

1 MICHAEL MCSHANE (CA State Bar #127944)

AUDET & PARTNERS, LLP

2 711 Van Ness Aveune., Suite 500

San Francisco, CA 94102

3 Telephone: (415) 568-2555

Facsimile: (415) 568-2556

4 mmcshane@audetlaw.com

5 WILLIAM ANDERSON (*Pro Hac Vice*)

CUNEO GILBERT & LADUCA, LLP

6 4725 Wisconsin Ave., NW, Suite 200

7 Washington, DC 20016

Telephone: (202) 789-3960

8 wanderson@cuneolaw.com

9 CHARLES J. LADUCA (*Pro Hac Vice*)

CUNEO GILBERT & LADUCA LLP

10 4725 Wisconsin Avenue, N.W. Suite 200

Washington, DC 20016

11 Telephone: (202) 789-3960

12 charlesl@cuneolaw.com

13 JON M. HERSKOWITZ (*Pro Hac Vice*)

BARON & HERSKOWITZ

14 9100 S. Dadeland Blvd., Suite 1704

Miami, FL 33156

15 Telephone: (305) 670-0101

Facsimile: (305) 670-2393

16 jon@bhfloridalaw.com

17 *Attorneys for Plaintiffs*

(Additional Counsel Listed in Signature Block)

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20
21 **PAUL ORSHAN, CHRISTOPHER**
22 **ENDARA, and DAVID HENDERSON,**
23 **individually, and on behalf of all others**
24 **similarly situated,**

25 **Plaintiffs,**

26 **v.**

27 **APPLE INC.,**

28 **Defendant**

Case No. 5:14-cv-5659 EJD

SECOND AMENDED CLASS ACTION COMPLAINT:

- (1) CALIFORNIA’S UNFAIR COMPETITION LAW (§ 17200);**
- (2) CALIFORNIA’S FALSE ADVERTISING LAW (§ 17500 *ET SEQ.*);**
- (3) CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT (§ 1750 *ET SEQ.*)**

JURY TRIAL DEMANDED

1 Plaintiffs Paul Orshan (“Orshan”), Christopher Endara (“Endara”), and David Henderson
2 (“Henderson”), individually and on behalf of all others similarly situated (or collectively
3 “Plaintiffs”), file this class action against Defendant Apple Inc. (“Apple” or “Defendant”).
4 Plaintiffs allege the following upon personal knowledge as to their actions and upon information
5 and belief based upon the investigation of their attorneys as to all other facts alleged in the
6 Complaint:

7 INTRODUCTION

8 1. This case challenges storage capacity misrepresentations and omissions in certain
9 Apple devices, as well as the inordinate amount of space consumed by Apple’s iOS 8 operating
10 system. As set forth in greater detail below, iOS 8 used an unexpectedly large percentage of the
11 storage capacity on 16 GB iPhones and iPads (the “Devices”) and appears to have represented
12 the high water mark for the space occupied by Apple’s iOS. Since this case was originally filed
13 in 2014, Apple has quadrupled the size of the base memory of its most recent iPhone, the iPhone
14 X, which now has a base memory of 64 GB. The most updated version of the iPad, the iPad Pro
15 10.5, now has a base memory of 64 GB. Despite the substantial increase in the size of the base
16 model iPhones and iPads, the size of iOS 11 has *decreased*.

17 2. Defendant failed to disclose to consumers that as much as 21.3% of the advertised
18 storage capacity of the Devices was consumed by iOS 8 and unavailable for consumers when
19 consumers purchase Devices that had iOS 8 installed. Apple also forces consumers to retain
20 applications that many consumers do not want, but are unable to delete. For example, iOS 8.2
21 included the Apple Watch as a required application that could not be deleted even if the
22 consumer had no Apple Watch, nor any desire to own one. This is but one of numerous
23 applications forced on consumers, including Plaintiffs, that epitomizes Defendant’s disregard of
24 its advertising representations that limits consumers access to the very Devices they purchased.
25 Reasonable consumers, such as Plaintiffs, do not expect this marked discrepancy between the
26 advertised level of capacity and the available capacity of the Devices, as the operating system,
27 forced applications and other storage space unavailable to consumers occupies an extraordinary
28 percentage of their Devices’ limited storage capacity. Defendant’s disclaimer that “actual

1 formatted capacity less” does not ameliorate Apple’s misstatement because the space unavailable
2 to consumers is not the result of formatting, which has a specific meaning. By way of
3 comparison, Samsung provides the following disclaimer language regarding the storage capacity
4 of its flagship Galaxy S8 smartphone, “User memory is less than the total memory due to the
5 storage of the operating system and software used to operate the features. Actual user memory
6 will vary depending on the operator and may change after software upgrades are performed.”
7 Again, formatting is not the operating system or the applications present on the device, so no
8 reasonable consumer could expect to lose 20%+ of the capacity of the device as occurred here.

