

EXHIBIT C

**U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:11-cv-02270-PSG**

Velez-Colon v. Apple, Inc
Assigned to: Magistrate Judge Paul Singh Grewal
Demand: \$500,000
Cause: 28:2201 Constitutionality of State Statutes

Date Filed: 05/09/2011
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Federal Question

Plaintiff**Jose Carlos Velez-Colon**

represented by **Jose Carlos Velez-Colon**
FK 41 Calle Polaris
URB Irlanda Heights
Bayamon, PR 00956
787-457-4434
PRO SE

V.

Defendant**Apple, Inc**

Date Filed	#	Docket Text
05/06/2011	<u>3</u>	Application to Proceed in forma pauperis filed by Jose Carlos Velez-Colon. (bw, COURT STAFF) (Filed on 5/6/2011) (Entered: 05/10/2011)
05/06/2011	<u>5</u>	MOTION to Appoint Process Server Under Rule 4(c)(3) filed by Jose Carlos Velez-Colon. (bw, COURT STAFF) (Filed on 5/6/2011) (Entered: 05/10/2011)
05/09/2011	<u>1</u>	COMPLAINT (NO PROCESS); IFPP; against Apple, Inc. Filed by Jose Carlos Velez-Colon. (Attachments: # <u>1</u> Civil Cover Sheet) (bw, COURT STAFF) (Filed on 5/9/2011) (Entered: 05/10/2011)
05/09/2011	<u>2</u>	Ex Parte Motion to Proceed in forma pauperis with accompanying Declaration in support filed by Jose Carlos Velez-Colon. (bw, COURT STAFF) (Filed on 5/9/2011) (Entered: 05/10/2011)
05/09/2011	<u>4</u>	MOTION Requesting Electronic Notification filed by Jose Carlos Velez-Colon. (bw, COURT STAFF) (Filed on 5/9/2011) (Entered: 05/10/2011)
05/09/2011	<u>6</u>	(Proposed) Order Granting Motion to Appoint Process Server and Specifying Further Action to be Taken by the Clerk filed by Jose Carlos Velez-Colon (bw, COURT STAFF) (Filed on 5/9/2011) (Entered: 05/10/2011)
05/09/2011	<u>7</u>	ADR SCHEDULING ORDER: Case Management Statement due by 7/26/2011. Case Management Conference set for 8/2/2011 02:00 PM in Courtroom 5, 4th Floor, San Jose. (Attachments: # <u>1</u> Standing Order for Civil Practice in Cases Assigned for All Purposes to Magistrate Judge Paul S. Grewal, # <u>2</u> U.S. Magistrate Judge Paul S. Grewal Settlement Conference Procedures, # <u>3</u> Standing Order for San Jose Division Judges, # <u>4</u> Standing Orders for Judges of the Northern District of California)(bw, COURT STAFF) (Filed on 5/9/2011) (Entered: 05/10/2011)
05/09/2011		CASE DESIGNATED for Electronic Filing. (bw, COURT STAFF) (Filed on 5/9/2011) (Entered: 05/10/2011)

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA - SAN JOSE

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

11 JOSE CARLOS VELEZ COLON,
12 Plaintiff,
13
14 vs.
15 Defendant
16 APPLE, INC.

CV 11 Case No. 02270

COMPLAINT
JURY TRIAL DEMANDED

PSG

21
22 Plaintiff, Jose Carlos Velez Colon, in propria persona, respectfully allege as follows:

23 **INTRODUCTION**

24 1. "Apple iPhones are secretly recording and storing details of all their owners'
25 movements," reported the British Broadcasting Company. According to security
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1 experts Alasdair Allan and Pete Warden¹, the location data is hidden from users but
2 unencrypted, making it easy for Apple or third parties to later access. Apple Inc.'s
3 *iPhone Tracks Users' Movements*, April 20, 2011. Available at
4 <http://www.bbc.co.uk/news/technology-13145562> (last visited May 1, 2011).
5

- 6 2. Users of Apple products have to no way to prevent Apple from collecting this
7 information because even if users disable the iPhone GPS components, Apple's
8 tracking system remains fully functional.

