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James S. Notis  
Jennifer Sarnelli (State Bar No. 242510)  
**GARDY & NOTIS, LLP**  
501 Fifth Avenue, Suite 1408  
New York, NY 10017  
Tel: 212-905-0509  
Fax: 212-905-0508

Charles A. Germershausen  
**GARDY & NOTIS, LLP**  
560 Sylvan Avenue, Suite 3085  
Englewood Cliffs, NJ 07632  
Tel: 201-567-7377  
Fax: 201-567-7337

Martin S. Bakst (State Bar No. 65112)  
**LAW OFFICES OF MARTIN S. BAKST**  
15760 Ventura Boulevard, Sixteenth Floor  
Encino, CA 91436  
Tel: 818-981-1400  
Fax: 818-981-5550

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

PSG

**CV 12-01384**

DANIEL M. BALASSONE and  
BENJAMIN SWARTZMAN, Individually  
and on Behalf of All Others Similarly  
Situated,  
  
Plaintiffs,  
  
v.  
  
APPLE, INC., and DOES 1-100.  
  
Defendants.

CASE NO.

**CLASS ACTION COMPLAINT**

**E-FILING**

**ADR**

**FILED**

MAR 20 2012

RICHARD W. WIENING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLASS ACTION COMPLAINT  
CASE NO.:

1 Daniel M. Balassone and Benjamin Swartzman (“Plaintiffs”), individually  
2 and on behalf of all others similarly situated, allege by and through their attorneys,  
3 upon information and belief as follows:

4 **I. INTRODUCTION**

5 1. On October 4, 2011 the Apple’s highly anticipated new mobile  
6 telephone, the Apple iPhone 4S (“iPhone 4S”) was introduced to the market.

7 2. In launching this new device, Apple focused on the iPhone 4S’s  
8 new intelligent assistant “Siri.”

9 3. Siri was touted by Apple as an interactive intelligent system that  
10 could understand user questions and provide verbal responses.

11 4. After announcing the iPhone 4S, Apple launched a nationwide  
12 advertising campaign that focused on the Siri feature. However, Apple failed to  
13 tell consumers that the iPhone 4S’s Siri feature, would not work as shown in its  
14 popular advertisements.

15 5. Apple’s television ads represented that Siri could handle a  
16 multitude of tasks quickly based on voice commands. For example, Siri displays  
17 calendar items and responds “Not bad ... only two meetings today” when asked  
18 “what’s my day look like” and provided a list of guitar store locations when  
19 prompted with “I gotta get a guitar.”

20 6. Siri was also shown crafting text messages. When asked to “tell  
21 Julie and Kate our band is playing at the garage tonight,” Siri immediately  
22 replies verbally “here’s your message to Julie and Kate” and shows the awaiting  
23 outgoing text message addressed to Julie and Kate saying “our band is playing at  
24 the garage tonight.”

25 7. And Apple represented Siri could understand most any voice. In  
26 fact, in one ad Apple shows a person running and asking Siri to change an  
27 appointment to 12 o’clock. Siri quickly responds telling the runner that moving  
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1 the appointment would conflict with another appointment and asking if the user  
2 still wishes to move the appointment to that time. The runner responds “move it  
3 to 2” and Siri understands and moved the appointment.

4 8. Apple’s advertising and marketing campaign is designed to induce  
5 consumers to purchase the iPhone 4S because of its Siri feature.

6 9. Apple’s advertisements regarding Siri are false and misleading.  
7 The iPhone 4S’s Siri feature does not perform as advertised. Siri was the  
8 primary difference between the iPhone 4 released by Apple in June 2010 and the  
9 iPhone 4S. Upon the launch of the iPhone 4S, Apple lowered its pricing for the  
10 iPhone 4 to \$99 with a new two-year contract, as opposed to the \$199 cost for the  
11 iPhone 4S with a new two-year contract. Apple’s marketing campaign was  
12 geared toward this “amazing” new feature to convince consumers to choose  
13 iPhone 4S over the iPhone 4 despite the additional cost. However, because Siri  
14 does not work as advertised, the iPhone 4S is nothing more than an expensive  
15 iPhone 4.

