

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

ROY A. KATRIEL (SBN 265463)
THE KATRIEL LAW FIRM, P.C.
4660 La Jolla Village Drive, Suite 200
San Diego, CA 92122
Telephone: (858) 546 4435
e-mail: rak@katriellaw.com

AZRA MEHDI (SBN 220406)
THE MEHDI FIRM, P.C.
One Market
Spear Tower, Suite 3600
San Francisco, CA 94111
Telephone: (415) 293-8039
Facsimile: (415) 293-8001
e-mail: azram@themehdifirm.com

*Counsel for Plaintiffs Andrea M. Williams
and James Stewart*

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

ANDREA M. WILLIAMS AND JAMES
STEWART, On Behalf of Themselves And
All Others Similarly Situated,

Plaintiff,

v.

APPLE, INC.,

Defendant.

No.

CLASS ACTION COMPLAINT

Class Action

Jury Trial Demanded

1 **NATURE OF THE ACTION**

2 1. Plaintiffs Andrea M. Williams and James Stewart and (collectively “Plaintiffs”) bring
3 this Class Action Complaint against Defendant Apple, Inc. (“Defendant” or “Apple”) on behalf of
4 themselves and all other similarly situated persons in the United States who during the Class
5 Period defined below paid for subscriptions to Apple’s iCloud service. Plaintiffs allege claims for
6 breach of contract, violations of California’s False Advertising Law (California Business and
7 Professions Code, §§ 17500 *et seq.*), and violations of California’s Unfair Competition Law
8 (California Business and Professions Code, §§ 17200 *et seq.*).

9 2. As detailed more fully below, Apple’s iCloud service provides users the ability to
10 store their digital data on remote servers, as opposed to keeping the data stored merely on the
11 users’ devices. This is commonly referred to as “storing on the cloud.” Throughout the Class
12 Period, Apple sold subscriptions to the putative class members by which Apple represented to
13 class members that, in exchange for paying Apple the iCloud monthly subscription fees, Apple
14 would provide them with cloud storage. In truth and in fact, however, Apple lacked the
15 necessary infrastructure to provide this service at the time it sold it. Unbeknownst to Plaintiffs
16 and the putative class members, instead of storing class members’ data on Apple cloud servers
17 and facilities, Apple actually stored users’ data on cloud facilities owned and operated by other
18 entities, like Amazon, Microsoft or Google—all undisclosed to these class members who paid and
19 entrusted Apple to store their data.

20 3. The selection of a cloud storage provider is a significant and material consideration,
21 as it involves entrusting all of a user’s stored data—including sensitive information like
22 photographs, documents of all kinds, and e-mail content—to be stored by the cloud storage
23 provider. Thus, users have an interest in who is offering this storage and taking custody of their
24 data. For this reason, in Apple’s iCloud subscription contract, Apple went to great lengths to
25 represent and assure iCloud subscribers that Apple was the provider of the cloud storage service
26 being purchased by the putative class members. Apple highlighted as much in its iCloud contract
27 for U.S. subscribers, emphasizing that:

1 ***Apple is the provider of the Service***, which permits you to utilize certain Internet
2 services, including storing your personal content (such as contacts, calendars, photos,
3 notes, reminders, documents, app data, and iCloud email) and making it accessible on
4 your compatible devices and computers, and certain location based services, only under
5 the terms and conditions set forth in this Agreement. iCloud is automatically enabled
6 when you are running devices on iOS 9 or later and sign in with your Apple ID during
7 device setup, unless you are upgrading the device and have previously chosen not to
8 enable iCloud. You can disable iCloud in Settings. When iCloud is enabled, ***your
9 content will be automatically sent to and stored by Apple***, so you can later access that
10 content or have content wirelessly pushed to your other iCloud-enabled devices or
11 computers.

