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 RICHARD W. WIEKING
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 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

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RS

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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

RS

12 JAMES R. PITTMAN, on behalf
 13 of himself and all others similarly situated,

Case No.

608-05375

ADR

14 Plaintiff,

15 v.

16 APPLE, INC., a California Corporation,

17 Defendant

18) CLASS ACTION COMPLAINT FOR
 19) DAMAGES AND EQUITABLE RELIEF FOR
 20) NEGLIGENT MISREPRESENTATION;
 21) VIOLATION OF THE SONG-BEVERLY
 22) CONSUMER WARRANTY ACT;
 23) VIOLATION OF THE CONSUMER LEGAL
 24) REMEDIES ACT; UNJUST ENRICHMENT;
 25) FALSE ADVERTISING; AND UNFAIR
 26) COMPETITION IN VIOLATION OF
 27) BUSINESS AND PROFESSIONS CODE
 28) SECTION 17200 *ET SEQ.*

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

23 Plaintiff James R. Pittman, on behalf of himself and all others similarly situated, and
 24 where appropriate, on behalf of the general public, alleges as follows:

NATURE OF THE ACTION

26 1. Defendant Apple, Inc. ("Apple") enticed Plaintiff and members of the proposed
 27 Class to buy its iPhone 3G "Smartphone" by promising them superior functionality and "3G"
 28 data speeds "twice as fast" as provided by the prior model iPhone over the AT&T wireless
 network. Plaintiff and Class members were required to pay extra monthly fees for the purported

1 3G data functionality and speeds. Unfortunately, the iPhone 3G had been rushed to market in a
2 defective state, and does not perform as represented. Because of a defective chipset and/or
3 firmware, it does not provide data connectivity "twice as fast" as the prior model iPhone. It is
4 not fully compatible with 3G networks and fails to deliver 3G data speeds for more than a
5 fraction of connection time. Furthermore, when using the iPhone 3G in 3G mode, users also
6 experience unreliable voice service, including vastly-increased numbers of dropped calls.

7 2. Plaintiff and Class members are now locked into multiyear contracts which
8 require them to pay an extra fee each month for a benefit they never received. Accordingly,
9 Plaintiff brings this class action and seeks relief, including damages and equitable relief, for
10 himself and members of the proposed Class.
11

12 JURISDICTION

13 3. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
14 Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million,
15 exclusive of interests and costs; the number of members of the proposed Class exceeds 100; and
16 Plaintiff and many members of the proposed Plaintiff Class are citizens of states of which
17 Defendant is not a citizen.

18 4. This Court has supplemental jurisdiction over the state law claims pursuant to 28
19 U.S.C. section 1367.
20

21 INTRADISTRICT ASSIGNMENT

22 5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. section
23 1391 subsections (b) and (c), and Civil L.R. 3-2 subsections (c) and (e). Defendant is based in
24 Santa Clara County and/or transacts business in this division and County and/or a substantial part
25 of the events giving rise to the claims at issue in the litigation arose in this division and County.

26 THE PARTIES

27 6. Plaintiff James R. Pittman is a resident of the State of Washington, who
28 purchased the iPhone 3G in or around July 2008, incurring monetary damages and injury as a
result of the conduct complained of herein.

1 7. Defendant Apple, Inc. was and is a California corporation based in Cupertino,
2 Santa Clara County, California, engaged in the business of manufacturing, marketing and selling
3 computers and other electronic devices and products, including the iPhone 3G cellular phone. In
4 1976, the Apple computer helped launch the microcomputer revolution. Since that time, the
5 company has remained a leader in computer technology, but has also branched into related fields,
6 including multimedia devices, and, more recently, cellular phones.

7 **SUBSTANTIVE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 **History of Mobile Radio Communication**

9 8. The first portable two-way radio was the SCR-300, a battery-powered,
10 backpacked "Walkie-Talkie" developed in the early 1940s by Galvin Manufacturing Corporation
11 (later renamed Motorola), for the United States military. Galvin/Motorola soon thereafter
12 developed the smaller SCR-536 transceiver, or "Handie-Talkie," which could be carried by hand
13 (barely). Both devices used vacuum tubes and high-voltage batteries. Although these radios
14 were used to communicate with other radio stations and had no capability to route calls into the
15 telephone system, the age of personal radio communication had begun.

