

# **EXHIBIT B**

**U.S. District Court  
California Northern District (San Jose)  
CIVIL DOCKET FOR CASE #: 5:11-cv-02317-HRL**

Normand v. Apple, Inc  
Assigned to: Magistrate Judge Howard R. Lloyd  
Cause: 28:1331 Fed. Question

Date Filed: 05/10/2011  
Jury Demand: Plaintiff  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Sharon Leslie Normand**  
*individually and on behalf of all others  
similarly situated*

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V.

**Defendant**

**Apple, Inc**  
*a California corporation*

Date Filed	#	Docket Text
05/10/2011	<u>1</u>	<b>Alleged Class Action Complaint</b> for Equitable Relief and Damages (Summons Issued); jury demand; against Apple, Inc ( Filing fee \$ 350, receipt number 54611009649). Filed by Sharon Leslie Normand. (Attachments: # <u>1</u> Civil Cover Sheet) (bw, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/12/2011)

05/10/2011	<u>2</u>	Certification of Interested Entities or Persons by Sharon Leslie Normand (bw, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/12/2011)
05/10/2011	<u>3</u>	Summons Issued as to Apple, Inc. (bw, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/12/2011)
05/10/2011	<u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 7/26/2011. Case Management Conference set for 8/2/2011 01:30 PM in Courtroom 2, 5th Floor, San Jose. (bw, COURT STAFF) (Filed on 5/10/2011) (Additional attachment(s) added on 5/12/2011: # <u>1</u> Judge Howard R. Lloyd Standing Order re Initial Case Management and Discovery Disputes, # <u>2</u> Standing Order for San Jose Division Judges, # <u>3</u> Standing Orders for Judges of the Northern District of California) (bw, COURT STAFF). (Entered: 05/12/2011)
05/10/2011		CASE DESIGNATED for Electronic Filing. (bw, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/12/2011)

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**SHARON LESLIE NORMAND**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHARON LESLIE NORMAND, individually  
and on behalf of all others similarly situated,

CV 11-02317

Case No.

HRL

Plaintiff,

vs.

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

Defendants.

**CLASS ACTION COMPLAINT FOR  
EQUITABLE RELIEF AND  
DAMAGES**

1. Violations of 18 U.S.C. §§ 1030, *et seq.*
2. Violations of Cal. Civ. C. §§ 1790, *et seq.* (Song-Beverly Consumer Warranty Act)
3. Intentional Misrepresentation
4. Negligent Misrepresentation
5. Violations of Cal. Bus. & Prof. C. §§ 17200, *et seq.* (Unfair Competition Law)
6. Violations of Cal. Bus. & Prof. C. §§ 17500, *et seq.* (False Advertising Law)

**DEMAND FOR JURY TRIAL**

Class Action Complaint

**BY FAX**

1 Plaintiff, SHARON LESLIE NORMAND ("Plaintiff"), individually and on behalf of all  
2 others similarly situated United States residents, bring this complaint against Defendants,  
3 APPLE, INC., a California corporation; and DOES 1 through 10, inclusive, (collectively  
4 "Defendants" or "Apple"), and alleges as follows:

#### 5 JURISDICTION

6 1. This Court has jurisdiction over the subject matter presented by this Complaint  
7 because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub.  
8 L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the jurisdiction of the Federal  
9 Courts over any class action in which any member of the Plaintiff class is a citizen of a state  
10 different from any Defendant, and in which the matter in controversy exceeds in the aggregate  
11 the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiff seek to represent a national  
12 class, and more than 2/3 of the members of the putative class are citizens of different states than  
13 Apple. Plaintiff is a resident of Monroe County, New York. Plaintiff alleges that the total claims  
14 of the individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00 in  
the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).

15 2. Defendant can be considered a citizen of California. More than 2/3 of the putative  
16 Class are citizens of states other than California. Therefore, diversity of citizenship exists under  
17 CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

#### 18 VENUE

19 3. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as  
20 set forth below, Defendant conducts and transacts substantial business in this District, and at  
21 least one Defendant has its headquarters located in this District.