12 Ex. 1 to Class Action Complaint (iCloud U.S. Contract), at 1 (emphasis added).

13 4. Touting itself as the provider of the iCloud service (when, in fact, Apple was merely
14 reselling cloud storage space on cloud facilities of other entities) allowed Apple not only to obtain
15 paid subscriptions of class members who subscribed to iCloud believing that their cloud storage
16 was being provided by Apple, but also allowed Apple to charge a premium for its iCloud service
17 because subscribers placed a value on having the “Apple” brand as the provider of the storage
18 service for their most sensitive data. In fact, at the time that Apple was selling iCloud storage as
19 its own to subscribers, but actually reselling (unbeknownst to class members) cloud storage
20 provided by Amazon or Microsoft, these rival entities (*i.e.*, Amazon or Microsoft) were providing
21 cloud storage services to the public at prices lower than Apple’s iCloud. Class members,
22 therefore, paid a premium for their belief and understanding that their data would be stored by
23 Apple.

24 5. As the foregoing allegations make clear and as more fully detailed below, Apple has
25 breached its iCloud contract, a copy of which is attached hereto as Exhibit 1. This breach was
26 material and caused all class members harm in that, *inter alia*, they did not receive the benefit of
27 their bargain with Apple (a bargained-for assurance and promise that Apple would provide the
28 cloud storage service when, in fact, the service was provided by entirely different and unrelated
entities with whom class members did not contract). Further, by representing that “Apple is the
provider of the Service” when, in fact, it was not, Apple engaged in false advertising within the
meaning of California’s False Advertising Law (“FAL”). Moreover, Apple’s acts also amount

1 to unlawful, unfair, or deceptive practices within the meaning of California’s Unfair Competition
2 Law (“UCL”).

3 6. Apple’s iCloud contract contains a choice of law provision, by which Apple and all
4 iCloud subscribers nationwide agreed to be bound by California law with regard to their rights
5 and liabilities in connection with the use and purchase of the iCloud service. *See* Ex. 1 to Class
6 Action Complaint, at § X.B (“Except to the extent expressly provided in the following paragraph, this
7 Agreement and the relationship between you and Apple shall be governed by the laws of the State of
8 California, excluding its conflicts of law provisions.”). It is therefore proper and appropriate to apply
9 California law to the claims raised on behalf of this nationwide putative class of iCloud subscribers.

10 **JURISDICTION AND VENUE**

11 7. This Court has subject-matter jurisdiction over all claims asserted in this Class Action
12 Complaint pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). Plaintiffs’ action is
13 brought on behalf of a class of nationwide subscribers of Apple’s iCloud service during the Class
14 Period, and Defendant Apple is a citizen of California. The putative class action, therefore, satisfies the
15 diversity of citizenship requirement. Given the redress sought and that class members number in the
16 millions, this Class Action Complaint also satisfies the amount in controversy requirement, as the
17 amount of redress sought exceeds \$5 million exclusive of interest, attorneys’ fees, or costs.

18 8. This Court has personal jurisdiction over Defendant because Apple is a corporation
19 incorporated under the laws of the State of California and has its principal place of business within this
20 state and judicial district at One Apple Park Way in Cupertino, California 95014.

21 9. Venue is proper in this district because Apple’s principal place of business is
22 located within this judicial district, the acts underlying all claims asserted in this Class Action
23 Complaint arose from within this judicial district and, as part of the iCloud contract, all parties
24 agreed to submit to venue in courts located within the county of Santa Clara, California. *See* Ex.
25 1 to Class Action Complaint, at § X.B. Venue in this Court, therefore, is proper pursuant to 28
26 U.S.C. § 1391.

INTRADISTRICT ASSIGNMENT

1
2 10. Pursuant to Civil L.R. 3-5(b), Plaintiffs allege that under Civil L.R. 3-2(e) and the
3 Court's General Order No. 44, assignment of this action to the San Jose Division is appropriate
4 because the events giving rise to the claims arose from Apple's principal place of business in
5 Santa Clara County. The Plaintiffs, putative class members, and Apple also agreed as part of the
6 iCloud agreement "to submit to the personal and exclusive jurisdiction of the courts located within the
7 county of Santa Clara, California, to resolve any dispute or claim arising from this Agreement." Ex 1
8 to Class Action Complaint, at § X.B.