16 10. Apple’s misrepresentations concerning the Siri feature of the  
17 iPhone 4S are misleading, false, and reasonably likely to deceive and have  
18 deceived Plaintiffs and members of the putative Class.

19 11. Apple knew or should have known that the iPhone 4S does not  
20 work as advertised.

21 12. Plaintiffs bring this action on behalf of themselves and all others  
22 similarly situated who purchased, for use and not resale, in the United States and  
23 its territories and its protectorates, the iPhone 4S.

24 13. Plaintiffs seek to stop the dissemination of Apple’s false and  
25 misleading advertising message, and to obtain redress for those who have  
26 purchased an iPhone 4S. Plaintiffs allege violations of the Unfair Competition  
27 Law, California Business and Professions Code §17200, *et seq.*; the False and  
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1 Misleading Advertising Law, California Business and Professions Code §17500,  
2 *et seq.*; the Consumers Legal Remedies Act, California Civil Code §1750, *et*  
3 *seq.*; breach of express warranty; unjust enrichment; and negligent  
4 misrepresentation.

5 **II. JURISDICTION AND VENUE**

6 14. This Court has original jurisdiction of this action under the Class  
7 Action Fairness Act of 2005. The amount-in-controversy exceeds the sum or  
8 value of \$5,000,000 exclusive of interest and costs, and there is minimal  
9 diversity because certain members of the class are citizens of a different state  
10 than any defendant as required by 28 U.S.C. § 1332(d)(2).

11 15. Venue is proper in this District because Defendant Apple's  
12 principal place of business in California.

13 **III. THE PARTIES**

14 16. Plaintiff, Daniel M. Balassone, purchased an iPhone 4S and is a  
15 resident of New Jersey.

16 17. Plaintiff, Benjamin Swartzman, purchased an iPhone 4S and is a  
17 resident of California.

18 18. Defendant Apple is a California corporation that is licensed to do,  
19 and is doing, business in California and throughout the United States. Its  
20 principle place of business is in Cupertino, California. At all relevant times,  
21 Apple designed, manufactured, promoted, marketed, distributed, and/or sold the  
22 iPhone 4 throughout the United States and California.

23 **IV. CLASS ACTION ALLEGATIONS**

24 19. Plaintiffs bring this action as a class action pursuant to Federal  
25 Rules of Civil Procedure 23(a) and 23(b)(3) seeking injunctive relief on behalf of  
26 himself and all others similarly situated as members of the following class (the  
27 "Class") consisting of all persons who purchased an iPhone 4 between June 2010  
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1 and the present.

2 20. Subject to additional information obtained through further  
3 investigation and discovery, the foregoing definition of the Class may be  
4 expanded or narrowed by amendment or amended complaint. Specifically  
5 excluded from the proposed Class is Apple, its officers, directors, agents,  
6 trustees, parents, children, corporations, trusts, representatives, employees,  
7 principals, servants, partners, joint ventures, or entities controlled by Apple, and  
8 their heirs, successors, assigns, or other persons or entities related to or affiliated  
9 with Apple and/or their officers and/or directors, or any of them.

10 21. **Numerosity**. The members of the Class are so numerous that  
11 joinder of all members is impracticable. Plaintiffs are informed and believe, and  
12 on that basis allege, that the proposed Class currently contains well over thirty  
13 million members. The exact number of members of the Class is unknown to  
14 Plaintiffs at the present time. The true number of Class members are known by  
15 Apple, however, and thus may be notified of the pendency of this action by first  
16 class mail, electronic mail, and by published notice.

17 22. **Adequacy of Representation**. Plaintiffs will fairly and adequately  
18 represent and protect the interests of the members of the Class. Plaintiffs have  
19 retained counsel highly experienced in complex consumer class action litigation  
20 and intend to prosecute this action vigorously. Plaintiffs are members of the  
21 Class and do not have interests antagonistic to, or in conflict with, the other  
22 members of the Class.

23 23. **Typicality**. Plaintiffs' claims are typical of the claims of the  
24 members of the Class. Plaintiffs and all members of the Class purchased iPhone  
25 4S's and been harmed by the same wrongful course of conduct.

26 24. **Existence and Predominance of Common Questions of Law and**  
27 **Fact**. Common questions of law and fact exist as to all members of the Class

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1 and predominate over any questions solely affecting individual members.