#### 22 PARTIES

23 4. Plaintiff SHARON LESLIE NORMAND ("Plaintiff"), is an adult individual and  
24 resident of Monroe County, New York. Plaintiff NORMAND was a user of the Apple iPhone 4  
25 that engaged in illegal tracking and recording of Plaintiff's movements and locations which was  
26 done without her knowledge or consent and without disclosure of such tracking by Defendant  
27 APPLE, INC. The Apple iPhone 4 was one of the devices using the iOS4 operating system.  
28 Plaintiff relied on Apple Inc.'s statements and omissions with regard to protecting her privacy.  
She has a legitimate privacy interest in her locations and reasonably believed this information  
would not be tracked by Apple Inc., let alone maintained in an unencrypted format.

1           5. Defendant APPLE, INC. is a California corporation with its principle place of  
2 business within this District in Santa Clara County, California. Apple, Inc. conducts substantial  
3 business throughout this State, this District, and throughout the entire United States by  
4 advertising and through the extensive use of distribution channels that deliver and sell the goods  
5 and services to consumers.

6           6. Plaintiff also names Does 1–10 as Defendants in this action, whose names and  
7 roles in this controversy have not presently been ascertained. At all times relevant herein, these  
8 Doe Defendants, along with APPLE, INC. and its employees, subsidiaries, affiliates, and other  
9 related entities, were the agents, servants, and employees of each, and at all times relevant  
10 herein, each was acting within the purpose and scope of that agency, service, and employment.

11           7. Whenever reference in this Complaint is made to any act or transaction of the  
12 Defendant, such allegation shall also include the principals, officers, directors, employees,  
13 agents, and/or representatives of Defendant who committed, knew of, performed, authorized,  
14 ratified and/or directed such acts or transactions on behalf of Defendant while actively engaged  
15 in the scope of their duties.

16   **GENERAL ALLEGATIONS**

17           8. Apple iPhones and 3G iPads are secretly recording and storing details of all their  
18 owners' movements. Plaintiff is informed and believes and based thereon alleges that the  
19 location data is hidden from users but unencrypted, making it easy for Apple or third parties to  
20 later access.

21           9. Apple's pattern of conduct in tracking consumers' locations and storing this data  
22 was intentional.

23           10. This action arises out of Apple's failure to inform their customers and users of the  
24 iPhone and 3G iPad that their movements were being tracked and recorded.

25           11. All iPhones log, record and store users' locations based on latitude and longitude  
26 alongside a timestamp. The iPhones store this information in a file called "consolidated.db" or  
27 something similar. Apple intentionally began recording this information with the release of its  
28 iOS 4 operating system in June 2010. Apple uses a cell-tower triangulation to obtain user  
location, thereby recording your moves. Alternatively, Apple may use global positioning system  
(GPS) data to obtain user location.

1           12. Apple devices download the user location data to the user's computer when the  
2 mobile device synchronizes ("syncs") or shares data with the computer. The data is unencrypted  
3 on the mobile devices and also on users' computers that sync with those mobile devices.

4           13. Apple's terms of Service (available at [http://www.apple.com](http://www.apple.com/legal/itunes/uk/terms.html)  
5 /legal/itunes/uk/terms.html) do not disclose its comprehensive tracking of users. Plaintiff and  
6 other users did not provide any sort of informed consent to the tracking at issue in this case.

7           14. Apple's omission of its uniform location tracking policies, practices and  
8 procedures was material, as a reasonable consumer has a privacy interest in his or her location  
9 and would find it important that a company was recording each location he or she visited and  
10 storing them in an unencrypted format. Apple collects the location information covertly,  
surreptitiously and in violation of law.

11           15. Plaintiff and Class members had no reasonable basis to believe every physical  
12 location they visited, while carrying their iPhone or iPad, could or would be monitored by Apple  
13 and then stored in an unencrypted format.

14           16. Apple tracks users' locations on its own, separate, apart and in addition to the  
15 information it collects in conjunction with other businesses that develop applications for Apple's  
16 devices. This action is not about the applications. It is about Apple's collection of their  
17 customers' location information.