16 9. Mobile radiotelephones with direct dialing capability appeared in the 1950s, as
17 heavy, vehicle-mounted devices. In the 1954 movie *Sabrina*, based on Billy Wilder's play
18 *Sabrina Fair*, the businessman Linus Larrabee (played by Humphrey Bogart) placed a call from
19 the phone in the back of his limousine. However, these mobile phones were large, expensive
20 devices available only to the few.

21 10. By the 1970s, solid-state, miniaturized electronics had displaced vacuum tubes,
22 making possible the design of much smaller units. Fittingly, it was Motorola that introduced the
23 first hand-held mobile phone. In a milestone event, on April 3, 1973, while walking the streets
24 of New York City, Motorola's Dr. Martin Cooper used the company's prototype hand-held
25 DynaTAC (DYNAMIC Adaptive Total Area Coverage) cellular phone to place a wireless call to
26 rival Joel Engel, head of AT&T's Bell Labs.
27
28

1 11. With the DynaTAC in hand, Motorola and AT&T/Bell Labs were able to
2 convince the Federal Communications Commission (FCC) to allocate spectrum for a cellular
3 phone system. Using relatively low transmission power, the "cell" phone would initiate calls
4 through the nearest station of a network of base stations, each station serving its own small
5 geographical "cell." Aside from facilitating small, battery-powered wireless phones, the low
6 power involved also meant that different stations in the same general area could concurrently
7 reuse the same frequencies, greatly multiplying the number of cellular customers that could be
8 serviced using the available frequency allocations. Another feature of the cellular concept was
9 that as mobile users moved between cells, an ongoing call would be "handed off" to the next
10 cell's station.

11 12. In 1978, the first cellular phone network was tested in Chicago with 2000 trial
12 customers. In 1981, a test began in the Washington D.C./Baltimore area. In 1983, the first
13 American commercial cellular service, using the analog AMPS (Advanced Mobile Phone
14 Service) protocol, was launched in Chicago by Ameritech. In 1983, the FCC approved the
15 Motorola DynaTAC 8000X as the first mass-produced, handheld cellular phone. It was 10
16 inches high and weighed 28 ounces, not counting its "rubber duck" antenna.

17 13. Through the 1980s and 1990s, cellular phones proliferated and cellular networks
18 evolved. The original analog AMPS protocol was joined by digital protocols allowing servicing
19 of even more concurrent users and offering improved voice quality as well as data connectivity
20 to the Internet. In the United States, competing wireless carriers divided into two main groups:
21 those utilizing the CDMA protocol for digital voice transmissions, including Verizon and Sprint,
22 and those using the GSM protocol, including Cingular/AT&T and T-Mobile. Digital cameras
23 were added to many phones. PDA-phones appeared, combining the features of a cellular phone
24 with the functionality of a (small) personal computer and allowed browsing and email functions.
25 Data protocols and Internet connectivity improved, with providers offering ever-faster speeds.

26 14. In 1984, there were some 12,000 cell phone subscribers in the United States. By
27 June 2008, there were approximately 262.7 million subscribers in the United States -- 84 percent
28

1 of the population. Manufacturing cell phones has become a huge industry, with makers vying
2 with each other to roll new models with additional features off their assembly lines. In 2007,
3 Nokia, the largest maker of cell phones, achieved worldwide sales of \$23 billion, followed
4 closely by Motorola, with sales of \$19 billion.

5 15. With most of the American population using cell phones, the wireless "voice"
6 market is nearing saturation. However, most wireless subscribers still do not use phones
7 providing high-speed data connectivity. The frontier of opportunity for both carriers and cell
8 phone manufacturers presently lies in providing "Smartphones" with high-speed Internet
9 connectivity. Smartphone devices not only cost customers more to purchase, they typically
10 require the customer to enter into a multiyear contract under which the customer pays an
11 additional monthly fee for the data service. In one example of how this market is growing, for its
12 fiscal year ended March 1, 2008, RIM (Research in Motion), maker of the popular "Blackberry"
13 Smartphone, reported revenues of \$6.01 billion, up 98% from \$3.04 billion last year.

