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12 COURT OF UNLIMITED JURISDICTION OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14

15 SHERI ROSALIA and TANYA GOODRICH on)
their own behalf and on behalf of all others)
16 similarly situated,)

17 Plaintiffs,)

18 v.)

19)
20 APPLE, INC., and DOES 1 THROUGH 10)
21)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.: CGC-17-563342

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

Complaint Filed: December 26, 2017

1 Plaintiffs identified below (collectively, “Plaintiffs”), individually, and on behalf of the
2 Classes defined below of similarly situated persons, file this Class Action Complaint. Plaintiffs file
3 suit against Apple, Inc. and DOES 1 and through 10 (“Defendants”).

4 **I. NATURE OF THE ACTION**

5 1. Numerous versions of the Apple iPhone suffer from a design defect: the processor
6 sometimes demands too much power from the battery, and it causes the iPhone to shut down
7 without warning. This defect was a hidden defect, and not disclosed to purchasers.

8 2. To address the hidden defect, Apple issued “updates” to the operating system (the
9 “iOS”) that slowed the processor (called “throttling”). Again, Apple did not disclose to iPhone
10 owners that the updates would have the effect of slowing their iPhones. Frequently these “updates”
11 occurred prior to the release of a new version of the iPhone.
12

13 3. Plaintiffs and Class Members have purchased and updated numerous versions of the
14 iPhone including the 4, 5, 6, 7 as well as the “S” and “+” variants thereof.

15 4. Plaintiffs and Class Members have noticed that their older iPhone models slow down
16 when new models come out.
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18 5. Plaintiffs and Class Members never consented to allow Defendants to slow their
19 iPhones.
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21 6. As a result of Defendants’ wrongful actions, Plaintiffs and Class Members
22 unknowingly purchased defective iPhones, and then unknowingly had their phones throttled,
23 thereby interfering with Plaintiffs’ and Class Members’ use or possession of their iPhones and
24 causing them to purchase new batteries and/or new iPhones, and have otherwise been damaged.

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1 **II. THE PARTIES**

2 7. Plaintiff Sheri Rosalia is a California citizen residing in San Diego, California.

3 8. Plaintiff Tanya Goodrich is a California citizen residing in the City and County of
4 San Francisco, California.

5 9. Plaintiffs bring this action on their own behalf and on behalf of all others similarly
6 situated, namely all other individuals who have purchased and/or owned iPhone models prior to
7 iPhone 8.

8 10. Upon information and belief, Defendant Apple is a corporation organized and
9 existing under the laws of the State of California with its principal place of business at 1 Infinite
10 Loop, Cupertino, California and is engaged in continuous and significant business in the City and
11 County of San Francisco consisting of, among other things, retail operations, advertising,
12 marketing, and distribution activities.

13 11. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
14 DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
15 Plaintiffs will amend this Complaint to allege their true names and capacities when the same are
16 ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously
17 named Defendants are responsible in some manner for the occurrences and acts alleged herein, and
18 that Plaintiffs damages alleged herein were proximately caused by these Defendants. When used
19 herein, the term "Defendants" is inclusive of DOES 1 through 10.
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23 12. Whenever and wherever reference is made in this Complaint to any act by a
24 Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and
25 failures to act of each Defendant acting individually, jointly, and severally.

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III. JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this case, pursuant to the California Constitution, Article VI, section 10, because this case is not given by statute to any other trial courts.

14. Plaintiffs allege, upon information and belief, that each of the Defendants conduct professional and commercial activities in California on a substantial, continuous, and systematic basis and therefore each of the Defendants are subject to the general jurisdiction of the courts of this state.

15. Plaintiffs further allege, upon information and belief that the claims asserted in this complaint arise out of or are related to each of the Defendants' professional and commercial activities within California, and therefore each of the Defendants are subject to the specific jurisdiction of the courts of this state.

16. The damages and/or compensation Plaintiffs seek are well in excess of this Court's jurisdictional limit.

17. Federal jurisdiction does not exist, because, although the aggregate amount in controversy is believed to exceed \$5 million, there is no minimum diversity among the parties since Defendants and, by definition, all of the Class Members, are California residents.

