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5 *Attorneys for Plaintiff*

6 **UNITED STATES DISTRICT COURT**  
 7 **CENTRAL DISTRICT OF CALIFORNIA**

9 DAVID JONES, Individually and on  
 10 Behalf of All Others Similarly  
 11 Situated,

12 Plaintiffs,

13 vs.

14 APPLE, INC., a California corporation  
 15 and DOES 1-10,

16 Defendants.

Case Number:

**CV12-02642 JFW(JCX)**  
**CLASS ACTION COMPLAINT**

- I. Magnuson-Moss Warranty Act
- II. Unjust Enrichment
- III. Breach of Express Warranty
- IV. Breach of Implied Warranty of Merchantability
- V. California Consumer Legal Remedies Act
- VI. California Unfair Competition Laws
- VII. California False Advertising Laws

**JURY TRIAL DEMANDED**

FILED

12 MAR 27 PM 3:51

CLERK U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIF.  
 LOS ANGELES

1 Plaintiff, David Jones, is an individual residing in the state of California  
2 (“Plaintiff”), and by his attorneys, alleges upon personal knowledge as to his own  
3 acts, and as to all other matters upon information and belief based upon, *inter alia*,  
4 the investigation made by and through his attorneys, as follows:

5 **SUMMARY OF THE ACTION**

6 1. This is a class action brought by Plaintiff against defendant Apple, Inc.  
7 (“Apple” or “Defendant”) for unfair, unlawful, deceptive, and misleading practices  
8 conducted in violation of California State, Federal, and common law. This action  
9 involves Apple’s iPhone 4S (the “iPhone 4S”).

10 2. Apple is headquartered in California and markets the iPhone 4S  
11 nationwide.

12 3. Apple’s iPhone 4S is the latest version of the iPhone smartphone and is  
13 marketed by Apple as superior to earlier versions of its iPhone smartphones,  
14 including the iPhone 4, based primarily on the inclusion of the voice activated  
15 “intelligent personal assistant” feature called “Siri” (the “Siri Feature”). Indeed, the  
16 Siri Feature is the primary distinguishing feature between the iPhone 4S and the  
17 iPhone 4, as the two versions are virtually identical in all other regards.

18 4. Through its nationwide multimedia marketing campaign, Apple  
19 disseminates false and deceptive representations regarding the functionality of the  
20 Siri Feature. Apple’s misrepresentations are designed to cause consumers to purchase  
21 the iPhone 4S over other smart phones.

22 5. For example, in many of Apple’s television commercials, consumers are  
23 shown using Siri to make appointments, find restaurants, and even to learn the guitar  
24 chords to classic rock songs. In its advertisements, Apple depicts these tasks as easily  
25 accomplished “just by asking” Siri. In truth, the depictions in Apple’s deceptive  
26 commercials diverge greatly from the actual functionality and operation of the Siri  
27 Feature as experienced by Plaintiff and fellow consumers.

6. On January 25, 2012, Apple issued its financial results for its fiscal 2012 first quarter ending December 31, 2011. Apple reported selling approximately 37 million iPhones for the quarter. Of the 37 million iPhones sold that quarter, almost 33 million or 89% were the iPhone 4S, which Apple sells at a premium over the price of its iPhone 4. Because the iPhone 4S's Siri Feature does not perform as represented, the iPhone 4S is essentially an overpriced iPhone 4. For example, according to Apple's website, an iPhone 4S starts at \$ 199, while the iPhone 4 starts at \$99.<sup>1</sup>

7. Defendant's misrepresentations regarding the Siri Feature are misleading, false, reasonably likely to deceive and have deceived Plaintiff and members of the putative Class.

8. Defendant knew or should have known that the iPhone 4S and Siri Feature do not function as represented in its advertisements, marketing materials, and warranties disseminated in Apple's nationwide marketing and advertising campaign.