18           17. Apple's iPhones and iPad 3Gs (collectively, the "Products") were created to keep  
19 consumers "connected" at all times, and are thus carried by consumers to essentially every  
20 location they travel to, making the information collected by Apple highly personal, and valuable;  
21 indeed, in many instances it may be information to which employers and family members are not  
22 privy.

23           18. That information about places frequently visited by a consumer are stored  
24 unencrypted, and the accessibility of the unencrypted information collected by Apple places  
25 consumers, including Plaintiff and the Class, at serious risk of privacy invasions, including  
crimes such as theft and stalking.

26           19. Plaintiff and proposed Class members were harmed by Apple's accrual of  
27 personal location, movement and travel histories because their personal computers were used in  
28 ways they did not approve, and because they were personally tracked just as if by a tracking  
device for which a court-ordered warrant would ordinarily be required.

1           20. Plaintiff brings this action to stop Apple's illegal and intrusive scheme of  
2 collecting personal location information.

3           21. Plaintiff seeks an injunction requiring Apple to disable such tracking in its next-  
4 released operating system for the relevant devices, which include at least iPhones running iOS 4  
5 operating systems and 3G iPads.

6           22. Plaintiff also seeks damages for violation of her and the Class Members' statutory  
7 and common law privacy rights.

8           23. As a direct and proximate result of Defendant,s conduct, Plaintiff and the Class  
9 have suffered and/or will suffer irreparable and irreversible damage. As such, Plaintiff, on  
10 behalf of the Class, seek injunctive relief, compensatory and punitive damages, statutory  
11 penalties and restitution for statutory and common law violations of California law.

12           24. An injunction that would, among other things, require Apple to reconfigure its  
13 software so that users' personal location information is not collected, synced to other computers,  
14 nor stored in an unencrypted format, is required to protect Plaintiff and the Class' privacy rights  
15 for the following reasons:

- 16           a. Apple knew or should have known that ordinary consumers acting reasonably  
17 would not understand the Apple privacy policy to include the location tracking  
18 and synchronizing at issue in this case.
- 19           b. Irreparable injury has resulted and continues to result from Apple's unauthorized  
20 tracking of millions of Americans. Once Plaintiff and the Class began carrying  
21 their Apple Products, Apple began tracking their locations. This has happened in  
22 the past and continues to happen all across the United States. It is unconscionable  
23 to allow Apple to continue unlawfully and without proper consent tracking  
24 Plaintiff and proposed Class members. If Apple wanted to track the whereabouts  
25 of each of its products' users, it should have obtained specific, particularized  
26 informed consent such that Apple consumers across America would not have  
27 been shocked and alarmed to learn of Apple's practices in recent days.
- 28           c. No adequate remedy at law exists because users of Apple products have no way to  
prevent Apple from collecting this information because even if users disable the  
iPhone and iPad GPS components, Apple's tracking system remains fully  
functional.



1 d. Balance of the hardships favors Plaintiff and the Class because it is easier for  
2 Apple to stop unlawfully tracking the every move of Americans than it is for  
3 individual consumers to circumvent Apple's sophisticated tracking programs. To  
4 require that Plaintiff and the Class bear the consequences of Apple's deceptive  
5 privacy policy and unlawful acquisition of personal location information would be  
6 inequitable.

7 e. The public has an important privacy interest their locations. Without an  
8 injunction, the unencrypted tracking information being synced with computers  
9 and networked to the internet are unsecured. The public interest would not be  
10 disserved, and indeed would be advanced, by entering an injunction against  
11 Defendant.

12 25. Plaintiff also seeks an order that Defendant was unjustly enriched as a result of  
13 the conduct described herein, and that such funds be disgorged. Because of Apple's omissions  
14 and concealment, Plaintiff and Class members conveyed a benefit to Apple by purchasing its  
15 products, maintaining and purchasing its service and then being tracked everywhere they  
16 subsequently traveled. Apple appreciated the benefit conferred on it by Plaintiff in this  
17 transaction because it was enriched in the amount Plaintiff paid for the iPhone and iPad and the  
18 monthly service. Plaintiff is entitled to have a refund of the amounts that they paid for the  
19 iPhone, iPad 3G and monthly service charges due to the fraudulent conduct of Defendants in an  
20 amount according to proof.