9 3. To compound the harm to consumers, after Defendant provides materially less
10 than the advertised capacity on the Devices, Defendant aggressively markets a monthly-fee-
11 based storage system called iCloud. Using these sharp business tactics, Defendant gives less
12 storage capacity than advertised, only to later offer to sell storage capacity in a desperate
13 moment, e.g., when a consumer is trying to record or take photos at a child or grandchild’s
14 recital, basketball game or wedding. To put this in context, each gigabyte of storage Apple
15 shortchanges its customers amounts to approximately 400-500 high resolution photographs.

16 JURISDICTION AND VENUE

17 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
18 1332(d). The matter in controversy exceeds \$5,000,000 exclusive of interests and costs, and this
19 matter is a class action in which certain class members are citizens of States other than
20 Defendant's state of citizenship.

21 5. Venue is proper in this Court because Defendant resides in this District, and a
22 substantial part of the events alleged in this Complaint giving rise to Plaintiffs’ claims, including
23 the dissemination of the false and misleading advertising alleged herein, occurred in and were
24 directed from this District.

25 THE PARTIES

26 6. Plaintiff Paul Orshan is a resident of Miami, Florida. Plaintiff Christopher Endara
27 is a resident of Miami, Florida. Plaintiff David Henderson is a resident of Arlington, Virginia.

28

1 10, 2011. Apple also manufactures and markets a line of “iPad” tablet devices, first introduced
2 on April 3, 2010.

3 15. Apple explicitly represented on its website, advertisements, product packaging,
4 and other promotional materials, that the iPhone 6 and 6+ were available with a storage capacity
5 of 16 GB. This is the principle false representation made by Defendant and relied upon by
6 Named Plaintiffs Orshan, Endara and Henderseon. Apple made similar representations with
7 respect to earlier models of the iPhone. Apple also made at all times during the relevant time
8 period, representations concerning the storage capacities of its 16 GB iPads. This cases
9 challenges Apple’s effort to limit consumers’ access to the storage Apple sold them.



22 16. In February, 2014, Plaintiff Orshan purchased two iPhone 5s’ represented by
23 Apple to have 16 gigabytes (“16 GB”) of purported storage capacity from the AT&T Store
24 located in Coral Gables, Florida. Orshan purchased the devices on a payment plan of \$32.50 per
25 month. Orshan purchased devices primarily for personal, family or household use. The iPhones
26 were purchased with iOS 7 and were subsequently upgraded to iOS 8.

27 17. In November, 2012 Plaintiff Orshan also purchased two iPads represented by
28 Apple to have 16 gigabytes (“16 GB”) of purported storage capacity at the Apple Store in the

1 Dadeland Mall. Orshan paid \$639.86 for the devices. The iPads were subsequently upgraded to
2 iOS 8.

3 18. Plaintiff Orshan purchased his iPhones and iPads in reliance on Defendant's
4 claims, on its website, advertisements, product packaging, and other promotional materials, that
5 the devices came equipped with 16 GB of storage space. Plaintiff Orshan viewed various
6 materials, including Apple's website before purchasing his iPhones and iPads, and packaging
7 materials in the store at the time of making the purchases, which specifically stated that the
8 Devices possessed 16 GB of storage capacity. Plaintiff Orshan was willing to—and did in fact—
9 pay more to acquire devices with 16 GB of storage capacity (rather than the less expensive 8GB
10 of storage capacity) because he wanted the greater capacity to store his personal data. In reliance
11 on the fact that Apple specifically represented that the devices had 16 GB of storage capacity,
12 Plaintiff Orshan expected that capacity would be available for his personal use. Absent that, it
13 would not have been of the same monetary value to him. Plaintiff upgraded to iOS 8 with the
14 belief that the upgrade would not substantially inhibit his available storage capacity. Defendant
15 did not adequately disclose in conjunction with upgrades to iOS 8 the additional and substantial
16 storage capacity that would be consumed by the upgrade. Had Plaintiff Orshan known that by
17 upgrading to iOS 8 he would substantially inhibit—and in fact decrease—his storage capacity, it
18 would have materially impacted his decision about whether to upgrade to iOS 8. However, in
19 reality because newer versions of iOS provide important security updates, it is important for
20 consumers—including Plaintiffs—to make the updates. In addition to security risks, failure to
21 implement operating system updates can also cause applications to cease functioning. But
22 Plaintiffs and consumers do not expect Defendant to foist unnecessary and unwanted
23 applications that cannot be erased in order to maintain the security of their Devices.

24 19. In December, 2014, Plaintiff Endara purchased an iPhone 6 represented by Apple
25 to have 16 gigabytes ("16 GB") of purported storage capacity from the AT&T store located in
26 Miami, Florida. Endara purchased the device on a payment plan of approximately \$27 per
27 month. Endara purchased the device primarily for personal use. The iPhone was purchased with
28 iOS 8 pre-installed.

