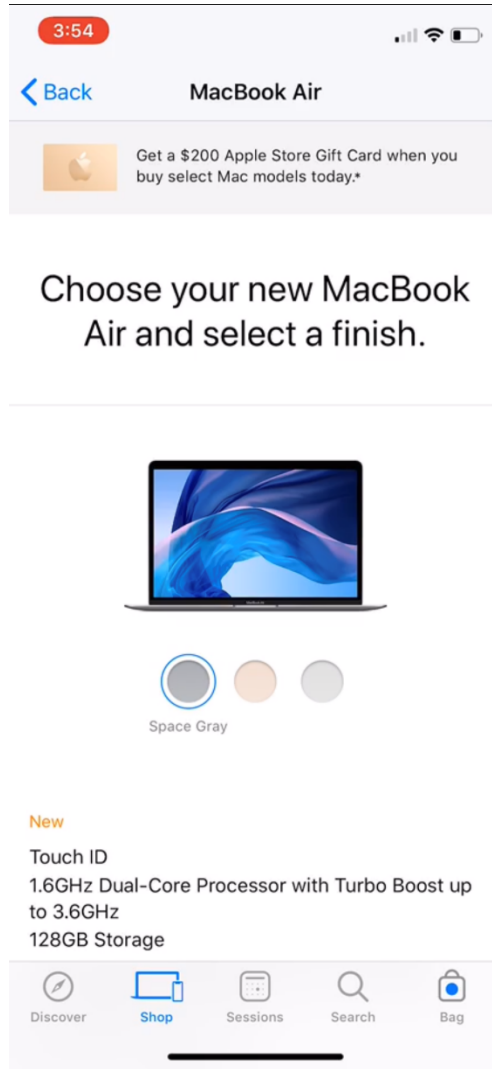
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15. Further, after clicking on an applicable product, Apple again represented to consumers that the products on these pages were part of the Apple Shopping Event and eligible for Gift Cards.

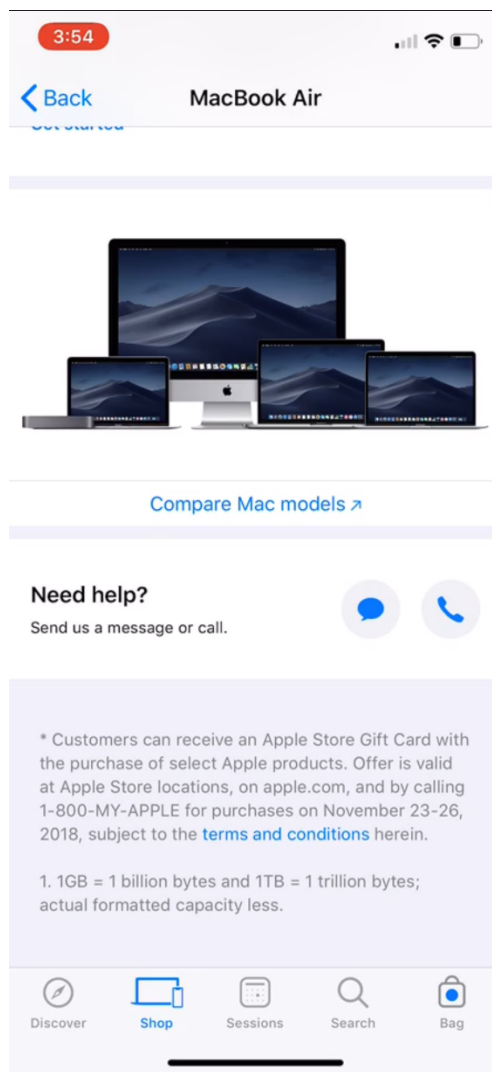
16. For example, when consumers clicked on the MacBook Air link (which link is shown in the screenshot immediately above and to the right of this paragraph), the following screen appeared:



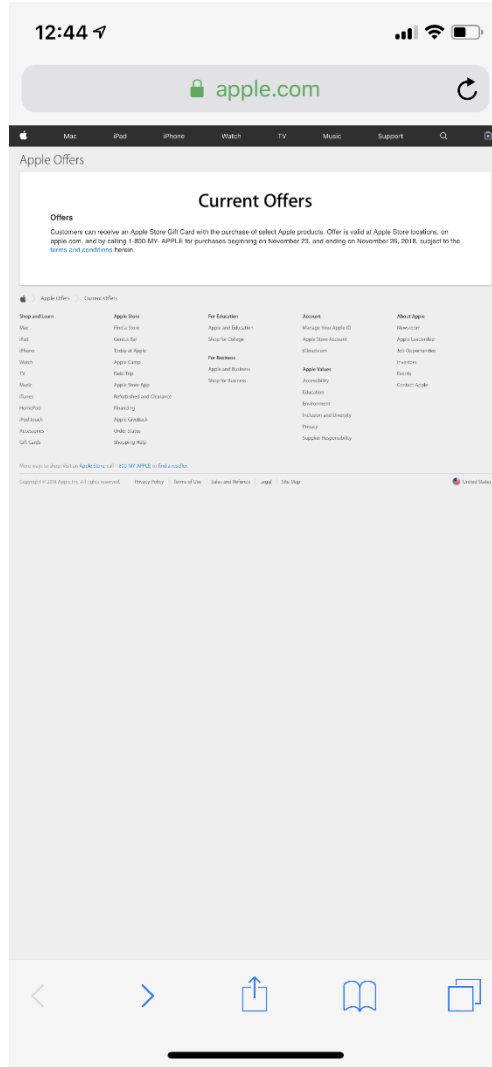
19 17. Again, the applicable pages of the App falsely led consumers to believe
20 that the products contained on said pages were eligible for the applicable Gift Card.

21 18. When Apple marketed its Apple Shopping Event advertisements and Gift
22 Card offer with respect to products for which it had no intention actually to provide Gift
23 Cards upon purchase, it acted in an intentionally deceptive manner in its marketing
24 tactics by including a vague reference to “select” products being eligible for the Gift
25 Card promotions. However, Apple concealed what “select” meant by hiding the
26 explanation at the bottom of three separate layers of terms and conditions – effectively
27 ensuring that no reasonable consumer would know that the product he or she was
28 buying was actually not covered by the special offer.

1 19. Indeed, when consumers scrolled to the bottom of the App to see what
2 “terms and conditions” applied to the Apple Shopping Event and the Gift Card offer,
3 this screen appeared:



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22 20. Inexplicably, Apple did not define “select” on the page. Clicking on the
23 “terms and conditions” link illustrated in the screenshot immediately above this
24 paragraph took consumers out of the App and onto another cryptic page on the
25 Apple.com website containing the exact same language:
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21. Only when consumers clicked again on the additional link on this second page of terms and conditions, were they able to see a more detailed third set of terms and conditions. Couched in those terms and conditions are a few parenthetical statements that cryptically indicate that certain Apple products might have been excluded from the Apple Holiday Sale. This is notwithstanding the fact that some or all of such products were included in the Apple Shopping Event link and were represented throughout the App as being eligible for the Gift Card offer. Thus, Apple engaged in clearly false, deceptive, and misleading marketing and advertising.

22. Plaintiff is a victim of Apple’s false and misleading business practices. On November 26, 2018, she accessed the App on her phone and purchased a MacBook Air

1 with a retina display after clicking on the link for the special Apple Shopping Event
2 link. To this day, Plaintiff has not received the \$200 Gift Card offered by Apple in
3 connection with her purchase. Plaintiff is one of numerous consumers throughout the
4 United States who were duped into buying one or more Apple products based on false
5 and misleading offers for Gift Cards that Apple had no intention to actually provide.

6 **IV.**

7 **CLASS ACTION ALLEGATIONS**

8 23. Plaintiff brings this case as a class action that may be properly maintained
9 under Federal Rule of Civil Procedure 23 on behalf of herself and all persons in the
10 United States who, between November 23, 2018 and November 26, 2018 (inclusive),
11 purchased an Apple product from the Apple Store App as part of the Apple Shopping
12 Event and did not receive the applicable Gift Card (“Nationwide Class”).

