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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 ELAINE ANDERSON, DIANA ATKINS,
SCOTT BURST, BETH CHAVEZ, COLEA
16 CHILDS, EUIHWAN CHO, ALISON
COLEMAN, VICTORIA CORNWELL,
17 DONALD DAHL, JACQUELINE DEMERITTE,
CANDACE MARTINO, SCOTT SAPKOSKY
18 and ERIK VILLAGRAN, on behalf of themselves
and all others similarly situated,

19 Plaintiffs,

20 v.

21 APPLE INC., a California corporation,

22 Defendant.
23

No. _____

CLASS ACTION COMPLAINT FOR BREACH
OF EXPRESS AND IMPLIED WARRANTIES,
VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT AND
UNFAIR COMPETITION LAW, FRAUDULENT
CONCEALMENT, AND BREACH OF IMPLIED
WARRANTY OF MERCHANTABILITY

DEMAND FOR JURY TRIAL

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1 All allegations made in this Complaint are based upon information and belief except those
2 allegations that pertain to Plaintiffs, which are based on personal knowledge. Each allegation in this
3 Complaint either has evidentiary support or, alternatively, pursuant to Federal Rule of Civil
4 Procedure 11(b)(3), is likely to have evidentiary support after a reasonable opportunity for further
5 investigation or discovery.

6 I. INTRODUCTION

7 1. Apple Inc. markets its iPhones as premium products with fast processors, reliable
8 connectivity, and epic performance. Each year, many thousands of American consumers purchase
9 Apple's products—so many, in fact, that they have made Apple one of the most valuable companies
10 in the world.

11 2. Like every vendor, Apple has duties of truthfulness and candor to its customers. It
12 also has the duty to not conceal material information that one of its newest iPhone models has
13 inferior performance and inferior components relative to its other new models and the models of its
14 competitors such that it will not maintain voice and data connections as advertised and promoted and
15 as needed to support the normal and expected operation of the device.

16 3. Apple has violated these duties by designing, manufacturing, and selling their iPhone
17 XR with defects that Apple was aware of. The iPhone XR is equipped with a 2x2 MIMO antenna
18 array versus the 4x4 MIMO array Apple uses in its iPhone XS and iPhone XS Max and which
19 Apple's competitors use on their phones priced comparably to the iPhone XR. Apple fails to disclose
20 at the point of sale or otherwise inform consumers that this design difference causes the iPhone XR
21 to have half the signal connectivity and 4G speed of the iPhone XS and iPhone XS Max and renders
22 the XR far less capable of obtaining a reliable connection in the same areas where the XS and Max
23 can reliably connect.

24 4. Apple has long known or should have known of the inadequacy of the iPhone XR
25 antenna array from multiple sources. These sources include pre-release design, manufacturing, and
26 testing data; warranty claims data; consumer complaints made directly to Apple, made to Apple
27 resellers and cellular service providers, and/or posted on public online forums; testing done in
28 response to those complaints; aggregate data and complaints from authorized resellers; and other

1 sources. Yet Apple failed to disclose and actively concealed the iPhone XR’s defect from the public,
2 and continues to manufacture, distribute, and sell the iPhone XR without disclosing the defect.

3 5. Under Apple’s One-Year Limited Warranty, Apple “warrants the included hardware
4 product and accessories against defects in materials and workmanship for one year from the date of
5 original retail purchase.” The 2x2 MIMO antenna array in the iPhone XR, all of which share
6 identical connectivity technology, are defective in material or workmanship under normal use.

7 6. Apple has not found a solution to the iPhone XR connectivity system defect. Instead,
8 upon receiving an in-warranty complaint, Apple—if it does anything—simply replaces the defective
9 iPhone XR with a new iPhone XR that has the identical defective connectivity system, leaving
10 consumers caught in a cycle of use, malfunction, and replacement.

11 7. In January 2020, Apple admitted that iPhone XR users were having network
12 connectivity issues on O2, a major cellular network in the United Kingdom. Apple has yet to offer a
13 solution to consumers there or in the United States.

14 8. Plaintiffs bring this action for violation of California consumer protection acts and for
15 breach of express and implied warranties on behalf of a nationwide class. Plaintiffs seek damages
16 and equitable relief on behalf of themselves and all others similarly situated.

17 9. In this nationwide proposed class action, Plaintiffs seek monetary compensation for
18 the degraded connectivity, reliability, and performance of their iPhone XR on their behalf and that of
19 the putative nationwide class.

20 II. JURISDICTION

21 10. This Court has subject matter jurisdiction over this matter pursuant to the Class
22 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed classes consist of 100 or
23 more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and at
24 least one plaintiff is a citizen of a state different from the defendant, which is a California
25 corporation.

26 III. VENUE

27 11. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial
28 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this judicial district.

1 Furthermore, Apple’s principal place of business is in this judicial district, and it is believed, and
2 therefore alleged, that a substantial amount of the conduct of which Plaintiffs complain occurred in
3 this judicial district. Also, Apple has marketed, advertised, and sold affected devices within this
4 judicial district. Additionally, the San Jose division of this Court is the proper division for filing,
5 given Apple’s headquarters in Cupertino, California.

6 **IV. PARTIES**

7 **A. Plaintiffs**

8 **1. Alabama Plaintiff Alison Coleman**

9 12. Plaintiff Alison Coleman (“Plaintiff” for purposes of this section) is a resident of
10 Fosters, Alabama. Plaintiff purchased four iPhone XRs on or about January 1, 2019.

11 13. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
12 prior to purchasing them. Plaintiff was not made aware of any features of the iPhone XR that would
13 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
14 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
15 MIMO array that would prevent it from adequately connecting to voice and data networks such that
16 she could use her iPhone XRs in a reliable manner as expected. Had she known about the inferior
17 2x2 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for the phones, or she
18 would have selected a different model or different manufacturer’s phone that did not use an inferior
19 antenna array.

20 14. From soon after her purchases, Plaintiff began to experience connectivity issues with
21 her iPhone XRs. Specifically, she would often be unable to hear caller’s voices or they would be
22 unable to hear hers; she would have difficulty sending and receiving text messages; and she would
23 have intermittent or inoperable data connections.

24 15. Plaintiff complained to Apple about these issues within one year of purchasing her
25 iPhone XRs. Plaintiff contacted Apple, as well as an authorized dealer, on multiple occasions.
26 Plaintiff was advised to reset her phones to factory default. She did this in an attempt to resolve her
27 connectivity issues, but her iPhone XRs continue to have the problems described above.

1 16. It was only recently that Plaintiff first learned, thanks to reports in the press, that
2 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array
3 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other
4 smartphone manufacturers use throughout their product lines, including in phones at the same price
5 point as the iPhone XR.

6 17. Plaintiff continues to possess her affected phones. One of her iPhone XRs was
7 provided to a family member who has also experienced the same connectivity issues.

8 2. **California Plaintiff Diana Atkins**

9 18. Plaintiff Diana Atkins (“Plaintiff” for purposes of this section) is a resident of Rohnert
10 Park, California. Plaintiff purchased her iPhone XR on or about October 27, 2019.

11 19. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
12 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
13 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
14 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
15 MIMO array that would prevent it from adequately connecting to voice and data networks such that
16 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2
17 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would
18 have selected a different model or different manufacturer’s phone that did not use an inferior antenna
19 array.

20 20. From soon after her purchase, Plaintiff began to experience connectivity issues with
21 her iPhone XR. Specifically, she would often be unable to hear caller’s voices or they would be
22 unable to hear hers; she would have difficulty sending and receiving text messages; and she would
23 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,
24 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an
25 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and
26 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,
27 including in phones at the same price point as the iPhone XR.