#### 21 CLASS ACTION ALLEGATIONS

22 26. The Plaintiff brings this action on behalf of herself and proposed plaintiff Class  
23 members under Rules 23(b)(2) and (3) of the Federal Rules of Civil Procedure. The proposed  
24 Class consists of:

25 **All persons in the United States who purchased or owned an iPhone with the iOS**  
26 **4 operating system or a 3G iPad between the release of those products for sale by**  
27 **Apple and the present. Excluded from the Class are those who purchased the**  
28 **products for resale; members of the federal judiciary and their relatives; and**  
**Defendant's officers, directors and employees.**

1 27. While the exact number of Class members is unknown to the Plaintiff at this time,  
2 Plaintiff is informed and believes and based upon such information and belief alleges that there  
3 are millions of members of the proposed Class. Approximately 59 million people now have an  
4 iPhone, and many of those run the iOS 4 operating system at issue in this case, and about 10  
5 million people have purchased an iPad, many of those the 3G version at issue here. The Class is  
6 so numerous that joinder of all members of the Class is impracticable.

7 28. This action involves questions of fact common to all Class members because all  
8 Class members purchased, own or use iPhones or iPads under uniform Apple privacy policies.

9 29. This action involves question of law common to all Class members because:

- 10 a. The Computer Fraud and Abuse Act, violated here, is national in scope and  
11 applies to all prospective Class members; and  
12 b. Apple's privacy invasions have violated Plaintiff's and Class members' common  
13 law rights in uniform ways.

14 30. Plaintiff's claims are typical of those of other members of the Class as there are  
15 no material differences in the facts and law underlying the claims of Plaintiff and the Class and  
16 by prosecuting their claims Plaintiff will advance the claims of Class members. Plaintiff has  
17 retained counsel competent and experienced in the prosecution of this type of litigation.

18 31. The common questions of law and fact among all Class members predominate  
19 over any issues affecting individual members of the Class, including but not limited to:

- 20 a. whether Apple obtained and stored Plaintiff's location information;  
21 b. whether Apple failed to disclose material terms in its privacy policy regarding its  
22 collection of users' location information;  
23 c. whether Apple intends to market or otherwise exploit users' location information;  
24 d. whether the alleged conduct constitutes violations of the laws asserted herein;  
25 e. whether Plaintiff and Class members are entitled to declaratory and injunctive  
26 relief;  
27 f. whether Plaintiff and Class members have sustained monetary loss and the proper  
28 measure of that loss;  
g. whether Plaintiff and Class members have sustained consequential loss, and to  
what measure; and  
h. whether Apple's acts and omissions warrant punitive damages.

1 32. Class treatment of the claims set forth herein is superior to other available  
2 methods for the fair and efficient adjudication of this controversy. The expense and burden of  
3 individual litigation would make it impracticable or impossible for proposed Class members to  
4 prosecute their claims individually. Absent a class action, a multiplicity of individual lawsuits  
5 would be required to address the claims between Class members and Apple, and inconsistent  
6 treatment and adjudication of the claims would likely result.

7 33. The litigation and trial of Plaintiff's claims is manageable. Apple's standardized  
8 "Terms and Conditions" at issue, Apple's uniform deployment of operating systems that track  
9 each user in identical ways, the consistent provisions of the relevant laws, and the readily  
10 ascertainable identities of many Class members demonstrate that there would be no significant  
11 manageability problems with prosecuting this lawsuit as a class action.

12 34. Apple has acted or refused to act on grounds that apply generally to the Class so  
13 that final injunctive relief and corresponding declaratory relief are appropriate.

14 35. Unless a class-wide injunction is issued, Apple will continue to commit the  
15 violations alleged, and the members of the Class will continue to be tracked, unlawfully  
16 surveyed, and potentially endangered.

17 36. Apple has acted and refused to act on grounds generally applicable to the Class,  
18 making appropriate final injunctive relief with respect to the Class as a whole.

