

EXHIBIT A

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ADR

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

2011 APR 14 P 3: 21

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

HRL

CHRISTINA JENKINS and JESSICA VEFFER,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No.

CV 11-01828

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(a), 28 U.S.C. §
1446 AND THE CLASS ACTION
FAIRNESS ACT**

(PUBLIC FILE)

1 TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO ALL PARTIES AND
2 THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that Defendant Apple Inc. ("Apple") hereby removes this
4 action from the Superior Court of the State of California for the County of Santa Clara to the
5 United States District Court, Northern District of California, San Jose Division.

6 In support thereof, Apple states as follows:

7 1. This Court has removal jurisdiction pursuant to 28 U.S.C. § 1441(a) and the Class
8 Action Fairness Act ("CAFA"), Pub. L. 109-2, 119 Stat. 4 (2005), codified at 28 U.S.C. §
9 1332(d).

10 2. Plaintiffs Christina Jenkins and Jessica Veffer filed a putative Class Action
11 Complaint for Equitable Relief on March 15, 2011. ("Complaint" or "Compl." attached as
12 Exhibit A to this Notice.) Apple was served with the Complaint on March 17, 2011.

13 Diversity Jurisdiction Under CAFA

14 3. Enacted to expand federal diversity jurisdiction over purported class actions,
15 CAFA provides that a class action may be removed in accordance with 28 U.S.C. § 1446 if: (a)
16 membership in the class is not less than 100; (b) any member of the plaintiff class is a citizen of a
17 foreign country or a state different from any defendant; and (c) the aggregate amount in
18 controversy exceeds \$5,000,000. *See* 28 U.S.C. §§ 1453(b) and 1332(d).

19 4. CAFA's first requirement – that class membership be no less than 100 (28 U.S.C.
20 § 1332(d)(5)) – is satisfied. This putative class action is brought on behalf of "[a]ll residents of
21 the United States who registered with Apple to be able to download apps from the Apple App
22 Store and who have downloaded at least one app from the Apple App Store within the year prior
23 to filing of this complaint." Compl. ¶ 31. Plaintiffs allege that "[m]embers of the class number in
24 the hundreds of thousands, if not millions" *Id.* ¶ 33.

25 5. CAFA's second requirement – that any one member of the purported class is a
26 citizen of a state different from any defendant (28 U.S.C. § 1332(d)(2)(A)) – is also satisfied.
27 Plaintiffs, citizens of California, Compl. ¶¶ 5-6, purport to represent a class of U.S. citizens, *id.* ¶
28 31.

1 6. CAFA's third requirement – that the aggregate amount in controversy exceeds
2 \$5,000,000 exclusive of interest and costs (28 U.S.C. § 1332(d)(2)) – is satisfied as well. Apple
3 disputes the theories of liability and asserted remedies advanced in the Complaint. Nevertheless,
4 Plaintiffs' requested injunctive relief puts more than \$5,000,000 in controversy.

5 7. Where the defendant invokes federal CAFA jurisdiction in an action seeking
6 injunctive relief, "the amount in controversy" is determined based on "the defendant's cost of
7 compliance with an injunction" *Tompkins v. Basic Research LLC*, 2008 WL 1808316,
8 *4 (E.D. Cal. April 22, 2008) (citing *In re Ford Motor Co./Citibank (S. Dak.), N.A.*, 264 F.3d
9 952, 958 (9th Cir. 2001)); *see also Mora v. Harley-Davidson Credit Corp.*, 2009 WL 464465, *5
10 (E.D. Cal. February 24, 2009).

11 8. Plaintiffs each allege that they purchased a software application, known as an
12 "app," from Apple's App Store for \$.99, and downloaded the app on their iPhones. Compl. ¶¶
13 26-27. Plaintiffs further allege and that the app transmitted certain user data to third parties
14 unnecessarily and without consent. *Id.* ¶ 29. Plaintiffs seek "an order requiring Apple to cease to
15 offer apps on its App Store that unnecessarily access and transmit consumers' data" *Id.* at 9
16 (Prayer ¶ b).

17 9. Apple began selling the iPhone to customers on June 29, 2007. Decl. of James
18 Bean in Supp. of Notice of Removal ¶ 2 ("Bean Decl."). [REDACTED]
19 [REDACTED]
20 [REDACTED]. *Id.* ¶ 3.