28 21. Plaintiff continues to possess her affected phone.

1 **3. California Plaintiff Euihwan Cho**

2 22. Plaintiff Euihwan Cho (“Plaintiff” for purposes of this section) is a resident of
3 Gardena, California. Plaintiff purchased his iPhone XR on or about June 1, 2019.

4 23. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
5 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
6 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
7 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
8 MIMO array that would prevent it from adequately connecting to voice and data networks such that
9 he could use his iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2
10 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or he would
11 have selected a different model or different manufacturer’s phone that did not use an inferior antenna
12 array.

13 24. From soon after his purchase, Plaintiff began to experience connectivity issues with
14 his iPhone XR. Specifically, he would often be unable to hear caller’s voices or they would be
15 unable to hear his; he would have difficulty sending and receiving text messages; and he would have
16 intermittent or inoperable data connections. It was only recently that Plaintiff first learned, thanks to
17 reports in the press, that Apple had designed and manufactured the iPhone XR with an inferior 2x2
18 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS
19 Max, and that other smartphone manufacturers use throughout their product lines, including in
20 phones at the same price point as the iPhone XR.

21 25. Plaintiff continues to possess his affected phone.

22 **4. Florida Plaintiff Beth Chavez**

23 Plaintiff Beth Chavez (“Plaintiff” for purposes of this section) is a resident of Gibsonton,
24 Florida. Plaintiff purchased her iPhone XR on or about April 6, 2019.

25 Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR prior to
26 purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would render it
27 less capable of voice and internet connectivity than other iPhone models. Specifically, Plaintiff was
28 not made aware of the fact that the iPhone XR was equipped with an inferior 2x2 MIMO array that

1 would prevent it from adequately connecting to voice and data networks such that she could use her
2 iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2 MIMO antenna
3 array on the iPhone XR, Plaintiff would have paid less for this phone, or she would have selected a
4 different model or different manufacturer's phone that did not use an inferior antenna array.

5 From soon after her purchase, Plaintiff began to experience connectivity issues with her
6 iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be unable
7 to hear hers; she would have difficulty sending and receiving text messages; and she would have
8 intermittent or inoperable data connections. It was only recently that Plaintiff first learned, thanks to
9 reports in the press, that Apple had designed and manufactured the iPhone XR with an inferior 2x2
10 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS
11 Max, and that other smartphone manufacturers use throughout their product lines, including in
12 phones at the same price point as the iPhone XR.

13 26. Plaintiff continues to possess her affected phone.

14 5. **Florida Plaintiff Jacqueline Demeritte**

15 27. Plaintiff Jacqueline Demeritte ("Plaintiff" for purposes of this section) is a resident of
16 Sunrise, Florida. Plaintiff purchased her iPhone XR on or about November 15, 2018.

17 28. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
18 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
19 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
20 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
21 MIMO array that would prevent it from adequately connecting to voice and data networks such that
22 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2
23 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would
24 have selected a different model or different manufacturer's phone that did not use an inferior antenna
25 array.

26 29. From soon after her purchase, Plaintiff began to experience connectivity issues with
27 her iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be
28 unable to hear hers; she would have difficulty sending and receiving text messages; and she would

1 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,
2 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an
3 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and
4 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,
5 including in phones at the same price point as the iPhone XR.

6 30. Plaintiff continues to possess her affected phone.

7 **6. Georgia Plaintiff Colea Childs**

8 31. Plaintiff Colea Childs (“Plaintiff” for purposes of this section) is a resident of Atlanta,
9 Georgia. Plaintiff purchased her iPhone XR on or about August 27, 2019.

10 32. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
11 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
12 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
13 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
14 MIMO array that would prevent it from adequately connecting to voice and data networks such that
15 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2
16 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would
17 have selected a different model or different manufacturer’s phone that did not use an inferior antenna
18 array.

19 33. From soon after her purchase, Plaintiff began to experience connectivity issues with
20 her iPhone XR. Specifically, she would often be unable to hear caller’s voices or they would be
21 unable to hear hers; she would have difficulty sending and receiving text messages; and she would
22 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,
23 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an
24 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and
25 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,
26 including in phones at the same price point as the iPhone XR.

27 34. Plaintiff continues to possess her affected phone.

1 7. **Nevada Plaintiff Donald Dahl**

2 35. Plaintiff Donald Dahl (“Plaintiff” for purposes of this section) is a resident of Las
3 Vegas, Nevada. Plaintiff purchased his iPhone XR on or about August 15, 2019.

4 36. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
5 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
6 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
7 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
8 MIMO array that would prevent it from adequately connecting to voice and data networks such that
9 he could use his iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2
10 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or he would
11 have selected a different model or different manufacturer’s phone that did not use an inferior antenna
12 array.

13 37. From soon after his purchase, Plaintiff began to experience connectivity issues with
14 his iPhone XR. Specifically, he would often be unable to hear caller’s voices or they would be
15 unable to hear his; he would have difficulty sending and receiving text messages; and he would have
16 intermittent or inoperable data connections. It was only recently that Plaintiff first learned, thanks to
17 reports in the press, that Apple had designed and manufactured the iPhone XR with an inferior 2x2
18 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS
19 Max, and that other smartphone manufacturers use throughout their product lines, including in
20 phones at the same price point as the iPhone XR.

21 38. Plaintiff continues to possess his affected phone.

22 8. **New York Plaintiff Candace Martino**

23 39. Plaintiff Candace Martino (“Plaintiff” for purposes of this section) is a resident of
24 Rochester, New York. Plaintiff purchased her iPhone XR on or about June 4, 2019.

25 40. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
26 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
27 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
28 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2

1 MIMO array that would prevent it from adequately connecting to voice and data networks such that
2 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2
3 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would
4 have selected a different model or different manufacturer's phone that did not use an inferior antenna
5 array.

6 41. Prior to purchasing her iPhone XR, Plaintiff was using an iPhone 6 plus and never
7 experienced any connectivity issues.

8 42. From soon after her purchase, Plaintiff began to experience connectivity issues with
9 her iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be
10 unable to hear her; she would experience dropped calls; she would have difficulty sending and
11 receiving text message; and she had intermittent or inoperable data connections.

12 43. Plaintiff complained to Apple about these issues within one year of purchasing her
13 iPhone XR. Plaintiff spent considerable time on the telephone with Apple trying to resolve these
14 issues. She was advised to perform a factory reset of the phone. She did this, and repeatedly turned
15 off and restarted her phone, to attempt to resolve her connectivity problems, but none of this has
16 worked and her iPhone XR continues to have the problems described above.

17 44. It was only recently that Plaintiff first learned, thanks to reports in the press, that
18 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array
19 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other
20 smartphone manufacturers use throughout their product lines, including in phones at the same price
21 point as the iPhone XR.

22 45. Plaintiff continues to possess her affected phone.

23 **9. Pennsylvania Plaintiff Scott Sapkosky**

24 46. Plaintiff Scott Sapkosky ("Plaintiff" for purposes of this section) is a resident of
25 Philadelphia, Pennsylvania. Plaintiff purchased his iPhone XR around May 2019.

26 47. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
27 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
28 render it less capable of voice and internet connectivity than other iPhone models. Specifically,

1 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
2 MIMO array that would prevent it from adequately connecting to voice and data networks such that
3 he could use his iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2
4 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or he would
5 have selected a different model or different manufacturer's phone that did not use an inferior antenna
6 array.