18. Venue is proper in this judicial district because the claims asserted in this complaint arise out of acts, transactions, and conduct that occurred within the County of San Francisco, California.

IV. SUBSTANTIVE ALLEGATIONS

19. The iPhone is a hugely popular internet and multimedia-enabled smartphone designed and marketed by Apple to consumers in California and throughout the world. Apple introduced the original iPhone for sale in the United States in 2007, and since then has continually

1 “updated” the iPhone via software updates, and introduced newer, improved “versions” of the
2 iPhone since that time.

3 20. In order to compete effectively in the smartphone market and maintain its dominant
4 market share, Apple must continually find ways to improve its iPhones and encourage prospective
5 buyers to purchase the latest model. Apple does this by adding new features, improving existing
6 features, and improving performance of the devices themselves such as processing speeds and
7 battery life. Consumers also purchased new phones when they perceived problems with their
8 existing phones, including battery degradation and slower processing speeds.

9
10 21. Apple has generated huge profits over the years by selling newer versions of its
11 iPhone. For example, in Q4 2017 Apple reported revenue of more than \$28 billion from more than
12 46 million iPhone sales. This amount represents almost 55% of the Company’s total revenue for the
13 4th Quarter 2017.

14
15 22. Unfortunately, certain Apple iPhone versions suffered (and continue to suffer) from
16 a design defect. Under certain conditions, the battery is unable to support the demands of the
17 processor. When this occurs, it causes the iPhone to shut down without warning to the user.

18 23. Apple sold its defective iPhones without disclosing this defect to Plaintiffs and the
19 Class, and purchasers were completely unaware of it.

20 24. In order to address this design flaw, Defendants did not redesign the iPhone. Instead,
21 Defendants caused Apple to issue operating system iOS “updates” to Apple iPhone customers.
22 However, they did so without notifying the customer of the true purpose of the update, and instead
23 Apple claimed that the update would “fix bugs” and have other salutary effects to their iPhones.

24 25. Unknown to users, Apple’s iOS updates were a Trojan horse, carrying a “fix” for the
25 design flaw that intentionally slowed the iPhone’s processor speed – called “throttling” the
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1 processor – in order to keep it from causing the iPhone to shut down. But this so-called “fix” was
2 not disclosed to consumers who accepted the update.

3 26. These updates occurred at least between January 23, 2017 and December 13, 2017.
4 These updates included iOS updates 10.2.1, 10.3, 10.3.1, 10.3.3 (the “iOS 10 Update”) and iOS
5 11.0.1, 11.02, 11.03, 11.1.1, 11.1.2, 11.2, and 11.2.1 (the “iOS 11 Update”).
6

7 27. As a result, when consumers accepted the updates they were unknowingly allowing
8 Apple to address the unknown iPhone defect by slowing the speed of their iPhones. Completely
9 unaware of what had happened, iPhone users including Plaintiffs and the Class noticed their phones
10 operated more slowly. Unaware of the design defect, Plaintiffs and the Class assumed the slower
11 operating speed was attributable to something else, such as the age of their phone or degradation of
12 their battery. Consumers thus purchased new batteries, or completely new iPhones, in order to
13 rectify the slower speeds. Apple benefitted from this by selling new batteries and iPhones to
14 consumers.
15

16 28. For more than a year, Apple publicly denied any such problem existed in the iPhone
17 design or that they were intentionally throttling the iPhones.

18 29. Plaintiffs are informed and believe that Apple was aware of a defect in older models
19 of the iPhone and not only failed to disclose what it knew, but made deliberately misleading
20 statements that were intended to conceal the nature and scope of that defect.
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22 30. For example, in or about November 2016, Apple announced that a “very small
23 number” of iPhones (specifically, a small number of the iPhone 6S and iPhone 6S Plus) suffered
24 from a problem that caused those devices to shut down, suddenly and unexpectedly, “for no
25 apparent reason.” In truth, Defendants knew that the lithium-ion batteries that were installed in
26 Apple iPhones were causing the devices to shut down unexpectedly, notwithstanding that their
27 battery levels were at as much as 60 percent when the shutdown occurred.
28

1 31. Despite claiming that the shutdowns were occurring for “no apparent reason”, Apple
2 also announced that it had initiated a battery-replacement program that was limited to the iPhone 6S
3 and the iPhone 6S Plus, and that neither the shutdown problem nor the battery-replacement program
4 would serve to extend the applicable warranty.

