

EXHIBIT A

ORIGINAL

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

13 ADAM WEISBLATT, individually and on
 14 behalf of all others similarly situated,
 15
 Plaintiff,
 16
 v.
 17 APPLE INC., AT&T INC., AT&T
 MOBILITY LLC, and Does 1-10,
 18
 Defendants.

Case No. **CV 10-02553**
CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL
PVT

19
 20 Upon personal knowledge as to his own acts and status, and based upon his
 21 investigation, his counsel's investigation and information and belief as to all other matters,
 22 Plaintiff Adam Weisblatt ("Plaintiff"), on behalf of himself and all others similarly situated,
 23 alleges as follows:

NATURE OF THE ACTION

24
 25 1. This is a class action brought on behalf of purchasers of the Apple 3G-enabled
 26 iPad. An iPad is a wireless computer product used for downloading and storing large amounts of
 27 multi-media data and applications, viewing and listening to video, movies, and music, as well as
 28 sending and receiving email. The wireless service plans for iPads are provided, and billed, on a

CLASS ACTION COMPLAINT
CASE NO. _____

FAXED

1 monthly basis according to the amount of data used, or downloaded, by the customer. Apple and
2 AT&T sold the 3G-enabled iPads with promises that “unlimited data” service plans would always
3 be available at the customers’ option.

4 2. As of June 7, 2010, Apple and AT&T discontinued providing the “unlimited data”
5 plan they promised in connection with their sales of the 3G-enabled iPads. Apple and AT&T had
6 promised consumers flexibility with their data plans, allowing them the ability to freely switch
7 back and forth between the limited data plan, the unlimited data plan, and no 3G data plan, based
8 on their data needs. The iPad purchasers who initially opted for the limited data plan or no 3G
9 data plan have been stripped of their ability to later opt for the unlimited data plan, and even those
10 customers currently signed up for the unlimited data plan cannot switch to a limited plan or no 3G
11 data plan and then later opt for the unlimited plan again, as was originally promised. Apple and
12 AT&T announced this policy change within just weeks after selling hundreds of thousands of 3G-
13 enabled iPads upon the product’s initial launch.

14 3. The availability of an unlimited 3G data plan, and, in particular, the option to
15 switch in and out of an unlimited data plan, motivated Plaintiff and other customers to purchase
16 iPads with 3G capability, which cost customers approximately \$130 more (before tax) than an
17 equivalent iPad without 3G capability. An unlimited data plan is attractive to customers who
18 wish to download movies and other data-intensive applications and content on their iPads at a
19 reasonable fixed monthly cost. Having the option to switch in an out of the unlimited data plan is
20 attractive to customers because it allows them access to unlimited data when they need it (such as
21 when they go on vacation and want to use their iPads to download movies and other data-
22 intensive content) and also allows them to not pay for unlimited data when they do not need it.
23 Defendants’ ubiquitous marketing of the unlimited data plan and the option for customers to turn
24 such plan on and off based on their data needs, on their respective websites and elsewhere,
25 reflects Defendants’ awareness that these options were highly important to customers’ purchase
26 decisions.

27 4. Plaintiff and the Class seek damages, restitution, and injunctive relief for
28 Defendants’ ubiquitous false representations, on their respective websites and elsewhere, that

1 customers who purchase iPads with 3G capability would be able to freely switch in and out of an
2 unlimited 3G data plan each month as their data needs demanded.

3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because
5 the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, and there is
6 minimal diversity because numerous members of the Class are citizens of different states than
7 Defendants.

8 6. This Court has personal jurisdiction over Defendants because Apple is
9 headquartered in, and is incorporated in, California; a substantial portion of the wrongdoing
10 alleged in this Complaint took place in California; Defendants are authorized to do business in
11 California; Defendants have sufficient minimum contacts with California and/or Defendants
12 otherwise intentionally avail themselves of the markets in California through the promotion,
13 marketing and sale of their products and services in California to render the exercise of
14 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

15 7. Venue is proper under 28 U.S.C. § 1391(a) because Apple has its headquarters in
16 this District and is incorporated in this District, and because a substantial part of the events or
17 omissions giving rise to Plaintiffs' claims occurred in this District.