PARTIES

9
10 11. Plaintiff Andrea M. Williams is a resident of Florida and a citizen of Florida for
11 purposes of the federal diversity statute as she intends to remain in Florida for the foreseeable
12 future. During the Class Period, Ms. Williams subscribed to Apple's iCloud service, paid money
13 to Apple for her iCloud subscription, and used iCloud to store her data on the cloud. The legal
14 agreement or contract that she and Apple entered into regarding Ms. Williams' iCloud
15 subscription provided that Apple would be the provider of this cloud storage service. Ms.
16 Williams was never informed by Apple that her data actually was being stored on the cloud on
17 non-Apple remote servers and facilities, such as cloud storage facilities belonging to Amazon,
18 Microsoft, or Google (or possibly other entities). Had Apple disclosed that, contrary to its
19 contractual representation, Apple was not the provider of the cloud storage, Ms. Williams either
20 would not have subscribed to Apple's iCloud service or would have not agreed to pay as much as
21 she did for the service..

22 12. Plaintiff James Stewart is a resident of San Francisco, California and a citizen of
23 California for purposes of the federal diversity statute as he intends to remain in California for the
24 foreseeable future. During the Class Period, Mr. Stewart subscribed to Apple's iCloud service,
25 paid money to Apple for his iCloud subscription, and used iCloud to store his data on the cloud.
26 The legal agreement or contract that he and Apple entered into regarding Mr. Stewart's iCloud
27 subscription provided that Apple would be the provider of this cloud storage service. Mr. Stewart

1 was never informed by Apple that his data actually was being stored on the cloud on non-Apple
2 remote facilities, such as cloud storage facilities belonging to Amazon, Microsoft, or Google (or
3 possibly other entities). Had Apple disclosed that, contrary to its contractual representation,
4 Apple was not the provider of the cloud storage being provided as part of the iCloud agreement,
5 Mr. Stewart either would not have subscribed to Apple's iCloud service or would have not agreed
6 to pay as much as he did for the service

7 CLOUD STORAGE

8 13. Cloud storage involves stashing data on hardware in a remote physical location,
9 which can be accessed from any device via the internet. Clients send files to a data server
10 maintained by a cloud provider instead of (or as well as) storing it on their own hard drives.

11 14. Cloud storage systems generally encompass hundreds of data servers linked
12 together by a master control server.

13 15. An appeal to individual users is that cloud storage service providers allow
14 individuals to store their photos, e-mail, music, calendars, contacts and other data in a central
15 location, accessible from whatever device happens to be handy. These can be set up to
16 automatically sync with the cloud, ending an era of fumbling with USB cables or other external
17 storage devices.

18 16. As the foregoing summary explanation makes clear, provision of cloud storage
19 services requires a sufficient and robust infrastructure of remote server and associated hardware
20 facilities for this data to be stored. Also, of importance to users, is the identity of the entity
21 providing this storage on its facilities, as the user is turning over sensitive data for storage, like
22 photographs, documents, and other personal digital files.

23 17. Today, there are a number of competing cloud storage service providers. In
24 addition to Apple's iCloud, other cloud storage providers include Dropbox, Amazon (through,
25 *inter alia*, its Amazon Drive service), Microsoft (through its Microsoft OneDrive service), and
26 Google (through, *inter alia*, its Google Drive service).

**APPLE'S iCloud SERVICE AND APPLE'S CONTRACTUAL
MISREPRESENTATION**

18. Apple launched its iCloud cloud storage and computing service on or about October 12, 2011. iCloud replaced Apple's previous MobileMe service, which had acted as a data syncing center for email, contacts, calendars, bookmarks, notes, reminders (to-do lists), iWork documents, photos, and other data.

19. iCloud enables users to store data such as documents, photos, and music on remote servers for download to iOS, macOS, or Windows devices, to share and send data to other users, and to manage their Apple devices if lost or stolen.

20. Owners of Apple devices are granted up to 5 GB of iCloud storage for free. If an Apple device user wishes to store more than 5 GB of data on the cloud through iCloud, then that user must subscribe to iCloud's paid service.

21. As set forth below, pricing for an iCloud subscription, which is billed on a monthly basis, depends on the amount of cloud data storage (measured in gigabytes or terabytes) the subscriber is entitled to store through iCloud.