7 48. From soon after his purchase, Plaintiff began to experience connectivity issues with
8 his iPhone XR. He had difficulty hearing incoming calls and persons had difficulty hearing him.
9 Additionally, calls would be dropped and fail to go through. Data connections were unreliable, and
10 his phone was slow-running on WiFi and on cell towers. Text messages would often fail to send, and
11 would regularly be received, if at all, long after they were sent.

12 49. Plaintiff attempted to troubleshoot the problem, including by clearing out the caches
13 on his phone. He eventually went to an Apple Store, where he had his phone replaced with another
14 iPhone XR. His second iPhone XR continues to have the problems described above.

15 50. It was only recently that Plaintiff first learned, thanks to reports in the press, that
16 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array
17 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other
18 smartphone manufacturers use throughout their product lines, including in phones at the same price
19 point as the iPhone XR.

20 51. Plaintiff stills owns the replacement iPhone XR.

21 10. **South Carolina Plaintiff Elaine Anderson**

22 52. Plaintiff Elaine Anderson ("Plaintiff" for purposes of this section) is a resident of
23 Sumter, South Carolina. Plaintiff purchased two iPhone XRs on or about September 21, 2019.

24 53. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
25 prior to purchasing them. Plaintiff was not made aware of any features of the iPhone XR that would
26 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
27 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
28 MIMO array that would prevent it from adequately connecting to voice and data networks such that

1 she could use her iPhone XRs in a reliable manner as expected. Had she known about the inferior
2 2x2 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for the phones, or she
3 would have selected a different model or different manufacturer's phone that did not use an inferior
4 antenna array.

5 54. From soon after her purchases, Plaintiff began to experience connectivity issues with
6 her iPhone XRs. Specifically, she would often be unable to hear caller's voices or they would be
7 unable to hear hers; she would have difficulty sending and receiving text messages; and she would
8 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,
9 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an
10 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and
11 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,
12 including in phones at the same price point as the iPhone XR.

13 55. Plaintiff continues to possess her affected phones.

14 11. **Texas Plaintiff Scott Burst**

15 56. Plaintiff Scott Burst ("Plaintiff" for purposes of this section) is a resident of Pearland,
16 Texas. Plaintiff purchased his iPhone XR on or about September 17, 2019.

17 57. Plaintiff was not made aware of any features of the iPhone XR that would render it
18 less capable of voice and internet connectivity than other iPhone models. Specifically, Plaintiff was
19 not made aware of the fact that the iPhone XR was equipped with an inferior 2x2 MIMO array that
20 would prevent it from adequately connecting to voice and data networks such that he could use his
21 iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2 MIMO antenna
22 array on the iPhone XR, Plaintiff would have paid less for this phone, or he would have selected a
23 different model or different manufacturer's phone that did not use an inferior antenna array.

24 58. From soon after his purchase, Plaintiff began to experience connectivity issues with
25 his iPhone XR. Specifically, he would often be unable to hear caller's voices or they would be
26 unable to hear his; he would have difficulty sending and receiving text message; and he has had
27 intermittent or inoperable data connections.

1 59. Plaintiff complained to Apple about these issues within one year of purchasing his
2 iPhone XR. He was advised to go to an Apple Store, where employees told him that he needed to do
3 a factory reset of his phone and downgrade the operating system. He did this, and repeatedly turned
4 off and restarted his phone to attempt to resolve his connectivity problems, but not of this worked
5 and his iPhone XR continues to have the problems described above.

6 60. It was only recently that Plaintiff first learned, thanks to reports in the press, that
7 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array
8 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other
9 smartphone manufacturers use throughout their product lines, including in phones at the same price
10 point as the iPhone XR.

11 61. Plaintiff continues to possess his affected phone.

12 **12. Texas Plaintiff Erick Villagran**

13 62. Plaintiff Erick Villagran is a resident of Round Rock, Texas. On January 30, 2020, he
14 purchased a new iPhone XR from the AT&T store in Pflugerville, Texas.

15 63. Prior to purchasing his iPhone XR, Plaintiff was using a Galaxy S10 plus and never
16 experienced any connectivity issues.

17 64. Shortly after acquiring his new iPhone XR, he began having connectivity issues with
18 his new phone. He had difficulty hearing incoming calls and persons had difficulty hearing him.
19 Additionally, calls would be dropped and fail to go through. Data connections were unreliable, with
20 interrupted streaming and the inability to use many applications, especially streaming services. Text
21 messages would often fail to send, and would regularly be received, if at all, long after they were
22 sent.

23 65. Plaintiff contacted his service provider, AT&T, and they told him the problem was
24 not with the service, but instead with his new iPhone XR.

25 66. Plaintiff still owns his iPhone XR. However, because of these connectivity issues,
26 Plaintiff is thinking of replacing his iPhone XR with a different phone.

1 67. When Plaintiff purchased his iPhone XR, he did so under the reasonable, but
2 mistaken, belief that it would function normally and allow him to use the normal operating features
3 of an iPhone, and would not have the serious connectivity issues that he has experienced.

4 68. Had Plaintiff known that the iPhone XR had a 2x2 MIMO antenna array that would
5 provide half the connection speed and deficient connectivity at any speed as compared to other
6 iPhones and competitor models on the market, he would have paid less for his iPhone XR, or he
7 would have purchased a different iPhone or a competitor's phone that did not have these issues.

8 **13. Wisconsin Plaintiff Victoria Cornwell**

9 69. Plaintiff Victoria Cornwell ("Plaintiff" for purposes of this section) is a resident of
10 Racine, Wisconsin. Plaintiff purchased her iPhone XR on or about February 28, 2019.

11 70. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR
12 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would
13 render it less capable of voice and internet connectivity than other iPhone models. Specifically,
14 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2
15 MIMO array that would prevent it from adequately connecting to voice and data networks such that
16 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2
17 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would
18 have selected a different model or different manufacturer's phone that did not use an inferior antenna
19 array.

20 71. From soon after her purchase, Plaintiff began to experience connectivity issues with
21 her iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be
22 unable to hear hers; she would have difficulty sending and receiving text messages; and she would
23 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,
24 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an
25 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and
26 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,
27 including in phones at the same price point as the iPhone XR.

28 72. Plaintiff continues to possess her affected phone.

1 **B. Defendant Apple Inc.**

2 73. Apple Inc., the designer, manufacturer, and vendor of iPhones, is a California
3 corporation. Apple maintains its headquarters and principal place of business in Cupertino,
4 California. Upon information and belief, Apple took all decisions and actions complained of herein
5 at or near its corporate headquarters in Cupertino, California, or elsewhere in the state of California.

6 74. Apple transacts substantial business throughout California, including by way of
7 designing its products and operating system updates, devising and implementing policies regarding
8 hardware design and components, devising and implementing its service and marketing strategies
9 and policies, and managing distribution of its iPhone products from or via its California
10 headquarters. It is believed, and therefore alleged, that substantially all of the misconduct alleged in
11 this complaint occurred in or emanated from California.

12 **V. FACTUAL ALLEGATIONS**

13 **A. The Technology in the iPhone XR**

14 75. On or about September 21, 2018, Apple released its iPhone XS and iPhone XS Max.¹
15 These new flagship models of the iconic iPhone were equipped with a 4x4 MIMO antenna array. The
16 iPhone XR, at issue in this case, was released on October 26, 2018.² Unlike the earlier released
17 iPhone XS and XS Max, however, the iPhone XR was released with a 2x2 MIMO antenna array.

