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7 *Attorneys for Defendant*  
 APPLE INC.

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 9  
 10 UNITED STATES DISTRICT COURT  
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 BIANCA WOFFORD and SUZANN LENNOX,  
 13 on behalf of themselves, and all others similarly  
 14 situated,

15 Plaintiffs,

16 v.

17 APPLE INC., a California corporation, and DOES  
 1 through 100,

18 Defendants.

Case No. '11CV0034 DMS NLS

**CLASS ACTION**

**DEFENDANT APPLE INC.'S  
 NOTICE OF REMOVAL**

19  
 20 **DEFENDANT APPLE INC.'S NOTICE OF REMOVAL**

21 Defendant Apple Inc. ("Apple"), pursuant to 28 U.S.C. § 1441, removes to this Court the  
 22 state action described below, which is within the original jurisdiction of this Court and properly  
 23 removed under 28 U.S.C. §§ 1332, 1441, 1446, and 1453. Pursuant to 28 U.S.C. § 1446(d),  
 24 copies of this Notice of Removal are being served upon counsel for Plaintiffs Bianca Wofford and  
 25 Suzann Lennox ("Plaintiffs") and filed with the Clerk of the California Superior Court for the  
 26 County of San Diego, as an exhibit to a Notice to State Court of Removal to Federal Court. A  
 27 copy of the Notice being filed in state court is attached hereto (without exhibits) as Exhibit A.  
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**PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL**

1. On October 29, 2010, Plaintiff Wofford filed a purported class action captioned *Wofford v. Apple Inc., et al.*, Case No. 37-2010-00103365-CU-OE-CTL, against Apple in the California Superior Court for the County of San Diego (“State Court Action”). The original complaint was never served on Apple. Plaintiffs Wofford and Lennox filed a First Amended Complaint (“FAC”) on November 12, 2010.

2. Apple was served with the State Court Action Summons, Complaint, and First Amended Complaint on December 8, 2010. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Apple in the State Court Action are attached to this Notice as Exhibit B.

3. The California Superior Court for the County of San Diego is located within the Southern District of California. 28 U.S.C. § 84(d). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

**NO JOINDER NECESSARY**

4. Because there are no other defendants in this action, no consent to removal is necessary.

**ALLEGATIONS OF THE COMPLAINT**

5. This action is a putative class action against Apple on behalf of California purchasers of Apple’s iPhone 3G and iPhone 3GS (collective, “the iPhone”). (FAC ¶ 24) Plaintiffs allege that Apple released a software upgrade for the iPhone, iOS 4.0, which plaintiffs claim “degraded service, diminished speed and operability and substantially slowed functionality” of “hundreds of thousands” of iPhones. (FAC ¶ 1) Plaintiffs also allege that Apple made various misrepresentations regarding iOS 4.0. (FAC ¶ 1)

6. Plaintiffs seek to represent several classes of individuals, including:

All persons residing in the United States of America, who, at any time from June 21, 2010 [to] September 8, 2010, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a subscriber with a billing address in the United States of America of any iPhone data plan with AT&T; (3) downloaded and installed iOS4 software from an authorized APPLE distribution website onto their iPhone 3G/3GS.

1 and

2 All persons residing in the United States of America, who, at any  
3 time from September 8, 2010 to the present, (1) own(ed) an  
4 authorized APPLE iPhone 3G/3GS device; (2) was a subscriber  
5 with [a] billing address in the United States of America of any  
6 iPhone data plan with AT&T; (3) downloaded and installed iOS4.x  
7 patch software from an authorized APPLE distribution website onto  
8 their iPhone 3G/3GS.

9 (FAC ¶ 24)

10 7. The FAC seeks, *inter alia*, damages, statutory penalties, restitution, punitive  
11 damages, injunctive and declaratory relief, attorney's fees, interest, and costs. (FAC, Prayer for  
12 Relief)

13 8. Apple disputes Plaintiffs' allegations, believes the FAC lacks merit, and denies that  
14 Plaintiffs or the putative class members have been harmed in any way.

#### 15 **BASIS FOR REMOVAL**

16 9. This action is within the original jurisdiction of this Court, and removal is therefore  
17 proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), which grants  
18 district courts original jurisdiction over class actions in which the amount in controversy exceeds  
19 \$5,000,000 and any member of the class of plaintiffs is a citizen of a State different from any  
20 defendant. As set forth below, this action satisfies each of the requirements of Section 1332(d)(2)  
21 for original jurisdiction under CAFA. *See Lowdermilk v. U.S. Bank, N.A.*, 479 F.3d 994, 997 (9th  
22 Cir. 2007).

23 10. Covered Class Action. This action meets the CAFA definition of a class action,  
24 which is "any civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar  
25 State statute or rule of judicial procedure." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a) & (b). (FAC  
26 ¶ 23)

27 11. Class Action Consisting of More than 100 Members. The FAC alleges that  
28 "Plaintiffs are informed and believe [that] the total number of nationwide class members  
approaches or exceeds 100,000 members." (FAC ¶ 26) Accordingly, based on Plaintiff's  
allegation, the aggregate number of class members is greater than 100 persons for purposes of  
28 U.S.C. § 1332(d)(5)(B).

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12. Diversity. The required diversity of citizenship under CAFA is satisfied because “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). Plaintiffs purport to represent a nationwide class of iPhone 3G and iPhone 3GS purchasers. (FAC ¶ 24) Apple is “a California corporation headquartered in Cupertino, California.” (FAC ¶ 14) Thus, according to the allegations of the FAC, the diversity requirements of CAFA are satisfied. 28 U.S.C. § 1332(d)(2)(A).

13. Amount in Controversy. Under CAFA, the claims of the individual class members are aggregated to determine if the amount in controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6). Plaintiffs seek damages, restitution, injunctive relief, and punitive damages. (*See, e.g.*, FAC ¶ 5) Without conceding any merit to the First Amended Complaint’s damages allegations or causes of action, the amount in controversy here satisfies CAFA’s jurisdictional threshold.

14. Amount in Controversy – Compensatory Damages. The amount in controversy with respect to compensatory damages alone exceeds \$5,000,000. Plaintiffs assert that they and the putative class members paid for wireless service “that could not be reasonably and reliably provided due to iOS4 installation,” that they have suffered “impairment” of their wireless service, and that they have been damaged “by not receiving the full benefit of their contracts with AT&T.” (FAC ¶¶ 43 (CLRA claim), 72 (interference with contract), 80 (breach of implied/equitable contract)) Plaintiff Wofford contends that her actual damages “exceed[] at least \$100.00 for the time period of this case.” (FAC ¶ 43) Plaintiffs then allege that Apple’s alleged conduct purportedly caused “hundreds of dollars worth of unnecessary service fees to be charged to WOFFORD and thousands of others similarly situated.” (FAC ¶ 43) Plaintiffs further allege that class certification is warranted because they and the class have “similar damages” and that they are adequate class representatives because they “have suffered similar loss and damages as all other class members.” (FAC ¶¶ 23, 28) Finally, Plaintiffs allege that the class consists of “hundreds of thousands of third generation iPhone consumers.” (FAC ¶ 23; *see also* FAC ¶ 26 (alleging that “the total number of nationwide class members approaches or exceeds 100,000

1 members’)) Thus, if each class member suffered \$100 in damages as plaintiffs allege, the amount  
2 in controversy alleged in the FAC is well over \$5,000,000 and easily meets the amount-in-  
3 controversy requirement.<sup>1</sup> While Apple disputes that it is liable to Plaintiff or any of the putative  
4 class members, or that Plaintiffs or the putative class members suffered injury or incurred  
5 damages in any amount whatsoever, for purposes of satisfying the jurisdictional prerequisites of  
6 CAFA, the matter in controversy exceeds \$5 million.<sup>2</sup>

7 15. Amount in Controversy — Punitive Damages. The Complaint also seeks punitive  
8 damages. (FAC, Prayer for Relief.) Punitive damages are considered part of the amount in  
9 controversy. *See Sanchez v. Wal-Mart Stores, Inc.*, No. S-06-cv-2573 DFL KJM, 2007 U.S. Dist.  
10 LEXIS 33746, at \*5-6 (E.D. Cal. May 8, 2007) (including punitive damages for amount in  
11 controversy under CAFA); *Alexander v. FedEx Ground Package Sys., Inc.*, No. C 05-0038 MHP,  
12 2005 U.S. Dist. LEXIS 5129, at \*15 (N.D. Cal. Mar. 25, 2005) (same). Apple believes that no  
13 damages, compensatory or punitive, should or will be awarded in this case; however, for purposes  
14 of the amount in controversy requirement, claimed punitive damages should be considered.

15 16. Amount in Controversy – Attorneys’ Fees. Plaintiff also seeks an award of  
16 attorneys’ fees. (FAC, Prayer for Relief.) This amount is likewise included in the amount in  
17 controversy calculation. *See Mo. State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933);  
18 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *amended by* 2006 U.S. App.  
19 LEXIS 3376 (9th Cir. Feb. 13, 2006); *see also, e.g., Sanchez*, 2007 U.S. Dist. LEXIS 33746, at \*6  
20 (including attorneys’ fees in calculation).

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24 <sup>1</sup> The FAC confirms this, alleging that “millions [of dollars] were collected” for “service  
that could not be reasonably and reliably provided due to” Apple’s alleged conduct. (FAC ¶ 43)

25 <sup>2</sup> The FAC alleges that “Plaintiffs are also informed and believe and based thereupon  
26 allege that *they themselves individually* do not claim and have not sustained damages necessary to  
27 invoke jurisdiction under [CAFA].” (FAC ¶ 10 (emphasis added)) This allegation is insufficient  
28 to defeat CAFA jurisdiction, because CAFA specifically allows for aggregation of the claims of  
all potential class members. 28 U.S.C. § 1332(d)(6).

1           No CAFA Exclusions. The action does not fall within any exclusion to removal  
2 jurisdiction recognized by 28 U.S.C. § 1332(d), and therefore this action is removable pursuant to  
3 CAFA, 28 U.S.C. §§ 1332(d) and 1453(b).

4   **CONCLUSION**

5           17. For all of the reasons stated above, this action is within the original jurisdiction of  
6 this Court pursuant to 28 U.S.C. § 1332(d). Accordingly, this action is removable pursuant to  
7 28 U.S.C. § 1441(a) and § 1453.

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9           WHEREFORE, Defendant Apple gives notice that the above-described action pending  
10 against it in the Superior Court for the County of San Diego is removed to this Court.

11  
12 Dated: January 7, 2011

PENELOPE A. PREOVOLOS  
ANDREW D. MUHLBACH  
ALEXEI KLESTOFF  
MORRISON & FOERSTER LLP

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*Attorneys for Defendant*  
APPLE INC.  
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# Exhibit A

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7 *Attorneys for Defendant*  
APPLE INC.

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN DIEGO

12 BIANCA WOFFORD and SUZANN LENNOX,  
13 on behalf of themselves, and all others similarly  
situated,

14 Plaintiffs,

15 v.

16 APPLE INC., a California corporation, and  
17 DOES 1 through 100,

18 Defendants.

Case No. 37-2010-00103365-CU-OE-CTL

**CLASS ACTION**

**DEFENDANT APPLE INC.'S NOTICE  
OF REMOVAL**

First Amended Complaint filed: November  
12, 2010



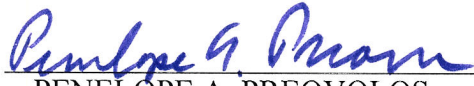
1 TO PLAINTIFFS, THEIR COUNSEL OF RECORD, AND THE CLERK OF THE SUPERIOR  
2 COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO:

3 PLEASE TAKE NOTICE that on January 7, 2011, Defendant Apple Inc. filed a Notice of  
4 Removal of this action in the United States District Court for the Southern District of California. A  
5 true and correct copy of said Notice of Removal (without exhibits) is attached hereto as Exhibit A  
6 and is served and filed herewith.

7 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of said  
8 Notice affects the removal of this action to the federal court, and this Court is directed to “proceed no  
9 further unless and until the case is remanded.” 28 U.S.C. § 1446(d).

10 Dated: January 7, 2011

PENELOPE A. PREOVOLOS  
ANDREW D. MUHLBACH  
ALEXEI KLESTOFF  
MORRISON & FOERSTER LLP

11  
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14 By:   
PENELOPE A. PREOVOLOS  
15 *Attorneys for Defendant*  
16 APPLE INC.  
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# Exhibit B

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## Register of Actions

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Case Number: **37-2010-00103365-CU-OE-CTL** Date Filed: **10/29/2010**  
Case Title: **Bianca Wofford vs. Apple Inc** Case Status: **Pending**  
Case Category: **Civil - Unlimited** Location: **Central**  
Case Type: **Other employment** Judicial Officer: **Joel M. Pressman**  
Case Age: **68 days** Department:  
Next Event Type: Next Event Date:

Display: [All Entries](#) [Filing Information Only](#) [Scheduling Information Only](#)

<a href="#">Entry Date</a>	Short/Long Entry	Filed By
11/18/2010	Summons issued.	
11/12/2010	Amended Complaint (FIRST) filed by Wofford, Bianca; Lennox, Suzann.	Lennox, Suzann (Plaintiff); Wofford, Bianca (Plaintiff)
10/29/2010	Case assigned to Judicial Officer Pressman, Joel.	
10/29/2010	Civil Case Cover Sheet filed by Wofford, Bianca.	Wofford, Bianca (Plaintiff)
10/29/2010	Original Summons filed by Wofford, Bianca.	Wofford, Bianca (Plaintiff)
10/29/2010	Complaint filed by Wofford, Bianca.	Wofford, Bianca (Plaintiff)

FILED  
OCT 29 PM 2:35  
SAN DIEGO COUNTY CA

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Isam C. Khoury, SBN 58759  
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8 Attorneys for Plaintiff BIANCA WOFFORD and all  
others similarly situated

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 BIANCA WOFFORD, on behalf of herself and  
all others similarly situated,

CASE NO. 37-2010-00103365-CU-OE-CTL

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14  
15 Plaintiffs,

) **CLASS ACTION COMPLAINT FOR**  
) **DAMAGES, RESTITUTION AND/OR**  
) **INJUNCTIVE RELIEF [F.R.C.P. 15(a)]**

17 v.

- 1) **Violation of the Consumer Legal Remedies Act ("CLRA") (California Civil Code § 1750 et seq.)**
- 2) **Unfair and Deceptive Business Practices in Violation of the Unfair Competition Law ("UCL") (Bus. & Prof. Code § 17200, et seq.)**
- 3) **False and Deceptive Advertising in Violation of Bus. & Prof. Code § 17500, et seq.**

19 APPLE, INC., a California corporation; and  
20 DOES 1 through 100, Inclusive

21 Defendants.

) **DEMAND FOR JURY TRIAL**

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1 Plaintiff BIANCA WOFFORD, on behalf of herself and all others similarly situated,  
2 complains and alleges as follows.

### 3 INTRODUCTION

4 1. This case arises from unsavory, dishonest and deceptive business practices  
5 engaged in by APPLE, INC. (referred to hereinafter as Defendant or "APPLE") that has resulted  
6 in significant and extended loss of functionality, application loss, loss of use and substantially  
7 degraded performance for all owners and consumers of the Third Generation of the APPLE  
8 iPhone, including the iPhone 3G and iPhone 3GS who, based on false statements made by  
9 APPLE, downloaded what was represented as a significant advance and triumph in software, that  
10 in reality directly interfered with functionality of the device and un-breakable data plan contracts  
11 with AT&T. In essence, APPLE knowingly and intentionally released what it called a system  
12 software "upgrade" that, in fact, made hundreds of thousands of the Third Generation iPhones  
13 that were exclusively tethered to AT&T data plans "useless" for their intended purpose. Since  
14 the release of iOS4 in conjunction with the sale and release of the Fourth Generation iPhone, or  
15 the iPhone 4 in June 2010, APPLE has falsely, intentionally and repeatedly represented to  
16 owners and consumers of the iPhone 3G that its new operating system for the device, iOS4, was  
17 of a nature, quality, and a significant upgrade for the functionality of all iPhone devices, when in  
18 fact, the installation and use of the iOS4 on iPhone 3G resulted in the opposite – a device with  
19 little more use than that of a paper weight. In a nutshell and contrary to APPLE's public fanfare  
20 and false affirmative oral and written representations as to the benefits, the "upgrade" to iOS4 for  
21 users of the iPhone 3G platform has degraded service, diminished speed and operability and  
22 substantially slowed functionality of the device. In connection with the release of iOS4, Apple  
23 falsely represented that the software/firmware was something far different than what it has turned  
24 out to be. Rather than improve anything, it has rendered the iPhone 3G devices virtually  
25 unusable, constantly slowed, crashed or frozen, and less versatile than the device consumers  
26 purchased and the earlier iOS 3.x version firmware. What's worse is that APPLE's own test  
27 engineers and its tech support site are acutely aware of the thousands of complaints lodged, and  
28 still waited for nearly 3 months to take any corrective action.

1           2.       Specifically, with the release of the iOS4, APPLE represented and continues to  
2 represent, falsely, that all California and nationwide consumers using Apple Inc.'s iPhone  
3 3G/3GS would obtain benefits, qualities and enhancements to their devices by "upgrading" to the  
4 iOS4 operating system. This statement, which was highlighted in early 2010 and is contained in  
5 brochures, marketing materials and throughout all of APPLE's web-based electronic media, is  
6 disseminated to the public with actual knowledge of falsity with the intent to induce and deceive  
7 consumers into downloading and installing iOS4 – with full knowledge that the operating  
8 system is optimized only for the iPhone 4 circuitry and provides essentially a "downgrade" to all  
9 users of predecessor iPhones, particularly the iPhone 3G/3GS. This in itself is a violation of  
10 law because the statements are known to be false as to the benefits of the iOS4 for those, like  
11 BIANCA WOFFORD, who are consumers of the earlier iPhone 3G/3GS devices. The fraud is  
12 perpetrated by APPLE through its support organization and its authorized retailers, who claim  
13 non-existent benefits to the iOS4 in relation to iPhone 3G/3GS. Had APPLE disclosed the truth  
14 — that the iOS4 was not optimal and would degrade speed, versatility and functionality of the  
15 earlier manufactured iPhone 3G/3GS – then hundreds of thousands of consumers would not have  
16 been induced to download and install the iOS4. Even though APPLE has actual knowledge of  
17 thousands of complaints from iPhone 3G/3GS consumers, APPLE does not allow for those same  
18 users/consumers of Third Generation devices to download and re-install earlier and optimized  
19 iOS3.x operating system without resorting to "hacker" tactics that will void APPLE warranties  
20 and violate iPhone user agreements. Thus, the iOS4 "upgrade" has essentially curtailed  
21 usefulness of the 3G/3GS devices and left consumers, like WOFFORD, without any ability to  
22 restore the device to its prior acceptable functionality.