9
10 **PARTIES**

- 11 3. Plaintiff Jose Carlos Velez Colon is a resident of Puerto Rico, who at all relevant times
12 has owned an iPhone and carried it with him everywhere.
13 4. Defendant Apple, Inc. is a California corporation with its principal place of business in
14 California.

15
16 **JURISDICTION, VENUE & INTRADISTRICT ASSIGNMENT**

- 17 5. This Court has federal question jurisdiction under 28 U.S.C. § 1331. Jurisdiction of
18 this Court also arises pursuant to 28 U.S.C. § 1332(a)(1) because there is complete
19 diversity between the parties and the amount in controversy is \$75,000 or more,
20 exclusive interests and costs.
21 6. Declaratory relief is available under 28 U.S.C. §§ 2201 and 2207.
22 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that Defendant principal
23 place of business is in this District, is authorized to conduct business in this district
24 and has availed itself of the laws and markets within this district through the
25

26
27 ¹ *Got an iPhone or 3G iPad? Apple is Recording Your Moves*, by Alasdair Allen and Pete Warden, on
28 radar.oreilly.com. Available at <http://radar.oreilly.com/2011/04/apple-location-tracking.html> (last visited May 4, 2011) (hereafter "Recording Your Moves").

1 promotion, marketing, distribution and sale of its products in this district; does
2 substantial business in this district; and is subject to personal jurisdiction in this
3 district.

- 4
5 8. Intradistrict assignment to the San Jose Division is proper because defendant's
6 principal place of business is located within this Division.

7 **APPLE'S PRIVACY VIOLATIONS**

- 8 9. All iPhones log, record and store users' locations based on latitude and longitude
9 alongside a timestamp. *Recording Your Moves*. The iPhones store this information in
10 a file called "consolidated.db" or something similar. Id. Apple intentionally began
11 recording this information with the release of its iOS 4 operating system in June
12 2010². Apple uses a cell-tower triangulation to obtain user location. *Recording Your*
13 *Moves*. Alternatively, Apple may use global positioning system (GPS) data to obtain
14 user location.
15
16 10. Apple devices download the user location data to the user's computer when the
17 mobile device synchronizes ("syncs") or shares data with the computer. The data is
18 unencrypted on the mobile devices and also on users' computers that sync with those
19 mobile devices.
20
21 11. Users of Apple's iPhones, including Plaintiff, are unaware of Apple's tracking their
22 locations and did not consent to such tracking.
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27
28 ² *iPhone Keeps Recording of Everwhere You Go*, by Charles Arthur of the London newspaper Guardian,
Available at <http://www.guardian.co.uk/technology/2011/apr/20/iphone-tracking-prompts-privacy-fears> (lastvisited
May 4, 2011).

1 12. Apple's Terms of Service do not disclose its comprehensive tracking of users. Plaintiff
2 and other users did not provide any sort of informed consent to the tracking at issue
3 in this case.

4
5 13. Apple collects the location information covertly, surreptitiously and in violations of
6 law.

7 14. Apple tracks users' locations on its own, separate, apart and in addition to the
8 information it collects in conjunction with other businesses that develop applications
9 for Apple's devices. This action is not about the applications' collection of information
10 on users; rather, it is specifically in objection to Apple's own collection of user
11 location information.
12

13 15. Apple's iPhone 3Gs are carried with users to essentially every location they travel to,
14 making the information collected by Apple highly personal; indeed, in many instances
15 it may be information to which employers and spouses are not privy.
16

17 16. The accessibility of the unencrypted information collected by Apple places users at
18 serious risk of privacy invasions, including stalking.

19 17. Plaintiff was harmed by Apple's accrual of personal location, movement and travel
20 histories because their personal computers were used in ways they did not approve,
21 and because they were personally tracked just as if by a tracking device for which a
22 court-ordered warrant would ordinarily be required.
23

24 18. Plaintiff brings this action to stop Apple's illegal and intrusive scheme of collecting
25 personal location information in Puerto Rico.

