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5 *Attorneys for Plaintiff Danyelle Comer*

6 **UNITED STATES DISTRICT COURT**
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 8 **NORTHERN DISTRICT OF CALIFORNIA**

9
 10 DANYELLE COMER, Individually and on
 Behalf of All Others Similarly Situated,

Case No. **12 2457** FAX
HRL

11 Plaintiffs,

12 vs.

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 14 APPLE, INC., a California corporation and
 DOES 1-10,

15 Defendants.
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CLASS ACTION COMPLAINT

1. Violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, et seq.)
2. Unjust Enrichment
3. Breach of Express Warranty
4. Breach of Implied Warranty of Merchantability
5. California Consumer Legal Remedies Act
6. California Unfair Competition Law (California Business and Professions Code §§ 17200, et seq.)
7. False Advertising (California Business and Professions Code §§ 17500, et seq.)

JURY TRIAL DEMANDED

20
 21 Plaintiff, Danyelle Comer, is an individual residing in the state of California ("Plaintiff"),
 22 and by her attorneys, alleges upon personal knowledge as to her own acts, and as to all other matters
 23 upon information and belief based upon, *inter alia*, the investigation made by and through his
 24 attorneys, as follows:
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1 **NATURE OF THE ACTION**

2 1. This is a class action brought by Plaintiff against defendant Apple, Inc. ("Apple" or
3 "Defendant") for unfair, unlawful, deceptive, and misleading practices conducted in violation of
4 California State, Federal, and common law. This action involves Apple's iCloud service.

5 2. Apple is headquartered in California and markets the iCloud service nationwide.
6 Apple represents that the iCloud service is the successor to Apple's MobileMe service which Apple
7 claims functions as remote hard drive storage for Apple users, storing users' data and content
8 online, rather than on the users' computer hard drive. This storing of data remotely online, accessed
9 by an internet connection to a user's personal computer is called storing data in the "cloud."

10 3. Apple markets the iCloud service as "automatic and effortless." The claimed ease of
11 a users' ability to use the iCloud service and set it up to save user content is a major element of
12 Apple's marketing of the service. According to Apple's website:

13 iCloud is so much more than a hard drive in the sky. It makes it
14 quick and effortless to access just about everything on the devices
15 you use every day. iCloud automatically and securely stores your
16 content so it's always available to your iPhone, iPad, iPod touch,
17 Mac or PC. It gives you access to your music, movies, apps, latest
18 photos and more from whichever device you happen to be using.
19 And it keeps your email, contacts, and calendars up to date across
20 all your devices. No syncing required. No management required.
21 In fact, no anything required. *iCloud does it all for you.*

22 4. Apple advertises that iCloud automatically makes music, movies, TV shows and
23 Applications purchased on Apple's iTunes store available on all the Apple devices owned by the
24 user. Apple claims that all photos and documents are also synced between devices, with the goal of
25 making the entirety of a users' content easily accessible. Within a week after launch, iCloud had
26 over 20 million users.

27 5. iCloud was launched in early October 2011. It was structured as the replacement for
28 MobileMe, a predecessor Apple service with ongoing problems going back to 2008. At that time,
MobileMe was dogged by problems ranging from slow synchronization to extended email outage.
In fact Steve Jobs, Apple's former CEO, acknowledged these problems when he announced the
iCloud in June 2011 stating: "You might ask, 'Why should I believe them, they're the ones that

1 brought me MobileMe?” As the crowd laughed, Jobs said “It wasn’t our finest hour, just let me
2 say that. But we learned a lot.”

3 6. MobileMe, the predecessor of iCloud, was launched in July 2008 as a paid
4 subscription service which also had numerous teething problems. The service cost \$99.00 per year.
5 It was panned by users almost initially as being an unstable platform and for having syncing
6 problems. By signing up for MobileMe, users were entitled to a special @me.com and @mac.com
7 email addresses and could add more for more fees, that could be accessed anywhere, online email
8 and file storage, a synchronized address book and calendar feature, and a public photo and video
9 gallery feature. Users also could access web applications through MobileMe and host and publish
10 websites.

11 7. MobileMe users have been forced to upgrade to iCloud. Apple has announced
12 MobileMe will become extinct after June, 2012, and will no longer supported or usable by
13 subscribers, despite having paid for their MobileMe account.