14 16. The use of mobile phones to access the Internet over wireless cellular networks is
15 growing rapidly in popularity. However, data speeds remain frustratingly slow compared to the
16 speeds attained by computers through DSL and other wideband connections. There is intense
17 competition both among wireless carriers and between phone manufacturers to provide faster
18 data connectivity. The leading wireless carriers currently offer "Third-Generation" or "3G" data
19 protocols and speeds for 3G-capable phones, as well as 2G and 2.5G protocols for slower
20 devices. AT&T's wireless network provides 3G speeds utilizing the HSDPA/UMTS (High
21 Speed Downlink Packet Access/Universal Mobile Telephone System) protocols, allowing 3G-
22 capable phones to download data at speeds of up to 3.6Mbps (mega-bits-per-second).

23 Apple and the iPhone 3G

24 17. Apple introduced its first iPhone in early 2007. With a touch-screen interface
25 providing a "virtual" keyboard, the iPhone was a stylish, Internet-connected Smartphone device.
26 In addition to phone features, the iPhone offered camera, media player and computer functions.
27 In the United States, Apple marketed the iPhone exclusively for the AT&T wireless network.
28

1 Utilizing the EDGE data protocol, the iPhone could be used for e-mail, text messaging and web
2 browsing. Apple advertised and marketed the iPhone aggressively. In spite of the requirement
3 that purchasers subscribe to expensive voice and data plans, the iPhone became an immediate
4 success. Time Magazine named it the Invention of the Year.

5 18. Capitalizing on its success with the iPhone and wanting to remain competitive
6 against other manufacturers already providing phones capable of 3G data speeds, Apple rushed
7 the "iPhone 3G" to market in July 2008. In its press releases and advertising, Apple represented
8 that the iPhone 3G was compatible with the AT&T 3G wireless network and would provide 3G
9 data speeds "twice as fast" as the prior model iPhone over AT&T's network. Customers
10 purchasing the iPhone 3G were required to enter into new two-year contracts and pay service
11 fees, including an extra \$10 per month fee for the purported "twice as fast" speed.

12 19. Apple's iPhone 3G is functionally similar to the iPhone but adds the 3G
13 UMTS/HSDPA data protocol to the EDGE protocol supported by the iPhone. The iPhone 3G is
14 available in versions offering 8GB or 16GB of storage. In addition to representing that the
15 iPhone 3G would deliver data "twice as fast" as the prior iPhone over the AT&T cellular
16 network, Apple promised that the iPhone 3G would seamlessly switch between 3G and the other
17 available data protocols, always providing the fastest speed possible:

18
19 iPhone 3G uses a technology protocol called HSDPA (High-Speed Downlink
20 Packet Access) to download data fast over UMTS (Universal Mobile
21 Telecommunications System) networks. Email attachments and web pages load
22 twice as fast on 3G networks as on 2G EDGE networks. And since iPhone 3G
23 seamlessly switches between EDGE, faster 3G, and even faster Wi-Fi, you always
24 get the best speeds possible.

25 20. Apple aggressively marketed the iPhone 3G, selling it online, through Apple
26 Retail Stores, and through partners such as AT&T, Best Buy and Radio Shack. Apple's
27 nationwide marketing campaign, using print, internet, radio and television media, was successful
28 in convincing many thousands of consumers to switch to the iPhone and pay an additional
monthly fee for its purported "twice as fast" speed.