22. In order to subscribe to iCloud, a user must agree to the iCloud Terms of Service Agreement. A current version of the iCloud agreement for iCloud subscribers in the United States is attached hereto as Exhibit 1. A key term of this iCloud agreement for U.S. subscribers, which sets forth the terms, duties and obligations, of Apple and the iCloud subscribers, is that Apple is the entity providing the iCloud cloud storage service for U.S. subscribers. This much is underscored in the iCloud agreement's second paragraph, in which Apple promises and represents that:

Apple is the provider of the Service, which permits you to utilize certain Internet services, including storing your personal content (such as contacts, calendars, photos, notes, reminders, documents, app data, and iCloud email) and making it accessible on your compatible devices and computers, and certain location based services, only under the terms and conditions set forth in this Agreement. iCloud is automatically enabled when you are running devices on iOS 9 or later and sign in with your Apple ID during device setup, unless you are upgrading the device and have previously chosen not to enable iCloud. You can disable iCloud in Settings. When iCloud is enabled, your content will ***be automatically sent to and stored by Apple***, so you can later access that

1 content or have content wirelessly pushed to your other iCloud-enabled devices or
2 computers.

3 Ex. 1 to Class Action Complaint, at 1 (emphasis added).

4 23. Although the current version of the iCloud agreement for U.S. subscribers was last
5 revised on September 17, 2018, Apple's representation that it was providing the iCloud cloud
6 storage service was a term and representation found in versions of the iCloud agreement for U.S.
7 subscribers for the entire Class Period. This is evidenced by the version of the iCloud agreement
8 for U.S. subscribers last revised on September 16, 2015, which contains the identical second
9 paragraph as the current version of that agreement and identically represents that "*Apple is the*
10 *provider of the Service,...*" A copy of the September 16, 2015 iCloud agreement for U.S. subscribers
11 is attached hereto as Exhibit 2.

12 24. As alleged at Paragraph 16 *supra*, the identity of the entity who is providing cloud
13 storage of subscribers' digital data is of concern to subscribers and forms a material term of any
14 agreement by subscribers of cloud storage. Indeed, it would be nonsensical to contend that users are
15 indifferent to whom they entrust their most personal, private, and sensitive digital data for storage.
16 This concern is not merely a privacy-driven one, but also a driven by subscribers need to assure
17 themselves that the party to whom they entrust their digital data for cloud storage is one whom they
18 sufficiently trust to take protect the data while in storage on the cloud servers and to ensure that the data
19 will be accessible to the subscribers on demand at any point in the future.

20 25. Apple, in fact, recognized that consumers are not indifferent as to the identity of
21 the provider storing consumers' digital data. Thus, for example, in mainland China, due to
22 governmental regulations, Apple was permitted to sell iCloud subscriptions for cloud storage to
23 Chinese users, but Apple was not permitted to own the cloud servers or other facilities. As a
24 result, Apple went to great lengths in its iCloud agreement for mainland Chinese subscriptions to
25 represent unlike in its U.S. iCloud agreement (where Apple represents that Apple provides the
26 iCloud cloud storage service) that another entity altogether, AIPO CLOUD (GUIZHOU)

1 TECHNOLOGY CO. LTD (“GCBD”), provides the iCloud cloud storage service. A copy of
2 Apple’ iCloud agreement for China-based subscribers, therefore, provides that:

3 ***GCBD is the provider of the Service in the Mainland of China***, which permits you to
4 utilize certain Internet services, including storing your personal content (such as
5 contacts, calendars, photos, notes, reminders, documents, app data, and iCloud email)
6 and making it accessible on your compatible devices and computers, and certain
7 location based services, only under the terms and conditions set forth in this Agreement.
8 iCloud is automatically enabled when you are running devices on iOS 9 or later and
9 sign in with your Apple ID during device setup, unless you are upgrading the device
and have previously chosen not to enable iCloud. You can disable iCloud in Settings.
When iCloud is enabled, ***your content will be automatically sent to and stored by***
GCBD, so you can later access that content or have content wirelessly pushed to your
other iCloud-enabled devices or computers.