18 8. **Intradistrict Assignment:** Pursuant to Northern District of California Civil Local
19 Rules 3-2 and 3-5, assignment to the San Jose Division of the Northern District of California is
20 appropriate. Defendant Apple Inc. is headquartered in Santa Clara County, and thus a substantial
21 part of the events or omissions which give rise to the claims occurred in Santa Clara County.

22 **PARTIES**

23 9. Plaintiff Adam Weisblatt is a citizen of, and resides in, Fulton, New York.

24 10. Defendant Apple Inc. ("Apple") is a California corporation with its headquarters in
25 Cupertino, California.

26 11. Apple is a multi-national corporation that designs and markets computer software,
27 personal computers, and consumer electronics, including mobile devices such as the iPhone and
28

1 iPad. By revenue, Apple is the largest mobile device company in the world. Apple markets and
2 sells its products and services directly to its customers in stores and online.

3 12. Defendant AT&T Inc. is a Delaware corporation with its headquarters in Dallas,
4 Texas.

5 13. Defendant AT&T Mobility LLC is a wholly-owned subsidiary of AT&T Inc., with
6 its headquarters in Atlanta, Georgia.

7 14. AT&T Inc. and AT&T Mobility LLC are collectively referred to herein as
8 "AT&T." Apple and AT&T are collectively referred to herein as "Defendants."

9 15. AT&T provides telecommunication products and services to consumers,
10 businesses, and other telecommunication service providers under the AT&T brand worldwide.
11 AT&T Mobility LLC began operations in October 2000, and in 2004 acquired AT&T Wireless
12 Services, Inc. Upon AT&T Inc.'s acquisition of BellSouth in 2006, AT&T Mobility became a
13 wholly-owned subsidiary of AT&T Inc. By revenue, AT&T is the largest wireless carrier and is
14 the second largest provider of mobile telephony service in the United States, with over 85.1
15 million wireless customers and more than 150 million total customers.

16 16. Through an agreement with Apple, AT&T is, and at all relevant times has been,
17 the exclusive provider of wireless service for all iPads. On information and belief, Apple receives
18 substantial consideration from AT&T in exchange for allowing AT&T to be the exclusive
19 provider of wireless service for all iPads.

20 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

21 17. On or around April 30, 2010, Defendants began offering iPads with exclusive
22 AT&T 3G service. Apple advertised the "No-contract, 3G service," telling customers that "[i]n
23 the U.S., 3G service is available from AT&T. You can choose from breakthrough data plans – no
24 long-term contract required." See Exhibit A, attached hereto. AT&T likewise advertised the 3G-
25 capable versions of the iPad, and consumers could follow a link on AT&T's website to purchase
26 3G-capable iPads. See Exhibit B, attached hereto. The iPads with 3G capability cost customers
27 approximately \$130 more (before tax) than the equivalent iPad models without 3G capability.
28 See Exhibit A, attached hereto

1 18. Since its launch, Defendants have sold over 2 million iPads. (See
2 <http://cbs5.com/local/iPad.Apple.sales.2.1724762.html>). On information and belief, a substantial
3 portion of the iPads that Defendants have sold have been iPads with 3G capability.

4 19. From April 30, 2010 until June 7, 2010, Defendants offered prospective purchasers
5 of 3G-capable iPads two 3G data plans: (a) 250 MB of data for \$14.99 per month, with additional
6 data available in 250 MB increments for an added charge; or (b) unlimited data for \$29.99 per
7 month. See Exhibits A-C, attached hereto.

8 20. Defendants represented that whether or not customers initially signed up for the
9 unlimited data plan, they would continue to have the option to “upgrade” to the unlimited data
10 plan, and to switch in and out of the unlimited data plan, as their monthly needs demanded.