18 76. With two fewer branches on the antenna array, 2x2 MIMO is only capable of two
19 streams of data for transmit and receive pathways, while 4x4 MIMO offers four streams. The
20 differences between 2x2 MIMO and 4x4 MIMO affect not just the LTE cellular connection, but also
21 industry standard 802.11ac WiFi connections.³

22 77. Testing has revealed that the increased pathways of the 4x4 MIMO array affects not
23 only download and upload data speeds, but also network connectivity. That is, given the same signal
24 strength from a cellular or WiFi antenna, the 2x2 MIMO antenna arrays do not connect as well and
25

26 ¹ See <https://historycooperative.org/the-history-of-the-iphone/> (last accessed April 3, 2020).

27 ² See *id.*

28 ³ See <https://www.howtogeek.com/394266/what-is-4x4-mimo-and-does-my-smartphone-need-it/>
(last accessed April 3, 2020).

1 suffer from an inferior connection to comparable devices equipped with the superior 4x4 MIMO
2 array.⁴

3 **B. Consumer Reaction to the iPhone XR**

4 78. Customers have posted on Apple’s own forums and websites complaints about
5 connectivity with the iPhone XR from soon after its initial release. For example, a customer
6 identified as “saltrock04” posted the following on December 10, 2018:

7 I am intermittently having a strange issue with my iPhone XR on
8 Sellular Connectivity. The phone just stops data and call connectivity,
9 even though the cellular receptions bar is showing full signal. The only
way you can tell it has happened is when you come to use the device,
then you see there is no data and calls can’t be made or received.⁵

10 79. Consumers posted to other boards that their iPhone XR phones had issues from
11 immediately after the release date. For example, “radiologyman” posted the following on December
12 23, 2018:

13 Seems like my wife’s day one Iphone XR has reception issues, both
14 with cellular signal and with random wifi disconnects. Is it worth
15 exchanging it for a later production date unit? Seems like it was
16 established on this forum that there is a variance in reception with the
XS and XS Max models. What are may chances to persuade Apple to
take it back in return for an Iphone X? Thanks!.⁶

17 80. And consumers have posted that recent software updates to their phones have not
18 fixed the connectivity issues. For example, on October 16, 2019, “Bluestar_dragon” posted:

19 I just got the XR 5 days ago. I’m coming from a 5s with no reception
20 issues. The XR has been horrible with reception so far. I updated to
iOS 13 and am still having issues.⁷

21 **C. Press Response to the iPhone XR**

22 81. The online technology press and forums have also widely reported and commented on
23 the systemic connectivity issues of the iPhone XR. On December 19, 2018, less than two months
24

25 ⁴ See *id.*

26 ⁵ <https://discussions.apple.com/thread/250014593> (last accessed April 3, 2020).

27 ⁶ <https://forums.macrumors.com/threads/iphone-xr-reception-issues.2162007/> (last accessed
28 April 3, 2020).

⁷ [https://forums.macrumors.com/threads/iphone-xr-reception-issues.2162007/page-2#post-
27409829](https://forums.macrumors.com/threads/iphone-xr-reception-issues.2162007/page-2#post-27409829) (last accessed April 3, 2020).

1 after the release of the iPhone XR, Matthew Miller from ZD Net published the article: “Goodbye
2 iPhone XR: Signal strength and size bring me back to the iPhone XS.” After using the iPhone XR, he
3 wrote: “After six weeks, I realized I just could not put up with the less capable wireless technology
4 that daily made my streaming media pause on my commute and had calls drop without warning.”⁸

5 82. In a product review that Mr. Miller published on October 31, 2018, he wrote:

6 One difference between the iPhone XR and XS/XS Max that can be
7 significant and is likely to be overlooked by the masses is the CAT 12
8 vs CAT 16 LTE support. Qualcomm has an excellent tutorial on this
9 that is applicable even to the Intel modems found in these new
10 iPhones. Most people may focus on the theoretical 600 Mbps CAT 12
11 vs 1 Gbps CAT 16 speeds. Speed differences are present, but that's not
12 really the main concern here. CAT 12 devices have two antennas while
13 CAT 16 devices have four; 2x2 MIMO vs 4x4 MIMO. In weak signal
14 areas, this can be critical.

11 My commuter train spends most of its time on the fringes of towns
12 along the way to Seattle and T-Mobile signal is weak most of the way.
13 In my testing, the iPhone XR averages about 4-5 dBm less than the
14 iPhone XS Max and a stunning 10 dBm less than the Note 9. Given the
15 logarithmic scale for this measure that equates to the Note 9 have a
16 signal three times as powerful as the iPhone XR. The iPhone XR is
17 performing even worse than the Essential Phone, which is terrible in
18 weak signal areas.⁹

16 83. A review in PC Magazine from November 5, 2018, just days after the release of the
17 iPhone XR, highlighted its deficient connectivity:

18 Both the XS/Max and the XR use the same modem, the new Intel
19 XMM7560. But the XR is missing two of the XS/Max's antenna
20 branches, making it a 2x2 MIMO phone versus the XS/Max's 4x4
21 MIMO. All flagship Android phones right now are 4x4 MIMO, as
22 well, including XR-priced phones like the LG G7 and the OnePlus
23 6T¹⁰

21 84. The article went on to explain that across the board, even when connected to a
22 network only capable of 2x2 MIMO connection, the iPhone XR materially underperformed the
23 iPhone XS and XS Max, and price-competitive models to the iPhone XR from other manufacturers.¹¹

24
25 ⁸ <https://www.zdnet.com/article/goodbye-apple-iphone-xr-signal-strength-and-size-put-the-iphone-xs-back-in-my-hand/> (last accessed April 3, 2020).

26 ⁹ <https://www.zdnet.com/product/apple-iphone-xr/> (last accessed April 3, 2020).

27 ¹⁰ <https://www.pcmag.com/news/exclusive-iphone-xs-crushes-xr-in-cellular-signal-test-results>
28 (last accessed April 3, 2020).

¹¹ *See id.*

1 85. By January 2019, the financial world had also recognized the failings of the iPhone
2 XR. In a January 7, 2019 article titled: “3 iPhone XR Problems that Create Huge Headaches for
3 Apple,” Josh Enomoto wrote on Yahoo Finance:

4 [T]he iPhone XR is itself a hot mess. When the company launched the
5 fighter model, it was supposed to bridge the pricing gaps in the Apple
6 iPhone. Apparently, management spent more time marketing the
7 product than manufacturing it.

8 According to various consumer reviews, the iPhone XR suffers from a
9 litany of performance and connectivity issues. In addition, frustrated
10 customers have reported numerous electronic gremlins. The kicker is
11 that AAPL is still working on solutions. Therefore, if you come across
12 an issue, you must hope a third-party resource has your answer.¹²

13 86. Despite several reports that Apple would attempt to resolve the iPhone XR
14 connectivity issues by switching the phone to a 4x4 MIMO antenna array for its fall 2019 product
15 release,¹³ there is no evidence that it has done that, and even recent purchasers report the same
16 connectivity issues as day-one purchasers.¹⁴

17 87. Apple engages in rigorous pre-release testing. Dozens of engineers are provided with
18 pre-production units in the months leading up to a product launch and report back their experiences
19 to Apple. Given the hardware differences in capability between the 2x2 MIMO antenna array in the
20 iPhone XR and the twice-as-capable 4x4 MIMO antenna array in the iPhone XS, iPhone XS Max,
21 and in other manufacturer’s devices at the same price-point as the iPhone XR, Apple’s pre-release
22 testing revealed to Apple that the iPhone XR would have serious connectivity shortcomings as
23 compared to consumers’ other choices in the marketplace. Yet Apple’s press release for the iPhone
24 XR revealed none of this, instead deceptively suggesting that the iPhone XR shared the iPhone XS’
25 “breakthrough technology”:

26 At 8 a.m. local time on Friday, October 26, the new iPhone XR went
27 on sale around the world. iPhone XR combines breakthrough
28 technologies from iPhone XS in an all-screen glass and aluminum

25 ¹² <https://finance.yahoo.com/news/3-iphone-xr-problems-create-171951118.html> (last accessed
26 April 3, 2020).