1 21. Unfortunately, the iPhone 3G did not perform as advertised. Apple had rushed
2 the iPhone 3G to market in a defective state. It was not fully compatible with AT&T's 3G
3 network. The iPhone 3G did not deliver data "twice as fast" as the prior iPhone. In actual use, it
4 provided 3G data speeds, at best, only a fraction of the time connected. Also, far from switching
5 seamlessly between available data protocols to provide the best possible speed, in fact, the
6 iPhone 3G would often provide slower data speeds than other 2G and 3G phones operating on
7 the same network from the same location. When using the iPhone 3G in 3G mode, users also
8 experienced poor reception, page freezes on web browsing, unexplained errors, and an unusually
9 high number of dropped calls and other glitches.

10 22. The iPhone 3G cannot throughput data reliably at 3G speeds because of a faulty
11 chipset and/or firmware. As reported in *iPhone Buz* by Chris Davies on August 12, 2008:

12 The ongoing reception issues faced by many iPhone 3G users may be due to its
13 Infineon 3G chipset and the protocol stack that it uses, according to Nomura
14 Securities analyst Richard Windsor. In a research note released today, Windsor
15 pointed the blame at Infineon as presumed 3G chipset supplier and suggested that
16 their "immature" protocol software was key to the Apple cellphone's woes: "We
17 believe that these issues are typical of an immature chipset and radio protocol
18 stack where we are almost certain Infineon is the 3G supplier" Richard Windsor,
19 analyst, Nomura Securities.

20 23. Apple has provided firmware updates in an apparent effort to fix the iPhone 3G's
21 data speed problems, to no avail. According to industry experts, it is unlikely that a firmware
22 update can fix the faulty hardware: "Windsor paints a much more serious picture, claiming that
23 the issue is unlikely to be rectified with changes in firmware. Instead, according to the analyst,
24 Apple would have to actually replace the 3G chipset in question in order to avoid consumers
25 claiming they are not getting the performance they paid for." Davies, *iPhone Buz, supra*.

26 24. Apple has succeeded in selling millions of iPhone 3G units to unsuspecting
27 buyers. Backed by Apple's aggressive advertising campaign, the iPhone 3G has become yet
28 another huge marketing success for the company. In October 2008, Apple reported that for the

1 just-ended quarter alone, it had sold 6,892,000 iPhone 3G units, more than six times the number
2 of iPhones sold in the same quarter last year:

3 Quarterly iPhone units sold were 6,892,000 compared to 1,119,000 in the year-
4 ago-quarter. "Apple just reported one of the best quarters in its history, with a
5 spectacular performance by the iPhone—we sold more phones than RIM," said
6 Steve Jobs, Apple's CEO. "We don't yet know how this economic downturn will
7 affect Apple. But we're armed with the strongest product line in our history, the
8 most talented employees and the best customers in our industry. And \$25 billion
9 of cash safely in the bank with zero debt."

10 25. Apple continues to package, label, advertise and market the iPhone 3G as a "3G"
11 phone capable of delivering 3G speeds on the AT&T 3G network. Nowhere on the box or label
12 is the consumer told that the iPhone 3G is not fully compatible with AT&T's 3G network, that it
13 contains a defective chipset, or that it will not provide sustained 3G speeds.

14 **Plaintiff's Experience**

15 26. Plaintiff's experience is typical. He purchased an iPhone 3G soon after it was
16 rolled out, in or about July 2008. In use, including in his metropolitan Seattle, Washington area,
17 his iPhone 3G did not perform as represented and failed to provide him with reliable 3G
18 functionality. It did not provide 3G data speeds "twice as fast" as the prior-model iPhone. In
19 fact, when in 3G mode, he experienced unreliable voice and data service, with page freezes on
20 browsing and downloading, constant error messages, and so many dropped calls that the phone's
21 functionality as even a voice-only communication device was severely impaired. The iPhone 3G
22 would work reliably, if at all, only when locked into the slower EDGE data mode.

23 27. Plaintiff spent more than 20 hours on the phone with Apple and AT&T
24 technicians, who were unable to solve the problems he experienced. His iPhone 3G was
25 replaced three times, but the problems persisted. Apple provided firmware updates, but the
26 phone still does not work reliably as a 3G device.

27 28. In spite of the fact that Plaintiff was supplied with an iPhone 3G which simply did
28 not perform as advertised, he remains locked into a two-year contract for service which requires
him to pay additional fees each month for the purported 3G data service.