14 8. Despite the yearly fee charges paid by customers for MobileMe services, MobileMe
15 users have not received the benefit of their bargain as in the r forced migration to the iCloud
16 platform; they have not been able to access the features they were promised by Apple.

17 9. Long time subscribers of MobileMe, when migrating to iCloud, have experienced a
18 total loss of the ability to received emails and have been unable to log on to their Apple IDs, or their
19 Apple email accounts. Their email accounts have even been blocked from receipt of emails.
20 Further problems resulted from Apple’s failure to ensure its servers could adequately handle the
21 processing of MobileMe migration requests. As a result, users were without access to their email
22 accounts, **which they had paid for**, for extended periods of time. Soon after launch, Apple was
23 forced to temporarily limit the number of users moving from MobileMe to iCloud as they had not
24 adequately prepared for this transition. The misrepresentations by Apple that migrating to iCloud
25 would be “effortless” were blatantly false for its MobileMe users and customers in general.

26 10. Throughout the migration, Apple failed to adequately ensure that features MobileMe
27 users were paying for would be accessible, including access to their e-mail accounts for which
28

1 customers pay additional fees. As a result, numerous MobileMe users suffered damage from the
2 inability to access their individual email accounts. Other MobileMe migrants to iCloud have had
3 significant difficulty in getting contacts, calendars and other features to sync. MobileMe users
4 therefore did not receive what Apple had advertised the iCloud as: an effortless way for them to
5 sync and access their information.

6 11. Apple misrepresented that the migration to iCloud would be “effortless” and
7 instead failed to provide sufficient functionality to ensure paying MobileMe users would be able
8 to access their e-mail accounts, continue to sync their calendars and contacts and store data, all
9 features they had continued to pay for as MobileMe users. Apple failed to ensure adequate
10 server functionality to allow MobileMe users to migrate their accounts to iCloud. Apple knew or
11 should have known that failures to ensure MobileMe email and sync access would have
12 devastating consequences on MobileMe users.

13 12. Defendant knew or should have known that iCloud did not function as represented
14 in its advertisements, marketing materials, and warranties disseminated in Apple’s nationwide
15 marketing and advertising campaign.

16 13. Therefore, Plaintiff seeks relief and damages in this action individually and on behalf
17 of the Class (defined below) pursuant to the Magnuson-Moss Act, 15 U.S.C. § 2301, *et. seq.*, for
18 unjust enrichment, breach of express warranty, fraudulent concealment, common law and
19 California’s Consumer Legal Remedies Act (California Civil Code §§ 1750, *et seq.*) and violations
20 of the California Unfair Competition Laws (California Business & Professions Code §§ 17200, *et*
21 *seq.*)

22 **THE PARTIES**

23 14. Plaintiff Danyelle Comer is a resident of the state of California and purchased her
24 Macintosh and Apple computer and software and subscribed to the MobileMe account here in
25 California. She has experienced the problems described herein with her account and has lost the
26 ability to utilize functions of MobileMe or iCloud account, including emails and receipt of same.

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1 15. Defendant Apple is a California corporation with its principal place of business
2 located at One Infinite Loop, Cupertino, California 95014. Apple designs, manufactures, and
3 markets various consumer electronics products, including personal computers, portable MP3
4 players, tablet computers, smart phones and is responsible for the production, marketing and sale of
5 its MobileMe and iCloud systems.

6 **JURISDICTION AND VENUE**

7 16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. This Court
8 has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

9 17. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)
10 because there are more than 100 class members and the aggregate amount in controversy exceeds
11 \$5,000,000.00, exclusive of interest, fees, and costs and also, at least one Class member is a citizen
12 of a state different from Defendant.

13 18. Venue lies within this judicial district under 28 U.S.C. § 1391(a) and (c) because
14 Defendant's contacts are sufficient to subject it to personal jurisdiction in this District, and
15 Defendant's principal offices are located in this District for purposes of venue.

16 **FACTUAL BACKGROUND**

17 19. Apple touts its iCloud service as allowing users to sync data between Macs,
18 Windows PCs, iPhone and iPads. The data on Apple's iCloud servers includes photos in your
19 Photo Stream, any documents stored in iCloud, backups for iOS devices, @me.com e-mail,
20 @mac.com e-mail, contacts, calendars, Safari bookmarks, reminders and notes.

21 20. In short, the iCloud service promises to continue the supposed functionality of
22 MobileMe by providing user e-mail, and online data storage of contacts, calendar dates, photos and
23 documents.

