

ZIMMERMAN REED LLP
CHRISTOPHER P. RIDOUT (SBN 143931)
Email: christopher.ridout@zimmreed.com
CALEB L.H. MARKER (SBN 269721)
Email: caleb.marker@zimmreed.com
2381 Rosecrans Avenue, Suite 328
Manhattan Beach, CA 90245
(877) 500-8780 Telephone
(877) 500-8781 Facsimile

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT GRILLO individually and on behalf of all others similarly situated,

Plaintiff,

vs.

APPLE, INC., a corporation; DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 5:18-CV-00148

COMPLAINT (CLASS ACTION)

1. Breach of Implied Contract
2. Trespass to Chattel
3. Breach of Covenant of Good Faith and Fair Dealing
4. Violation of California’s Unfair Competition Law
5. Violation of California’s Consumers Legal Remedies Act

(Jury Trial Demanded)

Plaintiff Scott Grillo (“Plaintiff”), on behalf of himself and all other similarly situated, brings this action against Apple Inc. (“Apple”) based upon personal knowledge of the facts pertaining to himself, and upon information and belief as to all other matters, herby alleges as follows:

NATURE OF THE ACTION

1. This is a consumer protection action seeking injunctive relief and damages arising from Defendant Apple’s unlawful failure to inform consumers that updating their iPhone 6, 6 Plus, 6S, 6S Plus, SE, 7, or 7 Plus to iOS 10.2.1 (and/or later to iOS 11.2) would dramatically and artificially reduce the performance of their device. Apple also failed to inform consumers that phone performance

1 would be restored, by as much as 70 percent, if affected individuals simply replaced the phone's
2 lithium-ion battery. The cost of replacing the battery at an Apple store is less than \$100. The cost of
3 the new iPhone X is over \$1000.

4 2. Batteries “wear” over time. The lithium-ion battery used by Apple in iPhones slowly
5 diminishes its ability to hold a charge with time and use. However, normal lithium-ion battery wear
6 does not reduce device performance. A weakening battery has no effect on device performance unless
7 there is software that links the two. That is precisely the conduct that Apple engaged in.

8 3. Since its debut, Apple has touted the superior performance of the iPhone and marketed
9 these devices as high speed and high capability smartphones. Updates for Apple's mobile operating
10 system, iOS are continually released to iPhone customers. There have been numerous versions of iOS
11 since iPhones were initially released, each with multiple iterations. The latest iOS version is iOS
12 11.2.1, which was released on December 13, 2017. The iOS downloads purportedly update and
13 improve the performance of iPhones, preserve the security of the devices, and make the devices
14 compatible with the newest and most up-to-date programs and applications.

15 4. In late 2016, iPhone users reported sudden shutdowns of iPhones 5 and 6 running
16 versions of iOS 10 software.¹ In February of 2017, Apple claimed that it had almost entirely resolved
17 the issue in its latest 10.2.1 iOS update, however users still complained of slow devices.²

18 5. In the release notes of iOS 10.2.1, Apple claimed to “bug fixes and improve[] the
19 security of [the] iPhone or iPad” and “improve[] power management during peak workloads to avoid
20 unexpected shutdowns on [the] iPhone.”³ Apple purposefully failed to disclose that the update would
21 throttle phone performance for phone's with weakened batteries.

22 6. Speculation regarding the manner in which iOS updates impair iPhones and the
23 functionality of iPhone features has existed for several years.⁴

24
25 ¹ <https://discussions.apple.com/message/30989226?start=165&tstart=0> (last visited on January 3,
26 2018).

² <https://discussions.apple.com/thread/7669667> (last visited on January 3, 2018).

³ Download iOS 10.0 – iOS 10.3.3 Information, Apple Inc.,
27 https://support.apple.com/kb/DL1893?locale=en_US.

⁴ <http://blackbag.gawker.com/does-apple-ruin-your-iphone-on-purpose-the-conspiracy1690649898>
28 (last visited on January 3, 2018).