26 19. Plaintiff also seeks damages for violations of their statutory and constitutional
27 privacy rights.
28

COUNT I

(DECLARATORY RELIEF)

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20. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

21. Plaintiff Jose Carlos Velez Colon purchased, owns, uses and carries with him Apple's iPhone with iOS 4 and has done so at all times relevant to this action.

22. Plaintiff relied on the terms of Apple's privacy policy, which did not explain the pervasive location tracking that Apple intended to undertake and did undertake.

23. Apple knew that ordinary consumers acting reasonably would not understand the Apple privacy policy to include the location tracking and syncing at issue in this case.

24. Injury has resulted and continues to result from Apple's unauthorized tracking. Once Plaintiff began carrying his Apple device, Apple began tracking his location. This has happened in the past and continues to happen all across the United States. If Apple wanted to track the whereabouts of each of its products' users, it should have obtained specific, particularized informed consent such that Apple consumers across America would not have been shocked and alarmed to learn of Apple's practices in recent days.

25. Plaintiff has to no way to prevent Apple from collecting this information because even if users disable the iPhone GPS components, Apple's tracking system remains fully functional.

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

7 27. The public has an interest in being able to travel without being tracked, and without
8 that **unencrypted tracking information** being synced with computers that are
9 networked to the internet and are unsecured. The public interest would not be
10 disserved, and indeed would be advanced, by entering a permanent declaratory relief
11 and permanent injunction against Apple. . See *eBay, Inc. v. MercExchange, LLC*, 547
12 U.S. 388 (2006).
13

14 **28.** The injunction should require Apple to reconfigure its software so that users'
15 personal location information is neither collected, nor synced to other computers.
16

17 **COUNT II**

18 **(Computer Fraud and Abuse Act, 18 U.S.C. § 1030)**

19 **29.** Plaintiff re-allege and incorporate by reference the allegations contained in the
20 paragraphs above, and those that come after as if fully set forth here.
21

22 **30.** By secretly installing software that records users' every moves Apple has accessed
23 Plaintiff's computers, in the course of interstate commerce or communication, in
24 excess of the authorization provided by Plaintiff as described in the Computer Fraud
25 and Abuse Act (the "Fraud Act") 18 U.S.C. § 1030(a)(2)(C).
26

27 **31.** Plaintiff computer is protected computers pursuant to 18 U.S.C. § 1030(e)(2)(B).
28

32. Plaintiff iPhone is a protected computer pursuant to 18 U.S.C. § 1030(e)(2)(B).

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

6 **34.** Apple's actions were knowing or reckless and, as described above, caused harm
7 to Plaintiff.

8 **35.** Plaintiffs seek recovery for this loss, as well as injunctive and declaratory relief to
9 prevent future harm.
10

11 **COUNT III**

12 **(Unfair or Deceptive Acts in Violation of Puerto Rico
13 Laws, 10 L.P.R.A. § 27)**

14 **36.** Plaintiff re-allege and incorporate by reference the allegations contained in the
15 paragraphs above, and those that come after as if fully set forth here. This cause of
16 action is brought by Plaintiff Jose Carlos Velez Colon pursuant to Puerto Rico's
17 Deceptive and Unfair Trade Practices Act. See 10 L.P.R.A. § 27.
18

19 **37.** Plaintiff is a consumer as defined under 10 L.P.R.A. § 27 et seq.

20 **38.** 10 L.P.R.A. § 27 et seq. prohibits an act or practice that violates either the
21 standards for "unfairness," or those for "deception" – the two are independent of
22 each other. An act or practice may be found to be unfair where it "causes or is likely
23 to cause substantial injury to consumers which is not reasonably avoidable by
24 consumers themselves and not outweighed by countervailing benefits to consumers
25 or to competition." 15 U.S.C. § 45(n). An act or practice is deceptive if it is likely to
26 mislead a consumer acting reasonably under the circumstances.
27
28

1 **39.** Apple's inadequate disclosures made in its privacy policy were both unfair and
2 deceptive.

3 **40.** Apple's tracking and syncing of Plaintiff's and other users' personal information
4 was both unfair and deceptive because Apple's users had no knowledge of Apple's
5 intent or actions.
6

7 **41.** The Acts of Florida and the other states substantially follow the FTC Act.