13 24. Plaintiff also seeks to represent a subclass defined as all California citizens
14 who, at any time between November 23, 2018 and November 26, 2018 (inclusive),
15 purchased an Apple product from the Apple Store App as part of the Apple Shopping
16 Event and did not receive the applicable Gift Card (“California Subclass”, and together
17 with the Nationwide Class, the “Classes”).

18 25. Excluded from the Classes are Defendant, the officers and directors of the
19 Defendant at all relevant times, members of its immediate families and its legal
20 representatives, heirs, successors or assigns and any entity in which Defendant has or
21 had a controlling interest. Any judge and/or magistrate judge to whom this action is
22 assigned, and any members of such judges’ staffs and immediate families are also
23 excluded from the Classes.

1 practicable, and questions of law and fact common to the class predominate over any
2 questions affecting only individual members of the class. Class action treatment will
3 empower similarly situated persons to litigate their claims in the manner that is most
4 efficient and economical for the parties and judicial system.

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

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

14 **V.**

15 **FIRST CLAIM FOR RELIEF**

16 **(Violation of the California Consumers Legal Remedies Act (“CLRA”),**

17 **Civil Code § 1750, et seq.)**

18 **(For the Nationwide Class, or in the alternative, for the California Subclass, in**
19 **each case, Against Apple)**

20 35. Plaintiff realleges and incorporates by reference all paragraphs set forth
21 above.

22 36. Plaintiff brings this claim individually and on behalf of the Nationwide
23 Class, or in the alternative, for the California Subclass, against Defendant.

24 37. Plaintiff and other members of the Nationwide Class and California
25 Subclass are “consumers” as defined by the CLRA. The Products are “goods” within
26 the meaning of the CLRA. Apple is the “supplier” and/or “seller” within the meaning
27 of the CLRA.

1 38. Apple has violated the CLRA by engaging in the following:

2 (a) "Advertising goods or services with intent not to sell them as
3 advertised." (Cal. Civ. Code § 1770, subd. (a)(9));

4 (b) Making false or misleading statements of fact concerning reasons
5 for, existence of, or amounts of, price reductions. (Cal. Civ. Code § 1770, subd. (a)(13));

6 (c) "Representing that a transaction confers or involves rights, remedies,
7 or obligations that it does not have or involve..." (Cal. Civ. Code § 1770, subd.
8 (a)(14)); and

9 (d) "Representing that the consumer will receive a rebate, discount, or
10 other economic benefit, if the earning of the benefit is contingent on an event to occur
11 subsequent to the consummation of the transaction." (Cal. Civ. Code § 1770, subd.
12 (a)(17)).

13 39. Plaintiff and other members of the Classes relied on Apple's
14 misrepresentations in deciding whether to purchase the Products.

15 40. As a direct and proximate result of Apple's conduct, Plaintiff and other
16 members of the Classes were injured.

17 41. Plaintiff is concurrently serving Defendant with a CLRA notification via
18 certified mail, return receipt requested.

19 42. The notice letter sets forth the relevant facts, notifies the Defendant of its
20 CLRA violations, and requests that Defendant promptly remedy those violations.

21 43. Under the CLRA, a plaintiff may without prior notification file a complaint
22 alleging violations of the CLRA that seeks injunctive relief only. Then, if the Defendant
23 does not remedy the CLRA violations within 30 days of notification, the plaintiff may
24 amend her or his CLRA causes of action without leave of court to add claims for
25 damages. Plaintiff, individually and on behalf of the Classes, will amend this complaint
26 to add damages claims if Defendant does not remedy its violations as to Plaintiff and the
27 members of the Classes within the statutory period.

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1 44. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff, on behalf of Plaintiff’s
2 self and the Classes, demand judgment against Defendant under the CLRA for
3 injunctive and equitable relief only to enjoin the practices described herein.