21 10. Compliance with the order Plaintiffs seek has the potential to force Apple to
22 forego millions of dollars in revenue from future sales of apps in its App Store. Plaintiffs allege
23 that they each paid for at least one \$.99 download from the App Store. Compl. ¶¶ 26-27. If
24 Plaintiffs' claims are typical of iPhone owners, as they allege, Compl. ¶ 35, then iPhone owners
25 have paid [REDACTED] to download apps from the App Store. Apple receives a 30%
26 commission on the sale of paid apps in the App Store. Bean Decl. ¶ 5. If Apple were required to
27 remove apps from the App Store, Apple would have to forego sales commissions. Based on the
28 Complaint's allegations, Apple made [REDACTED]

1 in commissions on App Store sales. Plaintiffs' requested injunctive relief could require Apple to
2 forego additional commissions on future App Store sales.

3 Procedural Requirements Under Removal Statute

4 11. The procedural requirements set forth in 28 U.S.C. § 1446 are also satisfied here.
5 Section (a) of that statute requires the removing party to file a notice of removal "in the district
6 court of the United States for the district and division within which such action is pending,"
7 which Apple does with this filing. Section (a) also requires a moving party to provide a copy to
8 the district court of all process, pleadings, and orders served on defendants in the state action.
9 The Complaint, summons, and other documents served on Apple are attached hereto as Exhibit A.

10 12. Section (b) of the removal statute requires that defendants file a notice of removal
11 in federal court within 30 days after the service of a complaint. Apple was served with the
12 Complaint on March 17, 2011. *See* Summons, Ex. A. This removal is timely.

13 13. Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal are being
14 served upon counsel for Plaintiffs and filed with the Clerk of the Superior Court of California for
15 the County of Santa Clara.

16
17 Based upon the foregoing, Apple therefore respectfully submits: (i) that this Court has
18 diversity jurisdiction under 28 U.S.C. §§ 1332, 1441, 1446, and 1453; and (ii) that
19 the procedural requirements under 28 U.S.C. § 1446 are met. As such, this action is properly
20 removable to federal court.

21
22 Date: April 14, 2011

HOGAN LOVELLS US LLP

23
24 By: 

Michael L. Charlson

25
26 Attorneys for Defendant
APPLE INC.

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

APPLE, INC.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CHRISTINA JENKINS and JESSICA VEFFER, on behalf of
themselves and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

2011 MAR 15 P 2: 58

David H. Yamazaki, Clerk of the Superior Court
County of Santa Clara, California

By: R. Nelson

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumple con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of Santa Clara
Downtown Superior Court
191 North First Street, San Jose, California 95113

CASE NUMBER:
(Número del Caso):

111 CV 196444

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Eric H. Gibbs, 601 California Street, 14th Floor, San Francisco, California 94108, Telephone: (415) 981-4800

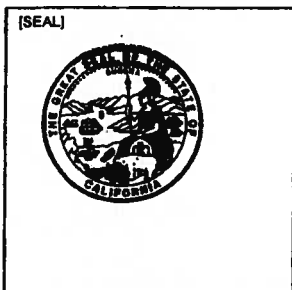
DATE: March 15, 2011
(Fecha)

DAVID H. YAMAZAKI
Chief Executive Officer, Clerk

Clerk, by
(Secretario)

R. Nelson, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

478

1 Eric H. Gibbs (State Bar No. 178658)
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 2 Geoffrey A. Munroe (State Bar No. 228590)
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 3 David Stein
 4 ds@girardgibbs.com (State Bar No. 257465)
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 5 amz@girardgibbs.com
 6 **GIRARD GIBBS LLP**
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 7 San Francisco, California 94104
 Telephone: (415) 981-4800
 8 Facsimile: (415) 981-4846

9 Attorneys for Plaintiffs

FILED
 2011 MAR 15 P 2:56

David H. Yamasaki, Clerk of the Superior Court
 County of Santa Clara, California
 By: _____

R. Nelson
 FILED Santa Clara Co
 03/15/11 3:56pm
 David H. Yamasaki
 Chief Executive Office
 By: rachelt DTSC1010
 R#201100028480
 CK \$945.00
 TL \$945.00
 Case: 1-11-CV-196444

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SANTA CLARA**

13 CHRISTINA JENKINS and JESSICA VEFFER,
 14 on behalf of themselves and all others similarly
 situated,

15 Plaintiffs,

16 vs.