10 Ex. 3 to Class Action Complaint, at 1 (emphasis added).

11 26. Thus, mainland China subscribers who subscribe to Apple’s iCloud are, in fact,
12 informed that, though they are subscribing to Apple’s iCloud service, the cloud storage service is
13 provided by an unrelated entity altogether, GCBD. By contrast, U.S. subscribers to Apple’s iCloud are
14 assured by Apple that Apple is providing the cloud storage service for these subscribers.

15 27. In truth and in fact, Apple’s contractual representation is and has been false all along.
16 The fact of the matter is that, at the time that Apple sold iCloud subscriptions to the putative class
17 members, Apple lacked the facilities needed to readily provide the cloud storage space being sold to
18 class members through iCloud.

19 28. Unable to provide the cloud storage space to all class members that Apple sold and was
20 selling through iCloud, Apple breached its iCloud agreement with its subscribers and had these users’
21 data stored not by Apple on Apple facilities, but instead turned the users’ digital files to other entities,
22 like Amazon and Microsoft for them to store on their facilities. All this was undisclosed to Plaintiffs
23 and the putative class members, who believed all along that Apple was providing the cloud storage of
24 their data, as Apple had represented in its iCloud agreement and as these users had bargained for all
25 along.

26 29. Apple continues to falsely claim that Apple is the provider of the iCloud cloud storage
27

1 service when, in fact, the cloud storage of iCloud subscribers in the United States is done by Amazon
2 or Microsoft. Without disclosing any of this to its iCloud subscribers, Apple effectively acts as a
3 reseller of cloud storage on Amazon or Microsoft remote servers and facilities. Upon information and
4 belief, Apple currently pays approximately half a billion dollars per year to Amazon and Microsoft to
5 compensate them for storing Apple iCloud subscribers' data on Amazon's and Microsoft's cloud
6 facilities.

7 30. Apple has never justified or even publicly explained its practice of having its iCloud
8 users' data turned over to Microsoft or Amazon (or others) for cloud storage. Evidently, however,
9 Apple believes it is justified in doing so (and not disclosing as much) because Apple maintains that the
10 iCloud user data stored on Amazon or Microsoft cloud facilities is first encrypted by Apple before
11 being turned over to these entities and Apple itself stores the encryption keys.

12 31. But, even if accurate, this "justification" does not excuse or legitimize Apple's
13 behavior, breach of its iCloud agreement, or misrepresentations. No iCloud subscriber bargained for or
14 agreed to have Apple turn his or her data—whether encrypted or not-- to others for storage. More
15 fundamentally, encryption of iCloud subscribers' data stored on third-parties' facilities, at most,
16 addresses the concerns over privacy and unauthorized access to the stored data. But turning over data
17 to third parties for them to keep in storage at their facilities, without the prior consent of the subscribers
18 who own the data, does nothing to address other fundamental concerns about the integrity of the data,
19 reliability of the storage, and assurance that the data stored will remain intact and accessible by the user
20 on demand without being damaged, lost, stolen, or otherwise disposed of by third-party entities who
21 the subscribers never authorized to have their most sensitive digital data stored for indefinite periods of
22 time. And, if subscribers are kept in the dark as to who is storing their data this, in and of itself, raises a
23 privacy concern.

24 32. The subscribers bargained for, agreed, and paid to have Apple—an entity they trusted--
25 store their data. Instead, without their knowledge or consent, these iCloud subscribers had their data
26 turned over by Apple to third-parties for these third-parties to store the data in a manner completely
27 unknown to the subscribers.

1 36. So too, the pricing premium that the Apple brand name exacts for iCloud cloud
2 storage is evident by reference to the cloud storage offered by Google. For example, Apple offers
3 Apple device users iCloud storage of up to 5 gigabytes for free. By contrast, Google's cloud storage
4 offering provides consumers with 15 gigabytes for free cloud storage. That is, Google offers for free
5 three times as much cloud storage as iCloud, despite the fact that, unbeknownst to iCloud subscribers,
6 their data actually is being stored on Google facilities.