27 ¹³ See, e.g., [https://appleinsider.com/articles/19/01/17/2019-iphone-xr-may-get-same-antenna-
28 tech-thats-in-the-iphone-xs](https://appleinsider.com/articles/19/01/17/2019-iphone-xr-may-get-same-antenna-tech-thats-in-the-iphone-xs) (last accessed April 3, 2020).

¹⁴ See, e.g., <https://discussions.apple.com/thread/251019022> (post from Jan. 7, 2020, “my iPhone
XR won’t stay connected to the WiFi”) (last accessed April 3, 2020).

1 design, featuring a stunning 6.1-inch Liquid Retina display — the most
2 advanced LCD in a smartphone.¹⁵

3 88. Likewise, marketing on its website for the XR, even to this day, revealed none of the
4 connectivity shortcomings of the 2x2 MIMO antenna array in the iPhone XR. Instead, in comparing
5 the iPhone XR to the iPhone XS and XS Max, Apple makes no mention at all of the different MIMO
6 antenna arrays or what the effect of this difference is on usability.¹⁶

7 **D. Apple’s Warranties and Response to the Defect**

8 89. Defendant issued to all original purchasers, including Plaintiffs and the other Class
9 members, a written manufacturer’s warranty. This One-Year Limited Warranty states that Apple
10 “warrants the included hardware product and accessories against defects in materials and
11 workmanship for one year from the date of original retail purchase.”

12 90. However, Apple knew, or at least should have known, of the defects at the time of
13 sale or lease of the iPhone XR. Plaintiffs and Class members, however, had no such knowledge. The
14 defects in the iPhone XR were and are latent in nature because they are not obvious or ascertainable
15 upon reasonable examination and they were no disclosed in any advertising or marketing materials.

16 91. Despite having more than adequate opportunity to successfully remedy the defect(s)
17 in the iPhone XR, Apple has failed to do so, and in many instances has instead merely replaced
18 defective iPhone XR with defective iPhone XR.

19 92. Apple concealed, and continues to conceal, the fact that the iPhone XR contains an
20 inferior 2x2 MIMO antenna array that renders the iPhone XR incapable of performing as reasonably
21 expected. Apple also continues to conceal the fact that the replacement iPhone XRs it provides to
22 purportedly repair the defect are equally defective. Despite its knowledge of this defect, Apple
23 continues to sell defective iPhone XR smartphones. Therefore, Plaintiffs did not discover and could
24 not have discovered this defect through reasonable diligence.

25 _____
26 ¹⁵ <https://www.apple.com/newsroom/2018/10/iphone-xr-now-available-around-the-world/> (last
27 accessed April 3, 2020).

28 ¹⁶ *See*
[https://www.apple.com/iphone/compare/?device1=iphoneXS&device2=iphoneXSmax&device3=iph
oneXR](https://www.apple.com/iphone/compare/?device1=iphoneXS&device2=iphoneXSmax&device3=iph
oneXR) (last accessed April 3, 2020).

1 99. Certification of Plaintiffs' claims for classwide treatment is appropriate because
2 Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as
3 would be used to prove those elements in individual actions alleging the same claims.

4 100. This action meets all applicable standards of Fed. R. Civ. P. 23 for class certification.
5 More specifically, Plaintiffs can demonstrate:

6 101. Numerosity. The members of the proposed class and subclass are so numerous and
7 geographically dispersed that individual joinder of all proposed class members is impracticable. *See*
8 Fed. R. Civ. P. 23(a)(1). While Plaintiffs believe that there are millions, if not tens of millions,
9 of members of the proposed class and subclass,¹⁸ the precise number of class and subclass members
10 is unknown to them, but may be ascertained from Apple's books and records. In the 48 hour period
11 following Plaintiffs' counsel's publication of their investigation of this matter, Plaintiffs' counsel
12 was contacted by over 1,300 iPhone XR owners with connectivity complaints and that number
13 continues to grow by hundreds per day. Class members may be notified of the pendency of this
14 action by recognized, court-approved notice dissemination methods, which may include U.S. Mail,
15 electronic mail, Internet postings, and/or published notice.

16 102. Commonality and Predominance. This action involves common questions of law and
17 fact, which predominate over any questions affecting individual class members. *See* Fed. R. Civ. P.
18 23(a)(2) and (b)(3). These include, without limitation:

- 19 a. Whether Apple engaged in the conduct alleged in this Complaint;
- 20 b. Whether Apple designed, advertised, marketed, distributed, sold, or otherwise
21 placed iPhone XRs into the stream of commerce in the United States;

22
23
24
25 ¹⁸ *See, e.g.*, <https://wccftech.com/iphone-xr-top-selling-smartphone-of-2019-h1/> (stating that 26
26 million iPhone XR were sold in the first half of 2019 alone) (last accessed April 3, 2019). *See also*
27 <https://www.statista.com/statistics/804398/us-iphone-sales-by-model/> (48% of all U.S. iPhone sales
28 in the first half of 2019 were iPhone XR); <https://www.businessinsider.com/iphone-xr-apple-best-selling-phone-in-2019-omdia-report-2020-2> (iPhone XR was most popular smartphone in the world in 2019 with over 46 million units sold).

- c. Whether Apple advised owners of iPhone XRs (including Plaintiffs and putative class members) of the use of 2x2 MIMO antenna arrays in the iPhone XR and the affect the use of this component would have on connectivity;
- d. Whether Apple had a common policy of concealing its decision to use the less-capable 2x2 MIMO antenna array in the iPhone XR;
- e. Whether the iPhone XR contains marketing, design, or manufacturing defects;
- f. Whether Apple knew about the defect(s), and, if so, for how long;
- g. Whether Apple marketed the iPhone XR as a high-performance device that was both powerful and speedy and capable of operating like its other iPhone devices;
- h. Whether Apple’s conduct, including but not limited to its alleged deceptive conduct, violates California consumer protection statutory or other laws, including the laws of other jurisdictions, as asserted herein;
- i. Whether Plaintiffs and members of the proposed classes are entitled to damages, as well as punitive, exemplary, or multiple damages, due to Apple’s conduct as alleged in this Complaint, and if so, in what amounts; and
- j. Whether Plaintiffs and other putative class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief as requested in this complaint.

103. Typicality. Plaintiffs’ claims are typical of the putative class members’ claims because, among other things, all such class members were comparably injured through Apple’s wrongful conduct as described above. *See* Fed. R. Civ. P. 23(a)(3).

104. Adequacy. Plaintiffs are adequate proposed class representatives because their interests do not conflict with the interests of the other members of the proposed class they seek to represent; because they have retained counsel competent and experienced in complex class action litigation; and because they intend to prosecute this action vigorously. The interests of the proposed classes will be fairly and adequately protected by Plaintiffs and their counsel. *See* Fed. R. Civ. P. 23(a)(4).