1 7. For example, on Appleinsider.com, one poster theorized as to the cause of slow-downs
2 in the iPhone 6 as follows: “At present, the theory is that the iOS 10.2.1 update issued in part to rectify
3 iPhone 6 shutdown issues with a low-power battery condition implemented some kind of down-
4 clocking routing to slow the processor in afflicted devices.”⁵

5 8. On December 18, 2017, in a report by Primate Labs, blogger John Poole plotted the
6 performance of the iPhone 6s and iPhone 7 before and after the iOS fix and stated that Apple was
7 deliberately slowing the performance of its devices. Poole further explained that he “believe[d] (as do
8 others) that Apple introduced a change to limit performance when battery condition decreases past a
9 certain point.”⁶

10 9. On December 20, 2017, in response to widespread speculation about the impact of iOS
11 10 on iPhone performance, Apple confirmed users’ long-held suspicions and finally admitted that its
12 latest iOS software updates deliberately slowed the performance of iPhones.

13 10. The effect of Apple’s actions was to 1) purposefully reduce device performance with
14 time, and 2) deprive consumers of material information concerning the cause of the decline in
15 performance of their iPhone.

16 11. Plaintiff and the Class he seeks to represent in this lawsuit are consumers who
17 purchased iPhone 6, 6 Plus, 6S, 6S Plus, SE, 7, or 7 Plus and installed the relevant upgraded operating
18 system software. This lawsuit is brought to challenge Apple’s unfair business practices under
19 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 and California’s Consumer
20 Legal Remedies Act, Cal. Bus. & Prof. Code § 1750. Plaintiff also brings a claim for breach of implied
21 contract, trespass to chattel, and breach of the implied covenant of good faith and fair dealing under
22 California law. Plaintiff requests that the Court find Apple’s business practices constitute unfair
23 competition and enjoin Apple from engaging in similar conduct in the future. Plaintiff further requests
24 that the Court order Defendant to: pay civil penalties pursuant to Cal. Bus. & Prof. Code § 17206;

25
26 ⁵ [http://appleinsider.com/articles/17/12/11/apple-may-fix-aging-battery-issues-prevent-
randomshutdowns-by-slowng-down-iphones](http://appleinsider.com/articles/17/12/11/apple-may-fix-aging-battery-issues-prevent-randomshutdowns-by-slowng-down-iphones) (last visited on January 3, 2018).

27 ⁶ <http://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/> (last visited on
28 January 3, 2018).

1 provide restitution to the Class of all money that may have been acquired by means of their unfair
2 practice; and pay attorney's fees and the costs of litigation.

3 **INTRADISTRICT ASSIGNMENT**

4 12. Assignment is proper to the San Jose division of this District under Local Rule 3-2(c)-
5 (e), as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Santa
6 Clara County, where Apple is headquartered.

7 **THE PARTIES**

8 13. Plaintiff Scott Grillo is a resident of the state of California, and purchased an iPhone
9 6S. He upgraded to iOS 10.2.1 and has since suffered material and increasing degradation in the
10 performance of the iPhone.

11 14. Plaintiffs bring this action on their own behalf and on behalf of all others similarly
12 situated, namely all other individuals who have owned iPhone 6, 6 Plus, 6S, 6S Plus, SE, 7, or 7 Plus.

13 15. Upon information and belief, Defendant Apple Inc. is a corporation organized and
14 existing under the laws of the State of California with its principal place of business at 1 Infinite Loop,
15 Cupertino, California.

16 16. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
17 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs
18 will amend this Complaint to allege their true names and capacities when the same are ascertained.
19 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants
20 are responsible in some manner for the occurrences and acts alleged herein, and that Plaintiffs
21 damages alleged herein were proximately caused by these Defendants. When used herein, the term
22 "Defendants" is inclusive of DOES 1 through 10.