1 20. Plaintiff Endara purchased his iPhone in reliance on Defendant's claims, on its
2 website, advertisements, product packaging, and other promotional materials, promoting the
3 claim that his iPhone 6 came equipped with 16 GB of storage space. Plaintiff Endara viewed
4 various materials, including Apple's website before purchasing his iPhone and packaging
5 materials in the store at the time of making the purchase, which stated that his Device possessed
6 16 GB of storage capacity. In reliance on the fact that Apple specifically represented that the
7 device had 16 GB of storage capacity, Plaintiff Endara expected that capacity would be available
8 for his personal use. Absent that, it would not have been of the same monetary value to him.
9 Had he known that in reality, the operating system and other mandatory pre-installed software
10 consumes a substantial portion of the represented storage capacity, Endara would not have
11 purchased the 16GB of storage capacity or would not have been willing to pay the same price for
12 it.

13 21. On April 1, 2012, Plaintiff Henderson purchased an iPad 2 represented by Apple
14 to have 16 gigabytes ("16GB") of purported storage capacity from the Apple Store located in
15 Clarendon, Virginia. Henderson purchased the device primarily for personal, family or
16 household use. Henderson paid \$522.90 for the device after tax and a \$99 payment for
17 AppleCare support. The iPad was purchased with a predecessor operating system to iOS 8.

18 22. Once Henderson upgraded to iOS 8, his iPad, which had previously performed
19 almost flawlessly for him, slowed to a snail's pace and was no longer useful for any purpose
20 other than reading a book. Henderson took the iPad to the Apple Genius Bar in the Apple Store
21 in Clarendon, Virginia, and was told that they had received many complaints about iPads
22 instantly becoming useless and that iPads with more memory seemed to fair better with the iOS
23 8. Henderson made multiple efforts to resolve the crash and speed issues with his iPad in store,
24 through AppleCare and even with an individual in Corporate Executive Relations at Apple's
25 executive offices. Ultimately, he was passed to an AppleCare iOS Senior Specialist who
26 recommended that he jailbreak his device—an action that would void his warranty. Because his
27 iPad would not perform properly, Henderson was forced to purchase a new iPad mini
28 represented by Apple to have 32 GB of storage capacity.

1 23. Plaintiff Henderson purchased his iPad in reliance on Defendant's claims, on its
2 website, advertisements, product packaging, and other promotional materials, that the device
3 came equipped with 16 GB of storage space. Plaintiff Henderson viewed various materials,
4 including Apple's website before purchasing his iPad, and packaging materials in the store at the
5 time of making the purchase, which specifically stated that the Device were available with 8 GB
6 or 16 GB of storage capacity. Plaintiff Henderson was willing to—and did in fact—pay more to
7 acquire devices with 16GB of storage capacity (rather than the less expensive 8GB of storage
8 capacity) because he wanted the greater capacity to store his personal data. In reliance on the
9 fact that Apple specifically represented that the devices had 16 GB of storage capacity, Plaintiff
10 Henderson expected that capacity would be available for his personal use. Absent that, it would
11 not have been of the same monetary value to him. Plaintiff upgraded to iOS 8 with the belief
12 that the upgrade would not substantially inhibit his available storage capacity. Defendant did not
13 adequately disclose in conjunction with upgrades to iOS 8 the additional and substantial storage
14 capacity that would be consumed by the upgrade. Had Plaintiff Orshan known that by upgrading
15 to iOS 8 he would substantially inhibit—and in fact decrease—his storage capacity, it would
16 have materially impacted his decision to complete the upgrade to iOS 8.

17 24. Neither Plaintiff Orshan, Plaintiff Endara, Plaintiff Henderson, nor any reasonable
18 consumer, expected (or could have reasonably expected) that a shortfall ranging between 18.1 –
19 21.3% exists between the advertised and available capacity of the Devices they purchased. By
20 way of comparison, a new iPhone X—even in the base model featuring 64 GB—with iOS 11
21 (the most recent operating system) would lose just over 3% of its available capacity according to
22 Forbes. See [https://www.forbes.com/sites/gordonkelly/2017/09/20/apple-ios-11-should-you-
23 upgrade/#7cd745762e48](https://www.forbes.com/sites/gordonkelly/2017/09/20/apple-ios-11-should-you-upgrade/#7cd745762e48). While Plaintiffs maintain that Apple's disclaimer of “actual formatted
24 capacity less” is misleading and must be changed to something similar to that of Samsung,
25 referenced above, no lawsuit would likely have been pursued over 3%.

26 25. Storage capacity matters to reasonable consumers (including Plaintiffs and
27 putative Class members) precisely because of how it translates into their ability to store personal
28 information after purchase. Storage capacity constitutes a substantial consideration that weighs

1 into reasonable consumers' decision making processes. Consumers purchase Devices with
2 greater storage capacity with the expectation that they will be able to store a greater amount of
3 personal information on those Devices and delay having to purchase a replacement in the future.
4 Indeed, this is why Apple makes representations regarding the storage capacity of its products
5 and boasts to consumers that its Devices have 16 GB of storage capacity. To a consumer, the
6 fact that a device has a particular storage capacity matters mostly because it impacts their ability
7 to make use of that capacity. The fact that a device has a storage capacity is not valuable to a
8 reasonable consumer if that consumer cannot actually make use of that capacity. And storage
9 capacity was the principle price differentiator for the Devices. Higher storage capacity costs
10 more.