1 113. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs
2 properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

3 114. In the course of selling the defective iPhone XR, Apple expressly warranted in its
4 One-Year Limited Warranty that it “will either repair, replace, or refund your iPhone at its own
5 discretion. Warranty benefits are in addition to rights provided under local consumer laws.”

6 115. Upon information and belief, Apple’s standard warranty language is identical for all
7 iPhone XRs sold nationwide.

8 116. Apple did not provide at the time of sale, and has not provided since then, iPhone XR
9 smartphones conforming to its express warranties.

10 117. Apple breached and continues to breach express warranties because the defective
11 connectivity technology/systems, including the 2x2 MIMO antenna arrays, were present in the
12 iPhone XR at the time of sale.

13 118. Apple breached and continues to breach express warranties because Apple did not
14 (and does not) cover the full expenses associated with repairing and/or replacing the defective
15 connectivity technology/systems in Plaintiffs’ and the Subclass members’ defective iPhone XRs.

16 119. Plaintiffs have attempted to have their iPhone XRs repaired under the warranty. Apple
17 breached and continues to breach express warranties because it either fails to repair the iPhone XR or
18 merely replaces the defective iPhone XR with a new or refurbished iPhone XR and is unable to
19 successfully repair the defects in Plaintiffs’ and the Subclass members’ iPhone XRs, despite having
20 had reasonable opportunities to do so. As such, the express warranties fail their essential purpose.

21 120. Apple’s refusal to provide an adequate repair or replacement violates 15 U.S.C.
22 § 2304.

23 121. Despite the fact that the iPhone XRs connectivity technology/systems continue to fail
24 despite being “repaired” or “replaced,” Apple continues to replace the defective iPhone XR with
25 identical or substantially similar iPhone XRs. Thus, the defect is permanent in nature.

26 122. Apple fraudulently concealed material information from Plaintiffs and the Subclass
27 regarding the existence and extent of the defects. Apple also fraudulently concealed the material fact
28 that the replacement iPhone XRs were defective. Therefore, any limitations imposed by Apple as to

1 the scope of its obligations under the express warranties to repair and replace defective parts and/or
2 any disclaimers in the written warranties prepared by Apple that purport to preclude recovery by
3 Plaintiffs or the Class members are unconscionable, both substantively and procedurally, and are
4 unenforceable as a matter of law.

5 123. Any such limitations or exclusions have been imposed unilaterally by Apple via
6 adhesive, “take it or leave it” contracts with no ability by Plaintiffs or the Subclass members to
7 negotiate the substance or coverage of the warranties, and Plaintiffs and the Subclass members did
8 not have any meaningful choices of reasonably available alternative sources of supply of suitable
9 iPhone XR smartphones free of the above unconscionable conditions.

10 124. Furthermore, Apple’s express warranty fails in its essential purpose because the
11 contractual remedy is insufficient to make Plaintiffs and the Subclass members whole and because
12 Apple has failed and/or refused to adequately provide the promised remedies within a reasonable
13 time.

14 125. Also, as alleged herein, at the time that Apple warranted and sold the iPhone XR, it
15 knew that the smartphones were defective, and Apple wrongfully and fraudulently misrepresented
16 and/or concealed material facts regarding the iPhone XR. Plaintiffs and the Subclass members were
17 therefore induced to purchase the iPhone XR under false and/or fraudulent pretenses.

18 126. Further, the enforcement under these circumstances of any limitations whatsoever on
19 the recovery of incidental and/or consequential damages is barred because any such limitations work
20 to reallocate the risks between the parties in an unconscionable and objectively unreasonable manner,
21 and result in overly harsh or one-sided results that shock the conscience, especially in light of the fact
22 that Apple simply placed replaced defective iPhone XRs with identically manufactured, and thus
23 similarly defective iPhone XRs when those smartphones are brought in for repairs.

24 127. Moreover, many of the damages flowing from the iPhone XRs cannot be resolved by
25 the limited remedies contained in the express warranty as those incidental and consequential
26 damages have already been suffered due to Apple’s fraudulent conduct as alleged herein and due to
27 their failure to provide such limited remedy within a reasonable time. Therefore, any limitation on
28

1 Plaintiffs’ and the Subclass members’ remedies would cause the available remedy to be insufficient
2 to make them whole.

3 128. Apple was previously provided notice of the defects in the iPhone XR by numerous
4 customer complaints, letters, emails, and other communications from Subclass members, resellers,
5 technology press, and repair facilities.

6 129. Plaintiffs and the Subclass members have suffered damages directly and proximately
7 caused by Apple’s breach of the express warranty and are entitled to recover damages including, but
8 not limited to, out of pocket expenses and diminution of value.

9 **COUNT II**
10 **BREACH OF IMPLIED WARRANTY—**
11 **MAGNUSON-MOSS WARRANTY ACT**
(15 U.S.C. §§ 2301, ET SEQ.)

12 130. Plaintiffs re-allege and incorporate each and every allegation set forth above as if
13 fully written herein.

14 131. Plaintiffs bring this claim on behalf of the Nationwide Class.

15 132. The iPhone XRs are “consumer products” within the meaning of 15 U.S.C. § 2301.

16 133. Plaintiffs and members of the Class are “consumers” within the meaning of 15 U.S.C.
17 § 2301 because they are persons entitled under applicable state law to enforce against the warrantor
18 the obligations of its express and implied warranties.

19 134. Apple is a “supplier” of consumer products to consumers and a “warrantor” within the
20 meaning of 15 U.S.C. § 2301.

21 135. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs
22 properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

23 136. Section 2310(d)(1) of Chapter 15 of the United States Code provides a cause of action
24 for any consumer who is damaged by the failure of a warrantor to comply with a written or implied
25 warranty.

26 137. Apple made written and implied warranties regarding the iPhone XR to Plaintiffs and
27 Class members within the meaning of 15 U.S.C. § 2301. Apple provided Plaintiffs and other Class
28

1 members an implied warranty of merchantability within the meaning of the Magnuson-Moss
2 Warranty Act, 15 U.S.C. § 2301(7).

3 138. Apple breached the implied warranty of merchantability because the iPhone XR was
4 not fit for the ordinary purpose for which such goods are used. As described throughout the
5 Complaint, the iPhone XR contains defects which render them inconvenient, and imperfect such that
6 Plaintiffs and Class members would not have purchased the iPhone XR had they known of the
7 defects.

8 139. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and
9 are not required to give Apple notice and an opportunity to cure until such time as the Court
10 determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil
11 Procedure.

12 140. Plaintiffs, individually and on behalf of the other Class members, seek all damages
13 permitted by law, including diminution in value of their iPhone XRs, in an amount to be proven at
14 trial.

15 141. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class
16 members are entitled to recover a sum equal to the aggregate amount of costs and expenses
17 (including attorneys' fees based on actual time expended) determined by the Court to have
18 reasonably been incurred by Plaintiffs and the other Class members in connection with the
19 commencement and prosecution of this action.

20 142. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C.
21 § 2310(d)(1) and damages as a result of Apple's violation of its written and/or implied warranties.

22 **COUNT III**
23 **VIOLATIONS OF THE CALIFORNIA CONSUMER**
24 **LEGAL REMEDIES ACT**
(CAL. CIV. CODE § 1750, ET SEQ.)

25 143. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
26 herein.

27 144. Plaintiffs bring this claim on behalf of the Nationwide Class.

1 145. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et*
2 *seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken
3 by any person in a transaction intended to result or which results in the sale or lease of goods or
4 services to any consumer.”

5 146. The iPhone XRs are “goods” as defined in Cal. Civ. Code § 1761(a).