5 32. Plaintiffs are informed and believe that Apple’s announcement was misleading and
6 that Apple knew it was misleading at the time it made the announcement in November 2016. Apple
7 admitted publicly that a “small number of customers outside the range (*i.e.*, iPhones other than the
8 6S and the 6S Plus) have also reported a shutdown.” *See* Jeff John Roberts, “Why It’s Time for
9 Apple to Come Clean About the iPhone Battery,” *Fortune* (Dec. 27, 2016) (available online at
10 <http://fortune.com/2016/12/27/apple-iphone-6-battery-problem/>). Apple went on to admit, “[s]ome
11 of these shutdowns can occur under normal conditions for the iPhone to protect its electronics.” *Id.*
12

13 33. Plaintiffs are informed and believe that these additional statements were deliberately
14 misleading half-truths as well. In truth, the lithium-ion batteries in all iPhones cause them to
15 operate erratically and to shut down the device unexpectedly due to the batteries’ inability to handle
16 the demand created by processor speeds.

17 34. Rather than curing the battery defect by providing a free, defect-free battery
18 replacement for all iPhones, Apple sought to mask the defect by modifying the iPhone operating
19 system (“iOS”) so that it reduces iPhones’ processing speeds in an effort to prevent their batteries
20 from causing erratic operation and unexpected shutdowns.
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22 35. But Defendants never disclosed that the updates they were sending would throttle the
23 iPhones of the consumers who accepted the update. Instead, Defendants represented to its
24 customers that the iOS updates it was sending them were beneficial to their iPhones.
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1 36. For example, Defendants previously claimed that the iOS 10 operating system
2 “make[s] everything you love about your iPhone and iPad even better.” Defendants also claimed,
3 “in iOS 10, accessing the information you need is easier and quicker than ever.”

4 37. These statements were materially false and misleading, omitting key information
5 including that Defendants were using the updates to throttle the iPhone processor, causing it to
6 slow.

7 38. Defendants repeatedly claimed each subsequent iOS update was beneficial to the
8 user, and failed to inform the user that Defendants were using the updates to throttle the iPhones,
9 including:
10

- 11 (a) iOS 10.2.1 “includes bug fixes and improves the security of your iPhone . . .”
12 and “improves power management during peak workloads to avoid
13 unexpected shutdowns on iPhones;”
14 (b) iOS 10.3.1 offered “new features” and improvements to various applications;
15 (c) iOS 10.3.2 and 10.3.3 included “bug fixes” and improved “the security of
16 your iPhone”;
17 (d) iOS 11.0.1, iOS 11.0.2 and iOS 11.0.3 included “bug fixes” and
18 “improvements” to the iPhone; and
19 (e) iOS 11.1, iOS 11.1.1, iOS 11.1.2, iOS 11.2, and iOS 11.2.1 include numerous
20 “bug fixes” and other iPhone improvements.
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23 39. Defendants also made it difficult for Plaintiffs and the Class NOT to accept these
24 updates. Apple’s update program “pushed” these updates to iPhone users, and if they did not accept
25 the update immediately then they were repeatedly reminded to update their iPhones until the user
26 relented and accepted the update. And if Plaintiffs and class members never accepted the update,
27 some applications for the iPhones would ultimately become unusable.
28

1 40. Modifying iOS via “updates” not only allowed Apple to conceal the true nature and
2 scope of the defect and to avoid expending time, money, and effort on correcting it. Apple’s
3 decision to surreptitiously modify iOS had the added benefit to Apple that slowing the performance
4 of iPhones served to incentivize consumers to replace them with new iPhones.