23           3.       Since the unveiling of the iPhone in approximately 2007, APPLE has sold  
24 millions of iPhone 3G/3GS devices in the United States and around the world. In June 2010, the  
25 iPhone 4 was released along with the iOS4 to serve as the device's authorized operating system  
26 that was stated by APPLE to be a marvelous improvement over the iOS3.x systems in use. The  
27 iOS4 was fully represented in writing and on its web site as fully compatible with iPhone  
28 3G/3GS devices; yet the company concealed the true facts that the iOS4 system software was

1 known to substantially impair operation, functionality, speed and reliability of the earlier 3G and  
2 3GS devices. The true fact of the matter, as verifiable by information technology experts, is that  
3 the iOS4 is a substantial "downgrade" for earlier iPhone devices and renders many of them  
4 virtually useless "iBricks." Nonetheless, in reasonable and detrimental reliance upon APPLE's  
5 false representations, false statements, and false claims of full compatibility, thousands upon  
6 thousands of iPhone 3 users were intentionally misled into installing iOS4 on their devices  
7 without knowledge of its incompatibility with the earlier iPhone devices and without knowledge  
8 that once iOS4 was installed, consumers and users of those devices would be prevented by  
9 APPLE from restoring the devices to the earlier iOS3.x system software to attain prior  
10 functionality without resorting to unauthorized means. Plaintiff WOFFORD is informed and  
11 believes that this whole situation was created to be a consumer catch-22 by APPLE in order for  
12 the company to promote sales of its just released iPhone 4 and to cause consumers to simply  
13 abandon the earlier 3G and 3GS platforms. After all, what better way to underhandedly create  
14 incentive to purchase a newer product than by essentially rendering an earlier product useless by  
15 the false promise of a software "upgrade."

16 4. At all relevant times, Defendant APPLE knew that its statements, representations,  
17 support information and other claims regarding the benefits, attributes, functionality and backward  
18 compatibility of the iOS4 were materially false as they related to the 3G and 3GS. As of the time  
19 of the release of the iOS4 operating software, the company had actual knowledge of the  
20 limitations and diminutive characteristics of the software on the earlier devices but still made  
21 misleading and deceptive statements as to its benefits, qualities and characteristics. At all relevant  
22 times, APPLE knew that the iPhone 3G and 3GS were not fully compatible with the iOS4 and that  
23 iOS4, once installed, would substantially compromise the earlier device functionality, speed and  
24 application use. APPLE and its support teams concealed the true facts about the iOS4 limitation  
25 on earlier devices despite almost immediate consumer complaints about the alleged "upgrade."

26 5. Accordingly, Plaintiff BIANCA WOFFORD brings this action on her own behalf,  
27 and on behalf of all iPhone 3G/3GS consumers in the United States and in California who were  
28 falsely induced to download and install inferior iOS4 system software on their earlier iPhone

1 device as a class action, and seeks damages, restitution, injunctive relief and punitive damages  
2 due to APPLE's fraudulent, misleading, unfair and deceptive business practices in connection  
3 with the sale of said services. The Plaintiff Class is defined as follows:

4 Plaintiff Class (California):

5 All persons residing in the State of California, who, at any time from June 1, 2010 to  
6 September 30, 2010 (1) owned an authorized APPLE iPhone 3G/3GS device; (2) was a  
7 subscriber with a California billing address of any iPhone data plan with AT&T; and (3)  
8 downloaded and installed iOS4 software from an authorized APPLE distribution website  
9 onto their iPhone 3G/3GS.

10 JURISDICTION AND VENUE

11 6. On information and belief, the California Superior Court has primary and original  
12 jurisdiction in this matter because there is no federal question at issue as the issues herein are  
13 based solely on California statutes and common law principles. Both Plaintiff and the Defendant  
14 are domiciles of the State of California.

15 7. Venue is proper in this Judicial district and the County of San Diego because  
16 Plaintiff BIANCA WOFFORD resides in the county and it is the location where the injury, harm  
17 and/or loss occurred. Upon information and belief, Defendant resides in and/or is domiciled in  
18 this county and maintains offices and transacts business in this county, and performed activities as  
19 described herein in the County of San Diego and throughout the State of California. Venue is also  
20 proper in San Diego County pursuant to CCP §395(b) and/or CCP §395.5 in that the county is the  
21 place Defendant engaged in the activity alleged herein. Plaintiff WOFFORD has also complied  
22 with Civil Code §1782(d) as part of the California Consumer Legal Remedies Act ("CLRA") and  
23 has submitted a declaration regarding the venue of this matter as arising in the County of San  
24 Diego, in the State of California and appropriate for a court of competent jurisdiction within San  
25 Diego County. (See, Declaration of B. Wofford, paragraphs 1-2, attached hereto as Exhibit 1.)  
26 Lastly, the unlawful acts alleged herein have a direct effect on Plaintiff and those similarly  
27 situated within the State of California and within San Diego County, as well as other counties  
28 located throughout California.



**THE PARTIES**

1  
2           8.       Plaintiff BIANCA WOFFORD is a citizen of the United States and a resident of  
3 the State of California in the County of San Diego. WOFFORD has owned an iPhone 3G/3GS  
4 since approximately 2009. Plaintiff is informed and beleives that her iPhone was still under  
5 APPLE's manufacturer's warranty. Periodically, WOFFORD was notified of system software  
6 upgrades from APPLE that were generally described by the company as improving the devices  
7 functionality and reliability. Therefore, WOFFORD, like many iPhone consumers, usually  
8 installed APPLE's recommended "upgrades" electronically through APPLE's authorized  
9 distribution websites through iTunes or through www.apple.com.

10           9.       Defendant APPLE, INC. is a California corporation headquartered in Cupertino,  
11 California. It is qualified and does business throughout the United States of America, and  
12 conducts business within the State of California. Plaintiff is informed and believes that APPLE  
13 is responsible for promoting, distributing, and marketing false, misleading and deceptive  
14 information designed to cause and induce consumers throughout the United States and in  
15 California who own or use iPhone 3G/3GS devices to download and install the iOS4 operating  
16 software in reasonable and justifiable reliance upon false statements of improvements,  
17 enhancements, increased functionality and operability, when in fact, such statements,  
18 representations and affirmations of fact are and were known to be false in relation to iPhone  
19 3G/3GS users/consumers. Despite false, misleading and deceptive statements to the contrary,  
20 iOS4 was in fact a downgrade in speed, functionality, operabilty and reliability for non-iPhone 4  
21 users/consumers.

22           10.       Plaintiff is informed and believes that APPLE, INC. is the responsible party for all  
23 conduct, actions, practices, frauds and conduct alleged herein. Plaintiff is ignorant of the true  
24 names, capacities, relationships and extent of participation in the conduct herein alleged of the  
25 Defendants sued herein as DOES 1 through 100, inclusive, but on information and belief alleges  
26 that said Defendants are legally responsible for the damages, restitution and recovery due to their  
27 unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will  
28 amend to allege the true names and capacities of the DOE Defendants when ascertained.

**STANDING - INJURY IN FACT SUFFERED BY PLAINTIFF**

11. At all relevant times, Plaintiff WOFFORD was a consumer of products and services provided by APPLE, Inc., in relation to her purchase, ownership and use of an iPhone 3G/3GS device. At all times relevant hereto, Plaintiff engaged in all authorized activities in relation to the use and operation of her iPhone (i.e, it was not hacked or jailbroken by any third party and she maintained appropriate and current accounts with APPLE's exclusive wireless service provider, AT&T.) Prior to June 2010, WOFFORD had installed all recommended upgrades to the operating system software as provided by APPLE and had not experienced any diminishment in performance, speed, reliability or functionality in her device(s). In June 2010, WOFFORD was informed by APPLE that along with the release of the iPhone 4, a new operating system and firmware "upgrade" was also available from the company that was fully compatible with her iPhone 3G/3GS, and that offered numerous qualities, benefits, properties and enhancements over the predecessor system software she was using at the time, which she is informed and believes was iOS 3.x. Based on statements, representations, claims of fact and other material representations made and provided by APPLE, WOFFORD downloaded and installed iOS4 from an authorized APPLE site, and through her iTunes program/account. She did so early on, in direct and reasonable reliance upon APPLE's false assertion that iOS4 would provide tremendous benefits to her iPhone 3G/3GS. At the time of the download and installation of iOS4, no statement was provided by APPLE that in any way informed, advised or suggested that iOS4 was incompatible or would result in substantial degradation of iPhone 3G/3GS functionality, operability, or reliability. In fact, all representations were to the contrary – that iOS4 would be a vast improvement to her iPhone. Further, at no time did APPLE in any way disclose to users/consumers that if iOS4 installation was unsuccessful in its promised benefits for iPhone 3G/3GS consumers, that such consumers, like WOFFORD, would not be permitted by the company to simply restore the older but reliable iOS3.x onto the iPhone. Prior to the release of iOS4, APPLE permitted restoration of iPhones to the earlier system software if problems were encountered.

///

1           12.     Almost immediately after downloading and installing iOS4, WOFFORD restarted  
2 her iPhone 3G/3GS device and noticed significantly reduced speed, the inability to use previously  
3 downloaded/purchased applications, and she noted an overall substantially decreased functionality  
4 and decreased reliability of the device. While not completely disabled, the operability of the  
5 device was significantly degraded and the device was no longer reliable. Thereafter, after using  
6 support resources from APPLE, WOFFORD learned that the company would not allow her to  
7 restore her iPhone to the earlier and much better performing iOS3.x. She thereafter learned that if  
8 she wanted to attempt to regain prior adequate functionality of her iPhone by re-installing iOS3.x  
9 system software, she could only do so by engaging in "hacker" activity that would be  
10 unauthorized by APPLE and potentially void her warranty. In other words, WOFFORD's iPhone  
11 "upgrade" had made the device unreliable and with vastly degraded and intermittent operability.  
12 Had Plaintiff known the true facts about (1) the "upgrade" to iOS4 onto earlier iPhone models and  
13 (2) the fact that if she did encounter problems that she would not be able to restore her iPhone to  
14 an earlier satisfactory iOS system without engaging in unauthorized activities (relying on third  
15 party hacks), then she would not have downloaded and installed the iOS4 software from APPLE.

16           13.     Plaintiff is informed and believes, and based thereupon alleges, that at all relevant  
17 times APPLE knew that the representations made to WOFFORD and the public were false at the  
18 time the representations were made and that APPLE's intent was to cause and induce detrimental  
19 reliance on the representations in order to proliferate its new iOS4 into the marketplace. Plaintiff  
20 is further informed and believes that APPLE engineers knew that iOS4 would substantially  
21 undermine, impede, degrade and decrease speed for consumers who owned third generation  
22 iPhones rather than the newly released iPhone 4 or Fourth generation iPhones. APPLE also  
23 engaged in fraudulent concealment of material facts necessary for consumers like WOFFORD to  
24 make an informed decision by inducing said consumers into downloading and installing iOS4 on  
25 their third generation devices without informing them that if any problems occurred, they would  
26 not be permitted to re-install the earlier iOS3.x system software without taking action that may  
27 void warranty coverage of the iPhone. Had APPLE disclosed such true facts by telling third  
28 generation iPhone consumers that iOS4 would likely substantially impair and limit performance,

1 functionality and reliability of the iPhone 3G/3GS, or by allowing consumers dissatisfied with  
2 iOS4's compatibility with the earlier devices to re-install the iOS3.x software, then hundreds of  
3 thousands of consumers would have been able to readily avoid what amounted to the oft-cited  
4 "iBrick," i.e., an iPhone whose only purpose is as a paperweight rather than a fully functioning  
5 handheld computer device. Plaintiff is informed and believes that APPLE's fraudulent,  
6 deceptive and misleading conduct was done to create a false incentive on the part of third  
7 generation iPhone consumers to purchase the iPhone 4 by essentially laying waste to the  
8 functionality of iPhone 3G/3GS, even though these phones have similar useful capabilities.

### 9 GENERAL ALLEGATIONS

10 14. Plaintiff WOFFORD personally suffered harm and economic loss caused by  
11 Defendant's fraud, deception, concealment and unfair business practices alleged herein. Despite  
12 purchasing various "Apps", for an extended period of time she has been unable to use them;  
13 despite paying fees for data service plans, her iPhone will not reliably allow her to use the data  
14 networks; despite paying over \$300 for her iPhone in approximately 2009, the value of the phone  
15 is substantively diminished if it does not have a reliable operating system that permits its  
16 promised functionality. Prior to relying on APPLE's inducement to load and install iOS4,  
17 WOFFORD's iPhone 3G/3GS was reasonably reliable and functional with all the applications  
18 and data network programs she had purchased. While certainly there were infrequent system  
19 problems that would require restart or restore of her iPhone, it was reliable 99% of the time.  
20 Following the installation of iOS4, WOFFORD's productive use of the device has precipitously  
21 and unreasonably diminished such that the device was slower, less functional and with frequent  
22 inability to use for its intended purposes. Plaintiff estimates that after iOS4 installation, she  
23 receives about 20% functionality of the device as it behaved before with the earlier iOS3.x system  
24 software and firmware. Plaintiff has learned from a vast majority of other iPhone 3G/3GS  
25 consumers of identical problems, and the lack of any APPLE authorized solution, has rendered  
26 their device prematurely obsolete, unreliable, slow and virtually useless.

27 15. The Plaintiff and members of the Plaintiff Class were all subject to the same fraud  
28 and deceptive conduct as APPLE designed and promoted iOS4 for the iPhone to be marketed and

1 distributed in a uniform fashion nationwide and to be adopted by iPhone 3G/3GS  
2 users/consumers. Plaintiff is informed and believes APPLE support staff all received the same or  
3 similar training, scripts and approach to deal with the many hundreds and thousands of complaints  
4 that have been lodged since iOS4 was released. APPLE is also aware and has direct knowledge  
5 that many consumers simply wish to re-install iOS3.x, but the company still will not permit it  
6 without causing owners to breach their warranty (by relying upon third party hacks.)

7 16. The Plaintiff and each member of the proposed Plaintiff Class all suffered the same  
8 or similar harm as a direct result of APPLE's material misrepresentations and concealment of true  
9 material facts, leading the consumer to download and install a product that was hailed as offering  
10 a substantial upgrade, enhanced reliability, enhanced features, and greater functionality and  
11 capability, when in fact such was completely false for third generation iPhone consumers.  
12 Defendant's corporate officers, directors and managing agents expressly authorized the fraud and  
13 ratified the use of misleading, fraudulent and deceptive inducements to steer consumers into  
14 adopting iOS4 in order to gain universal market share at the expense of third generation iPhone  
15 consumers. Plaintiff is informed and believes that APPLE perpetrated the fraud so as to  
16 improperly, unfairly and deceptively to induce iPhone 3G/3GS consumers to purchase iPhone 4.

17 **CLASS ACTION ALLEGATIONS**

18 17. Plaintiff brings this action on behalf of herself, individually, and all other similarly  
19 situated persons, as a class action pursuant to California Code Civil Procedure § 382 and pursuant  
20 to the Consumer Legal Remedies Act ("CLRA"), California Civil Code §1780 et seq. Plaintiff is  
21 informed and believes, and based thereupon alleges, that the use of class action procedures is  
22 warranted due to the existence of an ascertainable and numerous class of consumers having well-  
23 defined community of interest and similar damages that, in themselves, would not be sufficiently  
24 large to recover individually. Plaintiff is informed and believes that hundreds of thousands of  
25 third generation iPhone consumers have been negatively impacted and suffered legal harm due to  
26 APPLE's fraudulent and deceptive conduct surrounding the release of iOS4. Due to this, it would  
27 be impracticable to join all prospective class members, and it would overwhelm the court if the  
28 matter was brought as multiple separate individual actions. Plaintiff is further informed and

1 believes, and based thereon alleges, that she has not and never waived her right to a jury trial nor  
2 did she ever disclaim her rights under Civil Code Section 1751.

3 18. The class which Plaintiff seeks to represent are composed of and defined as  
4 follows:

5 Plaintiff Class (California):

6 All persons residing in the State of California, who, at any time from June 1, 2010 to  
7 September 30, 2010 (1) owned an authorized APPLE iPhone 3G/3GS device; (2) was a  
8 subscriber with a California billing address of any iPhone data plan with AT&T; and (3)  
9 downloaded and installed iOS4 software from an authorized APPLE distribution website  
10 onto their iPhone 3G/3GS.

11 Plaintiff reserves the right to alter, modify and/or amend these definitions in a manner  
12 consistent with California Rules of Court and Code of Civil Procedure Section 382.

13 19. **Ascertainable Class:** The proposed class consists of readily ascertainable persons  
14 and/or entities. The class is narrowly defined as those consumers who purchased and own iPhone  
15 3G/3GS devices and who installed iOS4 from APPLE since its release date in June 2010, and who  
16 experienced degradation of the devices functionality/operability. The members of the proposed  
17 class can be easily identified and located using information contained in Defendant's records, as  
18 each authorized iOS4 download must be authenticated to a particular user and APPLE account  
19 holder, like WOFFORD, using iTunes software. Specifically, each person or entity will have a  
20 record of an account with APPLE that will identify each person who installed iOS4 on an  
21 authorized iPhone 3G/3GS. In fact, Plaintiff is informed and believes that APPLE will have  
22 detailed records, down to the very serial number of the device, so that the class can be readily  
23 ascertained.

24 20. **Numerosity:** The potential quantity of members of the Class as defined is so  
25 numerous that joinder of all members would be unfeasible and highly impractical. The actual  
26 quantity of members of the Class is unknown to Plaintiff at this time; however Plaintiff is  
27 informed and believes the total number of nationwide class members approaches or exceeds  
28 100,000 members, with the largest single percentage of members located and residing in the  
forum state. The disposition of their claims through this class action will benefit both the parties  
and this Court. Class Action procedure will be efficient and prevent redundancy of claims.

1           21.     **Typicality:** The claims of Plaintiff WOFFORD for damages and restitution is  
2 typical of any consumer who purchased the third generation of iPhone, downloaded and installed  
3 iOS4 and experienced substantial degradation of the iPhone's key functionality of its applications  
4 and network connectivity. APPLE's manner of marketing and disseminating the iOS4 system  
5 software was done nationwide and in California in a uniform manner using the same false,  
6 deceptive and misleading statements that were intended and designed to induce proposed Class  
7 Members into "upgrading" their 3G/3GS devices with system software that would, in fact,  
8 materially "downgrade" the utility of the devices. Plaintiff is informed and believes that as a  
9 direct and proximate consequence of the practices alleged herein, APPLE increased its overall  
10 sales of iPhone 4s to persons who, frustrated over the iOS4's poor performance when operating on  
11 third generation iPhones, simply bought the newer device unnecessarily.

12           22.     **Adequacy:** Plaintiff WOFFORD is a member of the proposed Plaintiff Class and is  
13 an adequate representative. Plaintiff will fairly protect the interests of the members of the Class,  
14 has no interests antagonistic to the members of the proposed Class and will vigorously pursue this  
15 suit via attorneys who are competent, skilled and experienced in litigating matters of this type and  
16 are well-acquainted with class action process and procedure. Class Counsel are competent and  
17 experienced in litigating large class actions. Plaintiff has suffered similar loss and damages as all  
18 other class members and will fairly and judiciously protect the interests of absent class members.

19           23.     **Superiority:** The nature of this action and the nature of laws available to Plaintiff  
20 to make use of the class action format are particularly efficient and appropriate procedure to  
21 afford relief to Plaintiff and the Class for the wrongs alleged herein, as follows:

22           a.       This case involves a large corporate Defendant and a sufficient numerous  
23 group of individual Class Members with many relatively small claims but all  
24 having similar and common issues of law and fact;

25           b.       If each individual member of each of the Class was required to file an  
26 individual lawsuit, the large corporate Defendant would necessarily gain an  
27 unconscionable advantage because Defendant would be able to exploit and  
28 overwhelm the limited resources of each individual member of the Class with

1 Defendant's vastly superior financial and legal resources;

2 c. Requiring each individual member of each of the Class to pursue an  
3 individual remedy would also discourage the assertion of lawful claims by the  
4 members of the Class who would be disinclined to pursue an action against  
5 Defendant because of an appreciable and justifiable fear of retaliation and  
6 permanent damage to their lives, careers and well-being;

7 d. Proof of a common business practice or factual pattern, of which the  
8 members of the Class experienced, is representative of the Classes herein and will  
9 establish the right of each of the members of the Classes to recover on the causes  
10 of action alleged herein;

11 e. The prosecution of separate actions by the individual members of the  
12 Classes, even if possible, would create a substantial risk of inconsistent or varying  
13 verdicts or adjudications with respect to the individual members of the Class  
14 against Defendant; and which would establish potentially incompatible standards  
15 of conduct for Defendant; and/or legal determinations with respect to individual  
16 members of the Class which would, as a practical matter, be dispositive of the  
17 interest of the other members of the Class who are not parties to the adjudications  
18 or which would substantially impair or impede the ability of the members of the  
19 Class to protect their interests; and

20 f. The claims of the individual members of the Class are not sufficiently large  
21 to warrant vigorous individual prosecution considering all of the concomitant costs  
22 and expenses attending thereto.