8 **42.** Apple's privacy policy contained deceptive misrepresentations that are material
9 and are likely to and did deceive ordinary consumers acting reasonably, including the
10 Plaintiff, into believing that their every move would not be tracked by Apple and then
11 stored for future use in an Apple-designed database.
12

13 **43.** Apple's omission of its true intent to track users was material to terms and
14 conditions under which Plaintiff purchased their iPhones. An act or practice is
15 material if it is likely to affect a consumer's decision regarding the product. Plaintiffs
16 and other users would not have purchased Apple products and indeed would have
17 purchased the products of a competitor had they known that their every movement
18 would be tracked and recorded.
19

20 **44.** Here, Apple specifically omitted from its privacy policy any indication express
21 claims on their Products, knowing that such disclosure would prevent consumers
22 from consummating their purchases.
23

24 **45.** Puerto Rico law declares the acts and omissions of Apple to be unlawful. The
25 statute says: "Unfair methods of competition, unconscionable acts or practices, and
26 unfair or deceptive acts or practices in the conduct of any trade or commerce are
27 hereby declared unlawful."
28

1 **46.** Apple's practices have caused substantial injury to Plaintiff by depriving him of
2 money they would have spent elsewhere and by covertly delivering software that
3 tracks users' every movements.
4

5 **47.** Apple's unfair omissions injure both consumers and competition. Consumers are
6 injured in all the ways that Plaintiff have been injured, as described throughout this
7 complaint, and competition suffers in several ways too: (1) honest companies that do
8 not covertly track their customers' locations have lost and continue to lose market
9 share to Apple products as already described; (2) Apple is rewarded for its deceit
10 with billions of dollars in revenues (which should all be disgorged); and (3)
11 competitors behaving deceptively creates a "race to the bottom," wherein additional
12 companies feel economic pressure to similarly track users's whereabouts to later sell
13 and thereby avoid losing further market share in the rapidly growing and competitive
14 market for precise consumer demographic, location and other data. There are no
15 countervailing benefits of Apple's conduct: not to consumers, nor to competition.
16
17

18 **48.** Apple violated and continues to violate Puerto Rico law by engaging in the trade
19 practices described above, that has caused and continues to cause substantial injury
20 to consumers, which are not reasonably avoidable by the consumers themselves, in
21 transactions with Plaintiff which were intended to result in, and did result in, the sale
22 of the iPhone.
23

24 **49.** There were reasonable alternatives available to further Apple's legitimate
25 business interests, other than the conduct described herein. Apple, for example,
26 could have abstained from tracking the exact locations of users of its products. Apple
27 also could have required a single sentence disclosure describing its rampant covert
28

1 tracking of individual users' locations to be signed by purchasers – rather than or in
2 addition to it's hundred-plus page privacy terms and conditions.

3 **50.** Apple's act of tracking its users was "consumer-oriented" because it preys on
4 Apple's own purchasers only. See *Stutman v. Chemical Bank*, 731 N.E.2d 608, 611
5 (N.Y. 2000).
6

7 **51.** Apple's act of tracking its users is misleading in a material way because Apple
8 fails to disclose, or event hint at, the full extent of its user location tracking in the
9 Apple privacy policy terms and conditions. Apple's acts have a broad impact on
10 consumers at large because Apple's inadequate disclosures, coupled with its unlawful
11 tracking continue to impact prospective purchasers.
12

13 **52.** Plaintiff have suffered injury as a result of Apple's deceptive acts and omissions
14 because Plaintiff would have not bought Apple devices had they known that they
15 would be tracked. Plaintiff has suffered injury as a direct and proximate result of
16 Apple's deceptive acts, practices and omissions. Injury includes Plaintiff's purchases
17 of their Apple devices. Actual injury to Plaintiffs also includes the collection of his
18 private location information and the continued existence of databases of that same
19 information – databases that are unencrypted and accessible to the public.
20

21 **53.** Apple willfully and knowingly violated Puerto Rico law and is therefore subject to
22 three times the actual damages suffered by Plaintiff.
23

24 **54.** Apple deceived Plaintiff and consumers, and treated them unfairly by tracking
25 their movements as described above, and violated the law by omitting from its
26 privacy policy the full extent of its tracking.
27

28 **55.** Plaintiffs also seek punitive damages.