23 17. Whenever and wherever reference is made in this Complaint to any act by a Defendant
24 or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act
25 of each Defendant acting individually, jointly, and severally.

26 **JURISDICTION AND VENUE**

27 18. This Court has subject matter jurisdiction over the state law claims asserted here
28 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since some of the Class Members

1 are citizens of a State different from the Defendant and, upon the original filing of this complaint,
2 members of the putative Plaintiffs class resided in states around the country; there are more than 100
3 putative class members; and the amount in controversy exceeds \$5 million.

4 19. The Court has personal jurisdiction over Defendant Apple, Inc. because Apple is
5 incorporated under the laws of the State of California and is headquartered in Cupertino, California.

6 20. Venue is appropriate because, among other things: (a) Plaintiffs are residents and
7 citizens of this District; (b) the Defendants had directed their activities at residents in this District; (c)
8 the acts and omissions that give rise to this Action took place, among others, in this judicial district.

9 21. Venue is further appropriate pursuant to 28 U.S.C. § 1391 because Defendant conducts
10 a large amount of their business in this District, and Defendant has substantial relationships in this
11 District. Venue is also proper in this Court because a substantial part of the events and omissions
12 giving rise to the harm of the Class Members occurred in this District.

13 **SUBSTANTIVE ALLEGATIONS**

14 22. Plaintiff and Class Members are Apple iPhone users. Many Class Members are brand
15 loyal to Apple and have purchased various iterations of the iPhone.

16 23. Every iPhone device comes equipped with a mobile operating system called iOS. iOS
17 consists of a collection of software applications, known as “Apps,” that allows users to utilize all of
18 the features of Apple products.

19 24. On January 23, 2017, Apple released iOS 10.2.1. The update specifically addressed
20 aging batteries, and expressly represented that the purpose was to prolong the life of the Device. Apple
21 promised to “Deliver the best experience for customers, which includes overall performance and
22 prolonging the life of their devices.”⁷

23 25. For example, the update specifically sought to prevent the device from shutting down if
24 a performance spike drew too much power. While the battery issue was a reported problem at the
25 time,⁸ the iOS update did far more than address shutdowns on those few phones that experienced

26 ⁷ Kif Leswing, *Apple just admitted it's slowing down older iPhones – but says it has a good reason for*
27 *doing it*, Business Insider (Dec. 20, 2017) <http://www.businessinsider.com/apple-explains-why-older-iphones-appear-to-be-slowing-down-2017-12> (last visited 1/3/2018).

28 ⁸ A Message from Apple about iPhone and Unexpected Shutdowns, Apple Inc. <https://support.apple.com/zh-cn/HT207414>.

1 shutdowns. It also surreptitiously and purposefully throttled the performance speed on the iPhone 6, 6
2 Plus, 6S, 6S Plus, and SE by as much as 70 percent.

3 26. On December 18, 2017, in a report by Primate Labs, blogger John Poole plotted the
4 performance of the iPhone 6s and iPhone 7 before and after the iOS fix and stated that Apple was
5 deliberately slowing the performance of its devices. Poole further explained that he “believe[d] (as do
6 others) that Apple introduced a change to limit performance when battery condition decreases past a
7 certain point.”

8 27. On December 20, 2017, Apple finally admitted to this conduct and acknowledged that
9 it had deliberately slowed the performance of older iPhone Devices without users’ consent. Apple
10 explained, as follows:

11 Our goal is to deliver the best experience to customers, which includes overall
12 performance and prolonging the life of their devices. Lithium-ion batteries become less
13 capable of supplying peak current demands when in cold conditions, have a low battery
14 charge or as they age over time, which can result in the device unexpectedly shutting
15 down to protect its electronic components.

16 Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to smooth out the
17 instantaneous peaks only when needed to prevent the device from unexpectedly shutting
18 down during these conditions. We’ve now extended that feature to iPhone 7 with iOS
19 11.2, and plan to add support for other products in the future.