5 41. Recently, Apple admitted that it modified iOS in a manner that slowed the
6 performance of iPhones, but characterized this effort as a “feature”:
7

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

12 Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to
13 smooth out the instantaneous peaks only when needed to prevent the device
14 from unexpectedly shutting down during these conditions. We’ve now
15 extended that feature to iPhone 7 with iOS 11.2, and plan to add support for
16 other products in the future. Shara Tibiken, “Apple admits slowing older
iPhones, says it’s to prevent battery issues,” *C/Net* (Dec. 20, 2017) (available
online at <https://www.cnet.com/news/appleslows-down-older-iphone-battery-issues/#ftag=CAD-09-10aai5b>).

17 42. “The statement from Apple came in response to a report from earlier this week from
18 Primate Labs, the company behind the Geekbench processor benchmark software. John Pool, the
19 founder of the organization, said ‘. . . that processors in iPhones slow down and decrease in
20 performance as batteries age and lose capacity’. Poole explained that users expect their phones to
21 perform the same regardless of how old the battery is, but his tests indicated that wasn’t the case.”

22 *Id.*

23 43. Since that time, Apple’s CEO has publicly apologized for not informing Plaintiffs
24 and the Class of the design defect, or the iOS updates that throttled their iPhones, and admitted:
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27 About a year ago in iOS 10.2.1, we delivered a software update that improves power
28 management during peak workloads to avoid unexpected shutdowns on iPhone 6,
iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE. With the update, iOS

1 dynamically manages the maximum performance of some system components when
2 needed to prevent a shutdown. While these changes may go unnoticed, in some
3 cases users may experience longer launch times for apps and other reductions in
performance.

4 44. And Apple is now being investigated by the Federal Government for its disclosures
5 concerning these updates that throttled Plaintiffs' and the Class Members' iPhones. More
6 specifically, according to Bloomberg, the U.S. Department of Justice and the Securities and
7 Exchange Commission are investigating whether Apple violated securities laws concerning its
8 disclosures about the software updates that throttled iPhones. "Investigators are looking into public
9 statements made by Apple on the situation." See, [https://www.bloomberg.com/news/articles/2018-
10 01-30/u-s-said-to-probe-apple-over-updates-that-slow-older-iphones-jd1yahj7](https://www.bloomberg.com/news/articles/2018-01-30/u-s-said-to-probe-apple-over-updates-that-slow-older-iphones-jd1yahj7).

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12 45. Plaintiffs now bring this action on behalf of themselves and all others similarly
13 situated to require Apple: (a) to modify iOS in a manner that prevents it from slowing the
14 performance of iPhones; (b) to provide owners of iPhones with notice that the slow performance of
15 those devices is caused by modifications Apple made to iOS; (c) reimburse current owners of
16 iPhones with the purchase price they paid for those devices after Apple knew, but failed to disclose,
17 the existence of the battery defect and the slow performance caused by the iOS modification; (d) to
18 compensate current and form owners of iPhones for the costs they incurred in attempting to repair
19 or replace their iPhones due to the battery defect and/or the slow performance caused by the iOS
20 modification; (e) to provide current owners of iPhones with new batteries for those devices free of
21 charge; and (f) to compensate former owners of iPhones for the cost of replacing those devices
22 prematurely or, alternatively, to provide former owners with the opportunity to return their
23 replacement iPhones in exchange for a refund together with the model of iPhone (with a new
24 battery) that they owned prior to replacing that device.
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27 46. Plaintiffs and Class Members have used Apple iPhones for a number of years.
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1 47. Defendants allege that its battery may retain up to 80 percent of their original
2 capacity at 500 complete charge cycles.

3 48. Defendants allege that it slows down iPhone processors when the battery is wearing
4 out.

5 49. Defendants never requested consent or did Plaintiffs at any time give consent for
6 Defendants to slow down their iPhones.

7 50. Plaintiffs and Class Members were never given the option to bargain or choose
8 whether they preferred to have their iPhones slower than normal.

9 51. Plaintiffs and Class Members suffered interferences to their iPhone usage due to the
10 intentional slowdowns caused by Defendants.