1 (b) Whether the iPhone 3G seamlessly switched between the data modes
2 available to provide users with the fastest data speeds possible;

3 (c) Whether Apple knew that the iPhone 3G would not provide data speeds
4 "twice as fast" as the prior iPhone;

5 (d) Whether Apple knew that the iPhone 3G would not switch seamlessly
6 between data modes to provide users with the fastest data speeds possible;

7 (e) Whether the iPhone 3G was fully compatible with AT&T's 3G network;

8 (f) Whether Apple misrepresented the benefits, uses, attributes and
9 characteristics of the iPhone 3G;

10 (g) Whether the utility of Apple's conduct was outweighed by the injury done
11 consumers;

12 (h) Whether Apple falsely advertised the iPhone 3G;

13 (i) Whether Apple was unjustly enriched by the conduct complained of
14 herein; and

15 (j) The nature of the relief, including equitable relief, to which Plaintiff and
16 Class members are entitled.
17

18 **Typicality of Claims**

19 **(Fed. R. Civ. P. 23(a)(3))**

20 34. Plaintiff's claims are typical of the claims of the Class because Plaintiff, like all
21 other Class members, became an owner of the iPhone 3G and/or paid for data service on the
22 iPhone 3G.
23

24 **Adequacy of Representation**

25 **(Fed. R. Civ. P. 23(a)(4))**

26 35. Plaintiff is an adequate representative of the Class, because his interests do not
27 conflict with the interests of the members of the Class and he has retained counsel competent and
28 experienced in complex class action and consumer litigation.

1 36. The interests of Class members will be fairly and adequately protected by Plaintiff
2 and his counsel.

3 **Superiority of a Class Action**

4 **(Fed. R. Civ. P. 23(b)(3))**

5 37. A class action is superior to other available means for the fair and efficient
6 adjudication of the claims of Plaintiff and Class members. The damages suffered by each
7 individual Class member, while significant, are small given the burden and expense of individual
8 prosecution of the complex and extensive litigation necessitated by Defendant's conduct.
9 Further, it would be virtually impossible for the members of the Class individually to redress
10 effectively the wrongs done to them. And, even if members of the Class themselves could afford
11 such individual litigation; the court system could not, given the many thousands of cases that
12 would need to be filed. Individualized litigation would also present a potential for inconsistent
13 or contradictory judgments. Individualized litigation would increase the delay and expense to all
14 parties and the court system, given the complex legal and factual issues involved. By contrast,
15 the class action device presents far fewer management difficulties and provides the benefits of
16 single adjudication, economy of scale, and comprehensive supervision by a single court.

17 **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness**
18 **of Final Injunctive or Declaratory Relief**

19 **(Fed. R. Civ. P. 23(b)(1) And (2))**

20 38. In the alternative, this action may properly be maintained as a class action,
21 because:

22 (a) the prosecution of separate actions by individual Class members would
23 create a risk of inconsistent or varying adjudication with respect to individual Class members,
24 which would establish incompatible standards of conduct for Apple; or

25 (b) the prosecution of separate actions by individual Class members would
26 create a risk of adjudications with respect to individual members of the Class which would, as a
27
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1 practical matter, be dispositive of the interests of other Class members not parties to the
2 adjudications, or substantially impair or impede their ability to protect their interests; or

3 (c) Apple has acted or refused to act on grounds generally applicable to the
4 Class, thereby making appropriate final injunctive or corresponding declaratory relief with
5 respect to the Class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **(For Negligent Misrepresentation)**

8
9 39. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
10 as if fully set forth herein and further alleges as follows.

11 40. The conduct and actions of Defendant Apple complained of herein constitutes
12 negligent misrepresentation.

13 41. Defendant made false representations of material facts, including concerning its
14 iPhone 3G cellular phone, its data speeds and the characteristics thereof, to Plaintiff and Class
15 members. Among other things, Defendant falsely represented that the iPhone 3G would provide
16 sustained and reliable 3G data speeds and/or that it would provide data speeds "twice as fast" as
17 provided by the prior model iPhone.