4 45. Plaintiff, individually and as a member of the Classes, has no adequate
5 remedy at law for the future unlawful acts, methods, or practices as set forth above.

6 46. Pursuant to § 1780(d) of the CLRA, attached hereto as Exhibit A is the
7 affidavit showing that this action has been commenced in the proper forum.

8 47. In bringing this action, Plaintiff has engaged the services of attorneys and
9 has incurred reasonable legal expenses in an amount to be proved at trial.

10 48. Plaintiff is also entitled to recover Plaintiff’s attorneys’ fees, costs, and
11 expenses.

12 49. At this time, Plaintiff disclaims damages under the CLRA, but seeks an
13 order from this Court enjoining any further conduct by Apple of the nature alleged
14 herein.

15 50. Plaintiff reserves the right to amend this Class Action Complaint and to
16 assert a claim for damages pursuant to Civil Code § 1782.

17 **VI.**

18 **SECOND CLAIM FOR RELIEF**

19 **(Violation of California’s Unfair Competition Law (“UCL”))**

20 **(For the Nationwide Class, or in the alternative, for the California Subclass, in**
21 **each case, Against Apple)**

22 51. Plaintiff realleges and incorporates by reference all paragraphs set forth
23 above.

24 52. Plaintiff brings this claim individually and on behalf of the Nationwide
25 Class, or in the alternative, for the California Subclass, against Defendant.

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

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

5 55. Apple’s false and misleading representations surrounding the Apple
6 Shopping Event and Gift Cards were “unlawful” because they violated the CLRA,
7 California’s False Advertising Law (“FAL”), and other applicable state and federal
8 laws, including, but not limited to, 15 U.S.C. 52 – an important federal law prohibiting
9 the dissemination of false advertisements.

10 56. As a result of Apple’s unlawful business acts and practices, Apple has and
11 continues to unlawfully retain money from Plaintiff and other members of the Classes.

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

16 58. Apple’s conduct with regard to the Apple Shopping Event and Gift Cards,
17 as described above, was misleading, unfair, unlawful, and was injurious to consumers
18 who rely on Apple’s representations and did not get what they were expecting.
19 Deceiving consumers about a Gift Card offer is of no benefit to consumers. Therefore,
20 Defendant’s conduct was and continues to be “unfair.”

21 59. As a result of Apple’s unfair business acts and practices, Apple has and
22 continues to unfairly hold money from Plaintiff, and members of the Classes.

23 60. Under the UCL, a business act or practice is “fraudulent” if it actually
24 deceives or is likely to deceive members of the consuming public.

25 61. Apple’s conduct here was fraudulent because it has deceived and/or was
26 likely to deceive consumers into believing that they were to receive a Gift Card with
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1 certain product purchases, when they were not. Because Apple misled Plaintiff and
2 other members of the Classes, Apple’s conduct was “fraudulent.”

3 62. As a result of Apple’s fraudulent business acts and practices, Apple has and
4 continues to fraudulently hold money from Plaintiff and other members of the Classes.

5 63. Plaintiff requests that this Court cause Apple to restore this unlawfully,
6 unfairly, and fraudulently obtained money to Plaintiff and other members of the Classes,
7 to disgorge the profits Apple made on these transactions, and to enjoin Apple from
8 violating the UCL or violating it in the same fashion in the future as discussed herein.
9 Otherwise, Plaintiff and other members of the Classes may be irreparably harmed and/or
10 denied an effective and complete remedy if such an order is not granted.

11 64. Monetary damages are an inadequate remedy at law because injunctive
12 relief is necessary to deter Defendant from continuing its false and deceptive conduct in
13 the future.

14 **VII.**

15 **THIRD CLAIM FOR RELIEF**

16 **(Violations of the False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §**
17 **17500, et seq.)**

18 **(For the Nationwide Class, or in the alternative, for the California Subclass, in**
19 **each case, Against Apple)**

20 65. Plaintiff realleges and incorporates by reference all paragraphs set forth
21 above.

