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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM MOYLAN,)
Individually and on Behalf of All Others Similarly)
Situating,)

Plaintiff,)

vs.)

APPLE, INC.,)
a California Corporation,)

Defendant.)

CLASS ACTION

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

NOW COME the Plaintiff, **WILLIAM MOYLAN** (hereinafter “Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, **RIBBECK LAW CHARTERED**, and complaining of the Defendant, **Apple, Inc.** (hereinafter “Defendant”), a California corporation, states as follows:

I. INTRODUCTION

1. This class action is brought by Plaintiff, individually and on behalf of putative statewide classes in Illinois and other States, as well as a putative nationwide class of

similarly situated individuals located throughout the country (hereinafter "the Class"), against Defendant for surreptitiously collecting and obtaining private location information in violation of Illinois law.

THE PARTIES

2. Plaintiff, **WILLIAM MOYLAN**, is a natural person who, at all times relevant to the Complaint, is a citizen of Illinois and a resident of this District. Plaintiff purchased and owns an iPhone with iOS 4 operating system.

3. Upon information and belief, Defendant **APPLE, INC.** at all relevant times was and is a corporation organized under the laws of the State of California, with its principal place of business located in the State of California.

4. Upon information and belief, at all relevant times Defendant has transacted and conducted business in the State of Illinois and derived substantial revenue from interstate commerce.

5. Upon information and belief, Defendant expected or should have expected that its acts would have consequences within the United States of America, and Chicago, Illinois, and within the confines of the Northern District of Illinois in particular and derived substantial revenue from interstate commerce.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) of the Class Action Fairness Act of 2005 ("CAFA"), because Plaintiffs bring this action as a class action under Rule 23 of the Federal Rules of Civil Procedure. Plaintiff **WILLIAM MOYLAN** is a citizen of a different state than the Defendant, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

7. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the Court's jurisdiction. This Court has personal jurisdiction over the Defendant because it conducts substantial business in the State of Illinois, have sufficient minimum contacts with the State, and otherwise avails itself of the markets in this State, through promotion, sale, marketing, and distribution of its product in this State, so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue properly lies in this district because Defendant, as a corporation, is "deemed to reside in any judicial district in which [defendant is] subject to personal jurisdiction;" because a substantial part of the acts or omissions giving rise to Plaintiff's claims occurred and/or emanated in this district; and because Defendant conducts substantial business in this judicial district.

FACTUAL BACKGROUND

9. Defendant's iPhones and iPads are carried with users to essentially every location they travel to, making the information collected by Defendant highly personal; indeed, in many instances it may be information to which employers and spouses are not privy.

10. All iPhones and iPads log, record and store users' locations based on latitude and longitude alongside a timestamp. These mobile computing devices store this information in a file named "consolidated.db", or a similarly named file. Apple intentionally began recording this information with the release of its iOS 4 operating system in June 2010. Apple uses a cell-tower triangulation to obtain user location. Alternatively, Apple uses global positioning system (GPS) data to obtain user location.

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

12. Defendant previously collected user location information through its applications, though not to the extent done by the iOS 4 operating system. In the iTunes terms of service, Defendant explains that they “collect information such as occupation, language, zip code, area code, unique device identifier, location, and the time zone where an Apple product is used”.

13. In its patent application for the iOS 4 operating system location-recording technology, Defendant explained that the network information it collected could be accessed by an individual or an application to map the device user’s location over time.

The network information can be converted to estimated position coordinates (e.g., latitude, longitude, altitude) of the location aware device. The position coordinates can be stored in a location history database on the location aware device or made accessible on a network. A user or application can query the location history database with a timestamp or other query to retrieve all or part of the location history for display in a map view.

* * *

The location history can be used to construct a travel timeline for the location aware device. The travel timeline can be displayed in a map view or used by location aware applications running on the location aware device or on a network. In some implementations, an Application Programming Interface (API) can be used by an application to query the location history database.

See U.S. Patent App. 20110051665.

14. Users of Defendant’s iPhones and iPads, including Plaintiff and the putative Class, were unaware of Defendant tracking their locations.