1 **56.** Plaintiff also suffered actual damages. As a result of Defendants conduct, Plaintiff
2 suffered invasion of privacy and mental distress that manifested itself as headaches,
3 extreme alertness, sleeplessness and upset stomach and others to be proved at trial.
4 Defendant's conduct is actionable under Article 1802 of the Puerto Rico Civil Code
5 and a compensation of in no less than \$75,000, exclusive interests and costs, is
6 warranted. Diversity jurisdiction is hereby invoked if the federal cause of action is
7 dismissed.
8

9
10 **COUNT IV**
(Unjust Enrichment, Money Had and Received)

11 **57.** Plaintiffs re-allege and incorporate by reference the allegations contained in the
12 paragraphs above, and those that come after as if fully set forth here.
13

14 **58.** Unjust enrichment results from a transfer that is ineffective to conclusively alter
15 ownership rights. Here, Apple's omissions made Plaintiff believe that a term material
16 to the contract was different than it actually was. Morally and ethically – and
17 therefore, in equity – the Apple has gained a benefit for which it has not exchanged
18 the promised consideration. Apple promised products capable of certain tasks, but
19 instead, like the Trojan Horse, delivered products to spy on Plaintiffs and Class
20 members and to sell their personal information at a future date. This constitutes a
21 total failure of consideration.
22

23 **59.** Apple, through the omission of its true intentions, cultivated in consumers a
24 mistake of fact that would not have existed but for Defendant's intentional omissions.
25

26 **60.** Because of Apple's omissions, Plaintiff conveyed a benefit to Apple by purchasing
27 its products and then being tracked everywhere they subsequently traveled. Apple
28

1 appreciated the benefit conferred on it by Plaintiffs in this transaction because it was
2 enriched in the amount Plaintiffs paid for the iPhone.

3 **61.** Plaintiffs have no adequate remedy at law due to the difficulty of quantifying
4 damages caused by being tracked, having that location information stored or
5 downloaded on an unencrypted database. Apple is responsible for unknown increases
6 disclosures about private location information of Plaintiffs, their families, and future
7 purchasers, as a direct consequence of constantly recording all of their locations.

8
9 **62.** Plaintiff lacked the requisite intent to form a contract for the products that they
10 actually received. There can be no valid contract without intent. 7 See Restatement,
11 Third, of Restitution and Unjust Enrichment, § 1, comment b (Discussion Draft 2000).

12 **63.** Products supplied were inadequate consideration for the monies paid. These
13 contracts also fail for want of consideration.

14
15 Apple accepted and retained money paid to it by Plaintiff. The affirmative, knowing and
16 intentional misrepresentations and omissions of Apple, which Plaintiff reasonably relied
17 upon, in combination with Apple's blatant breach of Plaintiffs' privacy, constitute
18 circumstances that make it inequitable for Apple to retain Plaintiff's money.
19

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demand a trial by jury on all issues so triable against Apple.
22

23 **PRAYER FOR RELIEF**

24 WHEREFORE Plaintiffs pray for judgment against Apple as follows:

25 A. For declaratory and permanent injunctive relief, including enjoining Apple from
26 continuing to omit its true intentions about tracking purchasers of its
27 products, and requiring Apple to stop tracking Plaintiff in the future.
28

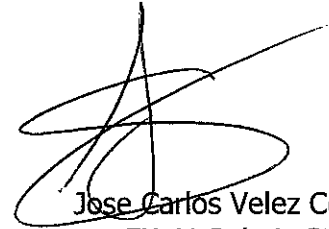
1 B. For actual damages or trebled damages under Puerto Rico law.

2 D. For punitive damages;

3 E. For reasonable attorneys' fees and costs; and

4 F. For a global award in damages in no less than \$75,000, excluding interests and
5 costs; and for such other and further relief as this Court deems equitable or just
6 under the circumstances.
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8
9 DATED: *May 4, 2011*



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