17 APPLE, INC.,

18 Defendant.

Case No.

111 CV 196444

CLASS ACTION

**COMPLAINT FOR EQUITABLE RELIEF
BASED ON:**

1. UNFAIR COMPETITION LAW, BUS. & PROF. CODE § 17200 ET SEQ.
2. CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750 ET SEQ.

**CLASS ACTION COMPLAINT FOR EQUITABLE RELIEF
 CASE NO.**

ORIGINAL

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1 Plaintiffs Christina Jenkins and Jessica Veffler, on behalf of themselves and all others similarly
2 situated, allege the following against Defendant Apple, Inc.

3 **SUMMARY OF THE CASE**

4 1. As Apple's iPhone, iPod Touch, and iPad devices have proliferated, so has the amount of
5 personal information stored on these devices. Consumers have nonetheless chosen to download and
6 install software applications (called "apps" for short) developed by a broad array of third parties who, if
7 left to their own devices, could program the apps to access and transmit the information stored on the
8 consumers' devices. The reason that consumers are willing to download these apps is that they are
9 offered through Apple, who maintains an App Store that features only apps that Apple has screened and
10 approved for sale or distribution to its customers.

11 2. Consumers reasonably expect that Apple's approval process ensures that the apps
12 available on the Apple App Store will not invade consumers' privacy by unnecessarily accessing or
13 transmitting information stored on their Apple devices. Apple itself has represented to the public and
14 the federal government that it "reviews every application submitted to Apple for the App Store in order
15 to protect consumer privacy."

16 3. Apple's actual practice, however, as revealed by recently published independent
17 investigations, is to make apps available on the App Store regardless of whether the apps unnecessarily
18 collect and transmit user data. A large number of the most popular apps available on the App Store
19 transmit consumer information, often including GPS location data and the device's unique ID (which
20 can be used to link the data being sent to other data collected from the phone at other times or by other
21 apps).

22 4. Apple's practice is unfair and deceptive and should be enjoined under California's
23 consumer protection statutes. On behalf of themselves and other App Store users, Plaintiffs seek an
24 order requiring Apple to comply with its public representations and with consumers' reasonable
25 expectations by ceasing to offer apps on its App Store that unnecessarily access and transmit consumers'
26 data. Alternatively, Apple should be required to conspicuously inform consumers if an app offered on
27 the App Store transmits data beyond what a reasonable consumer would expect, what data the app
28 transmits, and to whom.

1 **PARTIES**

2 5. Plaintiff Christina Jenkins is a citizen and resident of Alamo, California, in the County of
3 Contra Costa. She owns an Apple iPhone 4 and has purchased at least one app from the Apple App
4 Store that unnecessarily accesses and transmits data from her iPhone.

5 6. Plaintiff Jessica Veffer is a citizen and resident of San Francisco, California, in the
6 County of San Francisco. She owns an Apple iPhone 3GS and has purchased at least one app from the
7 Apple App Store that unnecessarily accesses and transmits data from her iPhone.

8 7. Defendant Apple, Inc. is a California corporation with its principal place of business in
9 Cupertino, California.

10 **JURISDICTION AND VENUE**

11 8. This Court has jurisdiction over this action under Code of Civil Procedure section 410.10
12 and Article VI, section 10 of the California Constitution.

13 9. Venue is proper in this Court under Code of Civil Procedure section 395(a) because
14 Defendant Apple resides in this County.

15 **FACTUAL ALLEGATIONS**

16 **The Apple App Store**

17 10. Defendant Apple designs and markets consumer electronics, including the iPhone
18 smartphone, iPod Touch portable media player, and iPad computer tablet.

19 11. A key selling point of these devices is the ability to download and install software
20 applications, known simply as "apps," through the Apple App Store. For instance, users can download
21 apps from the Apple App Store that allow them to track news and sports scores, play games, listen to
22 music, and manage finances on their devices.