2 Among the questions of law and fact common to the Class are:

3 a. Whether Defendant advertised and sold the iPhone 4S by  
4 promoting the features available with Siri; and

5 b. Whether Defendant failed to disclose material facts about the  
6 limitation in the performance characteristics of the iPhone 4S to consumers, and  
7 whether such a failure violates statutory and common law prohibitions against such  
8 conduct, as detailed more fully below.

9 25. **Superiority.** A class action is superior to other available methods  
10 for the fair and efficient adjudication of this controversy since, among other  
11 things, joinder of all members of the Class is impracticable. Furthermore, as the  
12 damages suffered by many individual Class members may be relatively small,  
13 the expense and burden of individual litigation make it virtually impossible for  
14 Class members individually to seek redress for the wrongful conduct alleged.  
15 Plaintiffs do not foresee any difficulty in the management of this litigation that  
16 would preclude its maintenance as a class action.

17 26. The claims asserted herein are applicable to all individuals and  
18 entities throughout the United States who purchased iPhone 4S's. The State of  
19 California has sufficient state interest through a significant contact or aggregation  
20 of contacts to the claims asserted by each member of the Class so that the choice  
21 of California law is not arbitrary or unfair.

22 27. Adequate notice can be given to Class members directly using  
23 information maintained in Apple's records, or through notice by publication.

24 28. Damages may be calculated from the sales information maintained  
25 in Apple's records, so that the costs of administering a recovery for the Class can  
26 be minimized. The amount of damages is known with precision from Apple's  
27 records.

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1 **V. SIRI DOES NOT WORK AS PROMISED**

2 29. Apple is well known for its inventive consumer electronics. The  
3 iPhone 4S, Apple's fifth generation mobile-telephone, has been touted by Apple  
4 as "the best iPhone yet."

5 30. Upon the launch of the iPhone 4S in October 2011, Apple marketed  
6 the new mobile phone with a video wherein Apple starts by reviewing the  
7 greatness of the iPhone 4 and questions "how do you improve on something so  
8 extraordinary." The answer: "now we're introducing Siri."

9 31. Apple's Senior Vice President iOS Software, Scott Forstall, tells  
10 consumers in the video that "Siri is a whole new way of interacting with the  
11 iPhone with just your voice. . . it's like this amazing assistant that listens to you,  
12 understands you, can answer your questions, it can even accomplish tasks for  
13 you." Apple continued in the video to show Siri performing multiple tasks for  
14 users and represented that "the ability to understand what you mean and act on it,  
15 that's the breakthrough with Siri."

16 32. Since the launch of the iPhone 4S, Apple has aired numerous  
17 television commercials demonstrating Siri acting as a precise, efficient personal  
18 assistant. Apple's video advertisements shows users scheduling appointments,  
19 learning how to tie a tie, getting assistance when being locked out and showing  
20 what a weasel looks like using Siri.

21 33. On October 20, 2011, Plaintiff Balassone purchased his iPhone 4S,  
22 Serial Number DNQGJ0YFDTDC, from an Apple store in Rockaway, New  
23 Jersey.

24 34. After the purchase of his iPhone 4S, Balassone realized that Siri  
25 was not performing as advertised. Siri frequently gave Balassone wrong  
26 information or failed to respond.

27 35. Balassone attempted to mirror the commands given to Siri in the  
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1 Apple advertisements. However, when Balassone asked Siri to show him guitar  
2 chords as is seen in Apple's "Rock God" television advertisement, Siri did  
3 answer. Balassone asked Siri: "How do you play an A chord" Siri answered  
4 "Ok, how about a web search for 'how do you play a quart.'" When Balassone  
5 asked "how do you play a B minor Chord" she said "looking for B minor chord"  
6 then it said "still thinking" then it said "Sorry, I couldn't find B minor chord in  
7 your music."

8 36. On January 7, 2012, Plaintiff Swartzman purchased his iPhone 4S,  
9 Serial Number DNP8YYP8TDT9V, from an Apple store in San Luis Obispo,  
10 California.

11 37. After the purchase of his iPhone 4S, Swartzman realized that Siri  
12 was not performing as advertised. Siri frequently gave Swartzman wrong  
13 information or failed to respond.