24 21. When MobileMe was still available to consumers it offered two different plans: an
25 *Individual* plan and a *Family Pack*. The *Individual* plan cost \$99.00 per year and included 20 GB of
26 email and file storage and 200 GB of monthly data transfer, with an e-mail account. Additional
27 email accounts are charged extra. The *Family Pack* cost \$149.00 per year and included 40 GB of
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1 storage split among one 20GB individual (primary) account and four 5 GB sub-accounts, each sub-
2 account having its own email address, online storage and access to all the MobileMe features.
3 Family members also were/are supposed to have a shared folder in their iDisk where supposedly
4 they could share access to data amongst themselves. Members could also buy additional storage in
5 20GB or 40 GB allocations. Apple claims the iCloud service is free for the first 5GB of data
6 storage, with a \$25.00 fee to sync music not bought via iTunes.

7 22. Apple announced it was discontinuing purchases of MobileMe in preparation for the
8 movement to the new iCloud service. According to apple, MobileMe itself will be shut down and
9 all services will be migrated into the iCloud service. Unfortunately, most users have had significant
10 difficulty migrating to the iCloud service, with little help from Apple. Movement from MobileMe
11 to iCloud has not been made voluntary for customers. So despite the numerous compounding of
12 problems with the switch to iCloud, MobileMe customers have been given no choice.

13 Migration To iCloud

14 23. According to Apple's website if you have a MobileMe account (with an email
15 ending in @me.com or @mac.com), you will be able to migrate your MobileMe account into
16 iCloud. This is supposedly accomplished by using your MobileMe e-mail address as your Apple
17 ID. An Apple ID is the email address you use as a login for everything you do with apple,
18 including using iTunes, and downloading apps from the App Store.

19 24. By signing in with your MobileMe email as your Apple ID on iCloud, this should set
20 up MobileMe email, contacts, calendar and bookmarks on your device. iCloud is supposed to
21 automatically upload, store and push all your content wirelessly, and "effortlessly" to your devices.

22 25. According to Steve Jobs, the late CEO of Apple, at the 2011 WWDC Keynote
23 Speech in discussing iCloud and comparing it to MobileMe, "it just works." Unfortunately for
24 many users it doesn't "just work" and has resulted in a series of headaches due to lack of syncing
25 ability, lack of email functionality and other complications and losses and corruption of data. In
26 fact a number of users have been forced to hire outside technical assistance at significant cost, just
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1 to migrate to the iCloud platform or get around it to obtain minimal functionality of emails and
2 other systems.

3 Users Face Numerous Issues Migrating to iCloud

4 26. MobileMe users have faced an uphill battle while trying to get their email and
5 devices to sync with iCloud due to Apple's forced migration.

6 27. *AppleInsider*, a publication following Apple devices, on October 17, 2011 published
7 an article highlighting the problems users were facing in merging their MobileMe accounts into
8 iCloud. According to the article, a major problem was the lack of any technical support from
9 Apple: "One person explained in an e-mail that they have called AppleCare, used online support
10 and even asked for help at a local retail store.¹ Apparently a number of problems arise out of Apple
11 ID's that are @me.com email addresses. One user stated:

12 'I bought a MobileMe subscription when they came out...[u]ntil Wednesday I
13 didn't (realize) this created a new (Apple ID). I asked (iTunes) support to add this
14 MobileMe address to my current (iTunes Apple ID) as this was to become my
15 primary email address. On Wednesday when iCloud came out it became apparent
16 that this MobileMe email address could not be verified on the MobileMe account
as it was in use by my old (iTunes Apple ID). So (I) went to applied.apple.com to
try to change the Primary email address to something different in my iTunes
AppleID but it wouldn't let me.' Calls made to AppleCare couldn't resolve the
problem, they said.

17 28. Similar lists of headaches for MobileMe users making the move to iCloud are well
18 documented. These issues can also apply to users who have shared an Apple ID with family
19 members, allowing purchases like software from the App Store to be installed on multiple devices,
20 a practice allowed with Apple's service terms. Unless all devices would be synced with the same
21 data store – with everyone sharing contacts, calendars and other personal information – other users,
22 such as family members, who were previously dependent on that account may have to re-purchase
23 apps or music.