23 g. Furthermore, as the damages suffered by each individual member of the  
24 class may be relatively small, the expenses and burden of individual litigation  
25 would make it difficult or impossible for individual members of the class to redress  
26 the wrongs done to them, while an important public interest will be served by  
27 addressing the matter as a class action.

28 h. The cost to the court system of adjudication of such individualized



1 litigation would be substantial. Individualized litigation would also present the  
2 potential for inconsistent or contradictory judgment.

3 **24. Existence and Predominance of Common Questions of Fact and Law:** There  
4 are common questions of law and fact as to the members of the Class which predominate over  
5 questions affecting only individual members of the Class including, without limitation:

6 a. Whether the Class Members were subject to a common scheme, plan,  
7 practice or procedure wherein common material misrepresentation of fact were  
8 perpetrated by APPLE so as to induce reasonable reliance upon individuals and  
9 entities download and install iOS4 on third generation iPhone devices, when, in  
10 fact, iOS4 was not fully compatible with the older iPhones and caused disruption  
11 in functionality of the iPhone.

12 b. Whether Defendant put in place a common, nationwide incentive based  
13 operation or scheme, common marketing practices, orientation, training and  
14 presentation to its support personnel to falsely and deceptively misrepresent  
15 compatibility issues between the iPhone iOS4 and iOS3.x for Third Generation  
16 iPhones and whether Defendant deliberately concealed and prevented iPhone  
17 3G/3GS consumers from re-installation and restoration of the iOS3.x onto their  
18 iPhones in order to unfairly and deceptively promote iOS4 and iPhone 4 sales  
19 during its June 2010 launch.

20 c. Whether Defendant's unlawful, unfair and deceptive business practices  
21 were designed, with advance knowledge, to induce reliance upon consumer so as to  
22 purchases goods or services that were unnecessary for the consumers to obtain full  
23 functionality of the iPhone.

24 d. Whether Defendant has been unjustly enriched by concealing true material  
25 facts from consumers and misleading consumers as to benefits, attributes and  
26 characteristics of iOS4 that, in truth and fact, it did not have for third generation  
27 iPhone consumers.

28 e. Whether members of the Class are entitled to compensatory damages, and

1 if so, the means of measuring such damages;

2 f. Whether the members of the Class are entitled to injunctive and/or  
3 declaratory relief so as to prevent Defendant from continuing its practices of falsely  
4 representing "compatibility" between the iOS4 system and 3G/3GS that in truth  
5 and fact, do not exist;

6 g. Whether the members of the Class are entitled to restitution;

7 h. Whether the members of the Class are entitled to punitive damages;

8 i. Whether Defendant is liable for pre-judgment interest.

9 25. **Manageability of Class and Common Modes of Proof:** The nature of this action  
10 and the nature of laws available to Plaintiff make use of the class action format a particularly  
11 efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein.  
12 Specifically, APPLE maintains all records necessary to identify each and every class member and  
13 to identify, based upon technical documentation, to identify each actual iPhone 3G/3GS owner  
14 that has downloaded iOS4. APPLE set in motion a common plan or scheme for the iPhone in  
15 June 2010 that had been carefully designed and developed in order to induce widespread adoption  
16 of iOS4 and increase its marketshare reach, even though the company knew and failed to disclose  
17 that iOS4 would provide no benefit to third generation iPhone consumers who installed the fourth  
18 generation system software/firmware. The records relating to the common implementation of  
19 iOS4 are uniform throughout the United States and would be used to show a common scheme,  
20 design, pattern, practice and plan of luring unsuspecting consumers to install iOS4 based upon  
21 false, deceptive and misleading statements designed to induce reliance and, in fact, causing  
22 detrimental reliance on software that was known to slow and crash iPhone 3G/3GS devices  
23 despite promises to the contrary. Due to these common practices, uniform product/service  
24 offerings, standardized pricing schemes, common marketing, promotional, orientation, sales  
25 training and advertising components, Plaintiff can assemble and formulate common modes of  
26 proof for the class as a whole designed to show (a) that APPLE engaged in a massive and  
27 organized campaign of fraud, deception and concealment on a nationwide basis in furtherance of  
28 promoting sales of the iPhone 4 and adoption of iOS4; (b) that APPLE's common distribution,

1 marketing, promotional and training materials were designed with advance knowledge that they  
2 would mislead and induce iPhone 3G/3GS consumers install iOS4 even though it would  
3 substantially and negatively impact the functionality of the device without recourse; (c) that  
4 consumers, like WOFFORD, would and did, in fact, reasonably and justifiably rely upon  
5 APPLE's intentionally false and misleading statements regarding alleged "compatibility" between  
6 iOS4 and 3G/3GS iPhones which was not true; and (d) that as a result, APPLE diminished the  
7 utility, the value and the services paid and available to iPhone 3G/3GS consumers in a reasonably  
8 certain and quantifiable manner. Plaintiff proposes surveys, representative testimony of class  
9 members, and record sampling done on a statistically significant and randomized basis to prove  
10 each claim as hereinafter alleged.

11           26. Plaintiff is informed and believes that class-wide evidence will show that she and  
12 proposed class members took action to download the iOS4 system software in direct, reasonable  
13 and justifiable reliance upon APPLE's false, misleading and deceptive representations.  
14 Specifically, Plaintiff WOFFORD and proposed Class Members were induced to download and  
15 install what was known by APPLE to be a inferior operating system for the iPhone 3G/3GS.  
16 APPLE's activities were dishonest, unethical and deceitful; had true and fair representations been  
17 made about the company's decision to disallow reinstallation of iOS3.x for iPhone 3G/3GS  
18 consumers and the asserted false benefits of installing iOS4 on Class Member devices, then  
19 WOFFORD and members of the proposed Classes would not have installed the iOS4 system  
20 software on their devices and incurred loss and damage due to unreliable, slow and constantly  
21 crashing – unusable for its intended purpose.

22           27. As a seller of goods and services, APPLE at all times had a duty to disclose all  
23 material facts and not to conceal material facts about the qualities and attributes of the iPhone or  
24 the iOS system software available and necessary to operate an iPhone. Attributes as to the  
25 compatibility, functionality, operability, and reasonable reliability or lack thereof for consumers  
26 and the purpose of the iPhone was material fact or set of facts that required APPLE to clearly  
27 communicate and to inform to consumers, and for which the company was duty bound not to  
28 conceal. APPLE is the only party who has access to true facts regarding compatibility or lack

1 thereof for consumers installing iOS4. *See, e.g., Nussbaum v. Weeks (1989) 214 Cal. App.3d*  
2 *1589, 1600 ("seller has a general duty to disclose material facts that are not accessible to the*  
3 *buyer")*, citing 5 Witkin, Summary of Cal. Law. (9th ed. 1988) Torts § 700, at 801-02. At all  
4 relevant times, APPLE, therefore, maintained the legal duty to disclose all necessary material facts  
5 in order to inform third generation iPhone consumers of limitations and known material  
6 systematic incompatibilities and material misrepresentations as to the data plans necessary for full  
7 functionality of the iPhone. APPLE knew that its promotional, sales, distribution, marketing and  
8 orientation training materials provided consumers and authorized retailers with false and  
9 misleading information, and that the information was to be disseminated to consumers in a  
10 manner that was reasonably likely to deceive said consumers in the absence of truthful disclosure.  
11 *See, e.g., Restatement (Second) of Torts § 551.* Had APPLE disclosed that prior iOS3.x  
12 restoration was unavailable to Third Generation iPhone devices and disclosed that iOS4 had  
13 significant operability limitations on Third Generation iPhones, then consumers could have had  
14 reasonable options to avoid the problems that interfered and degraded data plans for several  
15 AT&T billing cycles. At least then, they could have made the download with full knowledge that  
16 it might interfere with the functionality of their older phone. In essence, APPLE knew that its  
17 conduct would result in adaptation to iPhone 4 devices, **had incentive through its exclusive**  
18 **contractual arrangement with AT&T to artificially increase iPhone 4 sales**, and had no  
19 regard for the money consumers spend on data plans, even if an "upgrade" resulted in diminished  
20 service through its exclusive 3G network carrier, AT&T. Further, by limiting iPhone 3G and  
21 3GS access to data networks at the launch of iPhone 4 and iOS4, APPLE knew that iPhone 4  
22 consumers would have better and more stable access to AT&T relatively fragile 3G network.

23         28. In all, Plaintiff believes that AT&T data plan account holders with iPhone 3G/3GS  
24 devices suffered real and tangible degradation in data service and device functionality from the  
25 release of iOS4 until approximately September 30, 2010, when a iOS4.x patch was released.  
26 APPLE knew it was a problem, APPLE did nothing about, and essentially interfered with its  
27 exclusive carrier's ability to perform on its data plan contracts in damages according to proof.

28 ///

**FIRST CAUSE OF ACTION/CLAIM FOR RELIEF  
VIOLATION OF CALIFORNIA CIVIL CODE SECTION 1780  
The Consumer's Legal Remedies Act ("CLRA")  
(Plaintiff and each Member of Plaintiff Class (California) against Defendant)**

1  
2  
3  
4 29. Plaintiff incorporates all preceding paragraphs of this complaint as if fully alleged  
5 herein.

6 30. Plaintiff WOFFOD and members of the proposed Plaintiff Class (California) are  
7 consumers in the State of California who purchased goods and services from Defendant APPLE  
8 within three-years of the commencement of this action. Plaintiff WOFFORD has fully complied  
9 with Civil Code §1782(d) and has submitted a declaration regarding the venue of this matter as  
10 arising in the County of San Diego, in the State of California and appropriate for a court of  
11 competent jurisdiction within San Diego County. (See, Declaration of R. Wofford, paragraphs 1-  
12 2, attached hereto as Exhibit 1.)

13 31. Defendant provides "services" within the State of California that are within the  
14 meaning of Civil Code sections 1761(a), 1761(b) and 1770. Further, APPLE, including DOES 1-  
15 100, constitutes a "person" within the meaning of Civil Code sections 1761(c) and 1770.

16 32. Consumers of Defendant's products and services, specifically the iPhone 3G/3GS  
17 and its necessary APPLE configured operating system (necessary for use)," including Plaintiff and  
18 other members of the proposed Plaintiff Class (California), are all "consumers" within the  
19 meaning of Civil Code section 1761 (d) and 1770.

20 33. Each purchase of the iPhone 3G/3GS sold by Defendant along with the  
21 requirement to provide an operating system software resulted in Plaintiff and each and every  
22 proposed member of Plaintiff Class (California) being engaged in a "transaction" within the  
23 meaning of Civil Code section 1761 (d) and 1770.

24 34. The policies, acts and practices of Defendant as described above were intended to  
25 result in the sale of products/ services to Plaintiff and members of the Plaintiff Class. These  
26 actions violated, and continue to violate the Consumers Legal Remedies Act in at least the  
27 following aspects:

28 (a) In violation of Civil Code section 1770(a)(4), Defendant makes deceptive

1 representations in connection with the services in question;

2 (b) In violation of Civil Code section 1770(a)(5), Defendant represents that its services  
3 have characteristics, uses, or benefits which it does not have;

4 (c) In violation of Civil Code section I 770(a)(9), Defendant advertises services without  
5 the intent to sell them as advertised;

6 (d) In violation of Civil Code section 1770(a)(14), Defendant represents that its  
7 services confer or involve rights, remedies or obligations which it does not have, or which are  
8 prohibited by law; and

9 (e) In violation of Civil Code section 1770(a)(19), Defendant inserted and continues  
10 to insert unconscionable provisions into the contracts at issue herein.

11 35. APPLE's conduct, as specifically alleged above, was to fraudulently induce  
12 unwitting consumers into purchasing a product or service which was unnecessary. As a direct and  
13 proximate consequence of APPLE's conduct, Plaintiff and the proposed class were fraudulently  
14 induced, by deceit, into downloading and installing iOS4 on their Third Generation iPhone  
15 devices based upon false statements, material misrepresentation, deception as to "improvements"  
16 and "upgrades" and through concealment of true facts, even when specifically sought by  
17 consumers. Plaintiff WOFFORD and members of proposed Plaintiff Class as residents and  
18 citizens of the State of California, reasonably and justifiably relied upon APPLE's false  
19 representations about iOS4 and as a direct and proximate result of APPLE's conduct and  
20 practices, suffered damages and suffered harm. This included, without limitation, the knowing  
21 and willful impairment of AT&T to perform on its contracts to provide data service to iPhone  
22 3G/3GS devices from June to the end of September 2010. Plaintiff is informed and believes, and  
23 based thereupon alleges, that APPLE test engineers knew or should have known iPhone 3G/3GS  
24 applications that were reliant upon AT&T's 3G data network would be substantially impaired for  
25 anyone with a Third Generation iPhone that downloaded iOS4 from June 2010 to September 30,  
26 2010.

27 36. APPLE's actions and conduct were unfair, unlawful and illegal. The conduct is the  
28 proximate and legal cause, and/or a substantial factor in causing hundreds of dollars worth of

1 unnecessary service fees to be charged to WOFFORD and thousands of others similarly situated,  
2 who were in fact unable to obtain the benefits of their AT&T data plan contracts for a several  
3 month period. As a direct result of APPLE's unfair, unconscionable, fraudulent and deceptive  
4 business practices, millions were collected for a service that could not be reasonably and reliably  
5 provided due to iOS4 installation. Actual damages suffered by WOFFORD and caused by  
6 APPLE's conduct exceeds at least \$100.00 for the time period of this case. On information and  
7 belief, WOFFORD alleges that similar damages were suffered by virtually all members of the  
8 proposed Plaintiff Class (California). In fact, APPLE's support site is replete with consumer  
9 complaints about service degradation and the company failed to offer any compensation or  
10 corrective action for the time period specified in this case.

11 37. In addition to actual damages and restitution of fees imposed, Plaintiff also seeks  
12 the recovery of an additional \$5,000 for herself and each member of Plaintiff Class as permitted  
13 by California Civil Code section 1780(b)(1).

14 38. Further, because the actions of APPLE were intentional, willful, and in conscience  
15 and/or reckless disregard of the rights of consumers, and because officers, directors and/or  
16 managing agents of APPLE engaged in acts of fraud and oppression by both creating, concealing  
17 and implementing the uniform promotional strategies in order to sell and create incentives for  
18 Third Generation iPhone consumers to be lured to iOS4 and the Fourth Generation of the iPhone.  
19 through material misrepresentation and false statements. As a result, Plaintiff seeks the recovery  
20 of punitive damages pursuant to Civil Code section 1780(a)(4) and Civil Code section 3294 in an  
21 amount sufficient to deter such conduct in the future, and in an amount that is consistent with the  
22 Defendant's due process rights, and in an amount that is in reasonable relation to the revenues of  
23 the Defendant and the total damages caused to consumers in the Plaintiff Class as defined herein.

24 39. Plaintiff is informed and believes that all or a substantial part of the Defendant's  
25 unfair, unlawful, fraudulent and deceptive business activities, practices and acts continue to the  
26 present despite notice and opportunity to cure being provided. As a consequence, pursuant to  
27 California Civil Code section 1770, 1780(a)(2) and 1782 (d), Plaintiff will seek on behalf of  
28 herself and all others similarly situated an order to enjoin Defendant from engaging in the

1 activities described herein by seeking appropriate orders from the Court directing APPLE to cease  
2 and desist its fraudulent practices in the sales, promotion, and marketing of the iOS4 software  
3 upgrade for the iPhone 3G/3GS consumers, and to require that the true material facts to be  
4 disclosed to consumers.

5 40. Plaintiff and the Class demanded under Civil Code section 1782(a) that within  
6 thirty (30) days of its CLRA notice (attached hereto as Exhibit 2) that APPLE must take corrective  
7 action and to compensate iPhone 3G/3GS consumers for damages. Upon the mailing of notice by  
8 certified mail, return receipt requested, Plaintiff WOFFORD requested that Defendant cease,  
9 correct, or otherwise rectify the goods and services alleged in this complaint to be in violation of  
10 Civil Code section 1770, including notice and full compensation to consumers who were harmed  
11 by download and installation of the iOS4. A true and correct copy of the Plaintiff's Notice to the  
12 Defendant under the Consumer Legal Remedies Act (CLRA Notice) is attached hereto as Exhibit  
13 "2." Plaintiff has waited at least 30-days and Defendant has failed to remedy or cure any of the  
14 allegations of this complaint. Plaintiff withheld filing of initial Complaint in the anticipation of  
15 curative action by Defendant, but no such action was taken. Instead, after the CLRA letter,  
16 APPLE submitted a software patch for download that has restored some functionality for iPhone  
17 3G/3GS consumers, but has not allowed for the reinstallation of iOS3.x which provides greater  
18 functionality/reliability for iPhone 3G/3GS consumers. In fact, since the CLRA Notice was  
19 issued, no specific offer to cure was made to Plaintiff or her counsel, and no effort was made to  
20 address the allegations made. Indeed, APPLE's failure to respond, not just to WOFFORD but to  
21 hundreds of complaints lodged on APPLE's support web site appears to be an implied and  
22 adoptive admission that the facts averred herein are true.

23 **SECOND CAUSE OF ACTION/ CLAIM FOR RELIEF**  
24 **VIOLATION OF THE UNFAIR COMPETITION LAW**  
25 **(Business & Professions Code Section 17200, et seq.)**  
**(Plaintiff and each Member of Plaintiff Class (California) against Defendant)**

26 41. Plaintiff incorporates all preceding paragraphs in full as though fully set forth  
27 herein.

28 42. The practices identified above and engaged in by APPLE since at least June 2010



1 to the present in connection with the distribution of the iOS4 operating system and firmware to  
2 third generation iPhone consumers is an unlawful and unfair business practice within the meaning  
3 of Business and Professions Code sections 17200, *et seq.*

4 43. This claim for relief is brought under Business and Professions Code sections  
5 17203 and 17204, commonly called the Unfair Competition Law (“UCL”). Under this claim for  
6 relief and pursuant to Business and Professions Code section 17208, Plaintiff and members of the  
7 Plaintiff Class (California) seek restitution for the diminishment in value of their iPhone devices  
8 and/or for the percentage of loss of use of their iPhone 3G/3GS devices that stems as a direct and  
9 proximate result of Defendant’s false, misleading and deceptive business practices.

10 44. Based on the conduct herein described, Plaintiff is informed and believes, and  
11 based thereupon alleges, that APPLE violated the “unlawful” prong of the UCL by violating the  
12 Consumers Legal Remedies Act (CLRA) as alleged above.

13 45. This claim for relief is brought as a cumulative remedy as provided in Business and  
14 Professions Code section 17205, and is intended as an alternative remedy for restitution for  
15 Plaintiff and each Plaintiff Class member for the applicable time period during which APPLE  
16 engaged in the practices alleged herein.

17 46. As a result of the Defendant’s unlawful, unfair and deceptive business practices,  
18 Plaintiff and each member of Plaintiff Class (California) has suffered actual damages and is  
19 entitled to restitution in an amount according to proof.