14 38. Swartzman attempted to use Siri to make phone calls and Siri  
15 repeatedly gave the wrong the names and numbers of the people that he was  
16 trying to contact. When he asked Siri the weather in Palm Springs, Siri did not  
17 understand what he was asking for. Swartzman has also experienced problems  
18 with asking Siri to send emails, in which Siri got the names wrong of the  
19 contacts he was trying to email. Most recently, Swartzman asked Siri "When is  
20 St. Patrick's Day?" and Siri responded, "Sorry, I don't understand 'When is St.  
21 Patrick's Day.'"

22 39. Upon information and belief, Plaintiffs problems with Siri are not  
23 unique, and they have repeatedly occurred with use of the iPhone 4S. In fact, the  
24 Huffington Post made a video testing all the commands stated in Apple's "Rock  
25 God" commercial. See [http://www.huffingtonpost.com/jason-gilbert/apples-siri-  
26 rock-god-commercial-accuracy-test\\_b\\_1341769.html](http://www.huffingtonpost.com/jason-gilbert/apples-siri-rock-god-commercial-accuracy-test_b_1341769.html). In the video, labeled "A  
27 Scientific Ex-Siri-Ment" Siri did not perform as advertised. Siri took far longer  
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1 to respond to the questions and commands than shown in Apple's advertisements  
2 and frequently did not understand the tester or provided incorrect answers to the  
3 exact questions asked in the Apple advertisement.

4 40. In addition to the fact that Siri does not perform as advertised,  
5 recent reports have shown that continuous Siri usage dramatically increases an  
6 iPhone 4S users' monthly data usage, and can easily push users over their data  
7 plans.

8 41. Apple had actual or constructive knowledge of the iPhone 4S's  
9 shortcomings prior to its distribution. In fact, Apple's Web site contains fine  
10 print in a footnote revealing: "Siri is currently in beta and we'll continue to  
11 improve it over time." However, Apple fails to tell consumers that Siri is in  
12 "beta" in its numerous nationwide television advertisements.

13 42. Instead, Apple chose to show consumers Siri acting quickly and  
14 without complications, rather as it actually performs.

15 43. The information withheld from Plaintiffs and the other Class  
16 members is material and would have been considered by a reasonable person, as  
17 are the misrepresentations regarding Siri.

18 44. Furthermore, earlier this month Apple released a software update  
19 designed to address numerous software issues. Plaintiffs updated their software,  
20 however, the update did not in any way improve Siri's functionality.<sup>1</sup>

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26 <sup>1</sup> The update did add languages understood by Siri but did not address the overall  
27 deficiencies of Siri.

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Unlawful, Unfair, and Fraudulent Business Practices in Violation of**  
4 **California Business & Professions Code § 17200, et seq.)**

5 45. Plaintiffs incorporate by reference each and every preceding  
6 paragraph as though fully set forth herein.

7 46. The Unfair Competition Law, California Business and Professions  
8 Code § 17200, *et seq.*, defines unfair competition to include any “unfair,”  
9 “unlawful,” or “fraudulent” business act or practice.

10 47. Defendant Apple violated, and continues to violate, California  
11 Business and Professions Code § 17200, *et seq.*, by misrepresenting the iPhone  
12 4S as a superior phone when it knew or should have known that the Siri function  
13 did not work as an efficient assistant as it advertised.

14 48. By engaging in the above described acts and practices, Defendant  
15 has committed an unfair business practice within the meaning of California  
16 Business and Professions Code § 17200, *et seq.* Consumers suffered substantial  
17 injury they could not reasonably have avoided other than by not purchasing the  
18 product.

19 49. Defendant’s acts and practices have deceived and/or are likely to  
20 deceive Class members and the public and thus constitute a fraudulent business  
21 practice. Apple uniformly advertised the iPhone 4S as “amazing,” and  
22 “impressive” with videos showing Siri understanding consumers and acting on  
23 their statements and commands.

24 50. The acts and practices of Apple are an unlawful business act or  
25 practice because they violate the laws identified in this Complaint, including  
26 Negligence, Breach of Express and Implied Warranty of Merchantability, Fraud  
27 and Deceit, Negligent Misrepresentation, the Consumers Legal Remedies Act,  
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1 and California Business & Professions Code § 17500, as described below.