11 21. Customers who purchased 3G-capable iPads were not required to chose a single
12 3G data plan to apply to their service for any longer than a one month period. Rather, Defendants
13 consistently advertised that customers would be able to sign up for, and change, their data plans
14 each month as their data needs demanded, and, specifically, that they would be able to “upgrade
15 to” or “switch” in and out of the unlimited data plan on a monthly basis in the future as their data
16 needs demanded.

17 22. Defendants expressly promised their customers that if they purchased a 3G-
18 capable iPad, they could later upgrade to the unlimited data plan and could switch in and out of
19 the unlimited data plan as their data needs demanded. For example, Apple advertised to iPad 3G
20 customers:

21 a. **“No-contract 3G service.** In the United States, 3G service is
22 available through a breakthrough deal with AT&T. *You choose the amount of data per month you*
23 *want to buy — 250MB or unlimited.* If you choose the 250MB plan, you’ll receive onscreen
24 messages as you get close to your monthly data limit so *you can decide whether to turn off 3G or*
25 *upgrade to the unlimited plan.* Best of all, there’s no long-term contract. *So if you have a*
26 *business trip or vacation approaching, just sign up for the month you’ll be traveling and cancel*
27 *when you get back.* You don’t need to visit a store to get 3G service. You can sign up, check your
28

1 data usage, manage your account, or cancel your service — all from your iPad.” Exhibit C,
2 attached hereto (emphasis added).

3 b. “**Manage your data plan.** iPad makes it easy to choose the data
4 plan that works best for you. *When you need more data, you can add another 250MB or upgrade*
5 *to the Unlimited Data plan.* Because you sign up for a data plan in monthly increments, you can
6 cancel your plan at any time and then sign up again whenever you need 3G service.” Exhibit C,
7 attached hereto (emphasis added).

8 c. “[Y]ou can monitor your data usage and change your plan at any
9 time, including switching to unlimited data or cancelling 3G service if you know you won’t need
10 it.” Exhibit A, attached hereto.

11 d. “As you get close to your monthly data limit, you’ll receive
12 onscreen messages to help you decide whether to upgrade to another 250MB or switch to the
13 unlimited plan.” Exhibit A, attached hereto.

14 e. “There are two monthly data plans: 250MB or unlimited. There’s
15 no contract, and you can sign up and change your service right on your iPad.” Exhibit A,
16 attached hereto.

17 23. Likewise, AT&T advertised: “AT&T offers two data plan options – 250MB or
18 unlimited data, with recurring monthly charge and no long-term contract. To help you manage
19 your data with a 250 MB plan, iPad will notify you at 20%, 10%, and when there’s no more data
20 available, so you can decide if you want to add more data or upgrade to an unlimited data plan.”
21 Exhibit B, attached hereto.

22 24. An unlimited 3G data plan is material to iPad customers, because customers can
23 use the iPad to, among other things, download data-intensive applications and content, such as
24 full-length movies. On information and belief, for example, under a \$14.99 per month, 250 MB
25 plan, a consumer could download a little over 2 hours of video content per month before incurring
26 overage charges, whereas under the \$29.99 per month unlimited data plan, a consumer could
27 finish a 3 hour movie, and download unlimited other movies and content, without incurring any
28 overage charges.

1 25. Having the option to turn the unlimited data plan on and off is material to
2 customers because it allows them access to unlimited data, at a reasonable flat cost, when they
3 need it (such as when they are going on vacation, and want to use their iPads to download full-
4 length movies), while at the same time allowing them to not pay for unlimited data when they do
5 not need it.

6 26. Defendants marketed and advertised the unlimited data plan and the ability to
7 switch in and out of the unlimited data plan to induce consumers to purchase iPads with 3G
8 capability. The iPads with 3G capability cost significantly more than the equivalent iPads
9 without 3G capability, but they were seen as worth the added cost by consumers who wanted the
10 flexibility and option of getting unlimited data for a fixed cost when they needed it.

11 27. Defendants' representations regarding the continued availability of unlimited data
12 service plans were material to customers' decisions to purchase iPads with 3G capability,
13 Defendants intended that customers rely on those representations, and Plaintiff and the Class did
14 rely on those misrepresentations in making their purchase decisions.