11 52. Defendants' wrongful actions directly and proximately caused the interference and
12 loss of value to Plaintiffs' and Class Members' iPhones causing them to suffer, and continue to
13 suffer, economic damages and other harm for which they are entitled to compensation, including:
14

15 (a) Replacement of old phone;

16 (b) Loss of use;

17 (c) Loss of value;

18 (d) Purchase of new batteries;

19 (e) Ascertainable losses in the form of deprivation of the value of their iPhone;
20 and

21 (f) Overpayments to Defendants for iPhones in that a portion of the price paid
22 for such iPhone by Plaintiffs and Class Members to Defendants were for
23 Defendants to purposefully not interfere with the usage of their iPhones,
24 which Defendants and its affiliates purposefully interfered in order to slow
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1 down its performance and, as a result, Plaintiffs and Class Members did not
2 receive what they paid for and were overcharged by Defendants.

3 **V. CLASS ACTION ALLEGATIONS**

4 53. Pursuant to California Code of Civil Procedure §382, Plaintiffs bring this class action
5 on their own behalf and as representatives of the class. Plaintiffs seek certification of a class
6 consisting of California residents who have purchased iPhones that operate on Apple's iOS
7 operating system older than the iPhone 8 and iPhone X, and within the period permitted by the
8 applicable statutes of limitations for the causes of action discussed below.

9
10 54. Excluded from each of the above Classes are Defendants, including any entity in
11 which Defendants have a controlling interest, is a parent or subsidiary, or which is controlled by
12 Defendants, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors,
13 successors, and assigns of Defendants. Also excluded are the judges and court personnel in this
14 case and any members of their immediate families. Plaintiffs reserves the right to amend the Class
15 definitions if discovery and further investigation reveal that the Classes should be expanded or
16 otherwise modified.

17
18 55. The class representatives' claims are typical of the claims of the members of the
19 class because the class representatives and all other members of the class were damaged by the
20 same wrongful conduct committed by Defendants, as alleged more fully below.

21
22 56. Moreover, the class representatives' claims are typical because the class
23 representatives and all other members of the class each own an indivisible interest in the property at
24 issue here.

25 57. Plaintiffs will fairly and adequately protect the interests of the class. The interests of
26 the class representatives are coincident with, and not antagonistic to, the interests of the other
27 members of the class.

1 58. The class representatives have retained counsel competent and experienced in the
2 prosecution of class action litigation.

3 59. Questions of law and fact common to the members of the class are central here and
4 predominate over questions that may affect only individual members. Among the questions of law
5 and fact common to the class are:
6

7 (a) Whether Apple violated Business & Professions Code §17200 by engaging in
8 an “unlawful” business practice;

9 (b) Whether Apple violated Business & Professions Code §17200 by engaging in
10 a “fraudulent” business practice when it deceived customers regarding its iOS
11 updates;

12 (c) Whether Apple violated Business & Professions Code §17200 by engaging in
13 an “unfair” business practice by intentionally degrading the performance of
14 Plaintiffs’ iOS devices;

15 (d) Whether Apple violated Business & Professions Code §17500, *et seq.*
16 through false and misleading advertising in the State of California regarding
17 performance of its iOS devices; and
18

19 (e) Whether Apple’s conducted violated the other provisions of statutory and
20 common law outlined in this complaint
21

22 60. Damages for any individual class member are likely insufficient to justify the cost of
23 individual litigation so that, in the absence of class treatment, Defendants’ violations of law
24 inflicting substantial damages in the aggregate would go un-remedied.

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1 **FIRST CAUSE OF ACTION**
2 **(Unlawful, Fraudulent, and Unfair Business Practices**
3 **in Violation of the Unfair Competition Law)**
4 **(Against All Defendants)**

5 61. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the
6 preceding paragraphs of this Complaint.

7 62. By committing the acts and practices alleged herein, Apple has engaged in unlawful,
8 fraudulent, and unfair business practices in violation of the UCL:

9 (a) Unlawful Conduct: As a result of engaging in the conduct alleged in this
10 Complaint, Apple has violated the UCL's proscription against engaging in
11 unlawful conduct by virtue of: (i) its fraudulent and deceitful conduct in
12 violation of California Civil Code §§1709 through 1711; and (ii) its
13 violations of the Consumers Legal Remedies Act, California Civil Code
14 §§1770(a)(5), (a)(7), and (a)(9).