22 66. Plaintiff brings this claim individually and on behalf of the Nationwide
23 Class, or in the alternative, the California Subclass, against Defendant.

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

4 68. Apple represented to the public, including Plaintiff and other members of
5 the Classes, that it was offering Gift Cards with the purchase of certain products even
6 though Apple had no intention to honor that offer for such products. Because Apple
7 disseminated false and misleading information regarding the Apple Shopping Event and
8 Gift Cards, and Apple knew or should have known, through the exercise of reasonable
9 care, that the information was false and misleading, Apple has violated the FAL.

10 69. As a result of Apple’s false advertising and marketing, Apple fraudulently
11 obtained money from Plaintiff and other members of the Classes.

12 70. Plaintiff requests that this Court cause Apple to restore this fraudulently
13 obtained money to Plaintiff and other members of the Classes, to disgorge the profits
14 Apple made on these transactions, and to enjoin Apple from violating the FAL or
15 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiffs
16 and other members of the Classes may be irreparably harmed and/or denied an effective
17 and complete remedy if such an order is not granted.

18 71. Monetary damages are an inadequate remedy at law because injunctive
19 relief is necessary to deter Apple from continuing its false and deceptive conduct in the
20 future.

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VIII.

FOURTH CLAIM FOR RELIEF

(Breach of Express Warranty)

(For the Nationwide Class, or in the alternative, for the California Subclass, in each case, Against Apple)

72. Plaintiff realleges and incorporates by reference all paragraphs set forth above.

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

74. California Commercial Code (“Cal. Comm. Code”) § 2313 provides that “(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise,” and “(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.” Cal. Comm. Code § 2313.

75. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. provides for “[f]ull and conspicuous disclosure of terms and conditions...” 15 U.S.C. 2302(a) “In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products...” *Id.*

76. Defendant expressly warranted that a Gift Card would be included with the purchase of products connected with the Apple Shopping Event. These representations about the Gift Card offer: (1) are affirmations of fact or promises made by Apple, to consumers, that a Gift Card would be provided along with the applicable Apple products; (2) became part of the basis of the bargain to purchase the applicable Apple products; and (3) created an express warranty that the deal would conform to the affirmation of fact or promise by the inclusion of such a Gift Card. In the alternative, the representations are descriptions of goods, which were made as part of the basis of the

1 bargain to purchase the applicable Apple products, and which created an express
2 warranty that the Product bundle would conform to the description and include a Gift
3 Card.

4 77. Plaintiff and other members of the Classes reasonably and justifiably relied
5 on the foregoing express warranty in purchasing the applicable Apple products,
6 believing that that the products did in fact conform to the warranty and included the
7 applicable Gift Cards.

8 78. Apple has breached the express warranty made to Plaintiff and other
9 members of the Classes by failing to sell the applicable Apple products to satisfy the
10 warranty that they would include the applicable Gift Cards.

11 79. Plaintiffs and other members of the Classes did not obtain the full value of
12 the products purchased, as represented. If Plaintiff and other members of the Classes
13 had known of the true nature of the Apple products, they would not have purchased the
14 Apple products or would have paid less for them.

15 80. As a result, Plaintiff and other members of the Classes have suffered injury
16 and deserve to recover all damages afforded under the law.

17 **IX.**

18 **FIFTH CLAIM FOR RELIEF**

19 **(Breach of Implied Warranty)**

20 **(For the Nationwide Class, or in the alternative, for the California Subclass, in**
21 **each case, Against Apple)**

22 81. Plaintiff realleges and incorporates by reference all paragraphs set forth
23 above.

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

26 83. California Commercial Code § 2314(1) provides that “a warranty that the
27 goods shall be merchantable is implied in a contract for their sale if the seller is a
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1 merchant with respect to goods of that kind.” Cal. Comm. Code § 2314(1).
2 Furthermore, California Commercial Code § 2314(2) provides that “[g]oods to be
3 merchantable must be at least such as . . . [c]onform to the promises or affirmations of
4 fact made on the container or label if any.” Cal. Comm. Code § 2314(2)(f).