15 28. Defendants' representations regarding the continued availability of unlimited data
16 service plans for purchasers of iPads with 3G capability were false, and Defendants knew or
17 should have known that those representations were false.

18 29. On or around June 2, 2010, Defendants announced that as of June 7, 2010, they
19 would no longer offer an unlimited 3G data plan for iPad customers. Pursuant to this change,
20 customers can no longer choose to pay a fixed monthly rate for unlimited 3G data, but rather are
21 required to choose between other, limited data plans. *See* Exhibit D, attached hereto (Press
22 Release).

23 30. On information and belief, after June 7, 2010, customers who purchased iPads
24 with 3G capability before June 7, 2010 can only obtain the unlimited data plan if they were
25 already signed up for it as of June 7, 2010. Moreover, if those customers *ever* discontinue
26 subscribing to the unlimited data plan (*e.g.*, by changing to a different plan or choosing to have no
27 3G plan for a particular month), they cannot switch back to the unlimited data plan. In other
28 words, even though Defendants widely trumpeted to customers the availability of the unlimited

1 3G data plan and, specifically, that customers would be able to switch in and out of the unlimited
2 data plan in the future as their data needs demanded, those customers who did not initially sign up
3 for the unlimited data plan will *never* have the option of “switching” or “upgrading” to the
4 unlimited data plan in the future, as was promised. Likewise, those customers who did initially
5 sign up for the unlimited data plan have lost the ability to switch in and out of the unlimited data
6 plan, as was promised.

7 31. Defendants unilaterally withdrew the unlimited data plan option only just over a
8 month after they started selling iPads with 3G capability. Defendants stripped Plaintiff and the
9 Class of one of the key promised benefits of purchasing a 3G-capable iPad in some cases just
10 days (and, at most, about a month) after they purchased their iPads in reliance on Defendants’
11 misrepresentations.

12 32. Defendants’ unilateral withdrawal of the unlimited data plan option was timed just
13 a few days after the 30-day return deadline expired for the substantial number of customers,
14 including Plaintiff, who bought 3G-capable iPads during the initial rush when the product was
15 first launched. *See, e.g.*, <http://news.ycombinator.com/item?id=1397702>.

16 33. Defendants’ misrepresentations continued right up to the day they withdrew the
17 unlimited data plan option. As of at least June 5, 2010—three days after Defendants announced
18 the June 7, 2010 change and just two days before the change was scheduled to take effect (*see*
19 Exhibit D, attached hereto)—Apple continued to falsely advertise on its website that purchasers
20 of 3G-capable iPads would be able to “upgrade” to the unlimited data plan, and switch in and out
21 of the unlimited data plan, in the future. *See* Exhibit E, attached hereto. As of at least June 5,
22 2010, AT&T also continued to advertise this option despite the pending change that rendered the
23 representation completely false. *See* Exhibit F, attached hereto.

24 34. Even after the June 7, 2010 change took effect, Apple’s website continued to
25 misrepresent to customers that the unlimited data plan was available for 3G-capable iPads and
26 that customers would be able to upgrade in the future to the unlimited data plan, and switch in and
27 out of the unlimited data plan, as their data needs demanded. *See* Exhibit G, attached hereto.

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1 However, due to variances in his work and life schedules, there are several months each year
2 where an unlimited 3G data plan would not benefit Mr. Weisblatt. Thus, Mr. Weisblatt
3 anticipated using the unlimited data plan in some months and not in others. The appeal to Mr.
4 Weisblatt of the 3G-capable iPad was that, according to Defendants' representations, unlimited
5 3G data would be available to him for the months that he needed it, but he was not required to pay
6 for unlimited data in the months that he didn't need it.

7 41. As a result of Defendants' June 7, 2010 policy change, Mr. Weisblatt no longer
8 has the option to switch in and out of the unlimited 3G data plan, as he was promised.