20 47. Further, the Plaintiff requests the violations of the Defendant alleged herein be  
21 enjoined, and other equitable relief as this Court deems proper including an order for an  
22 accounting and injunctive relief to prevent fraudulent practices from continuing.

23 48. Enforcement of statutory provisions enacted to protect consumers is a fundamental  
24 public interest in the State of California. Consequently, Plaintiff’s success in this action will  
25 result in the enforcement of important rights as affecting the public interest and will confer a  
26 significant benefit upon the general public. Private enforcement of the rights enumerated herein is  
27 necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden  
28 in pursuing this action and it would be against the interests of justice to require the payment of

1 attorneys' fees and costs from any recovery that might be obtained herein.

2 49. In addition, if Plaintiff succeeds in enforcing these rights affecting the public  
3 interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of  
4 Civil Procedure section 1021.5 and other applicable law in part because:

5 a. A successful outcome in this action will result in the enforcement of  
6 important rights affecting the public interest by requiring Defendant to truthfully disclose all  
7 material facts;

8 b. This action will result in a significant benefit to Plaintiff, the Plaintiff  
9 Class, and the general public by bringing to a halt unlawful and/or unfair activity and by causing  
10 the return of ill-gotten gains obtained by Defendant;

11 c. Unless this action is prosecuted, members of the Plaintiff Class and the  
12 general public will not recover those moneys, and many of Defendant's customers and consumers  
13 would not be aware that the acts and practices they were subjected to by Defendant were wrongful  
14 and fraudulent;

15 d. Unless this action is prosecuted, Defendant will continue to mislead its  
16 customers about the true nature of their rights and remedies under the wage and hour laws; and

17 e. An award of attorneys' fees and costs is necessary for the prosecution of  
18 this action and will result in a benefit to Plaintiff, the Plaintiff Class, and to consumers in general  
19 by preventing Defendant to continue to gain unfair advantage from falsely representing attributes  
20 to its iOS4 operating system in relation to consumers who in justifiable reliance upon APPLE's  
21 false statements, downloaded and installed iOS4 software onto their third generation iPhone  
22 devices and, consequently, suffered economic loss therefrom.

23 **FOURTH CLAIM FOR RELIEF**  
24 **FALSE AND DECEPTIVE ADVERTISING**  
25 **(Business & Professions Code Section 17500, et seq.)**  
**(Plaintiff and each Member of Plaintiff Class II (California) against Defendant)**

26 50. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27 51. The practices identified above and engaged in by APPLE since at least June 1,  
28 2010 to the present in connection with the release and distribution of the iOS4 to iPhone 3G/3GS

1 consumers having a valid AT&T data plan, are part of a false, misleading and deceptive  
2 marketing, sales and promotional statements made to the public in violation of Business and  
3 Professions Code section 17500, *et seq.* The Defendant knew and knows that the statements made  
4 are false, misleading and deceptive to a reasonable consumer seeking to upgrade his or her  
5 iPhone.

6 52. California Business & Professions Code §17500 *et seq.* makes it unlawful for  
7 anyone to make an untrue or misleading statement to the public about or in connection with the  
8 advertising or sale of a product which is known or should be known by that person to be untrue or  
9 misleading and with the intent not to sell the product as advertised. Plaintiff and members of the  
10 Plaintiff Class (California) allege that the statements, advertisements, representations of fact and  
11 the use of the terms upgrade, improvement, enhancement, or other similar terms used by APPLE  
12 to describe purported benefits and attributes for its iOS4 are false, deceptive and likely to mislead  
13 reasonable consumers to believe that iOS4 is fully compatible and does not impair speed or  
14 functionality of third generation iPhone devices. Plaintiff WOFFORD, was, in fact, misled to  
15 believe by Defendant's statements, prior conduct and affirmations, that iOS4 would improve,  
16 enhance, and upgrade her iPhone 3G/3GS device, and was induced by statements made by APPLE  
17 to download and install the software on her device. She relied on the misleading and false  
18 statements to her detriment, and lost functionality and reliable operability of her iPhone as a direct  
19 and proximate consequence of APPLE's false and misleading statements released to the general  
20 public about the supposed "benefits" of iOS4.

21 53. At all relevant times, Defendant knew that its sales strategy for iOS4 and the  
22 iPhone 4 as well as its marketing communications with the public for purposes of causing and  
23 inducing consumers to adopt and install iOS4 were done through a common pattern and practice  
24 of misrepresenting the product and service provided in order to induce a reasonable consumer into  
25 taking action that actually caused harm and loss of use of their iPhone device. Defendant's  
26 statements, as identified throughout this Complaint, were part of an ongoing nationwide pattern or  
27 systematic course of conduct that was and continues to be repeated daily in the United States, in  
28 California and in this County, in order to maximize the adoption of iOS4 by consumers with

1 iPhone devices that will suffer degraded utility and service if installed and activated. Defendant  
2 has actual knowledge that its statements, representations and inducement are likely to mislead and  
3 deceive a reasonable person and have in fact misled and induced thousands of consumers across  
4 this State and throughout the United States to adopt what is in fact an inferior product for  
5 3G/3GS.

6 54. As a direct and proximate result of the Defendant's false, deceptive and misleading  
7 statements made to the public about benefits and qualities of iOS4, and the sustained effort to  
8 prevent consumers from restoring 3G/3GS devices with iOS3.x, Plaintiff and each member of  
9 Plaintiff Class (California) has suffered actual financial loss and damages and is entitled to  
10 restitution in an amount according to proof for the loss of use of their product and for loss of some  
11 value of their service agreements with APPLE's exclusive wireless service carrier, AT&T.  
12 APPLE's conduct knowingly and intentionally impaired AT&T's ability to perform on its data  
13 service plans for class members in violation of California decisional common law.

14 55. Plaintiff and the Plaintiff Class (California) request that the Court enter such orders  
15 as may be necessary to restore to each of them all sums which Defendant wrongfully acquired by  
16 means of the false advertising as provided in Business & Professions Code §17203 and §17535,  
17 and for other appropriate relief. Further, the Plaintiff requests the violations of the Defendant  
18 alleged herein be enjoined, and other equitable relief as this Court deems proper including an  
19 order requiring Defendant to cease and desist from its use of false, misleading and deceptive  
20 marketing, advertising and promotional statements related to the alleged benefits, enhanced  
21 properties and asserted improvements for the iOS4 as it relates to 3G/3GS iPhones.

22 56. In addition, if Plaintiff succeeds in enforcing these rights affecting the public  
23 interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of  
24 Civil Procedure section 1021.5

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on her own behalf, and on behalf the proposed Plaintiff Class,  
27 prays as follows:

28 1. That the Court determine this action may be maintained as a class action, and that  
the Court determine that all prerequisites under either California Code of Civil

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Procedure 382, California Civil Code section 1781 are satisfied and to enter an order certifying the proposed Plaintiff Class and appointing Cohelan Khoury & Singer as lead class counsel;

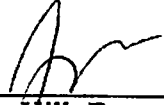
2. That the Defendant be ordered to pay and judgment be entered in favor of Plaintiff and the Plaintiff Class (California) for all actual damages legally caused by its unfair, unlawful, fraudulent and unconscionable business practices, in an amount according to proof;
3. That, in addition to actual damages, Defendant be ordered to pay and judgment be entered in favor of Plaintiff and Plaintiff Class and against Defendant for an additional \$5,000.00 for each and every such person for which unfair, unlawful, unconscionable fraudulent and deceptive practices in relation to the distribution of iOS4 system software to iPhone 3G/3GS consumers;
4. That, in addition to actual damages for Plaintiff, and enhanced damages for Plaintiff Class (California), for a judgment of exemplary or punitive damages pursuant to Civil Code section 1780(a)(4) and Civil Code section 3294 in an amount sufficient to deter such conduct in the future and in an amount that is consistent with the Defendant's due process rights and in an amount that is in reasonable relation to the revenues of the Defendant and the total damages caused to consumers in the Plaintiff Class as defined herein;
5. That the Defendant be found and a declaratory judgment entered finding Defendant to have engaged in unfair competition in violation of the Consumer Legal Remedies Act, Civil Code section 1770(a)(1)-(20) and/or to have engaged in unfair and deceptive business practices in violation of Business and Professions Code sections 17200, *et seq*;
6. For an Order granting the Plaintiff Class preliminary and permanent injunctive relief with or without notice to the class, as permitted by California Rule of Court and C.C.P. Section 382 so that the Defendant is enjoined from the continued implementation of its unlawful, unconscionable, deceptive and misleading business practices and unfair competition in relation to the marketing of iOS4;
7. For an Order directing Defendant to immediately disgorge all of its wrongfully obtained profits and ill-gotten gains, with interest thereon pursuant to Civil Code Section 1780(a)(2) and Business and Professions Code sections 17203 and 17204;
8. For compensatory damages in an amount according to proof;
9. For economic and/or special damages in an amount according to proof;
10. That the Defendant be found to have engaged in unfair competition in violation of Business and Professions Code sections 17200, *et seq*.;
11. That the Defendant be ordered to pay restitution to each Plaintiff Class member for the diminishment in value of their iPhone and the loss of use caused by its unlawful and unfair competition, including disgorgement of wrongfully obtained profits pursuant to Business and Professions Code sections 17203 and 17204;
13. For reasonable attorneys' fees, interest, and costs of suit pursuant to statute, including but not limited to, Civil Code section 1780(d) and (e) and Code of Civil Procedure section 1021.5;

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- 14. For the implementation of measures or other means to determine the appropriate remedy to compensate Plaintiff and each Class member as required to promote fairness and justice, including but not limited to establishing procedures for compensation, compensation amounts and fluid recovery if appropriate, and/or the creation of a trust for lawful disbursement of disgorged profits;
- 15. For an Order appointing an appropriate third party administrator to facilitate distribution of damages recovered by the class in a fair and equitable manner;
- 16. Prejudgment Interest as appropriate for any fixed and ascertainable damages in an amount according to proof;
- 18. Any other relief as this court appropriate and just.

**COHELAN KHOURY & SINGER**

Dated: October 29, 2010

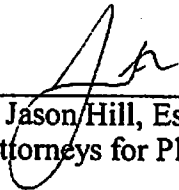
By:   
 \_\_\_\_\_  
 J. Jason Hill, Esq.  
 Attorneys for Plaintiff BIANCA WOFFORD

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

**COHELAN KHOURY & SINGER**

Dated: October 29, 2010

By:   
 \_\_\_\_\_  
 J. Jason Hill, Esq.  
 Attorneys for Plaintiff BIANCA WOFFORD

1 Timothy D. Cohelan, SBN 60827  
Isam C. Khoury, SBN 58759  
2 Michael D. Singer, SBN 115301  
J. Jason Hill, SBN 179630  
3 **COHELAN KHOURY & SINGER**  
605 C Street, Suite 200  
4 San Diego, CA 92101-5305  
TEL: (619) 595-3001  
5 FAX: (619) 595-3000  
tcohelan@ckslaw.com  
6 ikhoury@ckslaw.com  
msinger@ckslaw.com  
7 jhill@ckslaw.com

8 Attorneys for Plaintiff BIANCA WOFFORD and all  
others similarly situated  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 BIANCA WOFFORD, on behalf of herself and  
all others similarly situated,  
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14  
15 Plaintiffs,

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17 v.

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19 APPLE, INC, a California corporation; and  
20 DOES 1 through 100, Inclusive

21 Defendants.  
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) CASE NO. \_\_\_\_\_

) **CLASS ACTION:**

) **DECLARATION OF BIANCA WOFFORD**  
) **IN SUPPORT OF VENUE PURSUANT TO**  
) **CALIFORNIA CIVIL CODE §1780(d)**

I, BIANCA WOFFORD, state and declare as follows:

1. I am the Plaintiff in the above-entitled action. I am a competent adult over the age of eighteen years of age and I have personal knowledge of the following facts for which I could and would competently testify to under oath and in open court if called to do so.

2. I am a resident of the County of San Diego, in the State of California. The facts, transactions, and occurrences set forth in the Complaint took place in the County of San Diego in the State of California. The Defendant, APPLE, INC, operates, transacts and conducts business in the State of California and in the County of San Diego. I bring this action on behalf of myself and all others similarly situated. I am informed and believe that the appropriate venue of this matter is in the Superior Court in and for the County of San Diego in the State of California.

I declare under the penalty of perjury under the laws of the State of California and the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on this 21<sup>st</sup> Day of October 2010 in San Diego, California.

  
Bianca Wofford



# COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

ATTORNEYS AT LAW

TIMOTHY D. COHELAN,\* APLC  
ISAM C. KHOURY, APC  
DIANA M. KHOURY, APC  
MICHAEL D. SINGER,\*APLC

605 "C" STREET, SUITE 200  
SAN DIEGO, CALIFORNIA 92101-5305  
Telephone: (619) 595-3001  
Facsimile: (619) 595-3000

JEFF GERACI  
KIMBERLY D. NEILSON  
CHRISTOPHER A. OLSEN

[www.ck-lawfirm.com](http://www.ck-lawfirm.com)

August 24, 2010

## NOTICE PURSUANT TO CALIFORNIA CIVIL CODE SECTION § 1782

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT REQUESTED

APPLE, INC.  
Legal Department  
One Infinite Loop  
Cupertino, California 95014

**Re: Notice of Violations of the California Consumer Legal Remedies Act  
("CLRA") pursuant to Civil Code Section 1782.**

Dear Apple Representative:

Our firm has been retained by Bianca Wofford to pursue legal remedies based upon fraudulent, misleading and deceptive practices engaged in Apple, Inc., related to the release of iPhone OS4 for iPhone 3G devices. In a nutshell and contrary to much fanfare and false representations as to the benefits, the "upgrade" to iOS4 for users of the iPhone 3G platform has degraded service, diminished speed and operability and substantially slowed functionality of the device. In connection with the release of iOS4, Apple falsely represented that the software/firmware was something far different than what it has turned out to be. Rather than improve anything, it has rendered Ms. Wofford's iPhone 3G virtually unusable, constantly slowed or frozen, and less versatile than the device he purchased and using the earlier iOS 3.x version firmware.

Apple failed to disclose and/or undertook to intentionally conceal the fact that iOS4 would degrade functionality on the iPhone 3G platform. Certainly any testing done by engineers for the platforms would have instantly provided this information to the company. Instead, Ms. Wofford relied on Apple's false representations as to the extolled benefits of iOS4 and installed it. He has now learned that it has degraded his iPhone and that Apple refuses to permit re-installation of iOS 3.x firmware to recover speed and functionality. Thus, Apple has not only mislead Ms. Wofford and the public in a manner that undermined the very purpose for purchasing the iPhone 3G, but it has now made the conscious decision to prevent ability for users to cure the iOS4 problem on the platform without breaching Apple's warranty through use of unauthorized hacker remedies.

California Civil Code §1770 prohibits Apple from engaging in specific activities that are deceptive and misleading to consumers with regard to the nature of the goods and services sold in this state. Section 1779 (a) states that "The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful." The applicable activities here include:

- (1) Passing off goods or services as those of another.
- (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.
- (3) Misrepresenting the affiliation, connection, or association with, or certification by, another.
- (5) *Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.*
- (7) *Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.*
- (14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.
- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not. (17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.
- (19) Inserting an unconscionable provision in the contract.

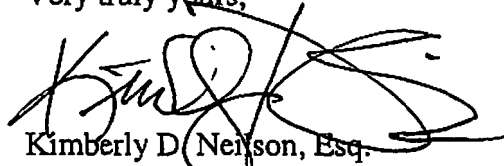
Our investigation shows that Apple engaged in each of the above deceptive acts and practices in connection with its failure to advise iPhone 3G platform users that iOS4 would degrade rather than improve the platform's functionality and operability. Alternatively, the company concealed that iOS4 would not provide any benefit to owners of iPhone 3G devices, and would, contrary to representations, diminish virtually all functional aspects of that platform.

At this time, Ms. Wofford demands the following corrective action be taken completed within the next thirty days: (1) Ms. Wofford demands that Apple, at its own expense, recall the iPhone 3G and supply her and others similarly situated with upgraded iPhone 3GS or iPhone 4 models that are capable of actually *benefitting from* iOS4; (2) Apple must immediately issue on its web site a downloadable fix to re-install iOS 3.x firmware for all iPhone 3G users who wish to "undo" the iOS4 "upgrade." (3) that Apple offer to purchase issue \$150.00 credits for all iPhone 3G consumers who now have installed iOS4 and have experienced degraded operability and functionality of their device for the loss of functionality and/or for redemption to purchase device platforms capable of benefitting from iOS4.

If these actions are not taken, a class action lawsuit will be filed under the CLRA and Business and Professions Code Section 17200 on behalf of Ms. Wofford and all those similarly situated in the State of California for all owners of locked (authorized) iPhone 3G devices who "upgraded" to iOS4 based upon misleading and concealed material facts. If a class action suit is filed, it will seek restitution for the loss of use and functionality of the device for the period of time since the release of iOS4 to the present and until such time as the above corrective measures are instituted.

Thank you for your prompt attention to this matter and please forward immediately to your legal department.

Very truly yours,



Kimberly D. Nelson, Esq.  
COHELAN KHOURY & SINGER

Date: August 24, 2010

Enclosures

cc: Via Certified U.S. Mail with Return Receipt Requested

**Apple, Inc.**  
c/o CT Corporation System as Agent for Service of Process  
818 West Seventh Street  
Los Angeles, California 90017

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Apple Inc.  
 c/o: CT corporation System  
 as agent for Service of process  
 818 West 7th St.  
 Los Angeles, CA 90017

2. Article Number

(Transfer from service label)

7010 0290 0000 6838 4743

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*[Signature]*

- Agent
- Address

B. Received by (Printed Name)

*[Signature]*

C. Date of Delivery

6-26

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

- Yes

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

~~Apple Inc.~~  
 Apple Inc.  
 Legal Dept.  
 One Infinite Loop  
 Cupertino, CA 95014

2. Article Number

(Transfer from service label)

PS Form

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *[Signature]*

- Agent
- Address

B. Received by (Printed Name)

*[Signature]*

C. Date of Delivery

8/21/10

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

- Yes

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information, visit our website at www.usps.com

**OFFICIAL USE**

Postage	\$ .44¢	Postmark Here
Certified Fee	2.80	
Return Receipt Fee (Endorsement Required)	2.30	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.54	

Sent To: Apple Inc. / c/o: CT corp. system  
 Street, Apt. No., or PO Box No.: 818 West 7th St.  
 City, State, ZIP+4: Los Angeles, CA 90017

PS Form 3800, August 2005

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information, visit our website at www.usps.com

**OFFICIAL USE**

Postage	\$ 44¢	Postmark Here
Certified Fee	2.80	
Return Receipt Fee (Endorsement Required)	2.30	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.54	

Sent To: Apple Inc. / Legal Dept.  
 Street, Apt. No., or PO Box No.: One Infinite Loop  
 City, State, ZIP+4: Cupertino, CA 95014

PS Form 3800, August 2005

7010 0290 0000 6838 4743

7010 0290 0000 6838 4750



**SUMMONS  
(CITACION JUDICIAL)**

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

NOV 29 PM 2:35

SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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

APPLE, INC., a California corporation; and  
Does 1 through 100, Inclusive

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

BIANCA WOFFORD, on behalf of herself and all  
others similarly situated

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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 cumpla 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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 for the State of California, County of San Diego  
330 West Broadway, San Diego, California 92101

CASE NUMBER:  
(Número del Caso):

37-2010-00103365-CU-OE-CTL

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):  
Cohelan Khoury & Singer; Michael D. Singer (SBN 115301), J. Jason Hill (SBN 179630)  
605 "C" Street, Suite 200, San Diego, California 92101, 619.595.3081

DATE:  
(Fecha)

NOV 29 2010

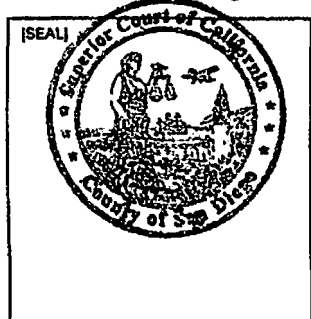
Clerk, by  
(Secretario)

R. Vela

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:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>COHELAN KHOURY &amp; SINGER</b> J. Jason Hill, Esq. (SBN 179630) 605 C Street, Suite 200, San Diego, California 92101  TELEPHONE NO.: <b>619.595.3001</b> FAX NO.: <b>619.595.3000</b> ATTORNEY FOR (Name): <b>Bianca Wofford</b>		FOR COURT USE ONLY  10:00 29 AM 2:35  SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN DIEGO</b> STREET ADDRESS: <b>330 West Broadway</b> MAILING ADDRESS: <b>330 West Broadway</b> CITY AND ZIP CODE: <b>San Diego, California 92101</b> BRANCH NAME: <b>Central Division</b>		
CASE NAME: <b>WOFFORD v. APPLE, INC.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <b>37-2010-00103365-CU-OE-CTL</b>  JUDGE:  DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W/D (23) <b>Non-PIP/D/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties   | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence  | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): Three (3)
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 10/29/2010  
J. Jason Hill

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.