11 26. Apple should have disclosed the actual storage capacity available to users for its
12 various Devices and that upgrading to iOS 8 would result in a substantial decrease in available
13 storage capacity. Had Plaintiffs known that the operating system and other pre-installed software
14 consumes a substantial portion of the storage capacity of the Devices, they would have
15 reconsidered their decisions to purchase Devices, or would have paid less. In the same vein,
16 Apple's decision to include applications that are irrelevant to many consumers and cannot be
17 deleted added insult to injury.

18 27. Defendant employed false, deceptive and misleading practices in connection with
19 marketing, selling, and distributing the Devices. For example, in its advertising, marketing, and
20 promotional materials, including Apple's Internet website, product packaging, and product
21 displays, Defendant misrepresented the iPhone 6 as having 16 GB of storage capacity. The
22 inclusion of a misleading disclaimer that states "actual formatted capacity less" does not mitigate
23 Apple's culpability based on the plain meaning of the disclaimer. Merriam-Webster defines
24 "format" as, "a method of organizing data (as for storage)." Notably, the dictionary definition of
25 "format" does not reference the operating system, and it certainly does not mean the inclusion of
26 software that cannot be erased or a partition of the available storage space beyond what is even
27 required for the operating system. Apple's disclosures were not sufficient to put reasonable
28 consumers—including Plaintiffs—on notice of the difference between the space promised on the

1 cover of every Device’s packaging, which each Plaintiff saw and relied upon, and the space
2 actually received. At minimum, each Plaintiff and every consumer saw a uniform misstatement
3 on the packaging of every device.

4 28. Defendant knew, but concealed and failed to disclose in its advertising, marketing
5 or promotional materials, that the operating system and other pre-installed software consumes a
6 substantial portion of the represented storage capacity of each of the Devices. Further, Apple’s
7 comparisons of the Devices with harddrives in its pleadings in this litigation, and Apple’s
8 incredible technological sophistication makes plain that Apple knows what the term “format”
9 means. The represented capacity, is not, therefore, actually what is available for consumers after
10 purchase. Defendant also fails to discuss that consumers will be forced to retain certain
11 applications, which consume storage capacity, even if the consumer wishes to delete the
12 application. Even if the Court disregards the plain dictionary meaning of Apple’s disclaimer,
13 nowhere does Apple disclose to Plaintiffs or any consumers that Apple will force consumers to
14 retain applications that they neither want, nor need. These applications are not necessary for the
15 devices to function, they are merely a forced tool by which Apple can solicit additional products
16 or services. During the pertinent time period, the list of applications that could not be deleted
17 included: calculator, calendar, camera, clock, compass, contacts, FaceTime, game center, iTunes
18 store, mail, maps, messages, music, newsstand, notes, passbook, photos, reminders, Safari,
19 stocks videos, voice memos, and weather. Thus, for a consumer who purchases a “16 GB”
20 iPhone, iPad, or iPod with iOS 8 pre-installed, or who upgrades to iOS 8, as much as 21.3% of
21 the represented storage capacity is inaccessible and unusable. Apple’s reference to other devices
22 not permitting consumers full access to the entire advertised storage space is a red herring
23 because, for example, Samsung provides an appropriate disclaimer, which describes the situation
24 honestly.

25 29. The following table depicts the discrepancy between represented storage capacity,
26 and storage capacity actually available to purchasers, on certain iPhones and iPads (with iOS 8
27 installed) that were examined by Plaintiffs’ counsel at the time the original complaint in this
28 action was filed:

Device	Represented Capacity		Capacity Available to User		Capacity Unavailable to User	
	(GB)	(GiB)	(GB)	(GB)	(%)	
iPhone 6+	16	11.8	12.7	3.3	20.6%	
iPhone 6	16	12.1	13.0	3.0	18.8%	
iPhone 5s	16	12.2	13.1	2.9	18.1%	
iPad Air	16	11.7	12.6	3.4	21.3%	
iPad	16	11.7	12.6	3.4	21.3%	