24 29. In addition to these issues, users transitioning from MobileMe experienced several
25 other issues. During the initial period after the iCloud launch, Apple's servers were inundated with
26

27 ¹
28 www.appleinsider.com/articles/11/10/17/mobileme_users_experience_issues_in_apples_transition_to_icloud.html

1 iCloud transfer requests, resulting in Apple throttling back account transitions from MobileMe,
2 setting back users from transferring seamlessly to the cloud.

3 **Users Are Unable To Access Their Email Accounts**

4 30. Those that were successful in moving their MobileMe account to iCloud at that time
5 also found that e-mail servers would no longer recognize valid passwords. Email accessibility has
6 been a major problem for MobileMe migrants to iCloud, with users having difficulty syncing their
7 email to their devices, thereby not receiving their email messages. Users from MobileMe with
8 @me.com and @mac.com email addresses have been unable to receive emails at these addresses
9 after migrating to iCloud.

10 31. The lack of email service for these MobileMe users appears to stem from two issues
11 (1) the change in authentication protocols that prevent individuals from logging into their @me.com
12 and @mac.com email addresses; and (2) the switching of server that Apple previously stored user
13 data for these email addresses on. Users cannot send or receive emails from their wireless devices
14 including iPhones and iPads, as well as from their home computers – services that worked before
15 they were forcibly migrated to iCloud. E-mail has continually failed to operate for former
16 MobileMe users – users who have paid for these email accounts.

17 32. As a result of these users being unable to access and utilize email services that they
18 paid for as MobileMe users, they lost the benefit of the services they paid for. Although there were
19 some advanced and technical workarounds to gain accessibility, these “fixes” or “workarounds”
20 generally require advanced expertise far beyond what an average customer would know, to
21 effectively allow them access their accounts. As a result, Apple’s “it just works” pronouncement
22 could not be farther from the truth. Apple, a company which advertises relentlessly touting its claim
23 to a reputation for simplicity and ease of usability failed to deliver this with the iCloud service. In
24 order just to access their email accounts, users were forced to pay for extra advanced technical
25 assistance. This was not anticipated due to Apple’s pronouncements regarding the “effortless” ease
26 of migrating to the new iCloud.

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1 33. In response to complaints regarding email accessibility for users, Apple has failed to
2 take action. Apple has indicated that the problem is fixed and that users should be receiving their
3 emails to their accounts. Unfortunately this is not the case, and even when users contact Apple's
4 technical assistance department, assuming they can get through, are given no realistic or
5 understandable solution. Apple has even been telling its customers that hiring a specialized
6 technician may be the only way they can solve their problems with their e-mail or other migration
7 issues.

8 34. Numerous complaints have been made on Apple message boards from users who
9 have been effected due to the transition from MobileMe to iCloud, including dedicated Apple
10 consumers:

11
12 Is there anything more upsetting that seeing apple's status page
13 (<http://www.apple.com/support/icloud/systemstatus/>) say "all services online",
14 when they most definitely are NOT ONLINE? I still can't login, get tons of errors.
15 And when I finally reached a rep at apple on the phone today he told me it was
16 not really his department, and that he would transfer me to "mobile me". And then
17 he hung up on me. Grrr. This remains a disaster, made worse by Apple ignoring
18 users like me (who buy tons of their products!)²

19 * * *

20 I transferred from MobileMe to iCloud yesterday. I am using the same .mac
21 address but have changed my AppleID to this as suggested. I now see an iCloud
22 account on all my devices (iMac, iPhone and iPad2). I receive emails but the
23 inbox only holds one or two messages and then seems to shift them direct to
24 Archive. I can't read archive file on the regular Mail programme - only by going
25 to iCloud.com. I have not instituted any rules on iCloud but it seems to be
26 behaving as if I have? Any ideas??³

27 * * *

28 I also used to have a .mac account, which was then migrated to .me, which I have
used now to *try* to setup iCloud. For several hours I simply could not switch
iCloud Mail on in the preference panel on my Mac. Now I still cannot login from
the Web interface -- it tells me that I need to create a Time account, which of
course I have already -- it is the very AppleID I use to login.⁴

* * *

26 ² See Apple Thread, available at: <https://discussions.apple.com/thread/3378893>

27 ³ See Apple Thread, available at: <https://discussions.apple.com/message/7166242#17166242>

28 ⁴ See Apple Thread, available at: <https://discussions.apple.com/thread/3378893>