15 (b) Fraudulent Conduct: Apple has violated the UCL's proscription against
16 fraud as a result of engaging in the fraudulent and deceitful conduct herein
17 throughout this Complaint.

18 (c) Unfair Conduct: Apple has violated the UCL's proscription against unfair
19 conduct as a result of engaging in the conduct alleged in this Complaint,
20 which violates legislatively-declared policies articulated in, *inter alia*,
21 California Civil Code §§1710, 1711, and 1770, subsections (a)(5), (a)(7), and
22 (a)(9).
23

24 63. Apple's violations of the UCL continue to this day. As a direct and proximate result
25 of Apple's violations of the UCL, Plaintiffs have suffered actual damage in that, *inter alia*, they
26 paid more for their iPhones than they would have had Apple not concealed the existence of the
27 battery defect and the effects of its modification of iOS.
28

1 64. Pursuant to Section 17203 of the UCL, Plaintiffs and the class seek an order that
2 requires Apple: (a) to modify iOS in a manner that prevents it from slowing the performance of
3 iPhones; (b) to provide owners of iPhones with notice that the slow performance of those devices is
4 caused by modifications Apple made to iOS; (c) reimburse current owners of iPhones with the
5 purchase price they paid for those devices after Apple knew, but failed to disclose, the existence of
6 the battery defect and the slow performance caused by the iOS modification; (d) to provide current
7 owners of iPhones with new batteries for those devices free of charge; (e) to make full restitution of
8 all moneys wrongfully obtained from its violations of the UCL, as alleged in this Complaint; and (f)
9 requires Apple to pay the attorney fees and costs incurred by counsel for Plaintiffs and the proposed
10 class in accordance with California Code of Civil Procedure §1021.5.

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12 **SECOND CAUSE OF ACTION**
13 **(Unfair and Deceptive Acts and Practices**
14 **in Violation of the Consumers Legal Remedies Act)**
15 **(Against All Defendants)**

16 65. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the
17 preceding paragraphs of this Complaint.

18 66. This claim for relief is brought pursuant to the CLRA. Plaintiffs and members of the
19 class are “consumers,” as that term is defined by Civil Code §1761(d), because they bought iPhones
20 for personal, family, or household purposes.

21 67. Plaintiffs and Class Members have engaged in a “transaction” with Apple, as that
22 term is defined by Civil Code §1761(e).

23 68. The conduct alleged in this Complaint constitutes unfair methods of competition and
24 unfair and deceptive acts and practices for the purposes of the CLRA, and were undertaken by
25 Apple in transactions intended to result in, and which resulted in, the sale of goods to consumers;
26 namely, to sell replacement batteries, repair services, and/or replacement devices for their iPhones.
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1 69. By engaging in the conduct described herein, Apple has violated subdivisions (a)(5),
2 (a)(7), and (a)(9) of California Civil Code §1770 by, *inter alia*, misrepresenting and concealing the
3 true nature and scope of the battery defect and that the modification of iOS would cause iPhones to
4 perform slowly and erratically and not disclosing those facts to Plaintiffs and members of the
5 proposed class before they bore the cost of purchasing a replacement device for their iPhone,
6 purchasing a new iPhone, and/or purchasing replacement parts and/or repair services as a result of
7 the battery defect or the iOS modification.
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9 70. By concealing the battery defect and the iOS modification from Plaintiffs and
10 members of the proposed class, Apple has represented, and continues to represent, that iPhones
11 have characteristics, uses and benefits, or qualities that they do not have, and that they are of a
12 particular standard, quality, or grade, when they are not, in violation of Civil Code §1770,
13 subsections (a)(5) and (a)(7).
14

15 71. By engaging in the conduct alleged herein, above, Apple has also advertised, and
16 continues to advertise, goods with the intent not to sell them as advertised, in violation of California
17 Civil Code §1770(a)(9).
18

19 72. Pursuant to §1782 of the CLRA, more than thirty days prior to the filing of this
20 Amended Complaint, Plaintiffs sent written notice to Apple by certified mail regarding its
21 violations of the CLRA, thereby providing Apple with an opportunity to correct or otherwise rectify
22 the problems alleged herein, but Apple declined to do so.