23 12. Consumers access the Apple App Store to download apps through the Apple iTunes
24 Store. In connection with registering to use the services available through the iTunes Store and App
25 Store, the parties agree that California law applies to all transactions and that any disputes will be
26 adjudicated in California state court. The iTunes Terms and Conditions state, "All transactions on the
27 Service are governed by California law, without giving effect to its conflict of law provisions. . . . You
28 expressly agree that exclusive jurisdiction for any claims or dispute with Apple or relating in any way to

1 your use of the Service resides in the courts of the State of California.” The App Store Terms and
2 Conditions contain a substantially identical provision.

3 13. Apps designed by third parties are available for download on the Apple App Store, but
4 Apple maintains sole discretion over the apps it makes available. Apple subjects each app to a well-
5 publicized screening approval process before making it available on the Apple App Store. In addition,
6 Apple provides developers with the software development kit used to create the apps, charges a fee for
7 making the apps available on the App Store, and shares in any proceeds from the sale of apps.

8 **Consumer Privacy Expectations**

9 14. Consumers are willing to download and use apps developed by third parties precisely
10 because of Apple’s control over the process. As Apple has acknowledged, “privacy and trust are vitally
11 important” to Apple App Store consumers. Thus, for instance, App Store consumers expect and assume
12 that Apple ensures that the apps it makes available on the App Store will not invade consumers’ privacy
13 by unnecessarily accessing information stored on consumers’ Apple devices.

14 15. In an open letter to the Federal Communications Commission (FCC), Apple has
15 confirmed that it “reviews every application submitted to Apple for the App Store in order to protect
16 consumer privacy.”

17 16. Consumers further expect and assume that they will be conspicuously notified (before
18 they download an app from the App Store) if an app will have access to data stored on their Apple
19 device (other than data essential to the app’s purpose) and will be conspicuously notified every time that
20 an app transmits that data to the app developer or to a third party.

21 17. Apple has recognized consumer expectations of privacy in the requirements set forth in
22 its standard agreements with app developers. Thus, for instance, Apple requires that apps (a) collect and
23 transmit user data only as necessary to provide the app’s intended services or functionality; (b) obtain
24 user consent before transmitting user data to third parties; and (c) obtain user consent before collecting
25 or transmitting user location data (e.g., through the device’s on-board GPS system).

26 **Apple’s Lack of Privacy Screening**

27 18. Despite Apple’s representation that it reviews every app to ensure consumer privacy
28 before making it available on the App Store, Apple’s practice is to approve apps with little to no regard

1 of whether they will invade consumers' privacy by unnecessarily accessing and transmitting information
2 stored on consumers' Apple devices.

3 19. Apple's practice is to make apps available on the App Store notwithstanding whether the
4 apps: (a) collect and transmit user data beyond that which is necessary to provide the app's intended
5 services or functionality; (b) do not obtain user consent before transmitting user data to third parties;
6 and/or (c) do not obtain user consent before collecting or transmitting user location data.

7 20. At least two independent investigators have recently designed systems to intercept and
8 record the data transmitted by a wide array of popular apps available on Apple's App Store; each
9 concluded that a substantial number of these apps collect and transmit private and sensitive information
10 without consumers' knowledge or consent.

11 21. For example, the Wall Street Journal's recently published examination of 51 popular
12 iPhone apps (many of which are also available for the iPad and iPod Touch) found that 35 transmitted
13 data that included the phone's unique device ID to other companies with the user's knowledge or
14 consent, and that 23 of these apps also transmitted the device's location to third parties. Several of these
15 applications are games, which no reasonable consumer would expect to track and transmit their location.

16 22. A published study by Bucknell University's Assistant Director of Information Security
17 and Networking similarly found that at least 68% of the popular iPhone apps evaluated transmit the
18 phone's unique device ID to a remote service. A substantial number of the apps collected both the
19 device ID and some form of user login data which ties to a known user account, and a number of the
20 apps were also observed to transmit the iPhone's GPS information as well.

21 23. A consumer's unique device ID is particularly sensitive information because it allows
22 data aggregators to link together all the various information that may be collected from a particular
23 user's iPhone, iPad, or iTouch. Many of the apps that transmit unique device IDs also plant tracking
24 cookies that don't expire for several years, which allows third parties to link the IDs from old, discarded
25 devices to the consumer's newest device.