30. The foregoing actual capacities are further confirmed by reports from several purchasers and bloggers reported on various websites. For example, a purchaser complained that his new iPhone 4 with a represented capacity of 8 GB had only 6.37 GB of storage. An Apple representative conceded that “that is normal” and suggested that, if the user did “not like it,” to “take it back.” See <https://discussions.apple.com/thread/3558683>. A blogger, similarly, reported that a “16 GB” iPad only affords 13 GB of usable storage, and noted that “selling a 16 GB iPad that really only has 13 GB available (after iOS is installed) – is deceptive.” See <http://www.mcelhearn.com/apples-ios-apps-are-bloated-and-how-many-gigs-do-you-get-on-a-16-gb-ios-device/> See also David Price, “What's an iPhone or iPad's true storage capacity?” (April 10, 2014), <http://www.macworld.co.uk/feature/ipad/whats-iphone-or-ipads-true-storage-capacity-3511773/> (“a 16GB iPhone 5s offers 12.2GB of true capacity, and a 16GB iPhone 5c allows 12.6GB,” apparently using the binary definition of gigabyte). See also <http://www.imore.com/16gb-vs-64gb-vs-128gb-which-iphone-6-and-iphone-6-plus-storage-size-should-you-get/> (“out of 16 GB of storage you get only 12~13”).

31. Apple’s misrepresentations and omissions are deceptive and misleading because they omit material facts that an average consumer would consider in deciding whether to purchase its products, namely, that when using iOS 8, as much as 3.7 GB of the represented storage capacity on a device represented to have 16 GB of storage capacity is, in fact, not available to the purchaser for storage. For example, Apple misrepresents that an iPhone 6+ with

1 the base level of storage has 16 GB of storage space while concealing, omitting and failing to
2 disclose that, on models with iOS 8 pre-installed, in excess 20% of that space is not available
3 storage space that the purchaser can access and use to store his or her own files.

4 32. In addition to making material misrepresentations and omissions to prospective
5 purchasers of Devices with iOS 8 pre-installed, Apple also made misrepresentations and
6 omissions to owners of Devices with predecessor operating systems. These misrepresentations
7 and omissions cause these consumers to “upgrade” their Devices from iOS 7 (or other operating
8 systems) to iOS 8. Apple fails to disclose that upgrading from iOS 7 to iOS 8 will cost a Device
9 user between 600 MB and 1.3 GB of storage space – a result that no consumer could reasonably
10 anticipate. This is confirmed by our own comparison of devices with iOS 7 and iOS 8
11 installations, and reports by others. *See* “iOS 8, thoroughly reviewed” (September 19, 2014),
12 available online at <http://arstechnica.com/apple/2014/09/ios-8-thoroughly-reviewed/2/#install>

13 33. Rather ironically, Apple touts iOS 8 as “The biggest iOS release ever.” Of
14 course, Apple is *not* referring to the literal size of iOS 8, which appears to be entirely
15 undisclosed in its voluminous marketing materials extolling the purported virtues of iOS 8.

16 34. At present, Apple does not enable users who have upgraded to iOS 8 to revert
17 back to iOS 7 or another operating system. *See* “How to downgrade from iOS 8 to iOS 7: Apple
18 stops signing iOS 7.1.2, and blocks iOS downgrades (Sept. 29, 2014), available online at
19 [http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-](http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-3522302/)
20 [3522302/](http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-3522302/); “There’s no turning back from iOS 8 if you upgrade from iOS 7.1.2” (Sept. 26,
21 2014), available online at <http://bgr.com/2014/09/26/downgrade-from-ios-8-to-ios-7-1-2/>).

22 35. The most popular storage option, for each of the Devices, is presently, and has
23 been at all times, the base level of storage, currently represented to be 8 or 16 GB depending on
24 the Device. At least a plurality (and perhaps a majority) of purchasers make the determination
25 that the storage afforded by the base model, which is priced lower than models with higher
26 storage capacity, will be sufficient for their purposes, based on Apple’s representations as to the
27 Devices’ storage capacities. The shortfall in actual storage capacity is most acute, and most
28

1 material, on the base models, as the unexpected shortfall in storage will cause some purchasers to
2 exhaust the Devices' storage capacities, and/or to do so earlier than expected.

3 36. Apple exploits the discrepancy between represented and available capacity for its
4 own gain by offering to sell, and by selling, cloud storage capacity to purchasers whose internal
5 storage capacity is at or near exhaustion. In fact, when the internal hard drive approaches "full,"
6 a pop up ad opens up offering the purchaser the opportunity to purchase "iCloud" cloud storage.
7 For this service, at all times relevant to this complaint, Apple charged prices ranging from \$0.99
8 to \$29.99 *per month*. And Apple operates in a closed system—it does not allow users to insert
9 an SD card or other internal storage medium (unlike certain competitors' smartphones, including
10 most phones using the Android operating system at the time the original complaint in this action
11 was filed). Similarly, at all times relevant to this complaint, Apple also did not permit users to
12 freely transfer files between the Devices and a (notebook or desktop) PC using a "file manager"
13 utility – an option available to most users of Android or Windows-based portable devices.

14 37. Plaintiff Orshan purchased a 16 GB iPhone 5s on or about February 2014 with (a
15 version of) iOS 7 pre-installed. On or about October 2014, Plaintiff upgraded the operating
16 system on his iPhone 5s to iOS 8 in reliance on Apple's misrepresentations and omissions.