19 37. Apple's acts and omissions are the direct and proximate cause of damage as  
20 described in the following Causes of Action:

21 **FIRST CAUSE OF ACTION**  
22 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**  
23 **18 U.S.C. §§ 1030, ET SEQ.**  
24 **(Plaintiff and Class Members Against All Defendants)**

25 38. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
26 paragraphs above, and those that come after as if fully set forth here.

27 39. By secretly installing software that records users' every moves Apple has accessed  
28 Plaintiff's computer and iPhone, in the course of interstate commerce or communication, in  
excess of the authorization provided by Plaintiff as described in the Computer Fraud and Abuse  
Act (the "Fraud Act") 18 U.S.C. § 1030(a)(2)(C).

1 40. Plaintiff's iPhones and iPads, and those of the Class, are protected computers  
2 pursuant to 18 U.S.C. section 1030(e)(2)(B).

3 41. Apple further violated the Fraud Act by causing the transmission of a program,  
4 information, code or command - both in deploying the iOS 4 operating systems, and also as a  
5 result of the syncing of user handheld devices with their laptop or desktop computers - and as a  
6 result caused harm aggregating at least \$5,000,000 in value.

7 42. Apple's actions were knowing or reckless and, as described above, caused harm to  
8 Plaintiff and proposed Class members.

9 43. Plaintiff seeks recovery for this loss, as well as injunctive and declaratory relief to  
10 prevent future harm.

11 **SECOND CAUSE OF ACTION**  
**BREACH OF SONG -BEVERLY CONSUMER WARRANTY ACT**  
**CAL. CIV. C. §§ 1790, ET SEQ.**

12 **(By Plaintiff and the Class as against all Defendants)**

13 44. Plaintiff re-alleges and incorporates the above allegations by reference as if set  
14 forth fully herein.

15 45. Plaintiff asserts this Cause of Action individually, on behalf of the Class and on  
16 behalf of the common or general interest for breach of implied warranty under the Song-Beverly  
17 Consumer Warranty Act, Cal. Civ. Code §1790, et seq.

18 46. The Apple iPhone and 3G iPad are "consumer goods" within the meaning of Civ.  
19 Code §1791(a).

20 47. Apple's implied warranty of merchantability arose out of and/or was related to the  
21 sales of the Apple iPhone, iPad and OS4 operating system and service.

22 48. As set forth more fully above, Defendant has failed to comply with its obligations  
23 under its implied warranty of merchantability.

24 49. Plaintiff and the Class have suffered and will continue to suffer damages as a  
25 result of Defendant's failure to comply with its warranty obligations. Accordingly, Plaintiff and  
26 the Class are entitled to recover such damages under the Song-Beverly Act, including damages  
27 pursuant to Civ. Code §§1791.1(d) and 1794. Defendant's breaches of warranty, as set forth  
28 above, were willful. Accordingly, a civil penalty should be imposed upon Defendants in an  
amount not to exceed twice the amount of actual damages.

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**THIRD CAUSE OF ACTION**  
**INTENTIONAL MISREPRESENTATION**  
**(By Plaintiff and Class Members Against All Defendants)**

50. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, and those that come after as if fully set forth here.

51. Apple represented to Plaintiff and Class members that it would not collect information about their every movement and location, and omitted disclosing this to Plaintiff and the Class.

52. Apple knew its privacy terms and conditions policy was, and continues to be, false, deceptive and untrue. Apple omitted the fact that Apple will track users, and intended for Plaintiff and Class members to rely on its deceptive statements.

53. Plaintiff and Class members had no reason to believe their physical locations could or would be monitored by Apple and stored in an unencrypted format.

54. Apple's omission of its location tracking policies, practices and procedures was material, as a reasonable consumer has a privacy interest in his or her location and would find it important that a company was recording each location he or she visited and storing them in an unencrypted format.

55. Apple's fraud is comprised both the omissions of proper disclosures to its users and to its illegal tracking of their movement.