2 51. As discussed above, Plaintiffs and the members of the Class  
3 purchased an iPhone 4S model directly from Apple and/or their authorized  
4 agents. Plaintiffs and members of the Class were injured in fact and lost money  
5 or property as a result of such acts of unfair competition.

6 52. Apple received the funds paid by Plaintiffs and the members of the  
7 Class. Apple profited enormously by misrepresenting the functionality of the  
8 iPhone 4S and not disclosing material problems and limitations with the iPhone  
9 4S. Apple's revenues attributable thereto are thus directly traceable to the  
10 millions of dollars paid out by Plaintiffs and the Class for the iPhone 4S.

11 53. Unless Defendant Apple is enjoined from continuing to engage in  
12 the unlawful, unfair and fraudulent business acts and practices as described  
13 herein, Plaintiffs and the Class will continue to be injured by Apple's conduct.

14 54. Apple, through its acts of unfair competition, has acquired money  
15 from Class members. Plaintiffs and the Class request this Court enjoin Apple  
16 from continuing to violate California Business and Professions Code § 17200, *et*  
17 *seq.*

18 55. The unlawful, unfair and fraudulent conduct described herein is  
19 ongoing and continues to this date. Plaintiffs and the Class, therefore, are  
20 entitled to relief described below as appropriate for this Cause of Action.

21 **SECOND CAUSE OF ACTION**

22 **(False and Misleading Advertising in Violation of**  
23 **California Business & Professions Code § 17500, *et seq.*)**

24 56. Plaintiffs incorporate by reference each and every preceding  
25 paragraph as though fully set forth herein.

26 57. Defendant's acts and practices as described herein have deceived  
27 and/or are likely to deceive members of the Class and the public. Apple has  
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1 spent millions of dollars to advertise, including through its Web site on the  
2 Internet, to call attention to, or give publicity to Apple's iPhone 4S improved  
3 features and functionality. Apple uniformly advertises the iPhone 4S as  
4 "amazing," and "impressive," with images of Siri acting as an efficient and  
5 expeditious assistant.

6 58. By its actions, Apple is disseminating uniform advertising  
7 concerning its products and services, which by its nature is unfair, deceptive,  
8 untrue, or misleading within the meaning of California Business & Professions  
9 Code § 17500, *et. seq.* Such advertisements are likely to deceive, and continue  
10 to deceive, the consuming public for the reasons detailed above.

11 59. The above-described false, misleading, and deceptive advertising  
12 Apple disseminated continues to have a likelihood to deceive in that Apple has  
13 failed to disclose the true and actual performance and functionality of the iPhone  
14 4S. Apple has failed to instigate a public information campaign to alert  
15 consumers of the iPhone 4S's deficiencies, which continues to create a  
16 misleading perception of the iPhone 4S's performance.

17 60. In making and disseminating the statements alleged herein, Apple  
18 should have known its advertisements were untrue and misleading in violation of  
19 California Business & Professions Code § 17500, *et seq.* Plaintiffs and the Class  
20 members based their decisions to purchase the iPhone 4S in substantial part on  
21 Defendant's misrepresentations and omitted material facts. The revenues to  
22 Apple attributable to products sold in those false and misleading advertisements  
23 amount to millions of dollars for the iPhone 4S. Plaintiffs and the Class were  
24 injured in fact and lost money or property as a result.

25 61. The misrepresentations and non-disclosures by Apple of the  
26 material facts detailed above constitute false and misleading advertising and  
27 therefore constitute a violation of California Business & Professions Code §  
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1 17500, *et. seq.*

2 62. As a result of Apple's wrongful conduct, Plaintiffs and the Class  
3 request that this Court enjoin Apple from continuing to violate California  
4 Business & Professions Code § 17500, *et. seq.* Such conduct is ongoing and  
5 continues to this date. Plaintiffs and the Class are therefore entitled to the relief  
6 described below as appropriate for this Cause of Action.

7 **THIRD CAUSE OF ACTION**

8 **(Violation of Consumers Legal Remedies Act –**  
9 **California Civil Code § 1750, *et seq.*)**

10 63. Plaintiffs incorporate by reference each and every preceding  
11 paragraph as though fully set forth herein.