9. Therefore, Plaintiff seeks relief and damages in this action individually and on behalf of the Class (defined below) pursuant to the Magnuson-Moss Act, 15 U.S.C. § 2301, *et. seq.*, for unjust enrichment, breach of express warranty, fraudulent concealment, common law and California's Consumer Legal Remedies Act (California Civil Code §§ 1750, *et seq.*) and violations of the California Unfair Competition Laws (California Business & Professions Code §§ 17200, *et seq.*)

## THE PARTIES

10. Plaintiff is an individual living and working in Los Angeles county and in the state of California. Plaintiff purchased an iPhone 4S phone in December 2011, with the Siri function at a retail store in Woodland Hills, California. Plaintiff purchased his iPhone 4S while relying on Apple's representations regarding the utility of the Siri feature.

<sup>1</sup> See [http://store.apple.com/us/browse/home/shop\\_iphone/family/iphone/iphone4s](http://store.apple.com/us/browse/home/shop_iphone/family/iphone/iphone4s) (last accessed March 7, 2012); [http://store.apple.com/us/browse/home/shop\\_iphone/family/iphone/iphone4](http://store.apple.com/us/browse/home/shop_iphone/family/iphone/iphone4) (last accessed March 7, 2012).

1 11. Defendant Apple is a California corporation with its principal place of  
2 business located at One Infinite Loop, Cupertino, California 95014. Apple designs,  
3 manufactures, and markets various consumer electronics products, including personal  
4 computers, portable MP3 players, tablet computers, and smart phones.

### 5 **JURISDICTION AND VENUE**

6 12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331  
7 (federal question). This Court has supplemental jurisdiction over state law claims  
8 pursuant to 28 U.S.C. § 1367.

9 13. This Court also has jurisdiction over this action pursuant to 28 U.S.C. §  
10 1332(d) because there are more than 100 class members and the aggregate amount in  
11 controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least  
12 one Class member is a citizen of a state different from Defendant.

13 14. Venue lies within this judicial district under 28 U.S.C. § 1391(a) and (c)  
14 because Defendant's contacts are sufficient to subject it to personal jurisdiction in this  
15 District, and therefore, Defendant resides in this District for purposes of venue.

### 16 **FACTUAL BACKGROUND**

#### 17 **A. Apple And Its Deceptive Marketing**

18 15. In the fall of 2011, Apple began marketing the iPhone 4S and placed an  
19 emphasis on the Siri Feature as distinguishing the iPhone 4S from its predecessor, the  
20 iPhone 4.

21 16. In an October 4, 2011 press release from Apple, defendants introduced  
22 the iPhone 4S and touted the new Siri Feature, stating:

23 ... Siri, an intelligent assistant that helps you get things done just by  
24 asking. Siri understands context allowing you to speak naturally when  
25 you ask it questions, for example, if you ask "Will I need an umbrella  
26 this weekend?" it understands you are looking for a weather forecast.  
27 Siri is also smart about using the personal information you allow it to  
28 access, for example, if you tell Siri "Remind me to call Mom when I  
get home" it can find "Mom" in your address book, or ask Siri "What's  
the traffic like around here?" and it can figure out where "here" is  
based on your current location. Siri helps you make calls, send

1 text messages or email, schedule meetings and reminders, make  
2 notes, search the Internet, find local businesses, get directions and  
3 more. You can also get answers, find facts and even perform complex  
4 calculations just by asking.

5 17. Apple's deceptive marketing of the iPhone 4S includes television  
6 commercials depicting consumers using the Siri Feature to schedule appointments,  
7 locate businesses, and even learn guitar chords. Four of the seven most recent iPhone  
8 4S television commercials, which are also featured on Apple's website, focus  
9 solely on Siri.<sup>2</sup>

10 18. For example, one commercial shows a couple on a road trip asking Siri  
11 various questions, including "Where is the best barbeque in Kansas City?," "Is there  
12 a rodeo in Amarillo today?," and "How big is the Grand Canyon?" In response to  
13 one question, "[Are there] any gas stations we can walk to?," Siri answers, "I  
14 found two gas stations fairly close to you," and displays the name and rating of two gas  
15 stations on the individual's iPhone 4S screen. When asked "What does Orion look  
16 like?" Siri responds with a map of the Orion constellation and states, "I found this for  
17 you."<sup>3</sup>

18 19. In another commercial by Apple marketing the iPhone 4S a guitar  
19 player asks Siri how to play the song "London Calling" and how to play a "B  
20 Minor Ninth" chord. In response Siri responds with the proper notes, chord, and  
21 sheet music.<sup>4</sup>[F1].