5 84. Apple is a merchant with respect to the sale of various products, including
6 the products at issue in this action. Therefore, a warranty of merchantability is implied
7 in every contract for sale of Apple products to consumers.

8 85. In representing throughout its App that the applicable Apple products
9 would include a Gift Card upon purchase during the Apple Shopping Event, Apple has
10 provided a promise or affirmation of fact to consumers that the applicable products
11 would in fact come with Gift Cards.

12 86. However, certain of the products did not actually come with Gift Cards,
13 despite Apple’s promise or affirmation of fact that they would.

14 87. Therefore, Apple has breached its implied warranty of merchantability
15 regarding these products.

16 88. If Plaintiff and other members of the Classes had known that the applicable
17 products did not conform to Apple’s promise or affirmation of fact, they would not have
18 purchased such products or would have paid less for them. Therefore, as a direct and/or
19 indirect result of Defendant’s breach, Plaintiff and other members of the Classes have
20 suffered injury and deserve to recover all damages afforded under the law.

21 **X.**

22 **SIXTH CLAIM FOR RELIEF**

23 **(Common Law Fraud)**

24 **(For the Nationwide Class, or in the alternative, for the California Subclass, in**
25 **each case, Against Apple)**

26 89. Plaintiff realleges and incorporates by reference all paragraphs set forth
27 above.

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

3 91. Apple has willfully, falsely, and knowingly represented that certain Apple
4 products sold during the Apple Shopping Event would come with an applicable Gift
5 Card, even though such Gift Cards were not actually provided. Therefore, Apple has
6 made knowing misrepresentations as to such products.

7 92. Apple's misrepresentations were material (i.e., the type of
8 misrepresentations to which a reasonable person would attach importance and would be
9 induced to act thereon in making purchase), because they affect the total cost of the
10 Apple product and the Gift Cards equate to a material amount of additional spending
11 money for the consumer.

12 93. Apple knew or recklessly disregarded the fact that products not eligible for
13 the Gift Card offer were represented to consumers as eligible before their purchase.

14 94. Apple intended that Plaintiffs and other consumers rely on these
15 representations, as the representations are made prominently on the multiple pages of
16 the Apple Store app and elsewhere.

17 95. Plaintiff and other members of the Classes have reasonably and justifiably
18 relied on Defendant's misrepresentations when purchasing the applicable Apple
19 products and had the correct facts been known, would not have purchased such products
20 or would not have purchased them at the prices at which they were offered.

21 96. Therefore, as a direct and proximate result of Apple's fraud, Plaintiff and
22 other members of the Classes have suffered economic losses and other general and
23 specific damages, including but not limited to the amounts paid for the Products, and
24 any interest that would have accrued on those monies, all in an amount to be proven at
25 trial.

1 **XI.**

2 **SEVENTH CLAIM FOR RELIEF**

3 **(QUASI-CONTRACT/RESTITUTION)**

4 **(For the Nationwide Class, or in the alternative, for the California Subclass, in**
5 **each case, Against Apple)**

6 97. Plaintiff realleges and incorporates by reference all paragraphs set forth
7 above.

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

10 99. As alleged herein, Apple intentionally, recklessly, and/or negligently made
11 a misleading representation about the Apples Sales Event and Gift Card to Plaintiff and
12 members of the Classes to induce them to purchase the Products. Plaintiff and members
13 of the Classes reasonably relied on the misleading representation and have not received
14 all of the benefits promised by Apple. Plaintiff and members of the Classes therefore
15 have been induced by Apple's misleading and false representations about the Products,
16 and paid for them when they would and/or should not have, and/or failed to receive
17 monetary benefits from Apple that they should have received.

18 100. Plaintiffs and members of the Classes have conferred a benefit upon Apple
19 as Apple have retained monies paid to them by Plaintiffs and members of the Classes.

20 101. The monies received were obtained under circumstances that were at the
21 expense of Plaintiffs and members of the Classes – i.e., Plaintiffs and other members of
22 the Classes did not receive the full value of the benefit conferred upon Apple because
23 Apple did not provide the Gift Cards as represented to consumers.