56. Plaintiff and Class members, acting as ordinary consumers, reasonably relied on Apple's representations. Plaintiff had a right to rely on Apple's representations. Plaintiff's and Class members' reliance on Apple's omissions was a substantial factor in causing their harm. Plaintiff and Class members were damaged in the amount of money required to purchase Apple's products and the monthly service charges on their accounts.

57. Plaintiff and the Class seek punitive damages from Apple.

58. Apple had and continues to have a duty of good faith, which implicitly includes a duty not to deceive consumers, and also not to conduct this sort of covert digital surveillance on consumers. And they certainly have a duty not to stalk consumers. But that is exactly what Apple has done and continues to do. Apple has collected and maintained the location history of Plaintiff and the Class, in an unprotected format in conscious disregard of the rights, including privacy rights, of the Plaintiff and Class Members.

1           59. To remedy Apple's intentional omission to consumers, and omission of clarifying  
2 statements during the sales process. Plaintiff and Class members seek to rescind the contracts,  
3 and thereby disgorge all monies paid to Apple for these products.

4                                   **FOURTH CAUSE OF ACTION**  
5                                   **NEGLIGENT MISREPRESENTATION**  
6                                   **(Plaintiff and Class Members Against All Defendants)**

7           60. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
8 paragraphs above, and those that come after as if fully set forth here.

9           61. At all times since 2009 in advertising for and soliciting customers, Apple omitted  
10 a material fact—that purchasers would be tracked at all times during its sale of iPhones and iPad  
11 3Gs to consumers and that records of the tracking would be maintained and may be maintained  
12 indefinitely.

13           62. Apple was negligent in making the omission because it should have known that  
14 whether their every movement would be tracked, recorded, and stored for later use was material  
15 to consumers.

16           63. Apple, in making that omission intended, or expected, that Plaintiff and Class  
17 members would rely on the omission.

18           64. Plaintiff and the Class justifiably relied on Apple's omissions about its tracking of  
19 purchasers, and would not have purchased Apple's products but for the omission. Plaintiff and  
20 the Class were damaged in amounts equal to the price they paid for Apple products and their  
21 monthly service charges.

22           65. Apple's omissions were material and directly and proximately caused ordinary  
23 consumers acting reasonably, Plaintiff and Class members included, to buy the iPhone and iPad  
24 products. Without Apple's omissions of its covert intentions, the products would not have been  
25 purchased, and Plaintiff would not have suffered damages.

26           66. Plaintiff seeks punitive damages from Apple.

27                                   **FIFTH CAUSE OF ACTION:**  
28                                   **VIOLATIONS OF BUS & PROF. CODE § 17200 ET SEQ.**  
                                     **(By Plaintiff and the Class as against all Defendants)**

          67. Plaintiff re-alleges and incorporates by reference the allegations set forth in each  
of the preceding paragraphs of this Complaint.

1           68. This cause of action is brought pursuant to Cal. Bus. & Prof. Code § 17200 et  
2 seq., which provides that “unfair competition shall mean and include any unlawful, unfair or  
3 deceptive business act or practice and unfair, deceptive, untrue or misleading advertising and any  
4 act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the  
5 Business and Professions Code.”

6           69. Apple committed “unlawful” business acts or practices when they violated  
7 California Const., Art. I, Section I, Cal. Bus. & Prof. Code 17500, et seq., 18 U.S.C. § 1030 et  
8 seq. and the Song-Beverly Act, Civ. Code §1790, et seq.as described above.

9           70. Apple committed unfair and fraudulent business acts or practices by failing to  
10 adequately advise Plaintiff and the Class that they were tracking their movements and locations  
11 of Plaintiff and Class Members and recording that information for periods of one year or longer.  
12 The record of movements was accessible by Apple and could be made available to third parties  
13 as well as subject to access by subpoena.

14           71. Apple has engaged in unfair, unlawful and fraudulent business practices as set  
15 forth above.

16           72. By engaging in the above-described acts and practices, Apple has committed one  
17 or more acts of unfair competition within the meaning of Bus. & Prof. Code §17200, et seq.