22 20. Apple's deceptive marketing campaign includes various  
23 misrepresentations made on its website. On its website, Apple uses the Siri  
24 Feature as a major selling point for the iPhone 4S. For example, on the  
25 "iPhone" tab of Apple's website, consumers are exposed to a welcome screen

26 <sup>2</sup> <http://www.apple.com/iphone/videos/> (last accessed March 7, 2012).

27 <sup>3</sup> Apple Inc., "TV Ads," <http://www.apple.com/iphone/videos/#tv-ads-roadtrip> (last accessed on  
28 March 7, 2012).

<sup>4</sup> Apple Inc., "TV Ads," <http://www.apple.com/iphone/videos/#tv-ads-rockgod> (last accessed on  
March 7, 2012).

1 that states, "Introducing Siri. The intelligent assistant that's there to help. Just  
2 ask. Ask Siri to make calls, send texts, set reminders, and more. Just talk the  
3 way you talk. Siri understands what you say and knows what you mean."<sup>5</sup>

4 21. Apple's website also contains a video entitled "iPhone 4S Video,"  
5 which promotes the iPhone 4S and the Siri Feature. The iPhone 4S video purports  
6 to demonstrate the Siri Feature and its capabilities. For example, when asked, "Find me  
7 an Italian restaurant in North Beach," Siri replies, "OK these 25 Italian restaurants are  
8 in North Beach" and displays the name and star rating of 25 Italian restaurants located in  
9 North Beach on the screen of the iPhone 4S. The iPhone 4S video also depicts a  
10 jogging man asking Siri to reschedule a meeting to 12 p.m., to which Siri responds,  
11 "Note that you already have a meeting about budgets at 12 p.m." The iPhone 4S video  
12 also features Scott Forstall, Senior Vice President of iOS Software, who states, "[Siri is]  
13 like this amazing assistant that listens to you, understands you, can answer your  
14 questions and can even accomplish tasks for you. . . . A lot of devices can recognize  
15 the words you say, but the ability to understand what you mean and act on it, that's the  
16 breakthrough with Siri."<sup>6</sup>

17 22. On January 25, 2012, Apple reported selling approximately 37 million  
18 iPhones for the fiscal 2012 first quarter ending December 31, 2011.<sup>7</sup> According to a  
19 recent blog post regarding the iPhone, approximately 89% of the 37 million iPhones  
20 sold that quarter were iPhone 4S's.<sup>8</sup> The blog post estimates that approximately 42%  
21 of current iPhone 4S users cancelled their contracts with their carriers in order to  
22 purchase the iPhone 4S.<sup>9</sup> A Consumer Intelligence Research poll of 6,316,365

23  
24 <sup>5</sup> See <http://www.apple.com/iphone/> (last accessed on March 7, 2012).

25 <sup>6</sup> Apple Inc., "Watch the iPhone 4S video," <http://www.apple.com/iphone> (last accessed on March 7, 2012).

26 <sup>7</sup> Apple Inc., Form 10-Q Quarterly Report dated Jan. 25, 2012,  
<http://investor.apple.com/secfiling.cfm?filingID=1193125-12-23398&CIK=320193>

27 <sup>8</sup> See <http://www.theiphoneblog.net/iphone-4s-contributed-89-of-total-us-iphone-sales/> (last  
accessed on March 7, 2012).

28 <sup>9</sup> *Id.*

1 iPhone users found that from October 2001 through the end of 2011, 36% of iPhone  
2 4S users had switched from a different smartphone platform.<sup>10</sup>

3 **B. The iPhone 4s's Siri Feature Does Not Function As Advertised**

4 23. Soon after purchasing his iPhone 4S, Plaintiff discovered that the Siri  
5 Function did not work as advertised. For example, Plaintiff would ask Siri for  
6 directions to a certain location, or to pinpoint a business, and Siri either would not  
7 understand what Plaintiff asked, or, after a long wait, provided the wrong answer.  
8 Plaintiff's problems with the Siri Function have occurred repeatedly when using the  
9 iPhone 4S.