12 64. This cause of action is brought under the Consumers Legal  
13 Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA"). Plaintiffs and  
14 the Class are consumers as defined by California Civil Code § 1761(d), and the  
15 Apple iPhone 4S is goods and services within the meaning of the CLRA.

16 65. Defendant violated and continues to violate the CLRA by engaging  
17 in the following deceptive practices proscribed by California Civil Code §  
18 1770(a) in connection with transactions intended to result in, and that did result  
19 in, the sale of the iPhone 4S at issue herein to Plaintiffs and members of the  
20 Class in violation of, *inter alia*, the following provisions:

21 a. Representing the goods and services have  
22 characteristics, uses or benefits which they do not have (Cal. Civ.  
23 Code § 1770(a)(5));

24 b. Representing the goods and services are of a particular  
25 standard, quality or grade if they are of another (Cal. Civ. Code §  
26 1770(a)(7));

27 c. Advertising goods and services with the intent not to  
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1 sell them as advertised (Cal. Civ. Code § 1770(a)(9));

2 d. Representing a transaction involves rights, remedies or  
3 obligations that it does not have or involve (Cal. Civ. Code §  
4 1770(a)(14)); and

5 e. Representing the goods and services have been  
6 supplied in accordance with a previous representation when they  
7 have not (Cal. Civ. Code § 1770(a)(16)).

8 66. Plaintiffs and other Class members, in purchasing and using the  
9 iPhone 4S as herein alleged, did reasonably act in response to Defendant's above  
10 representations or would have considered the omitted facts detailed herein  
11 material to their purchase decision. Plaintiffs and the Class have suffered  
12 damage by the wrongful acts and practices of Defendant that are in violation of  
13 California Civil Code § 1781.

14 67. Under Section 1782 of the CLRA, notice is not required as  
15 Plaintiffs are seeking only injunctive relief.

16 68. Plaintiffs will not serve this Complaint upon Defendant until such  
17 time for Defendant to respond to the letter has passed without an agreement to  
18 take the actions required by the CLRA on behalf of all affected consumers.  
19 Plaintiffs and the Class are therefore entitled to all forms of relief requested  
20 below as provided under Section 1780 of the CLRA.

21 69. Based on its knowledge or reckless disregard of the facts as detailed  
22 herein, Defendant was guilty of acting with malice, oppression or fraud.

23 **FOURTH CAUSE OF ACTION**

24 **(Breach of Express Warranty and Implied Warranty of Merchantability)**

25 70. Plaintiffs incorporate by reference each and every preceding  
26 paragraph as though fully set forth herein.

27 71. Plaintiffs and Class members purchased the iPhone 4S and used  
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1 them for their ordinary and intended purpose of using the Siri intelligent assistant  
2 feature to send messages, schedule appointments, seek information and  
3 directions and learn new tasks. Plaintiffs and the Class entered into agreements  
4 with Apple or its agents and received uniform warranties in connection with the  
5 purchase of such phones.

6 72. The iPhone 4S cannot perform its ordinary and represented purpose  
7 because the Siri feature does not understand user commands and perform tasks as  
8 advertised.

9 73. When Defendant placed the iPhone 4S into the stream of  
10 commerce, they knew, reasonably should have known, or were obligated to  
11 understand that the intended and ordinary purpose of their smart phone with Siri  
12 was to provide a consistent intelligent verbal assistant.

13 74. Plaintiffs and the Class purchased their iPhone 4S with the  
14 reasonable expectation that they would receive a consistent intelligent verbal  
15 assistant. The advertisements Defendant disseminated constitute a warranty that  
16 the products would operate as advertised during their useful life, upon which  
17 Plaintiffs and the Class reasonably acted.

18 75. The iPhone 4S is not fit for its warranted, advertised, ordinary and  
19 intended purpose of providing reliable mobile connectivity and is in fact  
20 defective, or would not pass without objection in the trade or industry in terms of  
21 being unable to provide consistent and reliable mobile connectivity when held in  
22 a user's hand. This defect has manifested for Plaintiffs and Class members as  
23 Siri does not consistently understand commands and act upon those commands.