9 42. Had he known that his access to the unlimited 3G data plan option would be
10 restricted in the way it has been pursuant to the June 7, 2010 change (*i.e.*, that he would not be
11 allowed to switch in and out of the unlimited data plan based on his needs), Mr. Weisblatt would
12 not have purchased the iPad with 3G capability.

13 43. Mr. Weisblatt has been, and will continue to be, injured as a result of Defendants'
14 conduct alleged herein, in that he paid more than he otherwise would have for his iPad and/or
15 related services, has been denied important benefits that he was promised by Defendants and that
16 he paid for, and will be assessed excessive charges for downloading data to his iPad.

17 **CLASS ACTION ALLEGATIONS**

18 44. Plaintiff brings this action on behalf of himself and all others similarly situated, as
19 members of a proposed nationwide class (the "Class") initially defined as:

20 All persons in the United States who purchased an Apple iPad with
21 3G capability between April 30, 2010 and June 6, 2010.

22 Excluded from this Class is any person, firm, trust, corporation, or
23 other entity related to or affiliated with Apple Inc., AT&T Inc., and
AT&T Mobility LLC.

24 45. This action is brought and may properly be maintained as a class action pursuant
25 to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). This action satisfies the
26 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of
27 these provisions.
28

1 46. Typicality Under Rule 23(a)(1). The Class is so numerous that the individual
2 joinder of all members is impracticable. While the Class's exact number and the identity of Class
3 members is currently unknown and can only be ascertained through appropriate discovery,
4 Plaintiff is informed and believes that the Class includes at least tens of thousands of individuals,
5 if not many more.

6 47. Commonality Under Rule 23(a)(2). Common legal and factual questions exist that
7 predominate over any questions affecting only individual Class members. These common
8 questions, which do not vary from Class member to Class member, and which may be determined
9 without reference to any Class member's individual circumstances, include, but are not limited to
10 whether:

11 a. The offer of an unlimited data plan and/or the ability to switch in
12 and out of an unlimited data plan are material facts that reasonable purchasers would have
13 considered important in making their purchase decisions;

14 b. Defendants engaged in unfair, false, misleading, or deceptive acts
15 or practices regarding its marketing and sale of 3G-capable iPads, in violation of the UCL;

16 c. Defendants represented, through their words and conduct, that their
17 iPads with 3G capability had characteristics, uses, or benefits they did not actually have, in
18 violation of the CLRA;

19 d. Defendants advertised the 3G-capable iPads with the intent not to
20 sell them as advertised, in violation of the CLRA;

21 e. Defendants' conduct regarding the marketing and sale of its 3G
22 iPads was likely to mislead or deceive, and is therefore fraudulent, within the meaning of the
23 UCL;

24 f. Defendants' conduct alleged herein constitutes false advertising in
25 violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*;

26 g. Defendants' conduct alleged herein constitutes fraud and/or
27 intentional misrepresentation;

28

1 h. Defendants' conduct alleged herein constitutes negligent
2 misrepresentation;

3 i. Defendants have been unjustly enriched by their conduct alleged
4 herein;

5 j. Plaintiff and the Class are entitled to injunctive and/or other
6 equitable relief, including restitution and disgorgement, and if so, the nature and amount of such
7 relief;

8 k. Defendants are liable for actual and/or compensatory damages, and,
9 if so, the amount of such damages;

10 l. Defendants are liable for punitive damages, and if so, the amount of
11 such damages.

12 48. Typicality Under Rule 23(a)(3). Plaintiff's claims are typical of the Class
13 members' claims. Defendants' common course of conduct caused Plaintiff and all Class
14 members the same damages. In particular, Defendants' conduct caused each Class member's
15 economic losses. Likewise, Plaintiff and other Class members must prove the same facts in order
16 to establish the same claims.

17 49. Adequacy of Representation Under Rule 23(a)(4). Plaintiff is an adequate Class
18 representative because he is a Class member and his interests do not conflict with Class interests.
19 Plaintiff retained counsel competent and experienced in consumer protection class actions, and
20 together Plaintiff and counsel intend to prosecute this action vigorously for the Class's benefit.
21 Plaintiff and his counsel will fairly and adequately protect Class interests.