17 38. Plaintiff Endara purchased a 16 GB iPhone on or about December 2014 with iOS
18 8 pre-installed.

19 39. Plaintiff Henderson purchased a 16 GB iPad on April 1, 2012, and upgraded to
20 iOS 8 in late 2014, with the catastrophic results described above. Plaintiff Henderson's
21 experience is a quintessential example of what fuels people's fears concerning planned
22 obsolescence by Apple.

23 40. Plaintiffs hereby bring this class action seeking redress for Defendant's unfair
24 business practices, false or deceptive or misleading advertising, and violations of the Consumers
25 Legal Remedies Act ("CLRA").

26 **CLASS ACTION ALLEGATIONS**

27 41. This action may properly be maintained as a class action pursuant to Fed. R. Civ.
28 P. 23.

1 42. Plaintiffs bring this action as a class action on behalf of themselves and the
2 following classes (“the Classes”): (1)(a) an “iOS 8 Purchaser Class” consisting of all persons or
3 entities in the United States who purchased an iPhone or iPad with represented storage capacity
4 of 16 GB with iOS 8 pre-installed for purposes other than resale or distribution, and (b) an “iOS
5 8 Purchaser CLRA Subclass” consisting of all persons in the United States who purchased an
6 iPhone or iPad with represented storage capacity of 16 GB with iOS 8 pre-installed for personal,
7 family or household use within the four years preceding the filing of this Complaint, (2)(a) an
8 “Upgrade Class” consisting of all persons or entities in the United States who upgraded an
9 iPhone or iPad with represented storage capacity of 16 GB to iOS 8, and (b) an “Upgrade CLRA
10 Subclass” consisting of all persons or entities in the United States who upgraded an iPhone or
11 iPad used for personal, family or household use with represented storage capacity of 16 GB to
12 iOS 8.

13 43. Excluded from the Classes are the Defendant, and all officers, directors,
14 employees, or agents of the Defendant.

15 44. The members of the Classes are so numerous that joinder of all members would
16 be impracticable. Plaintiffs do not know the exact size or identities of the proposed Classes,
17 since such information is in the exclusive control of Defendant. Plaintiffs, however, believe that
18 the Classes encompass many thousands of individuals.

19 45. There are common questions of law or fact, among others, including

- 20 a. The nature, scope and operations of the wrongful practices of Apple;
 - 21 b. Whether Defendant's advertising, marketing, product packaging, and other
22 promotional materials were untrue, misleading, or reasonably likely to deceive;
 - 23 c. Whether Defendant knew that its representations and/or omissions regarding the
24 Devices' storage capacity were false or misleading, but continued to make them.
 - 25 d. Whether Defendant's failure to disclose the amount of storage space consumed by
26 its operating system and other pre-installed software was a material fact;
 - 27 e. Whether Apple's forced inclusion of software violates the laws cited herein;
- 28

- 1 f. Whether Apple's partition of storage space beyond that necessary to operate the
2 devices is actionable misconduct;
- 3 g. Whether, by the misconduct as set forth in this Complaint, Apple engaged
4 in unfair or unlawful business practices, pursuant to California Business
5 and Professions Code § 17200, *et seq.*;
- 6 h. Whether Defendant's conduct violated the California Consumer Legal Remedies
7 Act;
- 8 i. Whether Defendant's conduct violated the California Business and Professions
9 Code § 17500, *et seq.*;
- 10 j. Whether, as a result of Apple's misconduct as set forth in this Complaint,
11 Plaintiffs and the Classes are entitled to damages, restitution, equitable
12 relief and other relief, and the amount and nature of such relief; and
- 13 k. Whether Apple has acted on grounds generally applicable to the Class,
14 making injunctive relief appropriate.

15 46. Plaintiffs' claims are typical of the members of the Classes because Plaintiffs and
16 all members of the Classes were injured by the same wrongful practices of Apple as described in
17 this Complaint. Plaintiffs' claims arise from the same practices and course of conduct that gives
18 rise to the claims of the Classes' members, and are based on the same legal theories. Plaintiffs
19 have no interests that are contrary to or in conflict with those of the Classes they seek to
20 represent.

21 47. Plaintiffs will fairly and adequately represent the interests of the members of the
22 Classes. Plaintiffs' interests are the same as, and not in conflict with, the other members of the
23 Classes. Plaintiffs' counsel is experienced in class action and complex litigation.

24 48. Questions of law or fact common to the members of the Classes predominate and
25 a class action is superior to other available methods for the fair and efficient adjudication of this
26 lawsuit, because individual litigation of the claims of all members of the Classes is economically
27 unfeasible and procedurally impracticable. While the aggregate damages sustained by Classes
28 members are likely to be in the millions of dollars, the individual damages incurred by each

1 Class member resulting from Apple' wrongful conduct are, as a general matter, too small to
2 warrant the expense of individual suits. The likelihood of individual members of the Classes
3 prosecuting separate claims is remote and, even if every Class member could afford individual
4 litigation, the court system would be unduly burdened by individual litigation of such cases.
5 Individualized litigation would also present the potential for varying, inconsistent, or
6 contradictory judgments and would magnify the delay and expense to all parties and to the court
7 system resulting from multiple trials of the same factual issues. Plaintiffs know of no difficulty
8 to be encountered in the management of this action that would preclude its maintenance as a
9 class action and certification of the Classes is proper.