23 73. Plaintiffs now seek an order requiring Apple to: (a) cease violating the CLRA by
24 modifying iOS in a manner that prevents it from slowing the performance of iPhones; (b) to provide
25 owners of iPhones with notice that the slow performance of those devices is caused by
26 modifications Apple made to iOS; and (c) to provide current owners of iPhones with new batteries
27 for those devices free of charge.
28

1 74. Unless Apple agrees to correct, repair, replace, or otherwise rectify the problems
2 created by Apple's conduct as alleged herein, Plaintiffs will amend this complaint to seek an order
3 awarding actual damages and, because Apple engaged in the conduct alleged herein deliberately
4 and with willful and malicious intent, punitive damages.

5
6 **THIRD CAUSE OF ACTION**
7 **(Breach of Implied Contract)**
8 **(Against All Defendants)**

9 75. Plaintiffs incorporate the substantive allegations contained in each and every
10 paragraph of this Complaint.

11 76. Defendants solicited and invited Plaintiffs and the members of the Class to buy new
12 iPhones. Plaintiffs and Class Members accepted Defendants' offers and bought iPhones from
13 Defendants.

14 77. When Plaintiffs and Class Members bought iPhones from Defendants, they paid for
15 iPhones that were defect-free. In so doing, Plaintiffs and Class Members entered into implied
16 contracts with Defendants to which Defendants agreed to provide defect-free iPhones, and not to
17 purposefully interfere with Plaintiffs and Class Members' usage or speed of the device.

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

20 79. Plaintiffs and Class Members fully performed their obligations under the implied
21 contracts with Defendants.

22 80. Defendants breached the implied contracts it made with Plaintiffs and Class
23 Members by purposefully selling them defective iPhones, and then by slowing down older iPhone
24 models when new models come out, and by failing to properly disclose that at the time of that the
25 parties entered into an agreement.
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1 81. As a direct and proximate result of Defendants' breaches of the implied contracts
2 between Defendants and Plaintiffs and Class Members, Plaintiffs and Class Members sustained
3 actual losses and damages as described in detail above.

4 **FOURTH CAUSE OF ACTION**
5 **(Fraud by Intentional Misrepresentation and Omission)**
6 **(Against All Defendants)**

7 82. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

8 83. Defendants, through Apple and its agents, employees and/or subsidiaries, made
9 materially false representations and omissions to Plaintiffs and the Class that Apple iPhones did not
10 suffer from a design defect, and that the updates to the iOS would benefit their iPhones.

11 84. These material misrepresentations and omissions were contained in the Purchase
12 Agreement and in various public statements by Defendants. These and similar material
13 misrepresentations and omissions were further reiterated and disseminated by Defendants in
14 Apple's iOS updates which updates were sent to Plaintiffs and the Class.
15

16 85. Defendants knew or recklessly disregarded the false and misleading nature of their
17 material misrepresentations and omissions.

18 86. Defendants made the materially false and misleading statements and omissions for
19 the purpose of inducing Plaintiffs and the other members of the Class to purchase new batteries and
20 iPhones, and to accept the iOS updates to their iPhones.

21 87. In accepting the iOS updates, and in purchasing new batteries and iPhones, Plaintiffs
22 and the Class reasonably relied on Defendants' materially misleading statements and omissions that
23 Plaintiffs' iPhones were defect-free and that the iOS updates were for the benefit of the user.

24 88. As a result of Defendants' materially false and misleading misrepresentations and
25 omissions, Plaintiffs and the Class sustained damages as set forth herein.
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1 **FIFTH CAUSE OF ACTION**
2 **(Fraud by Negligent Misrepresentation and Omission)**
3 **(Against All Defendants)**

4 89. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

5 90. Defendants, through their agents, employees and/or subsidiaries, negligently and/or
6 recklessly made materially false representations and omissions to Plaintiffs and the Class as alleged
7 above.