10 24. Upon information and belief, Plaintiff's problems with the Siri Function  
11 are not unique to Plaintiff and have been experienced by other members of the putative  
12 class.

13 25. In addition to the fact that the Siri Function does not function as  
14 advertised, a recent report has warned that continuous usage of the Siri Function  
15 dramatically increases an iPhone 4S users' monthly data usage, and can easily push users  
16 over the allotted data usage on their data plans.<sup>11</sup>

17 26. On the "Learn More About Siri" page of its website, Apple states, "Siri is  
18 currently in beta and we'll continue to improve it over time."<sup>12</sup> However, a significant  
19 amount of Apple's marketing and advertising campaign for the iPhone 4S, including its  
20 multiple television commercials, fail to disclose the Siri Feature's "beta" status and that  
21 the Siri Feature is not a finished product. Instead, consumers must follow a series of links  
22 on Apple's website, including a footnote at the bottom of a page<sup>13</sup>, in order to discover  
23 that the Siri Function is not a finished product and rather is in "beta" development

24 <sup>10</sup> [http://www.phonearena.com/news/Breaking-down-Apple-iPhone-4S-buyers-with-statistics\\_id26184](http://www.phonearena.com/news/Breaking-down-Apple-iPhone-4S-buyers-with-statistics_id26184) (last  
25 accessed on March 7, 2012).

26 <sup>11</sup> Jacqui Cheng, Siri, how much data do you gobble up in a month?, Ars Technica,  
27 <http://arstechnica.com/apple/news/2011/11/how-data-heavy-is-siri-on-an-iphone-4s-ars-investigates.ars> (last  
28 accessed on March 7, 2012).

<sup>12</sup> <http://www.apple.com/iphone/features/siri-faq.html> (last accessed on March 7, 2012).

<sup>13</sup> See n. 1, <http://www.apple.com/iphone/features/#siri> (last accessed on March 7, 2012).

1 status.<sup>14</sup> The fact that the Siri feature is still in “beta” status shows defendant had  
2 actual or constructive knowledge of the iPhone 4S's shortcomings prior to its distribution.

3 27. Apple fails to disclose to consumers that the interactions with the Siri  
4 Feature depicted in its television commercials are fabricated dramatizations and that  
5 consumers cannot reasonably expect the Siri Feature to perform the tasks performed in  
6 Apple's commercials when using actual iPhone 4S products.

7 28. The information withheld from Plaintiff and the other Class members is  
8 material and would be considered and relied upon by a reasonable person before  
9 purchasing the product, as are the misrepresentations regarding the Siri Feature, all as  
10 more detailed herein.

11 **C. Plaintiff's Claims Against Apple**

12 29. Plaintiff is a resident of California who purchased Apple's iPhone 4S  
13 believing the Siri Feature would function as advertised.

14 30. Plaintiff relied upon and was misled by Apple's misrepresentations  
15 regarding the functionality of the Siri Feature.

16 31. Apple's misrepresentations regarding the functionality of the Siri Feature  
17 were material to Plaintiff and members of the Class (as defined below) when they  
18 purchased the iPhone 4S. Plaintiff and members of the Class did not receive the  
19 benefit of the bargain from their purchases because the Siri feature does not function  
20 as advertised. Accordingly, Plaintiff and members of the Class suffered injury in fact  
21 and lost money as a result of Apple having misrepresented the functionality of the  
22 Siri Feature. But for Apple's misrepresentations regarding the Siri Feature, Plaintiff  
23 and members of the Class would not have paid the increased purchase price for the  
24 iPhone 4S.

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28 <sup>14</sup> <http://www.apple.com/iphone/features/siri-faq.html> (last accessed on March 7, 2012).





1           6.     whether the iPhone 4S failed to conform to the representations,  
2 which were published, disseminated and advertised to Plaintiff and the Class;

3           7.     whether Apple concealed from Plaintiff and the Class that the  
4 iPhone 4S did not conform to its stated representations;

5           8.     whether, by the misconduct set forth in this Complaint, Apple has  
6 engaged in unfair, fraudulent or unlawful business practices with respect to the  
7 advertising, marketing and sales of the iPhone 4S;

8           9.     whether Apple violated the California Consumer legal Remedies  
9 Act;

10          10.    whether Apple violated California's Unfair Competition Laws;

11          11.    whether Class members suffered an ascertainable loss as a result  
12 of the Apple's misrepresentations; and

13          12.    whether, as a result of Apple's misconduct as alleged herein,  
14 Plaintiff and Class members are entitled to restitution, injunctive and/or monetary  
15 relief and, if so, the amount and nature of such relief.