10 49. Relief concerning Plaintiffs' rights under the laws herein alleged and with respect
11 to the Classes would be proper on the additional ground that Apple has acted or refused to act on
12 grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or
13 corresponding declaratory relief with regard to members of each Class as a whole.

14 COUNT I

15 California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, et seq.

16 50. Plaintiffs repeat and reallege the allegations set forth above as if fully contained
17 herein.

18 51. Plaintiffs bring this cause of action individually and on behalf of the Class.

19 52. Defendant has violated California Business and Professions Code § 17200 by
20 engaging in unfair, unlawful, and fraudulent business acts or practices as described in this
21 Complaint, including but not limited to, disseminating or causing to be disseminated from the
22 State of California, unfair, deceptive, untrue, or misleading advertising as set forth above in this
23 Complaint.

24 53. Defendant's practices are likely to deceive, and have deceived, members of the
25 public.

26 54. Defendant knew, or should have known, that its misrepresentations, omissions,
27 failure to disclosure and/or partial disclosures omit material facts and are likely to deceive a
28 reasonable consumer.

1 55. Defendant continued to make such misrepresentations despite the fact it knew or
2 should have known that its conduct was misleading and deceptive.

3 56. By engaging in the above-described acts and practices, Defendant committed one
4 or more acts of unfair competition within the meaning of Unfair Competition Law, Cal. Bus. &
5 Prof. Code § 17200, *et seq.*

6 57. Plaintiffs and all members of the Classes suffered injury in fact as a result of
7 Defendant's unfair methods of competition. As a proximate result of Defendant's conduct,
8 Plaintiffs and members of the Classes were exposed to these misrepresentations and omissions,
9 purchased a Device(s) in reliance on these misrepresentations, and suffered monetary loss as a
10 result.

11 58. Plaintiffs, individually and on behalf of the Classes, seek an order of this Court
12 against Defendant awarding restitution, disgorgement, injunctive relief and all other relief
13 allowed under § 17200, *et seq.*, plus interest, attorneys' fees and costs.

14 **COUNT II**

15 **California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, et seq.**

16 59. Plaintiffs repeat and reallege the allegations set forth above as if fully contained
17 herein.

18 60. Plaintiffs bring this cause of action individually and on behalf of the Class.

19 61. Apple is a California company disseminating advertising from California
20 throughout the United States.

21 62. Defendant has engaged in a systematic campaign of advertising and marketing the
22 Devices as possessing specific storage capacities. In connection with the sale of the Devices, and
23 the promotion of iOS 8, Defendant disseminated or caused to be disseminated false, misleading,
24 and deceptive advertising regarding storage capacity to the general public through various forms
25 of media, including but not limited to product packaging, product displays, labeling, advertising
26 and marketing. However, Defendant knew or reasonably should have known that the Devices do
27 not make available to users the advertised storage space, and that the failure to disclose the
28 storage space consumed by iOS 8 (both to prospective purchasers of Devices with iOS 8 pre-

1 installed and to prospective upgraders) was a material omission, and that Apple's disclaimer was
2 inadequate and factually incorrect.

3 63. When Defendant disseminated the advertising described herein, it knew, or by the
4 exercise of reasonable care should have known, that the statements concerning iOS 8 and the
5 storage capacity of its Devices were untrue or misleading, or omitted to state the truth about the
6 Devices' storage capacity, in violation of the False Advertising Law, Cal. Bus. & Prof. Code §
7 17500, *et seq.*

8 64. As a proximate result of Defendant's conduct, Plaintiffs and members of the Class
9 were exposed to these misrepresentations, omissions and partial disclosures, purchased the
10 Devices in reliance on these misrepresentations, omissions and partial disclosures, and suffered
11 monetary loss as a result. They would not have purchased the Devices, or would have paid
12 significantly less for them, and/or would not have upgraded their Devices to iOS 8, had they
13 known the truth regarding the actual storage capacities of the Devices when equipped with iOS
14 8.

15 65. Defendant made such misrepresentations despite the fact that it knew or should
16 have known that the statements were false, misleading, and/or deceptive.

17 66. There were reasonably available alternatives to further Defendant's legitimate
18 business interests, other than the conduct described herein.

19 67. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and
20 the members of the Class seek an order of this Court enjoining Defendant from continuing to
21 engage, use, or employ the above-described practices in advertising the sale of the Devices and
22 promoting iOS 8.

23 68. Likewise, Plaintiffs seek an order requiring Defendant to make full corrective
24 disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial
25 disclosures.