7 37. These current examples of the price premium charged by Apple for its iCloud offering
8 are even more pronounced earlier within the Class Period. For many years, Apple charged an even
9 higher premium (either through higher monthly pricing for its iCloud plans or offering less cloud
10 storage capacity for the same price) relative to other cloud storage providers, including the very
11 providers that Apple employed for the storage of iCloud subscribers' data.

CLASS ALLEGATIONS

12 38. Pursuant to Federal Rules of Civil Procedure 23(b)(3) and (b)(2), Plaintiffs bring this
13 action as a class action on behalf of themselves and all other similarly situated subscribers within the
14 United States who during the Class Period defined as August 20, 2015 to the present paid for an Apple
15 iCloud subscription. Alternatively, to the extent that the Court should find that a nationwide class is
16 unavailable, Plaintiffs reserve the right to seek certification of state-wide class comprising paid iCloud
17 subscribers within California and Florida during the Class Period. Specifically excluded from all these
18 putative class definitions are Apple, its employees, and directors. Plaintiffs reserve the right to amend
19 these putative class definitions as discovery or other case circumstances may warrant.

20 39. Class certification is appropriate because the class sought to be certified is more than
21 sufficiently numerous to make joinder practical. Upon information and belief, based on Apple's
22 regulatory filings, common knowledge, and media reporting, the number of paying iCloud subscribers
23 in the United States numbers at least in the tens of millions.

24 40. Class certification is appropriate because Plaintiffs and their counsel are adequate class
25 representatives. Like all members of the class they seek to represent, Plaintiffs Williams and Stewart
26 paid for Apple's iCloud cloud storage service during the Class Period and, like all class members, these
27

1 plaintiffs allege that Apple breached its iCloud agreement with them, misrepresented and falsely
2 advertised its iCloud offering, and violated the UCL by, *inter alia*, failing to disclose that Apple was
3 not the provider of the iCloud cloud storage service but, in fact, the Plaintiffs' and class members' data
4 was stored by third-parties. Plaintiffs' counsel is experienced in class action litigation, including
5 previous classwide litigation against Apple, and will adequately represent the interests of putative class
6 members.

7 41. Class certification is appropriate because Plaintiffs' action raises common
8 questions of fact or law, whose means of proof predominates over questions that may call for
9 individual adjudication. Among these predominating common questions of fact or law are:

- 10 a. Whether Apple and the class members entered into a contract for the provision of
11 iCloud cloud storage services and, if so, the material terms of such contracts;
- 12 b. Whether Apple materially breached its iCloud agreement with class members;
- 13 c. Whether any such material breach caused harm or injury;
- 14 d. Whether Apple made and disseminated to the public any representation about its
15 iCloud that was false or misleading;
- 16 e. The measure of any damages, restitution, or other recovery due to the class members
17 as a result of Apple's conduct alleged herein;
- 18 f. Whether Apple's non-disclosure that third-parties unknown to class members were
19 providing the cloud storage of subscribers files should be enjoined.

20 42. Class certification is appropriate because Plaintiffs' claims are typical of the
21 claims asserted on behalf of the putative class members. Plaintiffs, like all class members, claim
22 that they were harmed because Apple falsely represented that it was the provider of the iCloud
23 storage service when, in fact, the cloud storage of Plaintiffs' and class members' data was done
24 by third-parties that were undisclosed to Plaintiffs or class members. All claims asserted by
25 Plaintiffs also are asserted on behalf of all class members, and there are no conflicts of interest
26 that render Plaintiffs' claims or interests atypical of the claims or interests of the class members.

1 *Apple is the provider of the Service*, which permits you to utilize certain Internet
2 services, including storing your personal content (such as contacts, calendars, photos,
3 notes, reminders, documents, app data, and iCloud email) and making it accessible on
4 your compatible devices and computers, and certain location based services, only under
5 the terms and conditions set forth in this Agreement. iCloud is automatically enabled
6 when you are running devices on iOS 9 or later and sign in with your Apple ID during
7 device setup, unless you are upgrading the device and have previously chosen not to
8 enable iCloud. You can disable iCloud in Settings. When iCloud is enabled, *your*
9 *content will be automatically sent to and stored by Apple*, so you can later access that
10 content or have content wirelessly pushed to your other iCloud-enabled devices or
11 computers.