22 50. The Class can be properly maintained under Rule 23(b)(2). Defendants have acted
23 or refused to act, with respect to some or all issues presented in this Complaint, on grounds
24 generally applicable to the Class, thereby making appropriate final injunctive relief with respect
25 to the Class as a whole.

26 51. The Class can be properly maintained under Rule 23(b)(3). A class action is
27 superior to other available methods for the fair and efficient adjudication of this litigation because
28 individual litigation of each Class member's claim is impracticable. Even if each Class member

1 could afford individual litigation, the court system could not. It would be unduly burdensome if
2 thousands of individual cases proceed. Likewise, individual litigation presents a potential for
3 inconsistent or contradictory judgments, the prospect of a race for the courthouse, as well as the
4 risk of an inequitable allocation of recovery among those with equally meritorious claims.
5 Individual litigation further increases the expense and delay to all parties and the courts because it
6 requires individual resolution of common legal and factual questions. By contrast, the class
7 action device presents far fewer management difficulties and provides the benefit of a single
8 adjudication, economies of scale, and comprehensive supervision by a single court.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**
11 **(Intentional Misrepresentation)**

12 52. Plaintiff, individually and on behalf of the Class, incorporates by reference all of
13 the allegations contained in the preceding paragraphs of this Complaint.

14 53. As alleged herein, in the course of conducting their business of selling iPads and
15 related services, Defendants have intentionally made numerous material misrepresentations of
16 fact to Plaintiff and all members of the Class concerning the benefits of purchasing an iPad with
17 3G capability and the nature of customers' unlimited 3G data plan options.

18 54. Defendants intentionally failed to disclose material information regarding the
19 nature of 3G data plan options to Plaintiff and the Class.

20 55. Defendants' misrepresentations alleged herein were the type of misrepresentations
21 that are material—*i.e.*, a reasonable person would attach importance to them and would be
22 induced to act on the information in making purchase decisions.

23 56. Defendants knew that the misrepresentations alleged herein were false at the time
24 they made them and/or acted recklessly in making such misrepresentations.

25 57. In making the misrepresentations alleged herein, Defendants intended that Plaintiff
26 and the Class would rely on such misrepresentations and purchase iPads with 3G capability.

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1 58. Defendants' misrepresentations alleged herein are objectively material to the
2 reasonable consumer, and therefore reliance upon such misrepresentations may be presumed as a
3 matter of law.

4 59. Plaintiff and the Class reasonably and justifiably relied to their detriment on
5 Defendants' intentional misrepresentations.

6 60. Defendants' intentional misrepresentations were a substantial factor in causing
7 Plaintiff and the Class to purchase iPads with 3G capability from Defendants.

8 61. As a proximate result of Defendants' intentional misrepresentations, Plaintiff and
9 each member of the Class suffered damages in an amount to be proven at trial.

10 62. Defendants directly benefited from, and were unjustly enriched by, their
11 intentional misrepresentations.

12 63. Defendants acted with "malice," as that term is defined in Cal. Civ. Code §
13 3294(c)(1), by engaging in the conduct alleged herein, which was specifically intended by
14 Defendants to cause substantial injury to Plaintiff and the members of the Class.

15 64. Defendants' conduct alleged herein constitutes "fraud," as that term is defined in
16 Cal. Civ. Code 3294(c)(3), because such conduct involved intentional misrepresentations, deceit,
17 and/or concealment of material facts known to Defendants, and was done with the intent to cause
18 injury to its customers.

19 65. Plaintiff and the Class are entitled to actual and punitive damages and attorneys'
20 fees under Cal. Civ. Code § 3294(a).

21 66. As a proximate result of Defendants' intentional misrepresentations, Plaintiff and
22 each member of the Class suffered an ascertainable loss and are entitled to equitable relief and
23 compensatory and punitive damages, in amounts to be proven at trial.