20 28. Thus, as Apple has now acknowledged, its software updates purposefully slowed or
21 “throttled down” the performance and speed of iPhones Devices.

22 29. Plaintiff and Class members were unaware that Apple’s iOS 10.2.1 and later updates
23 were engineered to intentionally slow down the performance speed of iPhone Devices or that these
24 updates otherwise had the effect of hindering the devices’ functionality.

25 30. Defendant never requested consent nor did Plaintiffs at any time give consent for
26 Defendant to slow down their iPhones.

27 31. Plaintiffs and Class Members were never given the option to bargain or choose whether
28 they preferred to have their iPhones slower than normal.

32. Plaintiffs and Class Members suffered interferences to their iPhone usage due to the
intentional slowdowns caused by Defendant.

1 33. Defendant’s wrongful actions directly and proximately caused the interference and loss
2 of value to Plaintiffs and Class Members’ iPhones causing them to suffer, and continue to suffer,
3 economic damages and other harm for which they are entitled to compensation, including:

- 4 a. Replacement of old phone;
- 5 b. Loss of use;
- 6 c. Loss of value;
- 7 d. Purchase of new batteries;
- 8 e. Ascertainable losses in the form of deprivation of the value of their iPhone;
- 9 f. Overpayments to Defendant for iPhones in that a portion of the price paid for such
10 iPhone by Plaintiffs and Class Members to Defendant was for Defendant to
11 purposefully not interfere with the usage of their iPhones, which Defendant and its
12 affiliates purposefully interfered in order to slow down its performance and, as a result,
13 Plaintiffs and Class Members did not receive what they paid for and were overcharged
14 by Defendant.

15 **CLASS ACTION ALLEGATIONS**

16 34. Plaintiffs brings this action on their own behalf and pursuant to the Federal Rules of
17 Civil Procedure Rule 23(a), (b)(2), (b)(3), and (c)(4), Plaintiffs seeks certification of a Nationwide
18 class, a California class, and a Consumer subclass. The nationwide class is initially defined as follows:

19 All persons residing in the United States who have owned iPhone
20 models older than iPhone 8 (the “Nationwide Class”).

21 The California class is initially defined as follows:

22 All persons residing in California who have owned iPhone models older
23 than iPhone 8 (the “California Class”).

24 The Consumer Subclass is initially defined as follows:

25 All persons in the Nationwide Class who is a “consumer,” as that term is
26 defined by California Civil Code § 1761(d), or purchased “goods” or
27 “consumer goods,” as those terms are defined by California Civil Code
28 §§ 1761(a) and 1791(a) (the “Consumer Subclass”).

35. Excluded from each of the above Classes are Defendant, including any entity in which
Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by Defendant, as
well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and

1 assigns of Defendant. Also excluded are the judges and court personnel in this case and any members
2 of their immediate families. Plaintiffs reserves the right to amend the Class definitions if discovery and
3 further investigation reveal that the Classes should be expanded or otherwise modified.

4 36. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Classes are so numerous that
5 the joinder of all members is impractical. While the exact number of Class Members is unknown to
6 Plaintiffs at this time, Defendant has acknowledged to purposefully slow down older iPhone models.
7 The disposition of the claims of Class Members in a single action will provide substantial benefits to
8 all parties and to the Court. The Class Members are readily identifiable from information and records
9 in Defendant's possession, custody, or control.