16          38.    Plaintiff's claims are typical of the claims of the members of the Class as  
17 all members of the Class are similarly affected by Apple's wrongful conduct. Plaintiff  
18 has no interests antagonistic to the interests of the other members of the Class. Plaintiff  
19 and all members of the Class have sustained economic injury arising out of Apple's  
20 violations of common and statutory laws as alleged herein.

21          39.    Plaintiff is an adequate representative of the Class because his interest does  
22 not conflict with the interests of the other Class members he seeks to represent, he has  
23 retained counsel who are competent and experienced in prosecuting class actions, and  
24 they intend to prosecute this action vigorously. The interests of Class members will be  
25 fairly and adequately protected by Plaintiff and his counsel.

26          40.    The class mechanism is superior to other available means for the fair and  
27 efficient adjudication of the claims of Plaintiff and Class members. Each individual  
28

1 Class member may lack the resources to undergo the burden and expense of individual  
2 prosecution of the complex and extensive litigation necessary to establish Apple's  
3 liability. Individualized litigation increases the delay and expense to all parties and  
4 multiplies the burden on the judicial system that is presented by the complex legal and  
5 factual issues of this case. Individualized litigation also presents a potential for  
6 inconsistent or contradictory judgments. In contrast, the class action device presents far  
7 fewer management difficulties and provides the benefits of single adjudication, economy  
8 of scale, and comprehensive supervision by a single court on the issue of Apple's  
9 liability. Class treatment of the liability issues will ensure that all claims and  
10 claimants are before this Court for consistent adjudication of the liability issues.

#### 11 **COUNT I**

##### 12 **Violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.***

13 41. Plaintiff and Class members reallege and incorporate by reference each  
14 allegation set forth above and further allege as follows.

15 42. Plaintiff brings this claim individually and on behalf of the members of the  
16 Class against Defendant.

17 43. The iPhone 4S is a consumer product as defined in 15 U.S.C. §2301(1).

18 44. Plaintiff and Class members are consumers as defined in 15 U.S.C.  
19 §2301(3).

20 45. Defendant Apple is a supplier and warrantor as defined in 15 U.S.C.  
21 §2301(4) and (5).

22 46. In connection with the sale of the iPhone 4S, Apple issued written  
23 warranties as defined in 15 U.S.C. §2301(6), which warranted that the Siri Feature  
24 would operate as advertised.

25 47. By reason of Apple's breach of the express written warranties regarding the  
26 functionality of the Siri feature, Apple has violated the statutory rights due Plaintiff and  
27  
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1 Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et*  
2 *seq.*, thereby damaging Plaintiff and Class members.

3 **COUNT II**

4 **Unjust Enrichment**

5 **(Brought on Behalf of the Class)**

6 48. Plaintiff and Class members reallege and incorporate by reference each  
7 allegation set forth above and further allege as follows.

8 49. Plaintiff brings this claim individually and on behalf of the members of the  
9 Class.

10 50. “Although there are numerous permutations of the elements of the unjust  
11 enrichment cause of action in the various states, there are few real differences. In all  
12 states, the focus of an unjust enrichment claim is whether the Apple was unjustly  
13 enriched. At the core of each state’s law are two fundamental elements – that Apple  
14 received a benefit from the Plaintiff and it would be inequitable for the Apple to retain  
15 that benefit without compensating the Plaintiff. [F2]

16 51. Plaintiff and Class members conferred a benefit on Apple by purchasing  
17 the iPhone 4S.

18 52. Apple has been unjustly enriched in retaining the revenues derived from  
19 Class members’ purchases of the iPhone 4S, which retention under these circumstances  
20 is unjust and inequitable because Apple misrepresented the functionality of the Siri  
21 Feature when in fact the Siri Feature does not operate as advertised.