24
25 **SECOND CAUSE OF ACTION**
26 **(False Promise/Fraud)**

26 67. Plaintiff, individually and on behalf of the Class, incorporates by reference all of
27 the allegations contained in the preceding paragraphs of this Complaint.

28

1 68. Defendants made false promises to Plaintiff and all members of the Class
2 regarding the benefits of purchasing iPads with 3G capability and the nature of customers'
3 unlimited 3G data plan options.

4 69. Defendants made such false promises for the purpose of inducing Plaintiff and the
5 Class to purchase iPads with 3G capability.

6 70. The false promises alleged herein were the type of promises considered to be
7 material, *i.e.*, a reasonable person would attach importance to them and would be induced to act
8 on the information in making purchase decisions.

9 71. Defendants made such false promises with the knowledge that they would not
10 fulfill them and with the intention of not fulfilling them.

11 72. The false promises alleged herein are objectively material to the reasonable
12 consumer, and therefore reliance upon such promises may be presumed as a matter of law.

13 73. Plaintiff and the Class reasonably and justifiably relied to their detriment on
14 Defendants' false promises.

15 74. Defendants' false promises were a substantial factor in causing Plaintiff and the
16 Class to purchase iPads with 3G capability from Defendants.

17 75. As a proximate result of Defendants' false promises, Plaintiff and each member of
18 the Class suffered damages in an amount to be proven at trial.

19 76. Defendants directly benefited from, and were unjustly enriched by, having made
20 the false promises alleged herein.

21 77. Defendants acted with "malice," as that term is defined in Cal. Civ. Code §
22 3294(c)(1), by engaging in the conduct alleged herein, which was specifically intended by
23 Defendants to cause substantial injury to Plaintiff and the members of the Class.

24 78. Defendants' conduct alleged herein constitutes "fraud," as that term is defined in
25 Cal. Civ. Code 3294(c)(3), because such conduct involved Defendants making material promises,
26 which Defendants knew to be false, with the intent to cause injury to its customers.

27 79. Plaintiff and the Class are entitled to actual and punitive damages and attorneys'
28 fees under Cal. Civ. Code § 3294(a).

1 c. Misrepresenting that their transactions with Plaintiff and the Class
2 conferred benefits and rights on Plaintiff and the Class, and obligations on Defendants, which
3 were not, in fact, conferred, in violation of Cal. Civ. Code § 1770(a)(14); and

4 d. Advertising goods and services to Plaintiff and the Class with the
5 intent not to sell them as advertised, in violation of Cal. Civ. Code § 1770(a)(9).

6 100. In addition, under California law, a duty to disclose arises in four circumstances:
7 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had
8 exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively
9 conceals a material fact from the plaintiff; and (4) when the defendant makes partial
10 representations but also suppresses some material facts.

11 101. Defendants had a duty to disclose to Plaintiff and the Class the true nature of the
12 unlimited data plan options because: (a) Defendants had exclusive knowledge of the information
13 at the time of sale; (b) Defendants actively concealed from Plaintiff and the Class the true nature
14 of the unlimited data plan options, which was material information to customers; and (c)
15 Defendants made partial representations to Plaintiff and the Class regarding the nature of the
16 unlimited data plan options.

17 102. Defendants violated the CLRA by concealing material information from Plaintiff
18 and the Class regarding the true nature of the unlimited data plan options when they had a duty to
19 disclose that information.

20 103. Defendants' misrepresentations and omissions in violation of the CLRA were
21 likely to mislead consumers. Plaintiffs and the Class reasonably interpreted Defendants'
22 representations and omissions to mean that they would be able to subscribe to, and switch in and
23 out of, the unlimited data plan in the future as their monthly data needs demanded, whether or not
24 they initially signed up for the unlimited data plan.

25 104. Defendants' conduct alleged herein was intentional and was specifically designed
26 to induce customers to purchase iPads with 3G capability.