26 24. As one of these data trackers, Traffic Marketplace, told the Wall Street Journal, the
27 unique device ID is "how we track everything." "We watch what apps you download, how frequently
28 you use them, how much time you spend on them, how deep into the app you go."

1 32. Excluded from the proposed class are Apple; any entity in which Apple has a controlling
2 interest; any of Apple's officers, directors, employees, successors, or assigns; anyone employed by
3 counsel for Plaintiffs; and any Judge to whom this case is assigned as well as his or her immediate
4 family.

5 33. Numerosity. Members of the class number in the hundreds of thousands, if not millions,
6 and thus are far too numerous to practically join in a single action. While Plaintiffs do not know the
7 exact number of class members, class members can be identified from Apple's records of App Store
8 downloads.

9 34. Commonality. Common questions of law and fact exist as to all class members and
10 predominate over questions affecting only individual class members. These common questions include
11 the following:

- 12 a. Whether a reasonable consumer expects or assumes that the apps Apple makes
13 available on its App Store will not invade consumers' privacy by unnecessarily
14 transmitting data stored on consumers' Apple devices;
- 15 b. Whether Apple's practice is to approve apps for sale or distribution on its App
16 Store regardless of whether they unnecessarily transmit data stored on consumers'
17 Apple device;
- 18 c. Whether Apple's practice is likely to mislead a reasonable consumer and thus
19 constitutes a fraudulent practice under the Unfair Competition Law;
- 20 d. Whether Apple's practice is, on balance, unscrupulous, unethical, or substantially
21 injurious to consumers, and thus constitutes an unfair practice under the Unfair
22 Competition Law;
- 23 e. Whether Apple violated the Consumers Legal Remedies Act by failing to
24 adequately disclose material facts to consumers—i.e., that particular apps on the
25 App Store transmit data beyond that reasonably necessary, what date the apps
26 transmit, and to whom; and
- 27 f. Whether Apple should be required to change its practice by either ceasing to offer
28 apps on its App Store that unnecessarily access and transmit consumers' data, or

1 by making adequate disclosures before a consumer downloads such an app from
2 the App Store.

3 35. Typicality. Plaintiffs' claims are typical of the claims of the class members because,
4 among other things, Plaintiffs and class members are Apple App Store customers and their legal claims
5 all arise from the same core Apple practice.

6 36. Adequacy. Plaintiffs are adequate representatives because their interests are aligned with
7 those of the class members they seek to represent, and because they have retained counsel competent
8 and experienced in complex class action litigation and intend to prosecute this action vigorously on class
9 members' behalf.

10 37. Superiority. A class action is superior to all other available methods for the fair and
11 efficient adjudication of this controversy given the joint nature of the relief sought and the expense of
12 addressing Apple's business practices through individual litigation. Apple has acted or refused to act on
13 grounds generally applicable to the class, thereby making appropriate final and injunctive relief with
14 respect to the members of the class as a whole.

15 **FIRST CAUSE OF ACTION**

16 **(For unlawful, unfair, and fraudulent business practices under**
17 **California Business and Professions Code § 17200, et seq.)**

18 38. Plaintiffs reallege, as if fully set forth, each and every allegation herein.

19 39. Apple has violated and continues to violate California's Unfair Competition Law, Cal.
20 Bus. & Prof. Code § 17200, et seq., which prohibits unlawful, unfair, or fraudulent business acts or
21 practices.

22 40. Apple's acts and practices, as alleged in this complaint, constitute unlawful practices in
23 that they violate the Consumers Legal Remedies Act.

24 41. Apple's acts and practices, as alleged in this complaint, constitute fraudulent practices in
25 that they are likely to deceive a reasonable consumer. A reasonable consumer expects that Apple
26 ensures that the apps it makes available on the Apple App Store will not invade consumers' privacy by
27 unnecessarily accessing or transmitting information stored on their Apple devices.

28 42. Apple's acts and practices, as alleged in this complaint, constitute unfair practices in that

1 (i) they are unethical, unscrupulous, and substantially injurious to consumers; (ii) any legitimate utility
2 of Apple's conduct is outweighed by the harm to consumers; (iii) the injury is not one that consumers
3 reasonably could have avoided; and/or (iv) the conduct runs afoul of the state and federal policy that
4 consumer information should not be captured or shared without knowledge and consent.