<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7066	
PLAINTIFF(S) / PETITIONER(S): Bianca Wofford	
DEFENDANT(S) / RESPONDENT(S): Apple Inc	
WOFFORD VS. APPLE INC	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2010-00103365-CU-OE-CTL

Judge: Joel M. Pressman

Department: C-66

**COMPLAINT/PETITION FILED: 10/29/2010**

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING



1 Timothy D. Cohelan, SBN 60827  
Isam C. Khoury, SBN 58759  
2 Michael D. Singer, SBN 115301  
J. Jason Hill, SBN 179630  
3 **COHELAN KHOURY & SINGER**  
605 C Street, Suite 200  
4 San Diego, CA 92101-5305  
Telephone: (619) 595-3001  
5 Facsimile: (619) 595-3000  
tcohelan@ckslaw.com  
6 ikhoury@ckslaw.com  
msinger@ckslaw.com  
7 jhill@ckslaw.com

**FILED**  
Clerk of the Superior Court

NOV 12 2010

8 Attorneys for Plaintiffs BIANCA WOFFORD, SUZANN LENNOX and all  
others similarly situated

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 BIANCA WOFFORD and SUZANN LENNOX )  
on behalf of themselves, and all others similarly )  
13 situated, )

14 )  
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Plaintiffs,

v.

APPLE, INC., a California corporation; and  
DOES 1 through 100, Inclusive

Defendants.

CASE NO. 37-2010-00103365-CU-OE-CTL

) **FIRST AMENDED CLASS ACTION**  
) **COMPLAINT FOR DAMAGES,**  
) **RESTITUTION AND/OR INJUNCTIVE**  
) **RELIEF**

- ) 1) **Violation of the Consumer Legal**  
) **Remedies Act ("CLRA") (California**  
) **Civil Code § 1750 et seq.)**
- ) 2) **Unfair and Deceptive Business**  
) **Practices in Violation of the Unfair**  
) **Competition Law ("UCL") (Bus. &**  
) **Prof. Code § 17200, et seq.)**
- ) 3) **False and Deceptive Advertising in**  
) **Violation of Bus. & Prof. Code §**  
) **17500, et seq.**
- ) 4) **Tortious Interference with Contract**
- ) 5) **Breach of Implied/Equitable**  
) **Contract**

) **DEMAND FOR JURY TRIAL**

1 Plaintiffs BIANCA WOFFORD and SUZANN LENNOX on behalf of themselves and all  
2 others similarly situated, complain and allege as follows.

3 **INTRODUCTION**

4 1. This case arises from unsavory, dishonest and deceptive business practices  
5 engaged in by APPLE, INC. (referred to hereinafter as Defendant or "APPLE") that has resulted  
6 in significant and extended loss of functionality, application loss, loss of use and substantially  
7 degraded performance for all owners and consumers of the Third Generation of the APPLE  
8 iPhone, including the iPhone 3G and iPhone 3GS who, based on false statements made by  
9 APPLE, downloaded what was represented as a significant advance and triumph in software, that  
10 in reality directly interfered with functionality of the device and un-breakable data plan contracts  
11 with AT&T. In essence, APPLE knowingly and intentionally released what it called a system  
12 software "upgrade" that, in fact, made hundreds of thousands of the Third Generation iPhones  
13 that were exclusively tethered to AT&T data plans "useless" for their intended purpose. Since  
14 the release of iOS4 in conjunction with the sale and release of the Fourth Generation iPhone, or  
15 the iPhone 4 in June 2010, APPLE has falsely, intentionally and repeatedly represented to owners  
16 and consumers of the iPhone 3G that its new operating system for the device, iOS4, was of a  
17 nature, quality, and a significant upgrade for the functionality of all iPhone devices, when in fact,  
18 the installation and use of the iOS4 on iPhone 3G resulted in the opposite – a device with little  
19 more use than that of a paper weight. In a nutshell and contrary to APPLE's public fanfare and  
20 false affirmative oral and written representations as to the benefits, the "upgrade" to iOS4 for  
21 users of the iPhone 3G platform has degraded service, diminished speed and operability and  
22 substantially slowed functionality of the device. In connection with the release of iOS4, Apple  
23 falsely represented that the software/firmware was something far different than what it has turned  
24 out to be. Rather than improve anything, it has rendered the iPhone 3G devices virtually  
25 unusable, constantly slowed, crashed or frozen, and less versatile than the device consumers  
26 purchased and the earlier iOS 3.x version firmware. What's worse is that APPLE's own test  
27 engineers and its tech support site are acutely aware of the thousands of complaints lodged, and  
28 still waited for nearly 3 months to take any corrective action.

1           2.       Specifically, with the release of the iOS4, APPLE represented and continues to  
2 represent, falsely, that all California and nationwide consumers using Apple Inc.'s iPhone  
3 3G/3GS would obtain benefits, qualities and enhancements to their devices by "upgrading" to the  
4 iOS4 operating system. This statement, which was highlighted in early 2010 and is contained in  
5 brochures, marketing materials and throughout all of APPLE's web-based electronic media, is  
6 disseminated to the public with actual knowledge of falsity with the intent to induce and deceive  
7 consumers into downloading and installing iOS4 – with full knowledge that the operating  
8 system is optimized only for the iPhone 4 circuitry and provides essentially a "downgrade" to all  
9 users of predecessor iPhones, particularly the iPhone 3G/3GS. This in itself is a violation of  
10 law because the statements are known to be false as to the benefits of the iOS4 for those, like  
11 BIANCA WOFFORD and SUZANN LENNOX, who are consumers of the earlier iPhone  
12 3G/3GS devices. The fraud is perpetrated by APPLE through its support organization, its  
13 technical support organization and its authorized retailers, who claim non-existent benefits to the  
14 iOS4 in relation to iPhone 3G/3GS. Had APPLE disclosed the truth — that the iOS4 was not  
15 optimal and would degrade speed, versatility and functionality of the earlier manufactured iPhone  
16 3G/3GS – then hundreds of thousands of consumers would not have been induced to download  
17 and install the iOS4. Even though APPLE has actual knowledge of thousands of complaints  
18 from iPhone 3G/3GS consumers, APPLE does not allow for those same users/consumers of  
19 Third Generation devices to download and re-install earlier and optimized iOS3.x operating  
20 system without resorting to "hacker" tactics that will void APPLE warranties and violate iPhone  
21 user agreements. Thus, the iOS4 "upgrade" has essentially curtailed usefulness of the 3G/3GS  
22 devices and left consumers, like WOFFORD and LENNOX, without any ability to restore the  
23 device to its prior acceptable functionality.

24           3.       Since the unveiling of the iPhone in approximately 2007, APPLE has sold  
25 millions of iPhone 3G/3GS devices in the United States and around the world. In June 2010, the  
26 iPhone 4 was released along with the iOS4 to serve as the device's authorized operating system  
27 that was stated by APPLE to be a marvelous improvement over the iOS3.x systems in use. The  
28 iOS4 was fully represented in writing and on its web site as fully compatible with iPhone

1 3G/3GS devices; yet the company concealed the true facts that the iOS4 system software was  
2 known to substantially impair operation, functionality, speed and reliability of the earlier 3G and  
3 3GS devices. The true fact of the matter, as verifiable by information technology experts, is that  
4 the iOS4 is a substantial "downgrade" for earlier iPhone devices and renders many of them  
5 virtually useless "iBricks." Nonetheless, in reasonable and detrimental reliance upon APPLE's  
6 false representations, false statements, and false claims of full compatibility, thousands upon  
7 thousands of iPhone 3 users were intentionally misled into installing iOS4 on their devices  
8 without knowledge of its incompatibility with the earlier iPhone devices and without knowledge  
9 that once iOS4 was installed, consumers and users of those devices would be prevented by  
10 APPLE from restoring the devices to the earlier iOS3.x system software to attain prior  
11 functionality without resorting to unauthorized means. Plaintiffs WOFFORD and LENNOX are  
12 informed and believe that this whole situation was created to be a consumer catch-22 by APPLE  
13 in order for the company to promote sales of its just released iPhone 4 and to cause consumers to  
14 simply abandon the earlier 3G and 3GS platforms. After all, what better way to underhandedly  
15 create incentive to purchase a newer product than by essentially rendering an earlier product  
16 useless by the false promise of a software "upgrade."

17 4. At all relevant times, Defendant APPLE knew that its statements, representations,  
18 support information and other claims regarding the benefits, attributes, functionality and backward  
19 compatibility of the iOS4 were materially false as they related to the 3G and 3GS. As of the time  
20 of the release of the iOS4 operating software, the company had actual knowledge of the  
21 limitations and diminutive characteristics of the software on the earlier devices but still made  
22 misleading and deceptive statements as to its benefits, qualities and characteristics. At all relevant  
23 times, APPLE knew that the iPhone 3G and 3GS were not fully compatible with the iOS4 and that  
24 iOS4, once installed, would substantially compromise the earlier device functionality, speed and  
25 application use. APPLE and its support teams concealed the true facts about the iOS4 limitation  
26 on earlier devices despite almost immediate consumer complaints about the alleged "upgrade."

27 5. Accordingly, Plaintiffs BIANCA WOFFORD and SUZANN LENNOX bring this  
28 action on behalf of themselves, individually, and on behalf of all iPhone 3G/3GS consumers in the

1 United States of America and in California who were falsely induced to download and install  
2 inferior iOS4 system software on their earlier iPhone device as a class action, and seek damages,  
3 restitution, injunctive relief and punitive damages due to APPLE's fraudulent, misleading, unfair  
4 and deceptive business practices in connection with the sale of said services.

5 6. The Plaintiff Class I (California) is defined as follows:

6 All persons residing in the State of California, who, at any time from June 21, 2010 to  
7 September 8, 2010, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a  
8 subscriber with a California billing address of any iPhone data plan with AT&T; and (3)  
9 downloaded and installed iOS4 software from an authorized APPLE distribution website  
10 onto their iPhone 3G/3GS.

11 7. The Plaintiff Class II (California) is defined as follows:

12 All persons residing in the State of California, who, at any time from September 8, 2010 to  
13 the present, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a  
14 subscriber with a California billing address of any iPhone data plan with AT&T; (3)  
15 downloaded and installed iOS4.1 patch software from an authorized APPLE distribution  
16 website onto their iPhone 3G/3GS.

17 8. The Plaintiff Class III (Nationwide) is defined as follows:

18 All persons residing in the United States of America, who, at any time from June 21, 2010  
19 September 8, 2010, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a  
20 subscriber with a billing address in the United States of America of any iPhone data plan  
21 with AT&T; (3) downloaded and installed iOS4 software from an authorized APPLE  
22 distribution website onto their iPhone 3G/3GS.

23 9. The Plaintiff Class IV (Nationwide) is defined as follows:

24 All persons residing in the State of California, who, at any time from June 21, 2010 to the  
25 present, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a subscriber  
26 with a California billing address of any iPhone data plan with AT&T; (3) downloaded and  
27 installed iOS4.1 patch software from an authorized APPLE distribution website onto their  
28 iPhone 3G/3GS.



1 **JURISDICTION AND VENUE**

2 10. On information and belief, the California Superior Court has primary and original  
3 jurisdiction in this matter because there is no federal question at issue as the issues herein are  
4 based solely on California statutes and common law principles. Both Plaintiffs and the  
5 Defendant are domiciles of the State of California. No federal claim is made under any law of  
6 the United States of America, the Constitution or under the U.S.Code. Plaintiffs are also  
7 informed and believe and based thereupon allege that they themselves individually do not claim  
8 and have not sustained damages necessary to invoke jurisdiction under the Class Action Fairness  
9 Act, ("CAFA") 28 U.S.C. Section 1332 (a)-(d).

10 11. Venue is proper in this Judicial district and the County of San Diego because  
11 Plaintiffs BIANCA WOFFORD and SUZANN LENNOX reside in the county and it is the  
12 location where the injury, harm and/or loss occurred. Upon information and belief, Defendant  
13 resides in and/or is domiciled in this county and maintains offices and transacts business in this  
14 county, and performed activities as described herein in the County of San Diego and throughout  
15 the State of California. Venue is also proper in San Diego County pursuant to CCP §395(b) and/or  
16 CCP §395.5 in that the county is the place Defendant engaged in the activity alleged herein.  
17 Plaintiff WOFFORD has also complied with Civil Code §1782(d) as part of the California  
18 Consumer Legal Remedies Act ("CLRA") and has submitted a declaration regarding the venue of  
19 this matter as arising in the County of San Diego, in the State of California and appropriate for a  
20 court of competent jurisdiction within San Diego County. (See, Declaration of B. Wofford,  
21 paragraphs 1-2, attached hereto as Exhibit 1.) The unlawful acts alleged herein have a direct  
22 effect on Plaintiffs and those similarly situated within the State of California and within San  
23 Diego County, as well as other counties located throughout California and the United States.

24 **THE PARTIES**

25 12. Plaintiff BIANCA WOFFORD is a citizen of the United States and a resident of  
26 the State of California in the County of San Diego. She has a billing address and satisfies all  
27 requirements for being a member of Plaintiff Classes I-IV, identified in paragraphs 6-9, above.  
28 WOFFORD has owned an iPhone 3G/3GS since approximately 2009. Plaintiff is informed and

1 believes that her iPhone was still under APPLE's manufacturer's warranty. Periodically,  
2 WOFFORD was notified of system software upgrades from APPLE that were generally described  
3 by the company as improving the devices functionality and reliability. Therefore, WOFFORD,  
4 like many iPhone consumers, usually installed APPLE's recommended "upgrades" electronically  
5 through APPLE's authorized distribution websites through iTunes or through www.apple.com.  
6 During her ownership of the iPhone, she has installed "upgrades" prior to June 21, 2010, and the  
7 performance of her phone was not impaired.

8 13. Plaintiff SUZANN LENNOX is a resident of the United States of America and a  
9 citizen domiciled and residing in the State of California in the County of San Diego. She has a  
10 billing address and satisfies all requirements for being a member of Plaintiff Classes I-IV,  
11 identified in paragraphs 6-9, above. LENNOX has owned iPhone 3G/3GS devices since  
12 approximately 2008. Periodically, LENNOX was notified of system software upgrades from  
13 APPLE that were generally described by the company as improving the devices functionality and  
14 reliability. Therefore, LENNOX, like many iPhone consumers, usually installed APPLE's  
15 recommended "upgrades" electronically through APPLE's authorized distribution websites  
16 through iTunes or through www.apple.com. During her ownership of her iPhone 3G devices, she  
17 has installed "upgrades" prior to June 21, 2010, and the performance of her phone was not  
18 impaired.

19 14. Defendant APPLE, INC. is a California corporation headquartered in Cupertino,  
20 California. It is qualified and does business throughout the United States of America, and  
21 conducts business within the State of California. Plaintiffs are informed and believe that APPLE  
22 is responsible for promoting, distributing, and marketing false, misleading and deceptive  
23 information designed to cause and induce consumers throughout the United States and in  
24 California who own or use iPhone 3G/3GS devices to download and install the iOS4 operating  
25 software in reasonable and justifiable reliance upon false statements of improvements,  
26 enhancements, increased functionality and operability, when in fact, such statements,  
27 representations and affirmations of fact are and were known to be false in relation to iPhone  
28 3G/3GS users/consumers. Despite false, misleading and deceptive statements to the contrary,

1 iOS4 was in fact a downgrade in speed, functionality, operability and reliability for non-iPhone 4  
2 users/consumers.

3 15. Plaintiffs are informed and believe that APPLE, INC. is the responsible party for  
4 all conduct, actions, practices, frauds and conduct alleged herein. Plaintiffs are ignorant of the  
5 true names, capacities, relationships and extent of participation in the conduct herein alleged of  
6 the Defendants sued herein as DOES 1 through 100, inclusive, but on information and belief  
7 allege that said Defendants are legally responsible for the damages, restitution and recovery due to  
8 their unlawful practices, and therefore sue these Defendants by such fictitious names. Plaintiffs  
9 will amend their Complaint as permitted by California Civil Code Section 474 so as to allege the  
10 true names and capacities of the DOE Defendants when ascertained.

11 **STANDING - INJURY IN FACT SUFFERED BY PLAINTIFFS**

12 16. At all relevant times, Plaintiffs WOFFORD and LENNOX were and remain  
13 consumers of products and services provided by APPLE, Inc., and specifically in relation to the  
14 iPhone 3G/3GS device. Each purchased and lawfully maintained operative contracts with AT&T  
15 for cellular and data service plans and only installed authorized software as permitted by APPLE.  
16 Each were, in every sense of the word, ordinary consumers in relation to their respective  
17 purchase, ownership and use of the iPhone 3G/3GS devices. At all times relevant hereto,  
18 Plaintiffs engaged in all authorized activities in relation to the use and operation of their iPhone  
19 (i.e, it was not hacked or jailbroken by any third party and each maintained appropriate and  
20 current accounts with APPLE's exclusive wireless service provider, AT&T.) Prior to June 2010,  
21 WOFFORD and LENNOX had successfully installed all recommended upgrades to the operating  
22 system software as provided by APPLE and had not experienced any diminishment in  
23 performance, speed, reliability or functionality in their device(s).

24 17. In June 2010, WOFFORD and LENNOX were informed by APPLE that along  
25 with the release of the iPhone 4, a new operating system and firmware "upgrade" was also  
26 available from the company that was fully compatible with their iPhone 3G/3GS, and that offered  
27 numerous qualities, benefits, properties and enhancements over the predecessor system software  
28 they were using at the time, which they are informed and believe was iOS 3.x. Based on

1 statements, representations, claims of fact and other material representations made and provided  
2 by APPLE, WOFFORD and LENNOX downloaded and installed iOS4 from an authorized  
3 APPLE site, and through their respective iTunes program/account. Each undertook this action  
4 early on, in direct and reasonable reliance upon APPLE's false assertion that iOS4 would provide  
5 tremendous benefits to their iPhone 3G/3GS. At the time of the download and installation of  
6 iOS4, no statement was provided by APPLE that in any way informed, advised or suggested that  
7 iOS4 was incompatible or would result in substantial degradation of iPhone 3G/3GS functionality,  
8 operability, or reliability. Further, APPLE made no effort to advise or inform Plaintiffs that once  
9 iOS4 was installed, the earlier version of the iOS3.x software would not be able to be re-installed  
10 through APPLE authorized means. Instead, all representations were to the contrary – that iOS4  
11 would be a vast improvement to their iPhones. Further, at no time did APPLE in any way  
12 disclose to users/consumers that if iOS4 installation was unsuccessful in its promised benefits for  
13 iPhone 3G/3GS consumers, that such consumers, like WOFFORD and LENNOX, would not be  
14 permitted by the company to simply restore the older but reliable iOS3.x onto the iPhone. Prior  
15 to the release of iOS4, APPLE permitted restoration of iPhones to the earlier system software if  
16 problems were encountered.