6 147. Plaintiffs and the other Class members are “consumers” as defined in Cal. Civ. Code
7 § 1761(d), and Plaintiffs, the other Class members, and Apple are “persons” as defined in Cal. Civ.
8 Code § 1761(c).

9 148. As alleged herein, Apple made misleading representations and omissions concerning
10 the benefits, performance, and reliability of the iPhone XR, including the connectivity
11 technology/system.

12 149. In purchasing the iPhone XR, Plaintiffs and other Class members were deceived by
13 Apple’s failure to disclose its knowledge of the defect in its iPhone XR.

14 150. Apple’s conduct as described herein was and is in violation of the CLRA. Apple’s
15 conduct violates at least the following enumerated CLRA provisions:

- 16 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,
17 approval, characteristics, uses, benefits, or quantities that they do not have.
- 18 ii. Cal Civ. Code § 1770(a)(7): Representing that goods are of a particular
19 standard, quality, or grade if they are of another.
- 20 iii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
21 advertised.
- 22 iv. Cal Civ. Code § 1770(a)(16): Representing that goods have been supplied in
23 accordance with a previous representation when they have not.

24 151. Apple intentionally and knowingly misrepresented and omitted material facts
25 regarding the iPhone XR, specifically regarding the connectivity technology/system, with an intent to
26 mislead Plaintiffs and Class members.

27 152. In purchasing the iPhone XR, Plaintiffs and other Class members were deceived by
28 Apple’s failure to disclose its knowledge of the defect in the connectivity technology/system.

1 153. Plaintiffs and other Class members had no way of knowing Apple's representations
2 were false, misleading, and incomplete or knowing the true nature of the iPhone XR.

3 154. As alleged herein, Apple engaged in a pattern of deception and public silence in the
4 face of a known defect with its iPhone XR. Plaintiffs and other Class members did not, and could
5 not, unravel Apple's deception on their own.

6 155. Apple knew or should have known its conduct violated the CLRA.

7 156. Apple owed Plaintiffs and the Class members a duty to disclose the truth about its
8 faulty iPhone XR because Apple:

- 9 i. Possessed exclusive knowledge of the defect in the iPhone XR;
10 ii. Intentionally concealed the foregoing from Plaintiffs and Class members;
11 and/or
12 iii. Made incomplete representations in advertisements and on its website, failing
13 to warn the public or to publicly admit that the iPhone XR was defective.

14 157. Apple had a duty to disclose that the connectivity technology/system in the iPhone
15 XR was fundamentally flawed as described herein, because Plaintiffs and the other Class members
16 relied on Apple's material misrepresentations and omissions regarding the features of the iPhone XR.

17 158. Apple's conduct proximately caused injuries to Plaintiffs and the other Class
18 members that purchased the iPhone XR and suffered harm as alleged herein.

19 159. Plaintiffs and the other Class members were injured and suffered ascertainable loss,
20 injury-in-fact, and/or actual damage as a proximate result of Apple's conduct in that Plaintiffs and
21 the other Class members incurred costs, including overpaying for their iPhone XRs that have
22 suffered a diminution in value.

23 160. Apple's violations cause continuing injuries to Plaintiffs and other Class members.

24 161. Apple's unlawful acts and practices complained of herein affect the public interest.

25 162. Apple knew of the defective connectivity technology/system, and that the iPhone XR
26 was materially compromised by such defects.

27 163. The facts concealed and omitted by Apple from Plaintiffs and other Class members
28 are material in that a reasonable consumer would have considered them to be important in deciding

1 whether to purchase an iPhone XR or pay a lower price. Had Plaintiffs and the other Class members
2 known about the defective nature of the iPhone XR, they would not have purchased the iPhone XR
3 or would not have paid the prices they paid.

4 164. Plaintiffs' and the other Class members' injuries were proximately caused by Apple's
5 unlawful and deceptive business practices.

6 165. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining Apple from
7 engaging in the methods, acts, or practices alleged herein, including further concealment of the
8 defect in the iPhone XR.

9 166. Plaintiffs sent out a notice letter on April 6, 2020.

10 167. If Apple does not rectify its conduct within 30 days, Plaintiffs will amend this
11 complaint to request the following forms of relief pursuant to Cal. Civ. Code § 1782:

- 12 i. Actual damages;
- 13 ii. Restitution of money to Plaintiffs and Class members, and the general public;
- 14 iii. Punitive damages;
- 15 iv. An additional award of up to \$5,000 to each Plaintiffs and any Class member
16 who is a "senior citizen";
- 17 v. Attorneys' fees and costs; and
- 18 vi. Other relief that this Court deems proper.

19 **COUNT IV**
20 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**
(CAL. BUS. & PROF. CODE § 17200, ET SEQ.)

21 168. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
22 herein.

23 169. Plaintiffs bring this claim on behalf of the Nationwide Class.

24 170. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et*
25 *seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act
26 or practice and unfair, deceptive, untrue, or misleading advertising."

27 171. Apple's conduct, as described herein, was and is in violation of the UCL. Apple's
28 conduct violates the UCL in at least the following ways:

- i. By failing to disclose that the connectivity technology/system in the iPhone XR was defective;
- ii. By selling iPhone XR s that suffer from such defects;
- iii. By knowingly and intentionally concealing from Plaintiffs and the other Class members that the iPhone XR was defective;
- iv. By marketing iPhone XRs as reliable, powerful, fast, and defect free, with cutting edge technology, all while knowing of the defect related to the connectivity technology/system; and
- v. By violating other California laws, including California consumer protection laws.

172. Apple intentionally and knowingly misrepresented and omitted material facts regarding the iPhone XR with intent to mislead Plaintiffs and the other Class members.

173. In purchasing the iPhone XRs, Plaintiffs and the other Class members were deceived by Apple's failure to disclose the defect related to the connectivity technology/system.

174. Plaintiffs and the other Class members reasonably relied upon Apple's false misrepresentations and omissions. They had no way of knowing that Apple's representations were false, misleading, and incomplete. As alleged herein, Apple engaged in a pattern of deception and public silence in the face of a known defect with its iPhone XR. Plaintiffs and the other Class members did not, and could not, unravel Apple's deception on their own.

175. Apple knew or should have known that its conduct violated the UCL.

176. Apple owed Plaintiffs and the other Class members a duty to disclose the truth about its iPhone XR because Apple:

- i. Possessed exclusive knowledge of the defect in the iPhone XR;
- ii. Intentionally concealed the foregoing from Plaintiffs and the other Class members; and/or
- iii. Made incomplete representations by failing to warn the public or to publicly admit that the iPhone XR was defective.

1 177. Apple had a duty to disclose that the connectivity technology/system in the iPhone
2 XR was fundamentally flawed as described herein, because Plaintiffs and the other Class members
3 relied on Apple's material misrepresentations and omissions.

4 178. Apple's conduct proximately caused injuries to Plaintiffs and the other Class
5 members that purchased the iPhone XR and suffered harm as alleged herein.

6 179. Plaintiffs and the other Class members were injured and suffered ascertainable loss,
7 injury-in-fact, and/or actual damage as a proximate result of Apple's conduct in that Plaintiffs and
8 the other Class members incurred costs, including overpaying for their iPhone XRs that have
9 suffered a diminution in value.

10 180. Apple's violations cause continuing injuries to Plaintiffs and Class members.

11 181. Apple's unlawful acts and practices complained of herein affect the public interest.