10 37. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact
11 common to the Classes, which predominate over any questions affecting only individual Class
12 Members. These common questions of law and fact include, without limitation:

- 13 a. Whether Defendant has an implied contractual obligation to not purposefully slow
14 down older iPhone models;
- 15 b. Whether Defendant has complied with any implied contractual obligation to not
16 purposefully slow down older iPhone models;
- 17 c. Whether Defendant interfered or otherwise lowered the use or value of older iPhone
18 models;
- 19 d. Whether Defendant purposefully designed iOS 10.2.1 to affect device performance or
20 did so knowingly;
- 21 e. Whether and to what extent Defendant disclosed the effect of iOS 10.2.1 on device
22 performance;
- 23 f. Whether the aspects of iOS 10.2.1 affecting device performance were extended to iOS
24 11.2;
- 25 g. Whether Defendant notified customers that the artificial reduction in device
26 performance could be remedied by simply replacing the battery.
- 27 h. Whether Apple's conduct has violated the Unfair Competition Law ("UCL"), Cal. Bus.
28 & Prof. Code §§ 17200-17209;

1 i. Whether Apple is subject to liability for violating the Consumers Legal Remedies Act
2 (“CLRA”), Cal. Civ. Code §§ 1750-1784;

3 j. Whether Plaintiffs and the Class are entitled to damages, civil penalties, punitive
4 damages, and/or injunctive relief.

5 38. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs’ claims are typical of those of other Class
6 Members because Plaintiffs’ iPhones, like that of every other Class Member, was misused by
7 Defendant.

8 39. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiffs will fairly and
9 adequately represent and protect the interests of the members of the Class. Plaintiffs have retained
10 competent counsel experienced in litigation of class actions, including consumer class actions, and
11 Plaintiffs intend to prosecute this action vigorously. Plaintiffs’ claims are typical of the claims of other
12 members of the Class and Plaintiffs has the same non-conflicting interests as the other Members of the
13 Class. The interests of the Class will be fairly and adequately represented by Plaintiffs and their
14 counsel.

15 40. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to other
16 available methods for the fair and efficient adjudication of this controversy since joinder of all the
17 members of the Classes is impracticable. Furthermore, the adjudication of this controversy through a
18 class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the
19 asserted claims. There will be no difficulty in the management of this action as a class action.

20 41. Damages for any individual class member are likely insufficient to justify the cost of
21 individual litigation so that, in the absence of class treatment, Defendant’s violations of law inflicting
22 substantial damages in the aggregate would go un-remedied.

23 42. Class certification is also appropriate under Fed. R. Civ. P. 23(a) and (b)(2), because
24 Defendant has acted or has refused to act on grounds generally applicable to the Classes, so that final
25 injunctive relief or corresponding declaratory relief is appropriate as to the Classes as a whole.

COUNT I

(Breach of Implied Contract)

(On Behalf of Plaintiff and the Nationwide and California Classes)

43. Plaintiffs incorporate the substantive allegations contained in each and every paragraph of this Complaint.

44. Defendant solicited and invited Plaintiffs and the members of the Class to buy new iPhones. Plaintiffs and Class Members accepted Defendant's offers and bought iPhones from Defendant.

45. When Plaintiffs and Class Members bought iPhones from Defendant, they paid for their iPhones. In so doing, Plaintiffs and Class Members entered into implied contracts with Defendant to which Defendant agreed to not purposefully interfere with Plaintiffs and Class Members' usage or speed of the device.

46. Each purchase made with Defendant by Plaintiffs and Class Members was made pursuant to the mutually agreed-upon implied contract with Defendant under which Defendant agreed to not purposefully interfere with Plaintiffs and Class Members' usage or value of their iPhones.

47. Plaintiffs and Class Members would not have bought iPhones from Defendant in the absence of the implied contract between them and Defendant.

48. Plaintiffs and Class Members fully performed their obligations under the implied contracts with Defendant.

49. Defendant breached the implied contracts it made with Plaintiffs and Class Members by purposefully slowing down older iPhone models when new models come out and by failing to properly disclose that at the time of that the parties entered into an agreement.

50. As a direct and proximate result of Defendant's breaches of the implied contracts between Defendant and Plaintiffs and Class Members, Plaintiffs and Class Members sustained actual losses and damages as described in detail above.