18 42. Defendant did not have reasonable grounds for believing that such false
19 representations were true when made.

20 43. Defendant made such false representations intending that Plaintiff and Class
21 members would rely on them.

22 44. Plaintiff and Class members reasonably relied on such false representations.

23 45. Plaintiff's and Class members' reliance on Defendant's false representations was a
24 substantial factor in causing harm to Plaintiff and Class members.

25 46. Accordingly, Plaintiff and Class members are entitled to and seek damages in an
26 amount to be determined according to proof at trial.
27
28

1 **SECOND CAUSE OF ACTION**

2 **(For Violation of the Song-Beverly Consumer Warranty Act)**

3 47. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
4 as if fully set forth herein and further alleges as follows.

5 48. Defendant Apple by its conduct complained of herein has violated the Song-
6 Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790 *et seq.* and similar consumer warranty
7 laws of other States.

8 49. Plaintiffs and Class members are "buyers" of "consumer goods," namely
9 purchasers of the subject iPhone 3G phones.

10 50. At the time of purchase, Defendant Apple was engaged in the business of selling
11 the subject consumer goods to retail buyers and/or manufacturing the subject consumer goods.

12 51. As set out herein, the subject consumer goods were not of the same quality as
13 those generally acceptable in the trade, were not fit for the ordinary purposes for which such
14 goods are used, were not adequately contained, packaged, and labeled, and/or did not measure up
15 to the promises or facts stated on the container or label.

16 52. Defendant placed the iPhone 3G phone into the stream of commerce representing
17 and knowing that the intended and ordinary purpose of the device was to provide sustained 3G
18 connectivity and that purchasers would purchase the phone expecting it to provide reliable and
19 sustained 3G connectivity.

20 53. Plaintiff and Class members purchased the iPhone 3G with the reasonable
21 expectation, based on the ordinary purpose for which the device was labeled, advertised and
22 intended, that the phone would provide reliable and sustained 3G connectivity to the Internet. In
23 fact, the iPhone 3G is not fit for its labeled, advertised, ordinary and intended purpose of
24 providing reliable 3G connectivity, and the iPhone 3G has not provided Plaintiff and Class
25 members with reliable and sustained 3G connectivity when used as designed.

26 95. As a direct and proximate result of Defendant's breach of implied warranty,
27 Plaintiff and Class members sustained injury and damages in an amount to be determined at trial.
28

1 54. Accordingly, Plaintiff and Class members are entitled to damages according to
2 proof, attorneys' fees and costs of suit, civil penalties and other legal and equitable remedies.

3 **THIRD CAUSE OF ACTION**

4 **(For Violation of the Consumers Legal Remedies Act)**

5 55. Plaintiff incorporates by reference and realleges all paragraphs previously alleged
6 as if fully set forth herein and further alleges as follows.

7 56. Defendant Apple by its actions complained of herein has violated the California
8 Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, and similar consumer protection
9 laws of other States.

10 57. Defendant's acts, practices, representations, omissions, and courses of conduct
11 with respect to the production, promotion and marketing of the iPhone 3G violate the Consumer
12 Legal Remedies Act in that, among other things:

13 (a) Defendant represented that its goods had characteristics, ingredients,
14 uses, benefits, or quantities which they do not have;

15 (b) Defendant advertised their goods with the intent not to sell them as
16 advertised; and/or

17 (c) Defendant represented that its goods were of a particular standard, quality
18 or grade when they are of another standard, quality or grade.

19 58. As a direct and proximate result of Defendant's violations, Plaintiff and Class
20 members were injured.

21 59. Plaintiff and Class members are therefore entitled to and seek equitable relief as
22 set forth below, and attorneys' fees and costs.

23 **FOURTH CAUSE OF ACTION**

24 **(For Unjust Enrichment)**

25 60. Plaintiff hereby incorporates by reference and realleges each of the foregoing
26 paragraphs as if fully set forth herein, and further alleges as follows.
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1 exercise of reasonable care should have been known, to be untrue or misleading, or (2) which
2 were made as part of a plan or scheme with the intent not to sell the iPhone 3G as advertised.