22 53. Because Apple’s retention of the non-gratuitous benefit conferred on it by  
23 Plaintiff and Class members is unjust and inequitable, Apple must pay restitution to  
24 Plaintiff and the Class members for its unjust enrichment, as ordered by the Court.  
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54. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

56. Apple, as the designer, manufacturer, marketer, distributor, or seller, expressly warranted that the iPhone 4S's Siri Feature would function as advertised.

58. Plaintiff and Class members were injured as a direct and proximate result of Apple's breach because: (a) they would not have purchased the iPhone 4S on the same terms if the true facts regarding the functionality of the Siri Feature had been known; (b) they paid a price premium due to the misrepresentations regarding the iPhone 4S; and (c) iPhone 4S did not have the attributes, characteristics, functionality or value as promised.

**For Breach of Implied Warranty of Merchantability  
(Brought on Behalf of the Class)**

60. Plaintiff brings this claim individually and on behalf of the members of the Class.

61. Apple' iPhone 4S was accompanied by an implied warranty of merchantability when sold, pursuant to California Civil code § 1792.

1        62. California Civil Code §1791.1(a) states in relevant part: “Implied  
2 warranty of merchantability” or “implied warranty that goods are merchantable”  
3 means that the consumer goods meet each of the following:

- 4            1. Pass without objection in the trade under the contract description.
- 5            2. Are fit for the ordinary purposes for which such goods are used.
- 6            3. Are adequately contained, packaged, and labeled.
- 7            4. Conform to the promises or affirmations of fact made on the  
8            container or label.

9        63. The Apple iPhone 4S, Siri Feature would not pass without objection in  
10 the smart phone trade business.

11        64. The Apple iPhone 4S, with the Siri Feature, is not fit for the ordinary  
12 purpose for which it was sold. The iPhone 4S with the Siri Feature was purchased  
13 by consumers to perform as it was advertised, to be an “intelligent assistant” to  
14 perform multiple tasks in response to voice commands, which it simply does not do.

15        65. The Apple iPhone 4S is not properly labeled to warn of the deficiencies  
16 and problems associated with its use and the increased data usage involved with its  
17 use. Apple failed to adequately warn consumers of these issues.

18        66. Had Plaintiff and the members of the Class known the true facts, they  
19 either would not have purchased the Apple iPhone 4S or would not have been  
20 willing to pay the premium price Defendants charged for Apple iPhone 4S.

21        67. Plaintiff and the class seek injunctive relief pursuant to California Civil  
22 Code § 1794.

23        68. Plaintiff and the class also seeks an award of attorneys’ fees and costs  
24 under California Civil Code § 1794.

1 **COUNT V**

2 **California Consumer Legal Remedies Act**  
3 **(Brought on Behalf of the California Class)**

4 70. Plaintiff and Class members reallege and incorporate by reference each  
5 allegation set forth above and further allege as follows.

6 71. Defendant committed deceptive trade practices in connection with the  
7 misconduct herein alleged, including through its acts of fraudulent concealment. Such  
8 acts include Defendant's intentional concealment from Plaintiff and other consumers  
9 among the general public that the Siri Feature of the iPhone 4S does not function as  
10 advertised.

11 72. Plaintiff and all members of the class of individuals referenced herein are  
12 "consumers" as that term is defined in California Civil Code § 1761(d) of the California  
13 Consumer Legal Remedies Act (*CLRA* herein).

14 73. Defendant's conduct described herein, including its violation of its duty to  
15 disclose and its fraudulent concealment of defects in the iPhone 4S, constitute deceptive  
16 trade practices in violation of the CLRA, California Civil Code §§ 1750, et seq.

17 74. Defendant's deceptive acts described herein were directed at consumers  
18 such as Plaintiff.

19 75. Defendant's deceptive acts described herein were misleading in a material  
20 way.

21 76. Defendants knew, or should have known, that its representations and  
22 advertisements regarding the iPhone 4S were false and would mislead the public,  
23 including Plaintiff.