1 **COUNT II**

2 **(Trespass to Chattel)**

3 (On Behalf of Plaintiffs and the Nationwide and California Classes)

4 51. Plaintiffs repeats and fully incorporates the allegations contained in each and every
5 paragraph of this Complaint.

6 52. Plaintiffs owned or possessed the right to possess the above mentioned iPhones.

7 53. Defendant intentionally interfered with Plaintiff and Class Members' use or possession
8 of their iPhone by purposefully slowing down their phones.

9 54. Plaintiffs and Class Members never consented to Defendant interfering with their
10 phones in order to slow their phones down.

11 55. Plaintiffs and Class Members have lost use, value, had to purchase new batteries, and
12 had to purchase new iPhones due to Defendant's conduct.

13 56. Defendant's conduct was a substantial factor in causing Plaintiffs and Class Members
14 to have to replace iPhones, buy new batteries, or loss of usage of their iPhone.

15 **COUNT III**

16 **(Breach of Covenant of Good Faith and Fair Dealing)**

17 (On Behalf of Plaintiff and the Nationwide and California Classes)

18 57. Plaintiff incorporates by reference the foregoing paragraphs.

19 58. In every contract or agreement there is an implied promise of good faith and fair
20 dealing under California law.

21 59. In dealings between Apple and its customers, Apple has power affecting the rights of its
22 users.

23 60. Apple entered into a contract with Plaintiff and Class Members at the time of purchase
24 of each iPhone, and at the time of download of iOS 10.2.1 and later iOS versions.

25 61. Apple contractually promised in the iOS 10.2.1 update and later updates to "deliver the
26 best experience for customers, which includes overall performance and prolonging the life of their
27 devices."

28 62. Plaintiff did all, or substantially all, of the things that the contracts required him to do.

1 63. Despite its contractual promises to prolong the life of the devices, Apple instead
2 purposefully took actions to reduce the life of the devices, and purposefully failed to notify customers
3 that replacing the battery would restore performance that had been artificially throttled by iOS 10.2.1
4 and later updates to iOS.

5 64. Apple's actions were objectively unreasonable given Apple's promises.

6 65. Apple's conduct evaded the spirit of the bargain made between Apple and the Plaintiff.

7 66. As a result of Apple's misconduct and breach of its duty of good faith and fair dealing,
8 Plaintiff and the Class suffered damages. Plaintiff and the Class members did not receive the benefit of
9 the bargain for which they contracted and for which they paid valuable consideration.

10 **COUNT IV**

11 **(Violation of California's Consumers Legal Remedies Act)**

12 (On Behalf of Plaintiff and the Consumer Subclass)

13 67. Plaintiff incorporates by reference the foregoing paragraphs.

14 68. This claim for relief is brought pursuant to the Consumers Legal Remedies Act
15 ("CLRA"). Plaintiff and members of the Consumer Subclass are "consumers" as the term is defined by
16 Civil Code § 1761(d) because they bought Affected iPhones for personal, family, or household
17 purposes.

18 69. Plaintiff and members of the Consumer Subclass have engaged in a "transaction" with
19 Apple, as that term is defined by Civil Code section 1761(e).

20 70. The conduct alleged in this Complaint constitutes unfair methods of competition and
21 unfair and deceptive acts and practices for the purposes of the CLRA, and were undertaken by Apple
22 in transactions intended to result in, and which resulted in, the sale of goods to consumers; namely, to
23 sell replacement batteries, repair services, and/or replacement devices for their Affected iPhones.

24 71. By engaging in the conduct alleged in this Complaint, Apple has violated subdivisions
25 (a)(5), (a)(7), and (a)(9) of California Civil Code section 1770 by, inter alia, misrepresenting and
26 concealing the true nature and scope of the battery defect and that the modification of iOS would cause
27 Affected iPhones to perform slowly and erratically and not disclosing those facts to Plaintiff and
28 members of the proposed class before they bore the cost of purchasing a replacement device for their

1 Affected iPhone, purchasing a new Affected iPhone, and/or purchasing replacement parts and/or repair
2 services as a result of the battery defect or the iOS modification.