8 91. These material misrepresentations and omissions were contained in the Purchase
9 Agreement and in various public statements by Defendants. These and similar material
10 misrepresentations and omissions were further reiterated and disseminated by Defendants in
11 Apple's iOS updates which updates were sent to Plaintiffs and the Class.

12 92. Defendants knew or should have known that the materially false and misleading
13 statements and omissions would induce Plaintiffs and the other members of the Class to accept the
14 iOS updates for their phones, and to purchase new batteries and newer versions of the iPhone.
15

16 93. In accepting the iOS updates and purchasing new batteries and iPhones, Plaintiffs
17 and the Class reasonably relied on Apple's materially misleading statements and omissions that
18 their iPhones were operating properly and that the updates would only benefit – and not throttle –
19 their iPhones.

20 94. As a result of Apple's materially false and misleading misrepresentations and
21 omissions, Plaintiffs and the Class sustained damage as set forth herein.
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1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for
3 relief in this Complaint as follows:

4 A. For an order certifying that the action may be maintained as a class action, on behalf
5 of the proposed class and any other subclass(es) the Court may deem appropriate and appointing
6 Plaintiffs as class representatives;

7 B. For an award of monetary damages, including but not limited to, compensatory,
8 incidental and consequential damages commensurate with proof at trial for the acts complained of
9 herein;

10 C. For an award of punitive damages in an amount consistent with applicable statutes
11 and precedent for those causes of action that permit such recovery;

12 D. For an order pursuant to California Civil Code §1780(a)(2) requiring Apple to: (a)
13 provide owners of iPhones with notice that the slow performance of those devices is caused by
14 modifications Apple made to iOS; (b) modify iOS in a manner that prevents it from slowing the
15 performance of iPhones; and (c) provide current owners of iPhones with new batteries for those
16 devices free of charge;

17 E. For an order awarding attorney fees and costs pursuant to California Civil Code
18 §1780(e);

19 F. For an order that requires Apple: (a) to modify iOS in a manner that prevents it from
20 slowing the performance of iPhones; (b) to provide owners of iPhones with notice that the slow
21 performance of those devices is caused by modifications Apple made to iOS; (c) reimburse current
22 owners of iPhones with the purchase price they paid for those devices after Apple knew, but failed
23 to disclose, the existence of the battery defect and the slow performance caused by the iOS
24 modification; (d) to provide current owners of iPhones with new batteries for those devices free of
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1 charge; (e) to make full restitution of all moneys wrongfully obtained from its violations of the
2 UCL, as alleged in this Complaint; and (f) requires Apple to pay the attorney fees and costs incurred
3 by counsel for Plaintiffs and the proposed class in accordance with California Code of Civil
4 Procedure §1021.5.

5 G. For equitable relief requiring restitution and disgorgement of the revenues
6 wrongfully retained as a result of Defendants' wrongful conduct;

7 H. For an award of attorney fees, where applicable;

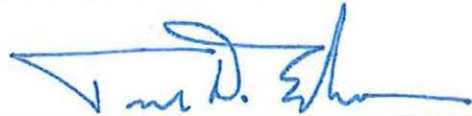
8 I. For an award of costs;

9 J. For an award of pre- and post-judgment interest on any amounts awarded; and

10 K. For any and all other relief the Court deems just and appropriate.
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13 DATED: February 7, 2018

THE BRANDI LAW FIRM



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TERENCE D. EDWARDS
Attorney for Plaintiff Goodrich

DATED: February __7, 2018

THE LAW OFFICES OF ANDREW J. BROWN



ANDREW J. BROWN
Attorney for Plaintiff Rosalia

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DEMAND FOR JURY TRIAL

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

DATED: February 7, 2018

THE BRANDI LAW FIRM



TERENCE D. EDWARDS
Attorney for Plaintiff Goodrich

DATED: February 7, 2018

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Attorney for Plaintiff Rosalia