24 77. A CLRA notice letter was served on Defendant Apple, Inc. which  
25 complies in all respects with California Civil Code § 1782(a). Plaintiff sent Apple,  
26 Inc. a letter *via* certified mail, return receipt requested, advising Apple, Inc., that it is  
27 in violation of the CLRA and must correct, repair, replace or otherwise rectify the  
28

1 goods alleged to be in violation of California Civil Code § 1770. Apple, Inc. was  
2 further advised that in the event that the relief requested has not been provided within  
3 thirty (30) days, Plaintiff will amend this Complaint to include a request for monetary  
4 damages pursuant to the CLRA.

5 78. As a proximate result of Defendant's deceptive acts, Plaintiff and the  
6 public, including the Class, have been damaged.

7 79. Plaintiff also seek injunctive relief for this violation of the CLRA.

8 80. Plaintiff seek attorney fees and costs as allowed by law.

9 **COUNT VI**

10 **CALIFORNIA UNFAIR COMPETITION LAW**

11 **(California Business & Professions code §§ 17200, et seq.)**

12 81. Plaintiff reallege and incorporate by this reference, the previous  
13 allegations of this complaint as if set forth here in full.

14 82. Plaintiff brings this claim against Defendant on behalf of the members of  
15 the Class under California law.

16 83. Defendant, Apple, Inc. is subject to the Unfair Competition Law (*UCL*),  
17 California Business & Professions Code §§ 17200, *et seq.* The UCL provides, in  
18 pertinent part: "Unfair competition shall mean and include unlawful, unfair or  
19 fraudulent business practices and unfair, deceptive, untrue or misleading advertising .  
20 . . ." The UCL also provides for injunctive relief and restitution for violations.

21 84. Defendant, Apple, Inc. committed acts of unfair competition by the acts,  
22 omissions, misrepresentations and fraudulent and deceptive practices and actions as  
23 alleged above, violating the common law as well as federal and California consumer  
24 protection statutes in, all constituting violations of the UCL.

25 85. Apple's conduct is unfair in that the harm to Plaintiff and the Class  
26 arising from Apple's conduct outweighs the utility, if any, of those practices.





1 other manner or means whatever, including over the Internet, any statement,  
2 concerning . . . personal property or services, professional or otherwise, or  
3 performance or disposition thereof, which is untrue or misleading and which is  
4 known, or which by the exercise of reasonable care should be known, to be untrue or  
5 misleading.”

6 92. Defendant Apple, Inc. committed acts of false advertising, as defined by  
7 § 17500, by using false and misleading statements to promote the sale of the iPhone  
8 4S, as described above.

9 93. Apple, Inc. knew or should have known, through the exercise of  
10 reasonable care that the statements were untrue and misleading.

11 94. Defendant Apple, Inc.’s actions in violation of California Business &  
12 Professions Code § 17500 were false and misleading such that the general public was  
13 likely to be deceived.

14 95. As a direct and proximate result of these acts, consumers have been and  
15 are being harmed. Plaintiff bring this action pursuant to California Business &  
16 Professions Code § 17535 for injunctive relief to enjoin the practices described  
17 herein, to require Apple, Inc. to issue corrective disclosures to consumers, and for  
18 restitution.

19  
20 **PRAYER FOR RELIEF**  
21

22 Plaintiff, on behalf of himself and all others similarly situated, requests that the  
23 Court enter judgment against Defendant, as follows:

24 1. For an order certifying the nationwide Class under Rule 23 of the Federal  
25 Rules of Civil Procedure and naming Plaintiff as Class Representative and his attorneys  
26 as Class Counsel to represent the Class members;  
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1           2.     For an order declaring that Apple's conduct violates the statutes referenced  
2 herein;

3           3.     For an order finding in favor of the Plaintiff and the Class, on all counts  
4 asserted herein;

5           4.     For an order awarding compensatory, treble, and punitive damages in  
6 amounts to be determined by the Court and/or jury;

7           5.     For prejudgment interest on all amounts awarded;

8           6.     For an order of restitution and all other forms of equitable monetary relief;

9           7.     For injunctive relief as pleaded or as the Court may deem proper; and

10          8.     For an order awarding Plaintiff and the Class their reasonable attorneys'  
11 fees and expenses and costs of suit.

12          9.     For such other and further relief as the Court deems just and proper.