17 18. Almost immediately after downloading and installing iOS4, WOFFORD and  
18 LENNOX restarted their respective iPhone 3G/3GS device and noticed significantly reduced  
19 speed, the inability to use previously downloaded/purchased applications, and noted an overall  
20 substantially decreased functionality and decreased reliability of the device. While not  
21 completely disabled, the operability of the device was significantly degraded and the device was  
22 no longer reliable. Both Plaintiffs experienced severe speed loss and in fact, were unable to  
23 answer telephone calls before callers were directed to voice-mail due to the inability to timely  
24 open the “sliding bar” device necessary to establish a cellular connection. Thereafter, after using  
25 support resources from APPLE, both LENNOX and WOFFORD learned that the company would  
26 not allow them to restore their iPhone to the earlier and much better performing iOS3.x. Both  
27 Plaintiffs' thereafter learned that if they wanted to attempt to regain prior adequate functionality of  
28 their iPhone by re-installing iOS3.x system software, they could only do so by engaging in activity

1 that would be unauthorized by APPLE and potentially void any warranty coverage. In other  
2 words, Plaintiffs iPhone "upgrade" had made the device unreliable and with vastly degraded and  
3 intermittent operability. Had Plaintiffs known the true facts about (1) the "upgrade" to iOS4  
4 onto earlier iPhone models and (2) the fact that if they did encounter problems that they would not  
5 be able to restore their iPhones to an earlier satisfactory iOS system without engaging in  
6 unauthorized activities (relying on third party unauthorized software downloads), then neither  
7 would have ever endeavored to download and install the iOS4 software from APPLE.

8 19. Plaintiffs are informed and believe, and based thereupon allege, that at all relevant  
9 times APPLE knew that the representations made to WOFFORD, LENNOX and the general  
10 public were materially false at the time the representations were made and that APPLE's intent  
11 was to cause and induce detrimental reliance on the representations in order to proliferate its new  
12 iOS4 into the marketplace. Plaintiffs are further informed and believe that APPLE engineers  
13 knew that iOS4 would substantially undermine, impede, degrade and decrease speed for  
14 consumers who owned third generation iPhones rather than the newly released iPhone 4 or Fourth  
15 generation iPhones. APPLE also engaged in fraudulent concealment of material facts necessary  
16 for consumers like WOFFORD and LENNOX to make an informed decisions by inducing said  
17 consumers into downloading and installing iOS4 on their third generation devices without  
18 informing them that if any problems occurred, they would not be permitted to re-install the earlier  
19 iOS3.x system software without taking action that may void warranty coverage of the iPhone.  
20 Had APPLE disclosed such true facts by telling third generation iPhone consumers that iOS4  
21 would likely substantially impair and limit performance, functionality and reliability of the iPhone  
22 3G/3GS, or by allowing consumers dissatisfied with iOS4's compatibility with the earlier devices  
23 to re-install the iOS3.x software, then hundreds of thousands of consumers would have been able  
24 to readily avoid what amounted to the oft-cited "iBrick," i.e., an iPhone whose only purpose is as  
25 a paperweight rather than a fully functioning handheld computer device. Plaintiffs are informed  
26 and believe that APPLE's fraudulent, deceptive and misleading conduct was done to create a false  
27 incentive on the part of third generation iPhone consumers to purchase the iPhone 4 by essentially  
28 laying waste to the functionality of iPhone 3G/3GS, even though these phones have similar useful

1 capabilities. Plaintiffs are also informed and believe that a substantial number of 3G/3GS owners  
2 were up for renewal of their AT&T contracts at the time of the iOS4 release, which added  
3 incentive on the part of APPLE to promote renewed contracts with its exclusive data and cellular  
4 service carrier, from whom it receives a portion of contract activation proceeds.

#### 5 GENERAL ALLEGATIONS

6 20. Plaintiffs WOFFORD and LENNOX personally suffered harm and economic loss  
7 caused by Defendant's fraud, deception, concealment and unfair business practices alleged herein.  
8 Despite purchasing various "Apps", for an extended period of time each were unable to use them;  
9 despite paying fees for data service and cellular plans, their iPhones will not reliably allow them  
10 to use the data networks or answer calls; despite paying over \$300 for their iPhones in  
11 approximately 2008 and 2009, the value of the phone is substantively diminished if it does not  
12 have a reliable operating system that permits its promised functionality. Prior to relying on  
13 APPLE's inducement to load and install iOS4, Plaintiffs' iPhone 3G/3GS devices were  
14 reasonably reliable and functional with all the applications and data network programs they had  
15 purchased. While certainly there were infrequent system problems that would require restart or  
16 restore of their iPhones, it was reliable 99% of the time. Following the installation of iOS4,  
17 Plaintiffs' productive use of the device has precipitously and unreasonably diminished such that  
18 the device was slower, less functional and with frequent inability to use for its intended purposes.  
19 Plaintiffs estimate that after iOS4 installation, they receive about 20% functionality of the device  
20 as it behaved before with the earlier iOS3.x system software and firmware, and even that  
21 functionality is at a significant loss of speed. Plaintiffs have learned from a vast majority of other  
22 iPhone 3G/3GS consumers of identical problems, and the lack of any APPLE authorized solution,  
23 has rendered their device prematurely obsolete, unreliable, slow and virtually useless. APPLE  
24 itself has a support cite that remains unanswered despite over 1600 inquiries. Further, APPLE is  
25 now editing and removing inquiries from its website in an effort to further conceal the problems  
26 associated with the damage iOS4 has unleashed on third generation iPhones.

27 21. The Plaintiffs and members of the Plaintiff Classes were all subject to the same  
28 fraud and deceptive conduct as APPLE designed and promoted iOS4 for the iPhone to be

1 marketed and distributed in a uniform fashion nationwide and to be adopted by iPhone 3G/3GS  
2 users/consumers. Plaintiffs are informed and believe that APPLE support staff all received the  
3 same or similar training, scripts and approach to deal with the many hundreds and thousands of  
4 complaints that have been lodged since iOS4 was released. APPLE is also aware and has direct  
5 knowledge that many consumers simply wish to re-install iOS3.x, but the company still will not  
6 permit it without causing owners to breach their warranty (by relying upon third party  
7 unauthorized tactics.)

8 22. The Plaintiffs and each member of the proposed Plaintiff Classes all suffered the  
9 same or similar harm as a direct result of APPLE's material misrepresentations and concealment  
10 of true material facts, leading the consumer to download and install a product that was hailed as  
11 offering a substantial upgrade, enhanced reliability, enhanced features, and greater functionality  
12 and capability, when in fact such was completely false for third generation iPhone consumers.  
13 Defendant's corporate officers, directors and managing agents expressly authorized the fraud and  
14 ratified the use of misleading, fraudulent and deceptive inducements to steer consumers into  
15 adopting iOS4 in order to gain universal market share at the expense of third generation iPhone  
16 consumers. Plaintiffs are informed and believe that APPLE perpetrated the fraud so as to  
17 improperly, unfairly and deceptively to induce iPhone 3G/3GS consumers to purchase iPhone 4.  
18 And investigation to date shows that many many consumers prematurely gave up their 3G/3GS  
19 devices and entered into new two year AT&T contracts in order to obtain the iPhone 4, for which  
20 the iOS4 is optimized.

### 21 CLASS ACTION ALLEGATIONS

22 23. Plaintiffs WOFFORD and LENNOX bring this action on behalf of themselves,  
23 individually, and all other similarly situated persons, as a class action pursuant to California Code  
24 Civil Procedure § 382 and pursuant to the Consumer Legal Remedies Act ("CLRA"), California  
25 Civil Code §1780 et seq. Plaintiffs are informed and believe, and based thereupon allege, that the  
26 use of class action procedures is warranted due to the existence of an ascertainable and numerous  
27 class of consumers having well-defined community of interest and similar damages that, in  
28 themselves, would not be sufficiently large to recover individually. Plaintiffs are informed and

1 believe that hundreds of thousands of third generation iPhone consumers have been negatively  
2 impacted and suffered legal harm due to APPLE's fraudulent and deceptive conduct surrounding  
3 the release of iOS4. Due to this, it would be impracticable to join all prospective class members,  
4 and it would overwhelm the court if the matter was brought as multiple separate individual  
5 actions. Plaintiffs are further informed and believe, and based thereon allege, that they have not  
6 and never waived their right to a jury trial nor did they ever disclaim their rights under Civil Code  
7 Section 1751.

8           24.     The classes which Plaintiffs seek to represent are composed of and defined as  
9 follows:

10           The Plaintiff Class I (California) is defined as follows:

11           All persons residing in the State of California, who, at any time from June 21, 2010 to  
12 September 8, 2010, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a  
13 subscriber with a California billing address of any iPhone data plan with AT&T; and (3)  
14 downloaded and installed iOS4 software from an authorized APPLE distribution website  
15 onto their iPhone 3G/3GS.

16           The Plaintiff Class II (California) is defined as follows:

17           All persons residing in the State of California, who, at any time from September 8, 2010 to  
18 the present, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a  
19 subscriber with a California billing address of any iPhone data plan with AT&T; (3)  
20 downloaded and installed iOS4.1 patch software from an authorized APPLE distribution  
21 website onto their iPhone 3G/3GS.

22           The Plaintiff Class III (Nationwide) is defined as follows:

23           All persons residing in the United States of America, who, at any time from June 21, 2010  
24 September 8, 2010, (1) own(ed) an authorized APPLE iPhone 3G/3GS device; (2) was a  
25 subscriber with a billing address in the United States of America of any iPhone data plan  
26 with AT&T; (3) downloaded and installed iOS4 software from an authorized APPLE  
27 distribution website onto their iPhone 3G/3GS.

28           The Plaintiff Class IV (Nationwide) is defined as follows:

          All persons residing in the in the United States of America, who, at any time from  
September 8, 2010 to the present, (1) own(ed) an authorized APPLE iPhone 3G/3GS  
device; (2) was a subscriber with billing address in the United States of America of any  
iPhone data plan with AT&T; (3) downloaded and installed iOS4.x patch software from an  
authorized APPLE distribution website onto their iPhone 3G/3GS.

          Plaintiffs reserve the right to alter, modify and/or amend these definitions in a manner  
consistent with California Rules of Court and Code of Civil Procedure Section 382.



1           25.     **Ascertainable Class:** The proposed classes consists of readily ascertainable  
2 persons and/or entities. The class is narrowly defined as those consumers who purchased and  
3 own iPhone 3G/3GS devices and who installed iOS4 from APPLE since its release date in June  
4 2010, and who experienced degradation of the devices functionality/operability. The members of  
5 the proposed class can be easily identified and located using information contained in Defendant's  
6 records, as each authorized iOS4 download must be authenticated to a particular user and APPLE  
7 account holder, like WOFFORD and LENNOX, using iTunes software. Specifically, each person  
8 or entity will have a record of an account with APPLE that will identify each person who installed  
9 iOS4 on an authorized iPhone 3G/3GS. In fact, Plaintiffs are informed and believe that APPLE  
10 will have detailed records, down to the very serial number of the device, so that the class can be  
11 readily ascertained. Further, all class members can be further ascertained, identified and located  
12 so as to receive constitutional notice through records maintained by AT&T.

13           26.     **Numerosity:** The potential quantity of members of the Class as defined is so  
14 numerous that joinder of all members would be unfeasible and highly impractical. The actual  
15 quantity of members of the Class is unknown to Plaintiffs at this time; however Plaintiffs are  
16 informed and believe the total number of nationwide class members approaches or exceeds  
17 100,000 members, with the largest single percentage of members located and residing in the  
18 forum state. The disposition of their claims through this class action will benefit both the parties  
19 and this Court. Class Action procedure will be efficient and prevent redundancy of claims.

20           27.     **Typicality:** The claims of Plaintiffs WOFFORD and LENNOX for damages and  
21 restitution are typical of any consumer who purchased the third generation of iPhone, downloaded  
22 and installed iOS4 and experienced substantial degradation of the iPhone's key functionality of its  
23 applications and network connectivity. APPLE's manner of marketing and disseminating the  
24 iOS4 system software was done nationwide and in California in a uniform manner using the same  
25 false, deceptive and misleading statements that were intended and designed to induce proposed  
26 Class Members into "upgrading" their 3G/3GS devices with system software that would, in fact,  
27 materially "downgrade" the utility of the devices. Plaintiffs are informed and believes that as a  
28 direct and proximate consequence of the practices alleged herein, APPLE increased its overall

1 sales of iPhone 4s to persons who, frustrated over the iOS4's poor performance when operating on  
2 third generation iPhones, simply bought the newer device unnecessarily.

3       28.     **Adequacy:** Plaintiffs WOFFORD and LENNOX are members of the proposed  
4 Plaintiff Classes and each are an adequate representative for the proposed California and  
5 Nationwide classes. Plaintiffs will fairly protect the interests of the members of the Class, have  
6 no interests antagonistic to the members of the proposed Class and will vigorously pursue this suit  
7 via attorneys who are competent, skilled and experienced in litigating matters of this type and are  
8 well-acquainted with class action process and procedure. Proposed Class Counsel are competent  
9 and experienced in litigating large class actions. Plaintiffs have suffered similar loss and damages  
10 as all other class members and will fairly and judiciously protect the interests of absent class  
11 members. Both Plaintiffs intend to vigorously pursue class claims for all Plaintiff Classes.

12       29.     **Superiority:** The nature of this action and the nature of laws available to Plaintiffs  
13 to make use of the class action format are particularly efficient and appropriate procedure to  
14 afford relief to Plaintiffs and the Classes for the wrongs alleged herein, as follows:

15             a.     This case involves a large corporate Defendant and a sufficient numerous  
16 group of individual Class Members with many relatively small claims but all  
17 having similar and common issues of law and fact;

18             b.     If each individual member of each of the Classes was required to file an  
19 individual lawsuit, the large corporate Defendant would necessarily gain an  
20 unconscionable advantage because Defendant would be able to exploit and  
21 overwhelm the limited resources of each individual member of the Classes with  
22 Defendant's vastly superior financial and legal resources;

23             c.     Requiring each individual member of each of the Classes to pursue an  
24 individual remedy would also discourage the assertion of lawful claims by the  
25 members of the Classes who would be disinclined to pursue an action against  
26 Defendant because of an appreciable and justifiable fear of retaliation and  
27 permanent damage to their lives, careers and well-being;

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d. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;

e. The prosecution of separate actions by the individual members of the Classes, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendant; and which would establish potentially incompatible standards of conduct for Defendant; and/or legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Class to protect their interests; and

f. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

g. Furthermore, as the damages suffered by each individual member of the Classes may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

h. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgment.

30. **Existence and Predominance of Common Questions of Fact and Law:** There are common questions of law and fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes including, without limitation:

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a. Whether the Class Members were subject to a common scheme, plan, practice or procedure wherein common material misrepresentation of fact were perpetrated by APPLE so as to induce reasonable reliance upon individuals and entities download and install iOS4 on third generation iPhone devices, when, in fact, iOS4 was not fully compatible with the older iPhones and caused disruption in functionality of the iPhone.

b. Whether Defendant put in place a common, nationwide incentive based operation or scheme, common marketing practices, orientation, training and presentation to its support personnel to falsely and deceptively misrepresent compatibility issues between the iPhone iOS4 and iOS3.x for Third Generation iPhones and whether Defendant deliberately concealed and prevented iPhone 3G/3GS consumers from re-installation and restoration of the iOS3.x onto their iPhones in order to unfairly and deceptively promote iOS4 and iPhone 4 sales during its June 2010 launch.

c. Whether Defendant's unlawful, unfair and deceptive business practices were designed, with advance knowledge, to induce reliance upon consumer so as to purchases goods or services that were unnecessary for the consumers to obtain full functionality of the iPhone.

d. Whether Defendant has been unjustly enriched by concealing true material facts from consumers and misleading consumers as to benefits, attributes and characteristics of iOS4 that, in truth and fact, it did not have for third generation iPhone consumers.

e. Whether members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;

f. Whether the members of the Classes are entitled to injunctive and/or declaratory relief so as to prevent Defendant from continuing its practices of falsely representing "compatibility" between the iOS4 system and 3G/3GS that in truth and fact, do not exist;

- 1           g.     Whether the members of the Classes are entitled to restitution;
- 2           h.     Whether the members of the Classes are entitled to punitive damages;
- 3           i.     Whether Defendant is liable for pre-judgment interest.

4           31.    **Manageability of Class and Common Modes of Proof:** The nature of this action  
5 and the nature of laws available to Plaintiffs make use of the class action format a particularly  
6 efficient and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein.  
7 Specifically, APPLE maintains all records necessary to identify each and every class member and  
8 to identify, based upon technical documentation, to identify each actual iPhone 3G/3GS owner  
9 that has downloaded iOS4. APPLE set in motion a common plan or scheme for the iPhone in  
10 June 2010 that had been carefully designed and developed in order to induce widespread adoption  
11 of iOS4 and increase its marketshare reach, even though the company knew and failed to disclose  
12 that iOS4 would provide no benefit to third generation iPhone consumers who installed the fourth  
13 generation system software/firmware. The records relating to the common implementation of  
14 iOS4 are uniform throughout the United States and would be used to show a common scheme,  
15 design, pattern, practice and plan of luring unsuspecting consumers to install iOS4 based upon  
16 false, deceptive and misleading statements designed to induce reliance and, in fact, causing  
17 detrimental reliance on software that was known to slow and crash iPhone 3G/3GS devices  
18 despite promises to the contrary. Due to these common practices, uniform product/service  
19 offerings, standardized pricing schemes, common marketing, promotional, orientation, sales  
20 training and advertising components, Plaintiffs can assemble and formulate common modes of  
21 proof for the class as a whole designed to show (a) that APPLE engaged in a massive and  
22 organized campaign of fraud, deception and concealment on a nationwide basis in furtherance of  
23 promoting sales of the iPhone 4 and adoption of iOS4; (b) that APPLE's common distribution,  
24 marketing, promotional and training materials were designed with advance knowledge that they  
25 would mislead and induce iPhone 3G/3GS consumers install iOS4 even though it would  
26 substantially and negatively impact the functionality of the device without recourse; (c) that  
27 consumers, like WOFFORD and LENNOX, would and did, in fact, reasonably and justifiably rely  
28 upon APPLE's intentionally false and misleading statements regarding alleged "compatibility"

1 between iOS4 and 3G/3GS iPhones which was not true; and (d) that as a result, APPLE  
2 diminished the utility, the value and the services paid and available to iPhone 3G/3GS consumers  
3 in a reasonably certain and quantifiable manner. Plaintiffs propose surveys, representative  
4 testimony of class members, and record sampling done on a statistically significant and  
5 randomized basis to prove each claim as hereinafter alleged. Further, expert technology data and  
6 data use patterns available from AT&T will show decreased network functionality class-wide.