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1 concealing the true nature of the unlimited data plan options from Plaintiff and the Class; and (c)
2 denying Plaintiff and the Class the promised benefit of the continuing option to switch in and out
3 of the unlimited data plan and unilaterally imposing upon Plaintiff and the Class a choice between
4 less advantageous data plan options.

5 113. In addition, the conduct alleged herein constitutes fraud, intentional
6 misrepresentation, negligent misrepresentation, unjust enrichment, and violations of the CLRA,
7 thus providing the basis for a finding of liability under the unlawful prong of Cal. Bus. & Prof.
8 Code §§ 17200 *et seq.*

9 114. Defendants' unfair, unlawful, and deceptive acts and practices alleged herein were
10 specifically designed to induce Plaintiff and the Class to purchase iPads with 3G capability.

11 115. Defendants' unfair, unlawful, and deceptive acts and practices alleged herein have
12 deceived and/or are likely to deceive Plaintiff and other reasonable consumers.

13 116. Defendants' misrepresentations and omissions alleged herein were material in that
14 a reasonable person would attach importance to such information and would be induced to act
15 upon such information in making purchase decisions.

16 117. Defendants' misrepresentations and omissions alleged herein are objectively
17 material to the reasonable consumer, and therefore reliance upon such misrepresentations may be
18 presumed as a matter of law.

19 118. Plaintiff and the Class relied to their detriment on Defendants' misrepresentations
20 and omissions in purchasing their 3G-capable iPads from Defendants.

21 119. Plaintiff and each member of the Class have been damaged as a result of
22 Defendants' unfair, unlawful, and deceptive conduct alleged herein. They are entitled to
23 injunctive relief and restitution, in an amount to be proven at trial.

24 **SIXTH CAUSE OF ACTION**
25 **(Violation of Cal. Bus. & Prof. Code Section 17500, *et seq.*—False Advertising)**

26 120. Plaintiff, individually and on behalf of the Class, incorporates by reference all of
27 the allegations contained in the preceding paragraphs of this Complaint.

28

1 Plaintiff and the Class have reasonably relied on these false representations in purchasing iPads
2 with 3G capability.

3 129. As alleged herein, Defendants made false promises to Plaintiff and the Class which
4 Defendants did not intend to keep, and which Defendants did not keep, to induce Plaintiff and the
5 Class to purchase iPads with 3G capability. Plaintiff and the Class have reasonably relied on
6 these false promises in purchasing iPads with 3G capability.

7 130. As alleged herein, Plaintiff and the Class did not receive all of the benefits that
8 they were promised by Defendants, and paid more to Defendants for their products and services
9 than they otherwise would have paid, and will continue to do so.

10 131. It would be inequitable and unconscionable for Defendants to retain the profits,
11 benefits, and other compensation they obtained from their deceptive, misleading, and unlawful
12 conduct alleged herein.

13 132. Plaintiff and the Class are entitled to restitution of, disgorgement of, and/or the
14 imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by
15 Defendants from their deceptive, misleading, and unlawful conduct alleged herein.

16 **PRAYER FOR RELIEF**

17 Plaintiff, on behalf of himself and the Class, request that the Court order the following
18 relief and enter judgment against Defendants as follows:

19 a. An Order certifying the proposed Class and appointing Plaintiff and
20 his counsel to represent the Class;

21 b. An Order that Defendants be permanently enjoined from its
22 improper activities and conduct described herein;

23 c. A judgment awarding Plaintiff and the Class actual and
24 compensatory damages in an amount according to proof;

25 d. A judgment awarding Plaintiff and the Class restitution in an
26 amount according to proof, including without limitation, restitution of, disgorgement of, and/or
27 the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained
28 by Defendants from their deceptive, misleading, and unlawful conduct alleged herein;

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- e. A judgment awarding Plaintiff and the Class punitive damages;
- f. Pre-judgment and post-judgment interest;
- g. Attorneys' fees and expenses and the costs of this action; and
- h. All other and further relief as the Court deems necessary, just and

proper.

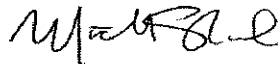
JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

Dated: June 9, 2010

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: 

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