3 72. By concealing the battery defect and the iOS modification from Plaintiff and members
4 of the proposed class, Apple has represented, and continues to represent, that Affected iPhones have
5 characteristics, uses and benefits, or qualities that they do not have, and that they are of a particular
6 standard, quality, or grade, when they are not, in violation of Civil Code section 1770, subsections
7 (a)(5) and (a)(7).

8 73. By engaging in the conduct alleged herein, above, Apple has also advertised, and
9 continues to advertise, goods with the intent not to sell them as advertised, in violation of California
10 Civil Code section 1770(a)(9).

11 74. Pursuant to Section 1782 of the CLRA, Plaintiff has sent written notice to Apple by
12 certified mail regarding its violations of the CLRA, thereby providing Apple with an opportunity to
13 correct or otherwise rectify the problems alleged herein within 30 days of receipt of that notice.

14 75. Unless Apple agrees to correct, repair, replace, or otherwise rectify the problems
15 created by Apple's conduct as alleged herein, Plaintiff will amend this Complaint to seek an order
16 awarding actual damages and, because Apple engaged in the conduct alleged herein deliberately and
17 with willful and malicious intent, punitive damages.

18 76. Plaintiff now seeks an order requiring Apple to (a) cease violating the CLRA by
19 modifying iOS in a manner that prevents it from slowing the performance of Affected iPhones; (b) to
20 provide owners of Affected iPhones with notice that the slow performance of those devices is caused
21 by modifications Apple made to iOS; and (c) to provide current owners of Affected iPhones with new
22 batteries for those devices free of charge.

23 **COUNT V**

24 **(Violation of California's Unfair Competition Law)**

25 (On Behalf of Plaintiff and the Nationwide and California Classes)

26 77. Plaintiff incorporates by reference the foregoing paragraphs.
27
28

1 78. Defendant's acts and practices, as alleged in this complaint, constitute unfair, unlawful
2 and fraudulent business practices in violation of California's Unfair Competition Law, Cal. Bus. &
3 Prof. Code § 17200, *et seq.*

4 79. Defendant's violation of the CLRA, as alleged in this complaint, constitutes unfair,
5 unlawful and fraudulent business practices in violation of California's Unfair Competition Law, Cal.
6 Bus. & Prof. Code § 17200, *et seq.*

7 80. Defendant's conduct is unfair because it failed to inform consumers that updating their
8 iPhone 6, 6 Plus, 6S Plus, SE, 7, or 7 Plus to iOS 10.2.1 (and/or later to iOS 11.2) would dramatically
9 and artificially reduce the performance of their device and Defendant also failed to inform consumers
10 that phone performance would be restored by simply replacing the battery.

11 81. Defendant's conduct is unlawful because it designed and sold iPhone 6, 6 Plus, 6S Plus,
12 SE, 7, or 7 Plus devices with software that caused the devices to operate more slowly in violation of
13 the CLRA and other laws as described above.

14 82. Defendant's conduct is fraudulent and deceitful within the meaning of the UCL because
15 it was reasonably calculated to mislead reasonable consumers into purchasing new iPhones when they
16 could restore the performance of their device by replacing the battery.

17 83. Defendant has engaged and continues to engage in an unfair business practice by
18 including code in iOS 10 (and now iOS 11) designed in part to materially diminish performance speed
19 of iPhones, and by purposefully failing to disclose that performance could be restored by simply
20 changing the battery.

21 84. Defendant's business practices are unscrupulous, unethical, and substantially injurious
22 to consumers. There is no legitimate business reason for Apple's business practice such that the utility
23 of its business practice outweighs the harm to consumers. Furthermore, Apple's business practice
24 undermines this State's fundamental policy against unfair and sharp business practices that are likely
25 to deceive or mislead consumers, and which undercut trust and fair competition in the consumer
26 marketplace.