15. Defendant did not disclose that it comprehensively tracked its users in its terms of service. Plaintiff and other users did not provide any sort of informed consent to the tracking at issue in this case. Defendant collected the private location information covertly, surreptitiously and in violation of law.

16. Defendant collected and obtained Plaintiff’s private location information by means of the operating system, by means of applications on Plaintiff’s mobile devices and these mobile devices were serviced at Defendant’s stores.

17. The accessibility of the unencrypted information collected by Defendant places users at serious risk of privacy invasions, including stalking. Moreover, this secretly-gathered private information may be subpoenaed and become public in the course of any litigation, including divorce proceedings.

18. Plaintiff and the Class were harmed by Defendant's accrual of personal location, movement and travel histories because their personal computers were used in ways they did not approve, and because they were personally tracked by a tracking device for which a court-ordered warrant would ordinarily be required.

19. Plaintiff and the Class suffered two different types of injuries. First, Plaintiff and the Class were injured and suffered a loss as a result of Defendant's surreptitiously recording its customers' locations. Their private information was surreptitiously stored on their mobile devices and transferred, without their knowledge or consent, to other computers and to third parties. Second, Plaintiff and the Class were injured by the risk of transfer of their location information to malicious third parties. By surreptitiously storing this information on their iPhones and transferring to other computers and to third parties by means of Apple Applications, Plaintiff and the Class face the risk of their private location information being obtained by malicious third parties and/or made public, for example, in the course of litigation. The damages incurred by Plaintiff and the Class exceed \$5 million.

20. By reason of the foregoing, Plaintiffs and the Class have suffered and/or continue to suffer injury as a result of Defendant's conduct.

CLASS ACTION ALLEGATIONS

21. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and a Class consisting of:

All individuals in Illinois and the United States, including its territories, who had a program or operating system installed on his or her iPhone or iPad by Defendant that recorded their location surreptitiously, illegally and without their consent.

22. Specifically excluded from the Class are the Defendant, any entities in which Defendant has a controlling interest, and the officers, directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of the Defendant and any Judge assigned to this action, and her or his immediate family. Plaintiff reserves the right to modify the Class definition as discovery and/or further investigation so warrant.

23. This action has been brought and may properly be maintained as a class action as Plaintiff and the Class satisfy all requirements for maintaining a class action.

24. The number of members in the Class is so numerous as to render joinder impracticable. Moreover, the amount of damages suffered individually by each member of the Class is so small as to make suit for its recovery by each individual member of the Class economically unfeasible.

25. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court. A well defined commonality of interests in the subject questions of law and fact affects Plaintiff and all members of the Class.

26. There are questions of law and fact common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendant's actions include, without limitation, the following:

- (a) Whether Defendant knowingly and intentionally installed a program or operating system on the mobile computing device of Plaintiff and the Class that altered, transferred and removed data;
- (b) Whether Plaintiff and the Class authorized Defendant to collect, alter and remove data from their mobile computing devices;
- (c) Whether Plaintiff and the Class suffered a loss and incurred damages as a result of Defendant's collecting, altering and removing data from their mobile computing devices;

- (d) Whether Plaintiff and the Class were consumers of Defendant's merchandise, and whether they bought Apple's merchandise for personal or family use;
- (e) Whether surreptitiously gathering, obtaining and transferring private location information without user authorization is an unfair business practice that violates the Illinois Consumer Fraud and Deceptive Business Practices Act;
- (f) Whether Defendant omitted, concealed and suppressed the material fact that it collected, obtained and transferred the private location information of Plaintiff and the Class;
- (g) Whether Defendant acted with the intent for Plaintiff and the Class to rely on its omission, concealment and suppression;
- (h) Whether Plaintiff and the Class suffered damages as a proximate result of Defendant's actions; and
- (i) Whether Defendant's actions were intentional, malicious and corrupt to such a degree to support an award of punitive damages.

27. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff does not have any interests antagonistic to those of the Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation. The questions of law and fact common to the Class members, some of which are set out above, predominate over any questions affecting only individual Class members.

28. Defendant has acted on grounds generally applicable to all Class members, thereby making final equitable relief with respect to the Class as a whole appropriate with respect to the Defendant.

29. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. Individualized litigation would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

30. The determination of fault and the basis for assessment of compensatory, exemplary and punitive damages may be made in the class action without the necessity of proof at that time as to the amount of those damages, thereby establishing guidelines for settlement and/or subsequent trials in individual cases if necessary.

31. Any applicable statutes of limitations have been tolled by the Defendant's knowing and active concealment and denial of the facts as alleged herein. Plaintiff and members of the Class have been kept in ignorance of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part.

COUNT I

COMPUTER TAMPERING

32. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

33. Illinois law provides:

(a) A person commits the offense of computer tampering when he knowingly and without the authorization of a computer's owner, as defined in Section 15-2 of this Code, or in excess of the authority granted to him:

* * *

(4) Inserts or attempts to insert a "program" into a computer or computer program knowing or having reason to believe that such "program" contains information or commands that will or may damage or destroy that computer, or any other computer subsequently accessing or being accessed by that computer, or that will or may alter, delete or remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer, or that will or may cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such "program"[.] *720 ILCS 5/16D-3(a)(4)*.

This law provides a civil cause of action for all individuals that suffer a loss by reason of violation of this provision. *720 ILCS 5/16D-3(c)*. Violation of this law is a Class 4 felony for the first offense and a Class 3 felony for the second or subsequent offense. *720 ILCS 5/16D-3(b)(3)*.

34. Defendant knowingly and without authorization installed a "program" or operating system on Plaintiff's iPhone, knowing or having reason to know that it would both alter, transfer and remove data from that mobile computing device, proximately causing Plaintiff and the Class to suffer a loss and incur damages in excess of \$5 Million.

35. As a result of the foregoing intentional acts of the Defendant, the Plaintiff and the Class sustained loss, and other damages, in an amount to be determined at trial, which damages were the actual and proximate result of Defendant's conduct.

WHEREFORE, Plaintiff, on behalf of himself and the members of the Class, respectfully seeks the relief set forth below.

COUNT II

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

36. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

37. Plaintiff and the members of the Class were consumers of Defendant's merchandise, and they bought the subject mobile computing devices for personal or family use.

38. The Illinois Consumer Fraud and Deceptive Business Practices Act provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2.

39. By surreptitiously installing a program on the mobile computing devices of Plaintiff and the Class that recorded their location without their consent, Defendant engaged in an unfair business.

40. Defendant omitted, concealed and suppressed the material fact that it collected, obtained and transferred the private location information of Plaintiff and the Class, and Defendant acted with the intent for Plaintiff and the putative Class to rely on that omission, concealment and suppression.

41. Defendant's violations of the Illinois Consumer Fraud Act occurred in the course of trade or commerce with Plaintiff and the putative Class.

42. As a direct and proximate result of the foregoing acts and omissions of the Defendant, the Plaintiff and the Class suffered and will continue to suffer loss and other damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, on behalf of himself and the members of the Class, respectfully seeks the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, **WILLIAM MOYLAN**, individually and on behalf of all others similarly situated, respectfully requests that this Court:

- A. determine that the claims alleged herein may be maintained as a class action and issue an order certifying the Class as defined above;
- B. appoint Plaintiff as the representatives of the Class and certifying the Plaintiff's Class defined herein;
- C. appoint Ribbeck Law Chartered as Lead Class counsel;
- D. award all actual, general, special, incidental, statutory and consequential damages to which Plaintiff and Class members are entitled;
- E. award pre-judgment and post-judgment interest on such monetary relief;
- F. order Defendant to pay punitive damages to appropriately punish Defendant for its extreme misconduct;
- G. appoint a trustee to administer any funds recovered from this suit;
- H. appoint attorneys for the trustee;
- I. award Plaintiff and the Class other appropriate equitable relief, including, but not limited to, disgorgement of all profits obtained from Defendant's wrongful conduct and declaratory and injunctive relief;
- J. award Plaintiff and the Class their costs and expenses in this litigation, including expert fees, and reasonable attorneys' fees; and

K. grant Plaintiff and the Class such other and further relief that this Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: May 16, 2011

Respectfully submitted,

RIBBECK LAW CHARTERED

By: /s/ Monica R. Kelly
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