7 32. Plaintiffs are informed and believe that class-wide evidence will show that they  
8 and proposed class members took action to download the iOS4 system software in direct,  
9 reasonable and justifiable reliance upon APPLE's false, misleading and deceptive representations.  
10 Specifically, Plaintiffs WOFFORD, LENNOX and proposed Class Members were induced to  
11 download and install what was known by APPLE to be a inferior operating system for the iPhone  
12 3G/3GS. APPLE's activities were dishonest, unethical and deceitful; had true and fair  
13 representations been made about the company's decision to disallow reinstallation of iOS3.x for  
14 iPhone 3G/3GS consumers and the asserted false benefits of installing iOS4 on Class Member  
15 devices, then WOFFORD, LENNOX and members of the proposed Classes would not have  
16 installed the iOS4 system software on their devices and incurred loss and damage due to  
17 unreliable, slow and constantly crashing – unusable for its intended purpose.

18 33. As a seller of goods and services, APPLE at all times had a duty to disclose all  
19 material facts and not to conceal material facts about the qualities and attributes of the iPhone or  
20 the iOS system software available and necessary to operate an iPhone. Attributes as to the  
21 compatibility, functionality, operability, and reasonable reliability or lack thereof for consumers  
22 and the purpose of the iPhone was material fact or set of facts that required APPLE to clearly  
23 communicate and to inform to consumers, and for which the company was duty bound not to  
24 conceal. APPLE is the only party who has access to true facts regarding compatibility or lack  
25 thereof for consumers installing iOS4. *See, e.g., Nussbaum v. Weeks (1989) 214 Cal. App.3d*  
26 *1589, 1600 ("seller has a general duty to disclose material facts that are not accessible to the*  
27 *buyer"),* citing 5 Witkin, Summary of Cal. Law. (9th ed. 1988) Torts § 700, at 801-02. At all  
28 relevant times, APPLE, therefore, maintained the legal duty to disclose all necessary material facts

1 in order to inform third generation iPhone consumers of limitations and known material  
2 systematic incompatibilities and material misrepresentations as to the data plans necessary for full  
3 functionality of the iPhone. APPLE knew that its promotional, sales, distribution, marketing and  
4 orientation training materials provided consumers and authorized retailers with false and  
5 misleading information, and that the information was to be disseminated to consumers in a  
6 manner that was reasonably likely to deceive said consumers in the absence of truthful disclosure.  
7 *See, e.g.*, Restatement (Second) of Torts § 551. Had APPLE disclosed that prior iOS3.x  
8 restoration was unavailable to Third Generation iPhone devices and disclosed that iOS4 had  
9 significant operability limitations on Third Generation iPhones, then consumers could have had  
10 reasonable options to avoid the problems that interfered and degraded data plans for several  
11 AT&T billing cycles. At least then, they could have made the download with full knowledge that  
12 it might interfere with the functionality of their older phone. In essence, APPLE knew that its  
13 conduct would result in adaptation to iPhone 4 devices, had incentive through its exclusive  
14 contractual arrangement with AT&T to artificially increase iPhone 4 sales, and had no regard for  
15 the money consumers spend on data plans, even if an “upgrade” resulted in diminished service  
16 through its exclusive 3G network carrier, AT&T. Further, by limiting iPhone 3G and 3GS access  
17 to data networks at the launch of iPhone 4 and iOS4, APPLE knew that iPhone 4 consumers  
18 would have better and more stable access to AT&T relatively fragile 3G network. Plaintiffs are  
19 informed and believe that AT&T aggregate network data for the time-period in question will show  
20 that 3G/3GS consumers were in fact significantly deprived service during the class periods  
21 proposed herein.

22 34. In all, Plaintiffs are informed and believe, and based thereupon allege that AT&T  
23 data plan account holders with iPhone 3G/3GS devices suffered real and tangible degradation in  
24 data service and device functionality from the release of iOS4 until approximately September 30,  
25 2010, when a iOS4.x patch was released. APPLE knew it was a problem, APPLE did nothing  
26 about, and essentially interfered with its exclusive carrier’s ability to perform on its data plan  
27 contracts in damages according to proof.

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1           40.     Each purchase of the iPhone 3G/3GS sold by Defendant along with the  
2 requirement to provide an operating system software resulted in Plaintiff WOFFORD and each  
3 and every proposed member of Plaintiff Classes (California) being engaged in a “transaction”  
4 within the meaning of Civil Code section 1761 (d) and 1770.

5           41.     The policies, acts and practices of Defendant as described above were intended to  
6 result in the sale of products/ services to Plaintiff WOFFORD and members of the Plaintiff  
7 Classes. These actions violated, and continue to violate the Consumers Legal Remedies Act in at  
8 least the following aspects:

9           (a)     In violation of Civil Code section 1770(a)(4), Defendant makes deceptive  
10 representations in connection with the services in question;

11           (b)     In violation of Civil Code section 1770(a)(5), Defendant represents that its services  
12 have characteristics, uses, or benefits which it does not have;

13           (c)     In violation of Civil Code section I 770(a)(9), Defendant advertises services without  
14 the intent to sell them as advertised;

15           (d)     In violation of Civil Code section 1770(a)(14), Defendant represents that its  
16 services confer or involve rights, remedies or obligations which it does not have, or which are  
17 prohibited by law; and

18           (e)     In violation of Civil Code section 1770(a)(19), Defendant inserted and continues  
19 to insert unconscionable provisions into the contracts at issue herein.

20           42.     APPLE’s conduct, as specifically alleged above, was to fraudulently induce  
21 unwitting consumers into purchasing a product or service which was unnecessary. As a direct and  
22 proximate consequence of APPLE’s conduct, Plaintiff WOFFORD and the proposed classes were  
23 fraudulently induced, by deceit, into downloading and installing iOS4 on their Third Generation  
24 iPhone devices based upon false statements, material misrepresentation, deception as to  
25 “improvements” and “upgrades” and through concealment of true facts, even when specifically  
26 sought by consumers. Plaintiff WOFFORD and members of proposed Plaintiff Classes as  
27 residents and citizens of the State of California, reasonably and justifiably relied upon APPLE’s  
28 false representations about iOS4 and as a direct and proximate result of APPLE’s conduct and

1 practices, suffered damages and suffered harm. This included, without limitation, the knowing  
2 and willful impairment of AT&T to perform on its contracts to provide data service to iPhone  
3 3G/3GS devices from June to the end of September 2010. Plaintiff WOFFORD is informed and  
4 believes, and based thereupon alleges, that APPLE test engineers knew or should have known  
5 iPhone 3G/3GS applications that were reliant upon AT&T's 3G data network would be  
6 substantially impaired for anyone with a Third Generation iPhone that downloaded iOS4 from  
7 June 2010 to September 30, 2010. APPLE had all resources necessary to know in advance that  
8 the iOS4 download would be a disaster for 3G/3GS consumers, did know such information, but  
9 did concealed the problem.

10 43. APPLE's actions and conduct were unfair, unlawful and illegal. The conduct is the  
11 proximate and legal cause, and/or a substantial factor in causing hundreds of dollars worth of  
12 unnecessary service fees to be charged to WOFFORD and thousands of others similarly situated,  
13 who were in fact unable to obtain the benefits of their AT&T data plan contracts for a several  
14 month period. As a direct result of APPLE's unfair, unconscionable, fraudulent and deceptive  
15 business practices, millions were collected for a service that could not be reasonably and reliably  
16 provided due to iOS4 installation. Actual damages suffered by WOFFORD and caused by  
17 APPLE's conduct exceeds at least \$100.00 for the time period of this case. On information and  
18 belief, WOFFORD alleges that similar damages were suffered by virtually all members of the  
19 proposed Plaintiff Class I and II (California). In fact, APPLE's support site is replete with  
20 consumer complaints about service degradation and the company failed to offer any compensation  
21 or corrective action for the time period specified in this case. APPLE was given an opportunity  
22 under the CLRA to cure its issues with the iPhone 3G/3GS consumers and failed to do so. While  
23 APPLE has released a patch through iOS4.1 on September 8, 2010, the patch is not sufficient to  
24 return the iPhone 3G/3GS devices to full prior functionality and reliable operability.

25 44. In addition to actual damages and restitution of fees imposed, Plaintiff WOFFORD  
26 also seeks the recovery of an additional monetary sum established by statute for herself and each  
27 member of Plaintiff Classes as permitted by California Civil Code section 1780(b)(1). This sum  
28 will be sought and assessed in an amount approved by the court or awarded by the trier of fact.

1           45. Further, because the actions of APPLE were intentional, willful, and in conscience  
2 and/or reckless disregard of the rights of consumers, and because officers, directors and/or  
3 managing agents of APPLE engaged in acts of fraud and oppression by both creating, concealing  
4 and implementing the uniform promotional strategies in order to sell and create incentives for  
5 Third Generation iPhone consumers to be lured to iOS4 and the Fourth Generation of the iPhone.  
6 through material misrepresentation and false statements. As a result, Plaintiff WOFFORD seeks  
7 the recovery of punitive damages pursuant to Civil Code section 1780(a)(4) and Civil Code  
8 section 3294 in an amount sufficient to deter such conduct in the future, and in an amount that is  
9 consistent with the Defendant's due process rights, and in an amount that is in reasonable relation  
10 to the revenues of the Defendant and its artificially increased iPhone 4 sales. By engaging in such  
11 conduct, APPLE increased sales of the iPhone 4 and renewal contracts with AT&T prematurely  
12 through artifice, deception and fraud that is of a despicable nature.

13           46. Plaintiff WOFFORD is informed and believes that all or a substantial part of the  
14 Defendant's unfair, unlawful, fraudulent and deceptive business activities, practices and acts  
15 continue to the present despite notice and opportunity to cure being provided. As a consequence,  
16 pursuant to California Civil Code section 1770, 1780(a)(2) and 1782 (d), Plaintiff WOFFORD  
17 will seek on behalf of herself and all others similarly situated an order to enjoin Defendant from  
18 engaging in the activities described herein by seeking appropriate orders from the Court directing  
19 APPLE to cease and desist its fraudulent practices in the sales, promotion, and marketing of the  
20 iOS4 software upgrade for the iPhone 3G/3GS consumers, and to require that the true material  
21 facts to be disclosed to consumers.

22           47. Plaintiff WOFFORD and the Class demanded under Civil Code section 1782(a)  
23 that within thirty (30) days of the CLRA notice (attached hereto as Exhibit 2) APPLE must take  
24 corrective action and to compensate iPhone 3G/3GS consumers for damages. Upon the mailing  
25 of notice by certified mail, return receipt requested, Plaintiff WOFFORD requested that  
26 Defendant cease, correct, or otherwise rectify the goods and services alleged in this complaint to  
27 be in violation of Civil Code section 1770, including notice and full compensation to consumers  
28 who were harmed by download and installation of the iOS4. A true and correct copy of the

1 Plaintiff's Notice to the Defendant under the Consumer Legal Remedies Act (CLRA Notice) is  
2 attached hereto as Exhibit "2." Plaintiff WOFFORD has waited at least 30-days and Defendant  
3 has failed to remedy or cure any of the allegations of this complaint. Plaintiff WOFFORD  
4 withheld filing of initial Complaint in the anticipation of curative action by Defendant, but no  
5 such action was taken. Instead, after the CLRA letter, APPLE submitted a software patch for  
6 download that has restored some functionality for iPhone 3G/3GS consumers, but has not allowed  
7 for the reinstallation of iO3.x which provides greater functionality/reliability for iPhone 3G/3GS  
8 consumers. In fact, since the CLRA Notice was issued, no specific offer to cure was made to  
9 Plaintiff WOFFORD or her counsel, and no effort was made to address the allegations made.  
10 Indeed, APPLE's failure to respond, not just to WOFFORD but to hundreds of complaints lodged  
11 on APPLE's support web site appears to be an implied and adoptive admission that the facts  
12 averred herein are true.

13 **SECOND CAUSE OF ACTION**  
14 **VIOLATION OF THE UNFAIR COMPETITION LAW**  
15 **(Business & Professions Code Section 17200, et seq.)**  
16 **(Plaintiffs WOFFORD, LENNOX and each Member of Plaintiff Class I & II (California)**  
17 **against Defendant)**

18 48. Plaintiffs incorporate all preceding paragraphs in full as though fully set forth  
19 herein.

20 49. The practices identified above and engaged in by APPLE since at least June 2010  
21 to the present in connection with the distribution of the iOS4 operating system and firmware to  
22 third generation iPhone consumers is an unlawful and unfair business practice within the meaning  
23 of Business and Professions Code sections 17200, *et seq.*

24 50. This claim for relief is brought under Business and Professions Code sections  
25 17203 and 17204, commonly called the Unfair Competition Law ("UCL"). Under this claim for  
26 relief and pursuant to Business and Professions Code section 17208, Plaintiffs and members of the  
27 Plaintiff Classes (California) seek restitution for the diminishment in value of their iPhone devices  
28 and/or for the percentage of loss of use of their iPhone 3G/3GS devices that stems as a direct and  
proximate result of Defendant's false, misleading and deceptive business practices.

1           51.     Based on the conduct herein described, Plaintiffs are informed and believe, and  
2 based thereupon allege, that APPLE violated the “unlawful” prong of the UCL by violating the  
3 Consumers Legal Remedies Act (CLRA) as alleged above. Plaintiffs are also informed and  
4 believe that APPLE’s conduct is unlawful as the conduct described herein constitutes fraud and  
5 deceit and violates California Civil Code Sections 1572, 1573, 1709 and 1710. Plaintiffs further  
6 allege that each of the remaining 49 states of the United States of America maintain their own  
7 similar laws and statutes related to fraud and false promise and that APPLE’s conduct violated  
8 those similar laws and statutes for consumers in those states. Plaintiffs are informed and believe  
9 that no statute of limitations has been exceeded in any state jurisdiction for the remaining 49 states  
10 as the conduct complained of herein did not occur until the nationwide release of iOS4 in June  
11 2010.

12           52.     This claim for relief is brought as a cumulative remedy as provided in Business and  
13 Professions Code section 17205, and is intended as an alternative remedy for restitution for  
14 Plaintiffs and each Plaintiff Class member for the applicable time period during which APPLE  
15 engaged in the practices alleged herein.

16           53.     As a result of the Defendant’s unlawful, unfair and deceptive business practices,  
17 Plaintiffs and each member of Plaintiff Classes (California) have suffered actual damages and are  
18 entitled to restitution in an amount according to proof.

19           54.     Further, the Plaintiffs request the violations of the Defendant alleged herein be  
20 enjoined, and other equitable relief as this Court deems proper including an order for an  
21 accounting and injunctive relief to prevent fraudulent practices from continuing.

22           55.     Enforcement of statutory provisions enacted to protect consumers is a fundamental  
23 public interest in the State of California. Consequently, Plaintiffs’ success in this action will  
24 result in the enforcement of important rights as affecting the public interest and will confer a  
25 significant benefit upon the general public. Private enforcement of the rights enumerated herein is  
26 necessary, as no public agency has pursued enforcement. Plaintiffs are incurring a financial  
27 burden in pursuing this action and it would be against the interests of justice to require the  
28 payment of attorneys’ fees and costs from any recovery that might be obtained herein.

1           56. Plaintiffs may, at their election, also seek declaratory and/or injunctive relief for  
2 Plaintiff classes II (California) and IV (Nationwide) as permitted by the Unfair Competition Law  
3 so as to cause APPLE to cease and desist in its ongoing wrongful conduct, false representations  
4 and its diminishment of both the value of the iPhone 3G/3GS product and its ongoing interference  
5 with known and existing contracts entered into by class members with AT&T in California and  
6 across the nation. Specifically, Plaintiffs seek to temporarily and permanently enjoin APPLE  
7 from continuing to impair AT&T's ability to provide and perform under its cellular and data plan  
8 contracts and making false statements about the qualities of iOS4 on 3G/3GS devices.

9           57. In addition, if Plaintiffs succeed in enforcing these rights affecting the public  
10 interest, then attorneys' fees may be awarded to Plaintiffs and against Defendant under Code of  
11 Civil Procedure section 1021.5 and other applicable law in part because:

12                   a. A successful outcome in this action will result in the enforcement of  
13 important rights affecting the public interest by requiring Defendant to truthfully disclose all  
14 material facts;

15                   b. This action will result in a significant benefit to Plaintiffs, the Plaintiff  
16 Classes, and the general public by bringing to a halt unlawful and/or unfair activity and by causing  
17 the return of ill-gotten gains obtained by Defendant;

18                   c. Unless this action is prosecuted, members of the Plaintiff Classes and the  
19 general public will not recover those moneys, and many of Defendant's customers and consumers  
20 would not be aware that the acts and practices they were subjected to by Defendant were wrongful  
21 and fraudulent;

22                   d. Unless this action is prosecuted, Defendant will continue to mislead its  
23 customers about the true nature of their rights and remedies under the wage and hour laws; and

24                   e. An award of attorneys' fees and costs is necessary for the prosecution of  
25 this action and will result in a benefit to Plaintiffs, the Plaintiff Classes, and to consumers in  
26 general by preventing Defendant to continue to gain unfair advantage from falsely representing  
27 attributes to its iOS4 operating system in relation to consumers who in justifiable reliance upon  
28

1 APPLE's false statements, downloaded and installed iOS4 software onto their third generation  
2 iPhone devices and, consequently, suffered economic loss therefrom.

3 **THIRD CAUSE OF ACTION**  
4 **FALSE AND DECEPTIVE ADVERTISING**  
5 **(Business & Professions Code Section 17500, et seq.)**  
6 **(Plaintiffs and each Member of Plaintiff Class I & II (California) against Defendant)**

7 58. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

8 59. The practices identified above and engaged in by APPLE since at least June 1,  
9 2010 to the present in connection with the release and distribution of the iOS4 to iPhone 3G/3GS  
10 consumers having a valid AT&T data plan, are part of a false, misleading and deceptive  
11 marketing, sales and promotional statements made to the public in violation of Business and  
12 Professions Code section 17500, *et seq.* The Defendant knew and knows that the statements made  
13 are false, misleading and deceptive to a reasonable consumer seeking to upgrade his or her  
14 iPhone. APPLE intended for 3G and 3GS consumers, like WOFFORD and LENNOX to  
15 detrimentally rely on their false promises of a software upgrade, and knew that iOS4 would not  
16 provide the asserted qualities and benefits for those consumers, but would instead hinder their  
17 iPhone's operations.

18 60. California Business & Professions Code §17500 *et seq.* makes it unlawful for  
19 anyone to make an untrue or misleading statement to the public about or in connection with the  
20 advertising or sale of a product which is known or should be known by that person to be untrue or  
21 misleading and with the intent not to sell the product as advertised. Plaintiff and members of the  
22 Plaintiff Class I & II (California) allege that the statements, advertisements, representations of fact  
23 and the use of the terms upgrade, improvement, enhancement, or other similar terms used by  
24 APPLE to describe purported benefits and attributes for its iOS4 are false, deceptive and likely to  
25 mislead reasonable consumers to believe that iOS4 is fully compatible and does not impair speed  
26 or functionality of third generation iPhone devices. Plaintiffs WOFFORD and LENNOX, were,  
27 in fact, misled to believe by Defendant's statements, prior conduct and affirmations, that iOS4  
28 would improve, enhance, and upgrade their respective iPhone 3G/3GS devices, and were wrongly  
induced by statements made by APPLE to download and install the software on their device.

1 WOFFORD and LENNOX relied on the misleading and false statements to their detriment, and  
2 lost functionality and reliable operability of their iPhone as a direct and proximate consequence of  
3 APPLE's false and misleading statements released to the general public about the supposed  
4 "benefits" of iOS4.