1 [H]ave been trying for days to access my mail using the mail app on my Mac
2 after upgrading to iCloud. I can use the web interface fine, although it's slower
3 than Mail was. I've tried on multiple computers. I have tried creating a new
4 account, but get the error that logging in failed. Make sure the user name and
5 password, etc...Is there any current fix or workaround for this?⁵

6 * * *

7 UPDATE: Still no fix whatsoever. No way to login to or use mail (although I can
8 login to icloud as I have been able to since the beginning). As an added bonus, I
9 noticed with icloud activated on my iPhone, my battery would drain like crazy
10 (fully in a few hours vs 2 days before the "upgrade"). Not sure if this is due to the
11 fact that it can never login to mail, but deleting the icloud account from my phone
12 seems to have fixed the battery issue at least...SIGH.⁶

13 35. In sum, Apple's most dedicated consumers, including those who paid for MobileMe
14 service have continually experienced problems with iCloud migration, including lack of email
15 access for extended periods.

16 CLASS ACTION ALLEGATIONS

17 36. Plaintiff brings this action on behalf of themselves and all others similarly situated,
18 as a class action suit pursuant to Fed. R. Civ. P. 23.

19 37. The classes Plaintiff seek to represent are as follows

20 38. All persons who, within the State of California, purchased the MobileMe service and
21 held a subscription until the iCloud launch (the "California Class")

22 39. All persons who, within the United States, purchased the MobileMe service and held a
23 subscription until the iCloud launch (the "Class").

24 40. Members of the Class are so numerous that their individual joinder herein is
25 impracticable. Members of each of these classes number in the tens of thousands. The precise number
26 of Class members and their identities are unknown to Plaintiff at this time but will be determined
27 through discovery in the course of this action. Class members may be notified of the pendency of this
28 action by mail and/or publication through the distribution records of Apple and third party retailers and
29 vendors.

30 ⁵ See Apple Thread, available at: <https://discussions.apple.com/thread/3378893>

31 ⁶ See Apple Thread, available at: <https://discussions.apple.com/thread/3378893>

1 41. Common questions of law and fact exist as to all Class members and predominate
2 over questions affecting only individual Class members. Common legal and factual questions
3 include, but are not limited to:

- 4 a. whether Apple violated the Magnuson-Moss Act, 15 U.S.C. § 201, *et seq.*,
- 5 b. whether Apple was unjustly enriched by its conduct;
- 6 c. whether Apple breached an express warranty made to Plaintiff and the Class;
- 7 d. whether Apple breached the implied warranty of merchantability in regard to
8 Plaintiff and the Class;
- 9 e. whether Apple advertises, or markets iCloud or the ability for MobileMe
10 users to upgrade to iCloud in a way that is false or misleading;
- 11 f. whether iCloud and the changeover to MobileMe failed to conform to the
12 representations, which were published, disseminated and advertised to Plaintiff and the Class;
- 13 g. whether Apple concealed from Plaintiff and the Class that iCloud or the
14 conversion from from MobileMe to iCloud did not conform to its stated representations;
- 15 h. whether, by the misconduct set forth in this Complaint, Apple has engaged in
16 unfair, fraudulent or unlawful business practices with respect to the advertising, marketing and sales
17 of iCloud and MobileMe.
- 18 i. whether Apple violated the California Consumer Legal Remedies Act ("CLRA");
- 19 j. whether Apple violated California's Unfair Competition Laws;
- 20 k. whether Class members suffered an ascertainable loss as a result of the
21 Apple's misrepresentations; and

22 l. whether, as a result of Apple's misconduct as alleged herein, Plaintiff and Class
23 members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and
24 nature of such relief.

25 42. Plaintiff's claims are typical of the claims of the members of the Class as all members of
26 the Class are similarly affected by Apple's wrongful conduct. Plaintiff has no interests antagonistic to
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1 the interests of the other members of the Class. Plaintiff and all members of the Class have sustained
2 economic injury arising out of Apple's violations of common and statutory laws as alleged herein.

3 43. Plaintiff is an adequate representative of the Class because her interest does not conflict
4 with the interests of the other Class members she seeks to represent, she has retained counsel who are
5 competent and experienced in prosecuting class actions, and they intend to prosecute this action
6 vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her
7 counsel.