24 102. Therefore, it is inequitable and unjust for Apple to retain the profit, benefit,
25 or compensation conferred upon them without paying to each of Plaintiff and the
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1 members of the Classes the difference of the full value of the benefit compared to the
2 value actually received.

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

8 104. Monetary damages are an inadequate remedy at law because injunctive
9 relief is necessary to deter Apple from continuing its false and deceptive conduct
10 regarding the Products.

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1 **XII.**

2 **PRAYER FOR RELIEF**

3 105. For an order certifying the Nationwide Class and the California Subclass,
4 under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiff as
5 representative of all Classes, and; naming Plaintiff's attorneys as Class Counsel to
6 represent all Classes;

7 106. For an order declaring that Apple's conduct violates the statutes and laws
8 referenced herein;

9 107. For an order finding in favor of Plaintiff, and all Classes, on all counts
10 asserted herein;

11 108. For an order awarding all damages in amounts to be determined by the
12 Court and/or jury;

13 109. For prejudgment interest on all amounts awarded;

14 110. For interest on the amount of any and all economic losses, at the prevailing
15 legal rate;

16 111. For an order of restitution and all other forms of equitable monetary relief;
17 For injunctive relief as pleaded or as the Court may deem proper;

18 112. For an order awarding Plaintiff and all Classes their reasonable attorneys'
19 fees, expenses and costs of suit, including as provided by statute such as under Fed. R.
20 Civ. P. 23(h) and California Code of Civil Procedure section 1021.5 as well as any other
21 applicable law; and

22 113. For any other such relief as the Court deems just and proper.

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Dated: November 29, 2018

RISE LAW FIRM, PC

By: 
ELIOT J. RUSHOVICH


Attorneys for Plaintiff
JESSICA LEE

DEMAND FOR JURY TRIAL

Plaintiff Jessica Lee hereby demands a trial by jury on all issues so triable.

Dated: November 29, 2018

RISE LAW FIRM, PC

By: 
ELIOT J. RUSHOVICH

Attorneys for Plaintiff
JESSICA LEE

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10 Attorneys for Plaintiff
11 JESSICA LEE

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 JESSICA LEE, individually and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 vs.

18 APPLE INC.,

19 Defendants.
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Case No.: 5:18-cv-07235

**DECLARATION PURSUANT
TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

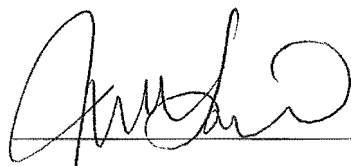
1 I, Jessica Lee, declare as follows:

2 1. I am over the age of 18 and I am a plaintiff in the above-captioned case. I have
3 personal knowledge of the following facts, and if called upon to testify, I could do so competently.
4 I submit this declaration in support of the concurrently filed Class Action Complaint against
5 Apple Inc., which is based, in part, on violations of the Consumers Legal Remedies Act,
6 California Civil Code section 1750, *et seq.*

7 2. This action is brought in the Northern District of California—a district in which
8 Defendant Apple Inc. is doing business.

9 3. Additionally, I purchased my MacBook Air, which is the subject of the complaint,
10 in San Francisco County, California.

11
12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct and that this declaration is executed on November 28, 2018 in San
14 Francisco, California.

15
16
17  11/28/18

18 Jessica Lee

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JS-CAND 44 (Rev. 06/17)

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:
JESSICA LEE, individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff **San Francisco**
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Reisman & Reisman, 5900 Wilshire Blvd., Ste 2600
Los Angeles, CA 90036 Tel: (323) 330-0580

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

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

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

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
15 U.S.C § 2301, et seq. and/or 28 U.S.C. § 1332(d)
 Brief description of cause:
False and/or misleading advertising, marketing, and sales practices, and breach of warranty

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ **5,000,000.01** 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 **Nov. 29, 2018** SIGNATURE OF ATTORNEY OF RECORD **s/Daniel A. Reisman**

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.