18           73. Apple’s acts and practices have and/or are likely to deceive members of the  
19 consuming public into reasonably believing that their movements and locations could be kept  
20 private when they had an Apple device with the iOS4 operating system with them.

21           74. The activity of Apple tracking its customers and maintaining records of the  
22 tracking was the direct and proximate result of Defendant’s failure to advise Plaintiff and Class  
23 Members that they were being tracked and the records of their locations were being maintained  
24 and of Apple not providing the Plaintiff and Class Members a means of consenting to or opting  
25 out of the tracking and recording of their movements. It was reasonably foreseeable to Apple  
26 that Plaintiff and Class Members would not want to have their movements tracked and the  
27 records of their movements recorded and maintained indefinitely.

28           75. Defendant actively concealed its knowledge that Defendant were tracking and  
recording the movements and locations of Plaintiff and Class Members.

          76. Pursuant to the California Constitutional Right to Privacy and California law there  
is an explicit public policy, creating an affirmative and continuing obligation on Defendant

1 herein, to respect consumers' privacy and to provide reasonable consumer computer data  
2 security under the circumstances, including, without limitation, the Plaintiff and the Class herein,  
3 and to protect the security and confidentiality of their nonpublic personal information (i.e. their  
4 location history). Such duties include, without limitation, the duty to ensure security, protect  
5 against anticipated threats, and protect against unauthorized access. Defendant, on information  
6 and belief, breached said duties by tracking the movements and locations of Plaintiff and Class  
7 Members and maintaining records of such private information, all without the knowledge or  
8 consent of Plaintiff or Class Members.

9 77. The harmful impact upon members of the general public and the Class who  
10 purchased and used the iPhone iPad and OS4 operating system service outweighs any reasons or  
11 justifications by Defendant for its conduct, as described above, considering the reasonably  
12 available alternatives. Preventing such conduct or redressing it is tied to a legislatively declared  
13 policy of not permitting the mislabeling or advertising of Apple iPhones or iPads using the OS4  
14 operating system.

15 78. The use of such unlawful, fraudulent and unfair business acts and practices was  
16 and is under the sole control of Defendant, and was deceptively concealed from the public by  
17 Defendants.

18 79. As a purchaser and consumer of Defendant's goods and services who suffered  
19 injury in fact and a loss of money or property (including property interest in personal  
20 information) as a result of Defendant's acts of unfair competition from purchasing the goods and  
21 services at the prices, that Plaintiff did, Plaintiff has standing to assert the claims made herein on  
22 behalf of the Class and seek all available remedies under the UCL.

23 80. Apple's sales and marketing practices thus constitute unfair, deceptive, fraudulent  
24 and/or unlawful business practices within the meaning of California Bus. & Prof. Code § 17200  
25 et seq.

26 81. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, on behalf of herself  
27 and all others similarly situated for the benefit of the public, seeks an order of this Court:

- 28 a. Enjoining Defendant from continuing to engage, use, or employ business acts or  
practices found by this Court to be unfair, deceptive and/or unlawful, related to  
the tracking of Plaintiff and the Class' locations and storing that information in an  
unencrypted format, as set forth in detail above; and



b. Restoring all monies that may have been acquired by Defendant as a result of such unfair, deceptive and/or unlawful business acts or practices.

82. Plaintiff and members of the general public may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

83. As a result of Defendant's violations of the UCL, Plaintiff and the Class are entitled to restitution for out-of-pocket expenses and economic harm.

84. As a further result of Defendant's conduct, Plaintiff and the Class are entitled general and special damages, an award of up to 3 times the general and special damages proximately caused by a violation of Civil Code sections 1708.8 (a), (b), or (c) and, if done for a commercial purpose, disgorgement to the Plaintiff and Class Members any proceeds or other consideration obtained as a result of the violation of this section. California Civil Code section 1708.8(d). This section provides that the Defendants may also be liable for punitive damages as provided in Civil Code section 3294.

85. Pursuant to California Civil Code § 3287(a), Plaintiff and Members of the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful conduct. The amount of damages suffered as a result is a sum certain and capable of calculation, and Plaintiff and Members of the Class are entitled to interest in an amount according to proof.