8 44. The class mechanism is superior to other available means for the fair and efficient
9 adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack the
10 resources to undergo the burden and expense of individual prosecution of the complex and extensive
11 litigation necessary to establish Apple's liability. Individualized litigation increases the delay and
12 expense to all parties and multiplies the burden on the judicial system that is presented by the complex
13 legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or
14 contradictory judgments. In contrast, the class action device presents far fewer management difficulties
15 and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a
16 single court on the issue of Apple's liability. Class treatment of the liability issues will ensure that all
17 claims and claimants are before this Court for consistent adjudication of the liability issues.

18 **COUNT I**

19 **Violation of the Magnuson-Moss Warranty Act**

20 **(15 U.S.C. § 2301, *et seq.*)**

21 45. Plaintiff and Class members reallege and incorporate by reference each allegation set
22 forth above and further allege as follows.

23 46. Plaintiff brings this claim individually and on behalf of the members of the Class against
24 Defendant.

25 47. The iCloud service and Mobile Me are a consumer products as defined in 15 U.S.C.
26 §2301(1).

27 48. Plaintiff and Class members are consumers as defined in 15 U.S.C. §2301(3).

28

1 57. Because Apple's retention of the non-gratuitous benefit conferred on it by Plaintiff and
2 Class members is unjust and inequitable, Apple must pay restitution to Plaintiff and the Class members
3 for its unjust enrichment, as ordered by the Court.

4 **COUNT III**

5 **For Breach of Express Warranty**

6 **(Brought on Behalf of the Class)**

7 58. Plaintiff and Class members reallege and incorporate by reference each allegation set
8 forth above and further allege as follows.

9 59. Plaintiff brings this claim individually and on behalf of members of the Class.

10 60. Apple, as the designer, manufacturer, marketer, distributor, or seller, expressly warranted
11 that MobileMe and iCloud and the conversion from MobileMe to iCloud would function as advertised.

12 61. In fact, MobileMe and iCloud and the conversion from MobileMe to iCloud has failed to
13 work in the way represented in Apple's advertisements.

14 62. Plaintiff and Class members were injured as a direct and proximate result of Apple's
15 breach because: (a) they would not have purchased the MobileMe service on the same terms if the true
16 facts regarding the functionality of the conversion to iCloud had been known; (b) they paid a price
17 premium for services due to the misrepresentations regarding iCloud and MobileMe functionality; and
18 (c) because they were unable to effectively convert their MobileMe accounts to iCloud successfully,
19 they lost access to personal information and the ability to use Apple services, including e-mail, resulting
20 in a loss of the service's value and functionality to them.

21 **COUNT IV**

22 **For Breach of Implied Warranty of Merchantability**

23 **(Brought on Behalf of the Class)**

24
25 63. Plaintiff and Class members reallege and incorporate by reference each allegation set
26 forth above and further allege as follows.

27 64. Plaintiff brings this claim individually and on behalf of the members of the Class.
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1 65. Apple’s MobileMe and iCloud services were accompanied by an implied warranty of
2 merchantability when sold, pursuant to California Civil code § 1794.

3 66. California Civil Code §1791.1(a) states in relevant part: “Implied warranty of
4 merchantability” or “implied warranty that goods are merchantable” means that the consumer
5 goods meet each of the following:

- 6 a. Pass without objection in the trade under the contract description.
- 7 b. Are fit for the ordinary purposes for which such goods are used.
- 8 c. Are adequately contained, packaged, and labeled.
- 9 d. Conform to the promises or affirmations of fact made on the container or label.

10 67. The Apple MobileMe and iCloud service would not pass without objection in the
11 cloud storage business.

12 68. The Apple iCloud service is not fit for the ordinary purpose for which it was sold.
13 The iCloud service was advertised as allowing MobileMe users to effectively convert their
14 accounts with total functionality to iCloud, however it fails to do this effectively.

15 69. Had Plaintiff and the members of the Class known the true facts, they would not
16 have purchased the MobileMe/iCloud service.

17 70. Plaintiff and the class seek injunctive relief pursuant to California Civil Code § 1794.

18 71. Plaintiff and the class also seeks an award of attorneys’ fees and costs under
19 California Civil Code § 1794.

20 **COUNT V**

21 **California Consumer Legal Remedies Act**
22 **(Brought on Behalf of the California Class)**

23 72. Plaintiff and Class members reallege and incorporate by reference each allegation set
24 forth above and further allege as follows.

25 73. Defendant committed deceptive trade practices in connection with the misconduct herein
26 alleged, including through its acts of fraudulent concealment. Such acts include Defendant’s
27