26 69. On information and belief, Defendant has failed and refused, and in the future will
27 fail and refuse, to cease its deceptive advertising practices, and will continue to do those acts
28

1 unless this Court orders Defendant to cease and desist pursuant to California Business and
2 Professions Code § 17535.

3 70. Plaintiffs, individually and on behalf of the Class, seek restitution, disgorgement,
4 injunctive relief, and all other relief allowable under § 17500, *et seq.*

5 **COUNT III**

6 **California Consumer Legal Remedies Act ("CLRA"), Cal. Civil Code § 1750, *et seq.***

7 71. Plaintiffs repeat and reallege the allegations set forth above as if fully contained
8 herein.

9 72. Plaintiffs bring this cause of action individually and on behalf of the Purchaser
10 and Upgrader CLRA Subclasses.

11 73. The acts and practices described in this Complaint were intended to result in the
12 sale of goods, specifically a cellular phone, in a consumer transaction.

13 74. The Defendant's acts and practices violated, and continue to violate, the
14 Consumer Legal Remedies Act ("CLRA") in at least the following respects:

15 a. Defendant violated California Civil Code § 1770(a)(5) by representing
16 that Devices on the one hand, and iOS 8, on the other hand, had characteristics,
17 uses, and benefits that they did not have, including representations that the
18 Devices had specific storage capacities when that is not, in fact, the case.

19 b. Defendant violated California Civil Code § 1770(a)(9) by advertising the
20 Devices as having specific storage capacities with the intent not to sell them as
21 advertised.

22 75. Plaintiffs and the Class are entitled to equitable relief on behalf of the members of
23 the Class in the form of an order, pursuant to Civil Code section 1780, subdivisions (a)(2)-(5),
24 prohibiting Defendant from continuing to engage in the above-described violations of the CLRA,
25 to provide restitution or actual damages in the form of all monies paid for storage capacity not
26 realized, the inflated sale price of the Devices, the inclusion of forced applications, punitive
27 damages, and any other relief the Court deems proper. Plaintiffs further seeks reasonable
28 attorneys' fees under Civil Code section 1780(e).

1 76. Pursuant to California Civil Code section 1782, on January 8, 2015, Plaintiffs
2 sent a demand letter to Defendant via registered mail. Defendant refused to respond to the
3 demand letter, making the inclusion of damage claim appropriate under the CLRA.

4 **Prayer for Relief**

5 WHEREFORE, Plaintiffs pray:

6 a. That this matter be certified as a class action with the Class defined as set forth
7 above under pursuant to Fed. R. Civ. P. 23 and that the Plaintiffs be appointed Class
8 Representatives, and their attorneys be appointed Class Counsel.

9 b. That the Court enter an order requiring Defendant to immediately cease the
10 wrongful conduct as set forth above; enjoining Defendant from continuing to conduct business
11 via the unlawful and unfair business acts and practices complained of herein; and ordering
12 Defendant to engage in a corrective notice campaign;

13 c. That judgment be entered against Defendant for restitution, including
14 disgorgement of profits received by Defendant as a result of said purchases, cost of suit, and
15 attorneys' fees, and injunction; and

16 d. For such other equitable relief and pre- and post-judgment interest as the Court
17 may deem just and proper.

18 **Jury Demand**

19 Plaintiffs hereby demand a trial by jury.
20

21 Dated: May 1, 2018

Respectfully submitted,

22 /s/ Michael McShane
23 MICHAEL MCSHANE (SBN 127944)
24 S. CLINTON WOODS (SBN 246054)
25 LING Y. KUANG (SBN 296873)
26 **AUDET & PARTNERS, LLP**
27 711 Van Ness Avenue, Suite 500
28 San Francisco, CA 94102
Telephone: (415) 568-2555
Facsimile: (415) 576-1776
mmcshane@audetlaw.com
cwoods@audetlaw.com
lkuang@audetlaw.com

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WILLIAM ANDERSON (*Pro Hac Vice*)
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Ave., NW, Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
wanderson@cuneolaw.com

CHARLES J. LADUCA (*Pro Hac Vice*)
CUNEO GILBERT & LADUCA LLP
4725 Wisconsin Avenue, N.W., Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
charlesl@cuneolaw.com

JON M. HERSKOWITZ (*Pro Hac Vice*)
BARON & HERSKOWITZ
9100 S. Dadeland Blvd.
Suite 1704
Miami, Fl. 33156
Telephone (305) 670-0101
Facsimile. (305) 670-2393
jon@bhfloridalaw.com

MELISSA S. WEINER (*Pro Hac Vice*)
HALUNEN LAW
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 605-4098
Fax: (612) 605-4099
Email: weiner@halunenlaw.com

ROBERT SHELQUIST
LOCKRIDGE GRINDAL NAUEN PLLP
Suite 2200
100 Washington Avenue S
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
rkshelquist@locklaw.com

Attorneys for Plaintiffs and the Proposed Class