12 182. Apple's misrepresentations and omissions alleged herein caused Plaintiffs and the
13 other Class members to make their purchases of their iPhone XRs. Absent those misrepresentations
14 and omissions, Plaintiffs and the other Class members would not have purchased iPhone XRs, would
15 not have purchased the iPhone XR at the prices they paid, and/or would have purchased alternative
16 smartphones that did not contain defective connectivity technology/systems that failed to live up to
17 reasonable consumer expectations or industry standards.

18 183. Accordingly, Plaintiffs and the other Class members have suffered injury-in-fact,
19 including lost money or property, as a result of Apple's misrepresentations and omissions.

20 184. Plaintiffs request that this Court enter such orders or judgments as may be necessary
21 to restore to Plaintiffs and Class members any money Apple acquired by unfair competition,
22 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code
23 § 17203 and Cal. Civ. Code § 3345; and for such other relief as may be appropriate.

24 **COUNT V**
25 **FRAUD BY CONCEALMENT**
(BASED ON CALIFORNIA LAW)

26 185. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
27 herein.

28 186. Plaintiffs bring this claim on behalf of the Nationwide Class.

1 187. Apple intentionally concealed that the iPhone XR is defective.

2 188. Apple further affirmatively misrepresented to Plaintiffs in advertising and other forms
3 of communication, including standard and uniform material provided with each iPhone XR and on
4 its website, that the iPhone XRs it was selling had no significant defects, that the iPhone XR was
5 reliable, fast, and would perform and operate properly.

6 189. Apple knew about the defect in the iPhone XR when these representations were made.

7 190. The iPhone XRs purchased by Plaintiffs and the other Class members contained
8 defective connectivity technology/systems.

9 191. Apple had a duty to disclose that the iPhone XR contained a fundamental defect as
10 alleged herein, because Plaintiffs and the other Class members relied on Apple's material
11 representations.

12 192. As alleged herein, at all relevant times, Apple has held out the iPhone XR to be free
13 from defects such as the defect related to the connectivity technology/system. Apple touted and
14 continues to tout the many benefits and advantages of the iPhone XR, but nonetheless failed to
15 disclose important facts related to the defect. This made Apple's other disclosures about the iPhone
16 XR deceptive.

17 193. The truth about the defective iPhone XR was known only to Apple; Plaintiffs and the
18 other Class members did not know of these facts and Apple actively concealed these facts from
19 Plaintiffs and Class members.

20 194. Plaintiffs and the other Class members reasonably relied upon Apple's deception.
21 They had no way of knowing that Apple's representations were false, misleading, or incomplete. As
22 consumers, Plaintiffs and Class members did not, and could not, unravel Apple's deception on their
23 own. Rather, Apple intended to deceive Plaintiffs and Class members by concealing the true facts
24 about the iPhone XR.

25 195. Apple's false representations and omissions were material to consumers because they
26 concerned qualities of the iPhone XR that played a significant role in the value of the iPhone XR.

27 196. Apple had a duty to disclose the connectivity technology/system defect and violations
28 with respect to the iPhone XR because details of the true facts were known and/or accessible only to

1 Apple, because Apple had exclusive knowledge as to such facts, and because Apple knew these facts
2 were not known to or reasonably discoverable by Plaintiffs or Class members.

3 197. Apple also had a duty to disclose because it made general affirmative representations
4 about the technology and innovations included with its iPhone XR, without telling consumers that
5 one of the features had a fundamental defect that would affect the quality, speed and performance of
6 the iPhone XR.

7 198. Apple's disclosures were misleading, deceptive, and incomplete because they failed to
8 inform consumers of the additional facts regarding the defect in the connectivity technology/system
9 as set forth herein. These omitted and concealed facts were material because they directly impact the
10 value of the iPhone XR purchased by Plaintiffs and Class members.

11 199. Apple has still not made full and adequate disclosures and continues to defraud
12 Plaintiffs and Class members by concealing material information regarding the defect in the iPhone
13 XR.

14 200. Plaintiffs and Class members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased or paid as much for iPhone XRs with faulty
17 connectivity technology/systems, and/or would have taken other affirmative steps in light of the
18 information concealed from them. Plaintiffs' and Class members' actions were justified. Apple was
19 in exclusive control of the material facts, and such facts were not generally known to the public,
20 Plaintiffs, or Class members.

21 201. Because of the concealment and/or suppression of facts, Plaintiffs and Class members
22 sustained damage because they own iPhone XRs that are diminished in value as a result of Apple's
23 concealment of the true quality of those smartphones. Had Plaintiffs and Class members been aware
24 of the defect in the iPhone XR, and the Company's disregard for the truth, Plaintiffs and Class
25 members would have paid less for their iPhone XR or would not have purchased them at all.

26 202. The value of Plaintiffs' and Class members' iPhone XR has diminished as a result of
27 Apple's fraudulent concealment of the defective connectivity technology/system, which has made
28

1 any reasonable consumer reluctant to purchase an iPhone XR, let alone pay what otherwise would
2 have been fair market value for the iPhone XR.

3 203. Accordingly, Apple is liable to Plaintiffs and Class members for damages in an
4 amount to be proven at trial.

5 204. Apple's acts were done wantonly, maliciously, oppressively, deliberately, with intent
6 to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations
7 that Apple made to them, in order to enrich Apple. Apple's conduct warrants an assessment of
8 punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be
9 determined according to proof.

10 **COUNT VI**
11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
12 **(CAL. COM. CODE § 2314)**

13 205. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
14 herein.

15 206. Plaintiffs bring this claim on behalf of the Nationwide Class.

16 207. Apple is and was at all relevant times a merchant with respect to smartphones such as
17 the iPhone XR under Cal. Com. Code § 2104.

18 208. A warranty that the iPhone XRs were in merchantable condition was implied by law
19 in the instant transaction, pursuant to Cal. Com. Code § 2314.

20 209. Apple marketed the iPhone XRs as reliable, fast, innovative and technologically
21 advanced smartphones that would functions as reasonably expected by consumers and in accordance
22 with industry standards. Such representations formed the basis of the bargain in Plaintiffs' and Class
23 members' decisions to purchase the iPhone XR.

24 210. Plaintiffs and other Class members purchased the iPhone XR from Apple, or through
25 Apple's authorized agents for retail sales. At all relevant times, Apple was the manufacturer,
26 distributor, warrantor, and/or seller of the iPhone XRs.

27 211. Apple knew or had reason to know of the specific use for which the iPhone XRs were
28 purchased.

1 D. An award of costs, expenses, and attorneys' fees;

2 E. Orders temporarily and then permanently enjoining Apple from continuing the unfair
3 and deceptive business practices alleged in this Complaint, in particular the ongoing sale of the
4 iPhone XR without replacing the defective connectivity technology/system, and orders effecting the
5 correction or mitigation of the unfair and deceptive practices alleged herein; and

6 F. Such other or further relief as may be appropriate.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand a jury trial for all claims so triable.

9 Dated: April 6, 2020

HAGENS BERMAN SOBOL SHAPIRO LLP

10 /s/ Shana E. Scarlett

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Attorneys for Plaintiffs and the Proposed Classes

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

Elaine Anderson, et al.

(b) County of Residence of First Listed Plaintiff Sumter County, South Carolina (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Hagens Berman Sobol Shapiro LLP; 715 Hearst Avenue, Suite 202, Berkeley, CA 94710; (510) 725-3000

DEFENDANTS

Apple Inc.

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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)

Brief description of cause:

Class Action Fairness Act of 2005

VII. REQUESTED IN COMPLAINT:

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

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

X SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 04/06/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Shana E. Scarlett