3 70. As a direct and proximate result of Defendant's false advertising practices as
4 alleged herein, Defendants were able to: (a) sell more iPhone 3G units than they otherwise
5 would have and cause more consumer to enter into contracts for iPhone 3G service than would
6 otherwise have been the case; and/or (b) charge inflated prices for iPhone 3G units and
7 associated goods and services, and accordingly received and are in possession of excessive and
8 unjust revenues and profits.

9
10 71. Plaintiff, on behalf of himself and Class members, and where appropriate, the
11 general public, seeks and is entitled to rescission and disgorgement of all profits Defendant
12 obtained from such false advertising.

13 **SIXTH CAUSE OF ACTION**

14 **(For Violations of the Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**

15 72. Plaintiff hereby incorporates by reference and realleges each of the foregoing
16 paragraphs as if fully set forth herein, and further alleges as follows.

17 73. Defendant Apple's business practices as complained of herein violate the Unfair
18 Competition Law, Cal. Bus. & Prof. Code sections 17200, *et seq.*, and similar unfair competition
19 laws of other States.

20 74. Defendant's practices constitute "unlawful" business practices in violation of the
21 UCL because, among other things, they violate statutory law and the common law.

22 75. Defendant's actions and practices constitute "unfair" business practices in
23 violation of the UCL, because, among other things, they are immoral, unethical, oppressive,
24 unscrupulous or substantially injurious to consumers, and/or any utility of such practices is
25 outweighed by the harm caused consumers.

26
27 76. Defendant's actions and practices constitute "fraudulent" business practices in
28 violation of the UCL because, among other things, they have a capacity and tendency to deceive
members of the public.

1 77. As a result of Defendant's wrongful business practices, Plaintiff and Class
2 members have suffered injury in fact. Among other things, Plaintiff and Class members were
3 caused to purchase a product which did not perform as represented, and are now locked into
4 multiyear contracts requiring them to pay months fees for a benefit they do not receive.

5 78. Defendant's wrongful business practices present an ongoing and continuing threat
6 to the general public.

7 79. Accordingly, Plaintiff is entitled to and prays for judgment and for equitable relief
8 for himself and Class members, and, where appropriate, members of the general public,
9 including rescission, disgorgement, restitution, and for attorneys' fees and costs of suit.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, on behalf of himself and Class members, and where
12 appropriate, the general public, prays for judgment against Defendant as follows:

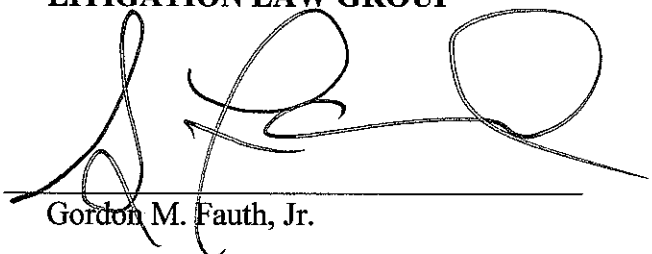
- 13
14 (1) For damages according to proof at trial;
15 (2) For rescission;
16 (3) For restitution and disgorgement;
17 (4) For imposition of a constructive trust for the benefit of Plaintiff and Class members;
18 (5) For an award of attorneys' fees;
19 (6) For an award of the costs of suit incurred herein, including expert witness fees;
20 (7) For an award of interest, including prejudgment interest, at the legal rate;
21 (8) For equitable, injunctive and declaratory relief; and
22 (9) For such other and further relief as this Court deems just and proper.

23 Respectfully submitted,

24 **LITIGATION LAW GROUP**

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28 Date: November 26, 2008

By:


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5 Attorneys for Individual and Representative
6 Plaintiff James R. Pittman

7 **DEMAND FOR JURY TRIAL**

8
9 Plaintiff James R. Pittman hereby demands trial by jury of all claims so triable.
10

11 **LITIGATION LAW GROUP**

12
13 Date: November 26, 2008

14 By: 

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