5 43. The Federal Trade Commission (FTC) has recently emphasized the importance of
6 ensuring that consumers understand and maintain ultimate control over their data. Noting that
7 "[c]onsumers live in a world where information about their purchasing behavior, online browsing habits,
8 and other online and offline activity is collected, analyzed, combined, used, and shared, often
9 instantaneously and invisibly," the FTC expressed particular concern about the "ubiquitous collection
10 and use of consumer data; consumers' lack of understanding and ability to make informed choices about
11 the collection and use of their data; . . . and the blurring of the distinction between personally
12 identifiable information and supposedly anonymous or de-identified information."

13 44. As a result of Apple's unfair, unlawful, and fraudulent business practices, Plaintiffs
14 have suffered injury in fact and lost money or property. Each Plaintiff purchased at least one app that
15 she would not have purchased were it not for Apple's practices; in addition, plaintiffs' data was
16 transmitted to third parties without their permission.

17 45. Plaintiffs and class members are entitled to equitable relief, including an order requiring
18 Apple to cease to offer apps on its App Store that unnecessarily access and transmit consumers' data.
19 Alternatively, Apple should be required to conspicuously inform consumers if an app offered on the App
20 Store transmits data beyond what a reasonable consumer would expect, what data the app transmits, and
21 to whom.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et. seq.)**

24 46. Plaintiffs reallege, as if fully set forth, each and every allegation herein.

25 47. Apple has violated the Consumers Legal Remedies Act (CLRA), California Civil Code
26 sections 1770(a)(2),(5),(7),(14), and (16) by engaging in unfair methods of competition and unfair and
27 deceptive acts and practices in connection with transactions—namely, the sale of apps to Plaintiffs and
28 class members—that are intended to result and have resulted in the sale and lease of goods or services to

1 consumers.

2 48. In connection with the sale of apps to Plaintiffs and class members, Apple omitted
3 material information about the apps which it was legally obligated to disclose. Apple did not inform and
4 has never informed Plaintiffs or class members when an app offered on the App Store transmits data
5 beyond what a reasonable consumer would expect, what data the app transmits, and to whom.

6 49. Apple has also failed to inform consumers that Apple approves and makes apps available
7 on the App Store notwithstanding whether the apps: (a) collect and transmit user data beyond that which
8 is necessary to provide the app's intended services or functionality; (b) do not obtain user consent before
9 transmitting user data to third parties; and/or (c) do not obtain user consent before collecting or
10 transmitting user location data.

11 50. The undisclosed information is material to a reasonable consumers' decision of whether
12 or not to download a particular app from the App Store, and Apple was in a unique position to know this
13 information in relation to its customers.

14 51. As a result of Apple's violations of the CLRA, Plaintiffs have suffered damages. Each
15 Plaintiff purchased at least one app that she would not have purchased were it not for Apple's practices;
16 in addition, Plaintiffs' data was transmitted to third parties without their permission.

17 52. Plaintiffs and class members are entitled to equitable relief, including an order requiring
18 Apple to cease to offer apps on its App Store that unnecessarily access and transmit consumers' data.
19 Alternatively, Apple should be required to conspicuously inform consumers if an app offered on the App
20 Store transmits data beyond what a reasonable consumer would expect, what data the app transmits, and
21 to whom.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the class, pray for judgment as
24 follows:

- 25 a. For an order certifying the proposed class and appointing Plaintiffs and their counsel to
26 represent the class;
- 27 b. For an order requiring Apple to cease to offer apps on its App Store that unnecessarily
28 access and transmit consumers' data; or alternatively, for an order requiring Apple to

1 conspicuously inform consumers if an app offered on the App Store transmits data
2 beyond what a reasonable consumer would expect, what data the app transmits, and to
3 whom;

- 4 c. For such other orders or judgments as may be necessary to prevent the continued use or
5 employment of the unlawful, unfair, and/or fraudulent practice alleged herein;
6 d. For an award of reasonable attorneys' fees and costs of suit, including expert witness fees;
7 and
8 e. For such other and further relief as the Court may deem just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a jury trial on all claims so triable.
11

12 Dated: March 15, 2011

Respectfully Submitted

13 **GIRARD GIBBS LLP**

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