**SIXTH CAUSE OF ACTION**  
**VIOLATIONS OF BUS. & PROF. CODE § 17500 (FAL)**  
**(By Plaintiff and the Class as against all Defendants)**

86. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

87. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and on behalf of the common or general interest. Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's violations of Bus. & Prof. Code §17500, et seq.

88. Beginning in or about 2009, Defendants engaged in advertising and marketing to the public and offered the Apple iPhones and iPad with the OS4 operating system for sale throughout the United States, including California, and the world.

1 89. Defendants have engaged in the advertising and marketing alleged herein with  
2 intent to directly or indirectly induce the purchase of the iPhone or iPad with the OS4 operating  
3 system and service.

4 90. Defendant's advertisements and marketing representations regarding the technical  
5 and other characteristics of the Apple iPhone, iPad, OS4 operating system and service are false,  
6 misleading and deceptive as set forth more fully above.

7 91. At the time Defendants made and disseminated the statements alleged herein, it  
8 knew or should have known that the statements were untrue or misleading, and acted in violation  
9 of Bus. & Prof. Code §17500, et seq.

10 92. Defendant actively concealed its knowledge that the movements and locations of  
11 its customers would be tracked and that the records of the tracking would be maintained by  
12 Apple for extensive periods of times that could be for more than a year.

13 93. Plaintiff has been harmed. Plaintiff, on behalf of herself, on behalf of the Class  
14 and on behalf of the common or general interest, seeks restitution, disgorgement, injunctive relief  
15 and all other relief allowable under §17500, et seq.

16 94. Plaintiff and members of the general public may be irreparably harmed and/or  
17 denied an effective and complete remedy if such an order is not granted.

18 95. As a result of Defendant's violations of the FAL, Plaintiff and the Class are  
19 entitled to restitution and disgorgement for out-of-pocket expenses and economic harm.

20 96. Pursuant to California Civil Code § 3287(a), Plaintiff and Members of the Class  
21 are further entitled to pre-judgment interest as a direct and proximate result of Defendant's  
22 wrongful conduct. The amount of damages suffered as a result is a sum certain and capable of  
23 calculation, and Plaintiff and Members of the Class are entitled to interest in an amount  
24 according to proof.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated,  
27 prays for relief pursuant to each cause of action set forth in this Complaint as follows:

28 1. For an order certifying that the action may be maintained as a class action,  
certifying Plaintiff as representative of the Class, and designating her counsel as counsel for the  
Class;

2. For an award of equitable relief as follows:

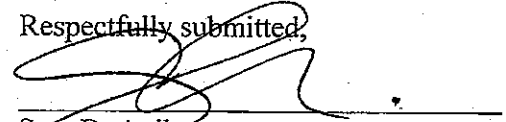
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- (a) Enjoining Defendants from making any claims for the goods and services found to violate California law as set forth above;
- (b) Requiring Defendants to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint;
- (c) Requiring Defendants to disgorge all ill-gotten gains flowing from the conduct described in this Complaint;
- (d) Requiring Defendants to immediately cease its wrongful conduct;
- (e) Enjoining Defendants' unfair, unlawful and fraudulent conduct;
- (f) Requiring Defendants to engage in a corrective notice campaign;
- (g) Requiring Defendants to refund to Plaintiff and all members of the Class the funds paid to Defendants for the Product;

- 3. For an award of attorney's fees and costs .
- 4. For an award of statutory damages, pursuant to §1708.8(d) of the Civil Code and any other applicable statutes;
- 7. For an award of damages to be determined at trial;
- 8. For an award of statutory damages to be determined at trial;
- 9. For an award of punitive damages to be determined at trial.
- 10. For pre- and post-judgment interest on any amounts awarded.

DATED: May 10, 2011

Respectfully submitted,

  
\_\_\_\_\_  
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9 *To apply pro hac vice*

10 Attorneys for Plaintiff  
11 SHARON LESLIE NORMAND

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury on all issues so triable.

14 DATED, May 10, 2011

15 Respectfully submitted,

16   
17 Sara D. Avila

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Class Action Complaint