13  
14                                   **JURY DEMAND**

15          Plaintiff demands a trial by jury.

16  
17          Dated: March 26, 2012

**FARUQI & FARUQI, LLP**

18  
19          By:   
              David E. Bower (119546)

20                                   10866 Wilshire Boulevard, Suite 1470  
21                                   Los Angeles, California 90024  
22                                   Telephone: (424) 256-2884  
                                    Facsimile: (424) 256-2885  
                                    Email: dbower@faruqilaw.com

23                                   -and-

24                                   Nadeem Faruqi  
25                                   Juan Monteverde  
26                                   369 Lexington Avenue, 10<sup>th</sup> Floor  
27                                   New York, New York 10017-6531  
28                                   Telephone: (212) 983-9330  
                                    Facsimile: (212) 983-9331

1 I, David Jones, declare as follows:

2 1. I am a plaintiff in this action and a citizen of the State of California. I have personal  
3 knowledge of the facts herein and if called as a witness, I could and would testify competently  
4 thereto.

5 2. This is a proper place for trial under Civil Code Section 1780(d) in that a substantial  
6 portion of the transaction alleged occurred in the US Central District of California because I bought  
7 my phone in Woodland Hills California, which is located in the Central District jurisdiction I  
8 purchased the phone at a Verizon store and know that these phones are available for sale quite  
9 readily in this District. I use the phone almost exclusively within this District and in the county of  
10 Los Angeles and I filled out all paperwork and all agreements and paid for the phone and within  
11 this Central district of California. I am also informed and believe and have seen several stores,  
12 owned by the Defendant, Apple, Inc. which sell and service these phones and other products as  
13 well.

14 3. I purchased *the iPhone 4S*, from a retail store in Woodland Hills California. Based  
15 on the product label and product advertising claims, I was led to believe that the iPhone 4S  
16 contained a voice activated "intelligent personal assistant" feature called "Siri" (the "Siri Feature")  
17 which would provide an voice activated services providing directions, information and other  
18 instructional and informational feedback. The product label and advertising claims were a  
19 substantial factor influencing my decision to purchase the iPhone 4S with the Siri Feature. I would  
20 not have purchased this product if I had known that product advertising claims were false and  
21 misleading. If I had not been exposed to product advertising regarding the Siri Function and its  
22 capabilities, I would not have purchased the product with this feature.

23 I declare under the penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct, executed on March 22, 2012, in Los Angeles , California.

25  
26   
27 \_\_\_\_\_  
28 David Jones

Name & Address: David E. Bower (119546)  
FARUQI & FARUQI, LLP  
10866 Wilshire Boulevard, Suite 1470  
Los Angeles, California 90024  
Tel: (424) 256-2884 Fax: (424) 256-2885  
E-mail: dbower@faruqilaw.com

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID JONES, Individually and on Behalf of All  
Others Similarly Situated,

PLAINTIFF(S)

v.

APPLE, INC., a California corporation and DOES  
1-10,

DEFENDANT(S).

CASE NUMBER

CV12-02642 JFW(JCX)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, David E. Bower, whose address is 10866 Wilshire Boulevard, Suite 1470, Los Angeles, California 90024. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MAR 27 2012

Clerk, U.S. District Court

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**COPY**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> DAVID JONES, individually and on Behalf of All Others Similarly Situated,	<b>DEFENDANTS</b> APPLE, INC., a California corporation and DOES 1-10
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  David E. Bower (119546) of FARUQI & FARUQI, LLP 10866 Wilshire Boulevard, Suite 1470, Los Angeles, California 90024 Tel: (424) 256-2884 Fax: (424) 256-2885	<b>Attorneys (If Known)</b>   

**BY FAX**

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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**V. REQUESTED IN COMPLAINT:** JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☒ Yes ☐ No     **MONEY DEMANDED IN COMPLAINT:** \$ In excess of \$75,000

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 USC 2031 et seq Breach of Warranty as to use of product sold by defendant

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV12-02642

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Santa Clara

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): [Signature] Date March 26, 2012

**Notice to Counsel/Parties:** The CV-71 (JS-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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge John F. Walter and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

**CV12- 2642 JFW (JCx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.