27 85. Plaintiff also has standing to challenge Defendants' unfair, unlawful and fraudulent
28 business practices on behalf of the public pursuant to California Business and Professions Code

1 §17204, since he has suffered injury in fact and lost money or property as a result of such practices in
2 the form of reduced value of the iPhone. Plaintiff purchased an iPhone 6S and upgraded to iOS 10.2.1,
3 causing his device performance to be artificially throttled. Apple did not inform him that its software
4 was the cause, and did not inform him that a simple change of battery could restore performance.
5 Plaintiff has also suffered reduced productivity as a result of Apple's practices.

6 86. On behalf of the proposed class, Plaintiff hereby seeks restitution in an amount to be
7 determined at trial.

8 87. On behalf of the proposed class, Plaintiff also hereby seeks entry of appropriate
9 equitable relief pursuant to California Business & Professions Code § 17203, including an injunction
10 prohibiting Defendant from engaging in the same or similar unfair business practices in the future,
11 civil penalties, restitution of money that may have been acquired by Defendants' unfair business
12 practices, and attorney's fees and costs of litigation. The entry of injunctive relief is of particular
13 importance, and necessary to secure a fair consumer marketplace.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, individually and on behalf of all Class Members proposed in this
16 Complaint, respectfully requests that the Court enter judgment in his favor and against Defendant as
17 follows:

18 A. For an Order certifying the Nationwide Class, California Class, and Consumer Subclass
19 as defined here, and appointing Plaintiffs and her Counsel to represent the Nationwide Class, the
20 California Class, and the Consumer Subclass;

21 B. For equitable relief enjoining Defendant from engaging in the wrongful conduct
22 complained of here pertaining to the misuse of Plaintiffs and Class Members' personal property;

23 C. For equitable relief compelling Defendant to utilize appropriate
24 methods and policies with respect to older iPhone models in respect to their batteries;

25 D. For equitable relief requiring restitution and disgorgement of the revenues wrongfully
26 retained as a result of Defendant's wrongful conduct;

27 E. For an award of actual damages and compensatory damages, in an
28 amount to be determined on all counts where damages can currently be claimed;

1 F. For an order pursuant to California Civil Code section 1780(a)(2) requiring Apple to (a)
2 provide owners of Affected iPhones with notice that the slow performance of those devices is caused
3 by modifications Apple made to iOS; (b) modify iOS in a manner that prevents it from slowing the
4 performance of Affected iPhones; and (c) provide current owners of Affected iPhones with new
5 batteries for those devices free of charge;

6 G. For an order awarding attorney fees and costs pursuant to California Civil Code section
7 1780(e);

8 H. For an award of costs of suit and attorneys' fees, as allowable by law; and

9 I. Such other and further relief as this court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Based on the foregoing, Plaintiffs, on behalf of themselves, and all others similarly situated,
12 hereby demand a jury trial for all claims so triable.

13
14 ZIMMERMAN REED LLP

15 Dated: January 8, 2018

16 By: /s/ Christopher P. Ridout
17 Christopher Ridout
18 Caleb Marker
19 2381 Rosecrans Avenue, Suite 328
20 Manhattan Beach, CA 90245
21 Tel. (877) 500-8780
22 Fax (877) 500-8781

23
24 *Attorneys for Plaintiff*
25
26
27
28

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

SCOTT GRILLO individually & on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Christopher P. Ridout Zimmerman Reed LLP, 2381 Rosecrans Ave., Suite 328, Manhattan Beach, CA 90245 Tel: 877-500-8780

DEFENDANTS

APPLE, INC., a corporation; DOES 1 through 10, inclusive,

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)(2)

Brief description of cause:

Breach of implied contract, violation of Cal. Bus. & Prof. Code § 17200 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/08/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Christopher P. Ridout

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

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

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