12 Ex. 1 to Class Action Complaint (iCloud current U.S. Contract), at 1 (emphasis added); Ex 2 to Class
13 Action Complaint (iCloud U.S. contract last revised September 2015) (emphasis added).

14 48. Plaintiffs and class members fully performed their material obligations under their
15 iCloud agreements with Apple by paying the iCloud monthly subscription fees charged by Apple.

16 49. Apple materially breached its iCloud agreement with Plaintiffs and the class members
17 because, without Plaintiffs' or class members' prior consent, instead of Apple being the provider of the
18 cloud storage of class members' data, such storage was provided by non-Apple third parties with
19 whom neither Plaintiffs nor class members had bargained.

20 50. Apple's breach of its iCloud agreements with Plaintiffs and class members was
21 material, as individuals are self-evidently concerned about who their sensitive online data is entrusted
22 and provided to. All subscribers were informed and contracted for Apple to be the provider of cloud
23 storage for these subscribers' data. The storage service, however, was performed by third parties, with
24 Apple effectively acting as a reseller of these third-parties' cloud storage facilities.

25 51. Plaintiffs and class members were injured as a proximate, direct, and foreseeable result
26 of Apple's material breach of the iCloud agreements. Had Apple disclosed that, instead, of Apple
27 being the provider of the iCloud cloud storage service other, non-Apple, third-parties were actually
28 undertaking the cloud storage of class members' data, they would either not have entered into the
iCloud agreement with Apple or would not have agreed to pay Apple as much as they did for their
iCloud subscription.

1 Advertising Law (Cal. Bus. and Prof. Code, § 17500 *et seq.*) and also because it amounts to a
2 breach of contract.

3 65. Apple's business conduct alleged herein with respect to Apple's iCloud
4 subscription sales also independently amounts to an unfair business practice within the meaning
5 of the UCL (Bus. and Prof. Code, § 17200 *et seq.*). Apple's misrepresentation as to which entity
6 is providing the cloud storage of Plaintiffs' and class members' data cause substantial economic
7 injury that Plaintiffs and class members cannot avoid precisely because Apple fails to inform
8 Plaintiffs and the class members that Apple is not the provider of cloud storage for their data, but
9 that the subscribers' data actually is turned over to third-parties unknown to Plaintiffs and the
10 class for cloud storage. Apple's business practice is not outweighed by any countervailing
11 benefits to consumers or competition.

12 64. Apple's business conduct alleged herein with respect to Apple's iCloud
13 subscription sales also independently amounts to a deceptive business practice within the
14 meaning of the UCL (Bus. and Prof. Code, § 17200 *et seq.*). Apple's misrepresentations to the
15 effect that Apple is providing the iCloud cloud storage service when, in fact, it has not, has
16 permitted Apple to charge a premium for class members' iCloud subscriptions.

17 65. During the time that Apple engaged in this unlawful business practice, Plaintiffs
18 and class members conveyed money to Apple in the form of the iCloud subscription fees they
19 paid Apple. Apple acquired this money from Plaintiffs and class members by resort and use of
20 this unlawful business practice.

21 66. Plaintiffs and class members pray for an order of restitution, restoring to them the
22 money they conferred on Apple while Apple engaged in the unlawful business practices alleged
23 herein. Plaintiffs also pray for an injunction to prohibit Apple from continuing to engage in the
24 unlawful conduct alleged herein.

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

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury on all counts so triable.

Dated: August 12, 2019

Respectfully submitted,

/s/ Roy A. Katriel
ROY A. KATRIEL (SBN 265463)
THE KATRIEL LAW FIRM, P.C.
4660 La Jolla Village Drive, Suite 200
San Diego, CA 92122
Telephone: (858) 546 4435
e-mail: rak@katriellaw.com

AZRA MEHDI (SBN 220406)
THE MEHDI FIRM, P.C.
One Market
Spear Tower, Suite 3600
San Francisco, CA 94111
Telephone: (415) 293-8039
Facsimile: (415) 293-8001
e-mail: azram@themehdifirm.com

Counsel for Plaintiffs James Stewart and Andrea M. Williams