24 76. Plaintiffs have given notice to Defendant of this breach by virtue of  
25 the filing of a lawsuit, which demands have been ignored or rejected.

26 77. Defendant's breach of the warranty described above also  
27 constitutes a violation of Cal. Civ. Code §1792, *et seq.*

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**FIFTH CAUSE OF ACTION**

**(Common Counts and Unjust Enrichment)**

78. Plaintiffs incorporate by reference each and every preceding paragraph as though fully set forth herein.

79. Defendant has benefited from their unlawful conduct as detailed above by receiving millions of dollars in revenues and profits derived from the sale of the Apple iPhone 4S. Defendant appreciated the benefit of the receipt of such revenues and profits.

80. Because Defendant was unjustly enriched and has received this excessive revenue at the expense of Plaintiffs and the Class based on false and misleading statements regarding the iPhone 4S, its capacity, and its ability to perform its stated functions, it would be inequitable for Defendant to retain the benefits it gained from purchases by Plaintiffs and the Class of the iPhone 4S.

**SIXTH CAUSE OF ACTION**

**(Negligent Misrepresentation)**

81. Plaintiffs incorporate by reference each and every preceding paragraph as though fully set forth herein.

82. Apple represented that the iPhone 4S with Siri would provide customers with an “amazing” phone that has the “ability to understand what you mean and act on it.”

83. Defendant had no reasonable grounds for believing their representations were true because Apple knew Siri was in “beta” but failed to disclose this in its television and internet video advertisements. Defendant should have known, or had a duty to learn, about the true facts that contradicted their representations.



1           84. In making these representations to Plaintiffs and the Class,  
2 Defendant Apple intended to induce Plaintiffs and the Class to purchase the  
3 iPhone 4S.

4           85. At all times herein, Plaintiffs and the Class were unaware of the  
5 falsity of Defendant's statements. Plaintiffs and the Class reasonably acted in  
6 response to the statements made by Defendant when they purchased an iPhone  
7 4S.

8           86. As a proximate result of Defendant's negligent misrepresentations,  
9 Plaintiffs and Class members purchased an iPhone 4S that does not work when  
10 held normally in a users hand without a case.

11 **VII. PRAYER FOR RELIEF**

12           WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the  
13 members of the Class defined herein, as applicable, pray for judgment and relief as  
14 follows as appropriate for the above causes of action:

15           A. An order certifying this case as a class action and appointing Plaintiffs  
16 and their counsel to represent the Class;

17           B. A temporary, preliminary and/or permanent order for injunctive relief  
18 enjoining Defendant from pursuing the policies, acts and practices complained of  
19 herein;

20           C. A temporary, preliminary and/or permanent order for injunctive relief  
21 requiring Defendant to undertake an informational campaign to inform members of  
22 the general public as to the wrongfulness of Defendant's practices; and

23           D. Such other and further relief as the Court may deem necessary or  
24 appropriate.

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1 DATED: March 20, 2011

**GARDY & NOTIS, LLP**

2 By:   
Jennifer Sarnelli (State Bar No. 242510)

3 James S. Notis  
4 501 Fifth Avenue, Suite 1408  
5 New York, NY 10017  
6 Tel: 212-905-0509  
7 Fax: 212-905-0508  
8 [jsarnelli@gardylaw.com](mailto:jsarnelli@gardylaw.com)  
9 [jnotis@gardylaw.com](mailto:jnotis@gardylaw.com)

10 Charles A. Germershausen  
11 **GARDY & NOTIS, LLP**  
12 560 Sylvan Avenue, Suite 3085  
13 Englewood Cliffs, NJ 07632  
14 Tel: 201-567-7377  
15 Fax: 201-567-7337  
16 [cgermershausen@gardylaw.com](mailto:cgermershausen@gardylaw.com)

17 Martin S. Bakst (State Bar No. 65112)  
18 **LAW OFFICES OF MARTIN S. BAKST**  
19 15760 Ventura Boulevard, Sixteenth Floor  
20 Encino, CA 91436  
21 Tel: 818-981-1400  
22 Fax: 818-981-5550  
23 [msb@mbakst.com](mailto:msb@mbakst.com)

24 *Attorneys for Plaintiffs*

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