5         61. At all relevant times, Defendant knew that its sales strategy for iOS4 and the  
6 iPhone 4 as well as its marketing communications with the public for purposes of causing and  
7 inducing consumers to adopt and install iOS4 were done through a common pattern and practice  
8 of misrepresenting the product and service provided in order to induce a reasonable consumer into  
9 taking action that actually caused harm and loss of use of their iPhone device. Defendant's  
10 statements, as identified throughout this Complaint, were part of an ongoing nationwide pattern or  
11 systematic course of conduct that was and continues to be repeated daily in the United States, in  
12 California and in this County, in order to maximize the adoption of iOS4 by consumers with  
13 iPhone devices that will suffer degraded utility and service if installed and activated. Defendant  
14 has actual knowledge that its statements, representations and inducement are likely to mislead and  
15 deceive a reasonable person and have in fact misled and induced thousands of consumers across  
16 this State and throughout the United States to adopt what is in fact an inferior product for  
17 3G/3GS.

18         62. As a direct and proximate result of the Defendant's false, deceptive and misleading  
19 statements made to the public about benefits and qualities of iOS4, and the sustained effort to  
20 prevent consumers from restoring 3G/3GS devices with iOS3.x, Plaintiffs and each member of  
21 Plaintiff Classes I and II (California) have suffered actual financial loss and damages and are  
22 entitled to restitution in an amount according to proof for the loss of use of their product and for  
23 loss of some value of their service agreements with APPLE's exclusive wireless service carrier,  
24 AT&T. APPLE's conduct knowingly and intentionally impaired AT&T's ability to perform on its  
25 data service plans for class members in violation of California decisional common law.

26         63. Plaintiffs and the Plaintiff Classes I & II (California) request that the Court enter  
27 such orders as may be necessary to restore to each of them all sums which Defendant wrongfully  
28 acquired by means of the false advertising as provided in Business & Professions Code §17203



1 and §17535, and for other appropriate relief. Further, the Plaintiffs request the violations of the  
2 Defendant alleged herein be enjoined, and other equitable relief as this Court deems proper  
3 including an order requiring Defendant to cease and desist from its use of false, misleading and  
4 deceptive marketing, advertising and promotional statements related to the alleged benefits,  
5 enhanced properties and asserted improvements for the iOS4 as it relates to 3G/3GS iPhones.

6 64. In addition, if Plaintiffs succeed in enforcing these rights affecting the public  
7 interest, then attorneys' fees may be awarded to Plaintiffs and against Defendant under Code of  
8 Civil Procedure section 1021.5.

9 **FOURTH CAUSE OF ACTION**  
10 **INTENTIONAL AND/OR NEGLIGENT INTERFERENCE**  
11 **WITH EXISTING CONTRACT**  
**(Plaintiffs WOFFORD, LENNOX and Plaintiff Classes I-IV (California and Nationwide)**  
**against Defendant)**

12 65. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

13 66. At all times relevant herein, Plaintiffs and members of Plaintiff Classes I-IV had a  
14 valid, existing and binding contract for cellular and data service for the iPhone 3G/3GS device  
15 wherein consumers paid monthly contract service fees to AT&T in exchange for wireless  
16 telephone and data services upon AT&T's network infrastructure. AT&T was, at all times, the  
17 exclusive carrier for all such services and contracts with between Plaintiffs and the proposed  
18 Classes with AT&T were necessary to make the iPhone fulfill its intended purpose as a mobile  
19 communications device.

20 67. At all relevant times, APPLE had actual knowledge of the existence of each  
21 contract between Plaintiffs, members of the proposed Plaintiff Classess I-IV and its exclusive  
22 carrier, AT&T. APPLE knew that in order for the iPhone to serve its intended purpose, it  
23 required basic operating system software for functionality of the device and its ability to engage  
24 the AT&T cellular and data network.

25 68. Under the common law of California and each of the other 49 states comprising the  
26 United States of America, it is unlawful for a party to engage in conduct that it intends, knows or  
27 should have known by exercising reasonable care that will and in fact does interfere with the  
28 ability of a party to perform duties ongoing in an executory contract. Under the common law of

1 all 50 states, persons and entities are charged with a duty of care to refrain from activities that will  
2 impair the ability of another party to perform a contract for duties owed to others for contracts it  
3 knows exist and are executory in nature. APPLE knew that owners of iPhone 3G/3GS without a  
4 reliable operating system would still be charged for services on AT&T's cellular and data  
5 networks, whether the iPhones were operable or not.

6 69. At all relevant time, Plaintiffs are informed and believe, and based thereupon  
7 allege, that APPLE had actual, direct and cogent knowledge of the existence of AT&T's contracts  
8 with Plaintiffs and all proposed class members in California and across the United States of  
9 America. Defendant knew that its conduct in releasing system software for download without  
10 warning of serious flaws and substantial performance problems would and in fact did directly,  
11 tangibly and materially interfere with AT&T ability to provide its wireless data and cellular  
12 services for each person who owned a 3G/3GS device with an AT&T account and who  
13 downloaded the iOS4 operating system software believing under false pretense that it was an  
14 "upgrade." APPLE's conduct in releasing iOS4 for download on 3G/3GS iPhone was conduct  
15 that it intended, knew or should have with reasonable care known would substantially and  
16 materially interfere with AT&T's ability to perform on its duties and obligations on its executory  
17 contracts with Plaintiffs and the proposed members of the Plaintiff classes.

18 70. As a direct, proximate and legal result of APPLE's conduct, the iOS4 software did  
19 in fact cause and was a substantial factor in impairing AT&T's ability to provide and perform  
20 under its contracts as expected by reasonable consumers who owned iPhone 3G/3GS devices  
21 tethered to AT&T. The conduct of APPLE substantially degraded and impaired data and cellular  
22 performance of the iPhone all while customers continued to pay full price for their montly AT&T  
23 service contracts. Plaintiffs and the members of the proposed California and Nationwide Classes I  
24 and IV were damaged in an amount according to proof as a direct and proximate result of  
25 APPLE's unlawful, intentional and/or negligent interference with their AT&T contracts through  
26 diminished service and degraded performance, operabilty, speed, functionality of their device to  
27 interact with AT&T's networks.

28

1           71.     APPLE's conduct as to Plaintiffs and Plaintiff Classes II & IV continues to  
2 unlawfully, intentionally and/or negligently interfere with existing AT&T data plan and wireless  
3 service contracts. Plaintiffs and members of the Plaintiff Classes II & IV continue to have their  
4 contractual services degraded and impaired by iOS4.x patch software. While certainly APPLE  
5 has attempted to mitigate damages through the release of patch software on or about September 8,  
6 2010, for those who downloaded iOS4 and the patch onto 3G/3GS devices still have their  
7 expected performance by AT&T impaired. Plaintiffs are not receiving the benefits for which they  
8 bargained with AT&T as a direct and proximate result of APPLE's conduct and failure to allow  
9 iPhone 3G/3GS users to officially revert to iOS3.x software that was optimized for 3G/3GS  
10 performance.

11           72.     As a direct, proximate and legal result of APPLE's conduct, Plaintiffs and the  
12 proposed Plaintiff classes have been damaged by not receiving the full benefit of their contracts  
13 with AT&T in a monetary amount according to proof.

14           73.     Plaintiffs are informed and believe, and based thereupon allege, that insofar as  
15 APPLE's conduct was intentional and in furtherance of a scheme to promote adoption of the  
16 iPhone 4 in an unsavory and underhanded manner, that they and the proposed classes are entitled  
17 to punitive damages in an amount according to proof. Plaintiffs believe and allege that the  
18 aforementioned conduct constitutes malice, oppression and fraud and was done with knowledge  
19 or reckless disregard of the rights of iPhone 3G/3GS owners to have fully functional and  
20 reasonably reliable mobile communications and data network operability. In such event as this  
21 allegation is proven by clear and convincing evidence and that APPLE representatives ratified  
22 such conduct, Plaintiffs and the proposed Plaintiff classes are entitled to an award of punitive  
23 damages in an amount based on the wealth of the defendant so as to prevent and/or deter similar  
24 misconduct in the future, and in an amount consistent with due process principles, all according to  
25 proof.

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**  
2 **BREACH OF IMPLIED/EQUITABLE CONTRACT**  
3 **(Plaintiffs WOFFORD, LENNOX and Plaintiff Classes I-IV (California and Nationwide)**  
4 **against Defendant)**

4 74. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

5 75. At all times relevant herein, there existed by conduct, prior course of dealing, and  
6 reasonable consumer expectations an implied by law and/or equitable contract between Plaintiffs  
7 (and all members of the Plaintiff Classes I-IV) and Defendant APPLE, wherein the company, in  
8 exchange for the consumer's purchase of an iPhone 3G/3GS device and subsequent contract with  
9 AT&T for cellular/data services, agreed to provide necessary system software so as to allow  
10 reasonable functionality, reliability, operability of the device. Such software is never perfect, but  
11 is absolutely necessary for the device to operate at all and serve its intended purpose as a mobile  
12 communications device with access to wireless telephone and data networks. The agreement to  
13 provide necessary software, including intermittent improvements, was inherent in the purchase of  
14 the iPhone and APPLE was duty bound to provide such software with good faith and not to  
15 provide system software that would substantially and materially compromise the device's function  
16 and purpose. In consideration of this promise, Plaintiffs and all proposed class members paid a  
17 premium price for the APPLE iPhone product and paid for an extended service contract with  
18 AT&T in order to enable access and service on its networks. At all times, Plaintiffs and the  
19 proposed class expected that APPLE would perform its obligation in good faith.

20 76. Without justification and with ulterior motive, APPLE materially breached this  
21 implied contract by releasing iOS4 for download under the false pretense that it was an "upgrade"  
22 to existing iPhone 3G/3GS system software (iOS3.x) when in fact it was nothing of the sort.  
23 Based in good faith and in direct, reasonable and detrimental reliance upon APPLE's  
24 representations, prior course of conduct and its implied promise not to provide malware that  
25 would disable, impair or degrade the functionality of a lawfully authorized and properly AT&T  
26 tethered 3G/3GS device, Plaintiffs and hundreds of thousands of other proposed class members  
27 downloaded iOS4 onto their device and discovered that the software did not have the benefits or  
28 qualities promised, but quite the contrary, made the device virtually unusable and with materially

1 diminished functionality, operability and reliability for all purposes. The operating system  
2 software rendered the products unfit for their intended purpose.

3 77. For Plaintiff classes I and III, APPLE concealed the true nature of the iOS4  
4 software and breached its implied promise to provide adequate software for the iPhone to function  
5 as intended. Had APPLE fully and adequately informed consumers and at the point of download  
6 warned them that iOS4 was not appropriate for 3G/3GS devices, then it would not have been in  
7 breach. Further, had APPLE take immediate corrective action by allowing authorized means to  
8 re-install iOS3.x for 3G/3GS consumers, it would have cured its breach. But APPLE undertook  
9 neither lawful course of action and instead left Plaintiff Classes I and III without remedy (whether  
10 adequate or not) until a proposed patch software was released on or about September 8, 2010.

11 78. For Plaintiff classes II & IV who have downloaded patch software also continue to  
12 suffer damage and loss a result of the iOS4.x patch. Although the damages are less than the  
13 damages incurred by Plaintiff Classes I & III, they are continuous and substantial, and are a direct  
14 and proximate result of APPLE's breach of its implied contract to provide software with the  
15 iPhone that allows it to operate as intended and without substantial degradation of speed and  
16 functionality.

17 79. At all relevant times, APPLE knew that its conduct in the release of iOS4 would  
18 result in foreseeable risk of substantial damages if the software failed to work as intended and  
19 offer reasonable functionality of third generation iPhones. APPLE understand that releasing  
20 defective software would result in loss and damage to the proposed classes.

21 80. Plaintiffs and Plaintiff Classess I-IV acted reasonably at all times and took  
22 reasonable measures minimize damages. APPLE has been on notice to cure its breach and has  
23 failed to timely do so. As a result, Plaintiffs and the proposed classes have and continue to suffer  
24 damages, loss of use, impairment of their service and other incidental and consequential damages  
25 due to APPLE's material breach. All damage will be shown in an amount according to proof.  
26 Some class members have abandoned the iPhone 3G/3Gs altogether and either unnecessarily  
27 purchased iPhone 4 (along with another extension of AT&T tethering contracts) or have gone to  
28

1 other carriers offering other smartphones. While the damage among class members may vary, that  
2 is not a basis for APPLE to avoid class-wide liability for its breach of the implied contract.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves, and on behalf of the proposed Plaintiff  
5 Class, prays as follows:

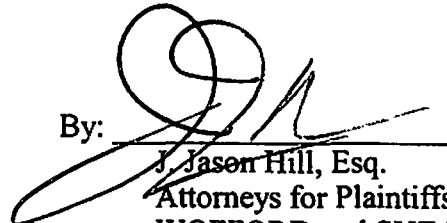
- 6 1. That the Court determine this action may be maintained as a class action, and that  
7 the Court determine that all prerequisites under either California Code of Civil  
8 Procedure 382, California Civil Code section 1781 are satisfied and to enter an  
9 order certifying the proposed Plaintiff Classes and appointing Cohelan Khoury &  
10 Singer as lead class counsel;
- 11 2. That the Defendant be ordered to pay and judgment be entered in favor of Plaintiffs  
12 and the Plaintiff Classes (California) for all actual damages legally caused by its  
13 unfair, unlawful, fraudulent and unconscionable business practices, in an amount  
14 according to proof;
- 15 3. That, in addition to actual damages, Defendant be ordered to pay and judgment be  
16 entered in favor of Plaintiffs and Plaintiff Classes and against Defendant for an  
17 additional monetary sum for each and every such person for which unfair,  
18 unlawful, unconscionable fraudulent and deceptive practices in relation to the  
19 distribution of iOS4 system software to iPhone 3G/3GS consumers;
- 20 4. That, in addition to actual damages for Plaintiffs, and enhanced damages for  
21 Plaintiff Classes (California), for a judgment of exemplary or punitive damages  
22 pursuant to Civil Code section 1780(a)(4) and Civil Code section 3294 in an  
23 amount sufficient to deter such conduct in the future and in an amount that is  
24 consistent with the Defendant's due process rights and in an amount that is in  
25 reasonable relation to the revenues of the Defendant and the total damages caused  
26 to consumers in the Plaintiff Classes as defined herein;
- 27 5. That the Defendant be found and a declaratory judgment entered finding Defendant  
28 to have engaged in unfair competition in violation of the Consumer Legal  
Remedies Act, Civil Code section 1770(a)(1)-(20) and/or to have engaged in unfair  
and deceptive business practices in violation of Business and Professions Code  
sections 17200, *et seq*;
6. For an Order granting the Plaintiff Classes preliminary and permanent injunctive  
relief with or without notice to the class, as permitted by California Rule of Court  
and C.C.P. Section 382 so that the Defendant is enjoined from the continued  
implementation of its unlawful, unconscionable, deceptive and misleading business  
practices and unfair competition in relation to the marketing of iOS4;
7. For an Order directing Defendant to immediately disgorge all of its wrongfully  
obtained profits and ill-gotten gains, with interest thereon pursuant to Civil Code  
Section 1780(a)(2) and Business and Professions Code sections 17203 and 17204;
8. For compensatory damages in an amount according to proof;
9. For economic and/or special damages in an amount according to proof;

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- 10. That the Defendant be found to have engaged in unfair competition in violation of Business and Professions Code sections 17200, *et seq.*;
- 11. That the Defendant be ordered to pay restitution to each Plaintiff Class member for the diminishment in value of their iPhone and the loss of use caused by its unlawful and unfair competition, including disgorgement of wrongfully obtained profits pursuant to Business and Professions Code sections 17203 and 17204;
- 13. For reasonable attorneys' fees, interest, and costs of suit pursuant to statute, including but not limited to, Civil Code section 1780(d) and (e) and Code of Civil Procedure section 1021.5;
- 14. For the implementation of measures or other means to determine the appropriate remedy to compensate Plaintiffs and each Class member as required to promote fairness and justice, including but not limited to establishing procedures for compensation, compensation amounts and fluid recovery if appropriate, and/or the creation of a trust for lawful disbursement of disgorged profits;
- 15. For an Order appointing an appropriate third party administrator to facilitate distribution of damages recovered by the class in a fair and equitable manner;
- 16. Prejudgment Interest as appropriate for any fixed and ascertainable damages in an amount according to proof;
- 18. Any other relief as this court appropriate and just.

**COHELAN KHOURY & SINGER**

Dated: November 12, 2010

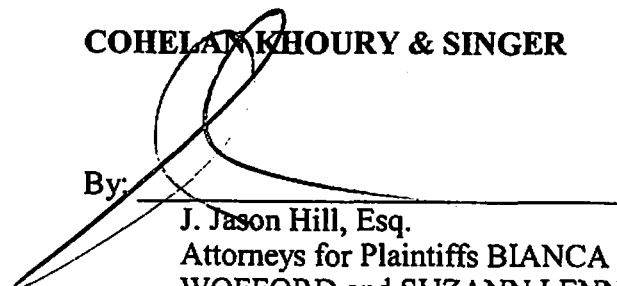
By:   
 J. Jason Hill, Esq.  
 Attorneys for Plaintiffs BLANCA  
 WOFFORD and SUZANN LENNOX

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

**COHELAN KHOURY & SINGER**

Dated: November 12, 2010

By:   
 J. Jason Hill, Esq.  
 Attorneys for Plaintiffs BLANCA  
 WOFFORD and SUZANN LENNOX

1 Timothy D. Cohelan, SBN 60827  
Isam C. Khoury, SBN 58759  
2 Michael D. Singer, SBN 115301  
J. Jason Hill, SBN 179630  
3 **COHELAN KHOURY & SINGER**  
605 C Street, Suite 200  
4 San Diego, CA 92101-5305  
TEL: (619) 595-3001  
5 FAX: (619) 595-3000  
tcohelan@ckslaw.com  
6 ikhoury@ckslaw.com  
msinger@ckslaw.com  
7 jhill@ckslaw.com

8 Attorneys for Plaintiff BIANCA WOFFORD and all  
others similarly situated

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 BIANCA WOFFORD, on behalf of herself and  
all others similarly situated,

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15 Plaintiffs,

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17 v.

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19 APPLE, INC, a California corporation; and  
20 DOES 1 through 100, Inclusive

21 Defendants.  
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) CASE NO. \_\_\_\_\_

) CLASS ACTION:

) **DECLARATION OF BIANCA WOFFORD**  
) **IN SUPPORT OF VENUE PURSUANT TO**  
) **CALIFORNIA CIVIL CODE §1780(d)**




I, BIANCA WOFFORD, state and declare as follows:

1. I am the Plaintiff in the above-entitled action. I am a competent adult over the age of eighteen years of age and I have personal knowledge of the following facts for which I could and would competently testify to under oath and in open court if called to do so.

2. I am a resident of the County of San Diego, in the State of California. The facts, transactions, and occurrences set forth in the Complaint took place in the County of San Diego in the State of California. The Defendant, APPLE, INC, operates, transacts and conducts business in the State of California and in the County of San Diego. I bring this action on behalf of myself and all others similarly situated. I am informed and believe that the appropriate venue of this matter is in the Superior Court in and for the County of San Diego in the State of California.

I declare under the penalty of perjury under the laws of the State of California and the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on this 21<sup>st</sup> Day of October 2010 in San Diego, California.

  
Bianca Wofford



AMENDED SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE) FILED Clerk of the Superior Court NOV 18 2010 By: T. Perkins Deputy

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

APPLE, INC., a California corporation; and Does 1 through 100, Inclusive

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

BIANCA WOFFORD and SUZANN LENNOX, on behalf of themselves and all others similarly situated

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 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.

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.

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 cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro.

The name and address of the court is: (El nombre y dirección de la corte es): Superior Court for the State of California, County of San Diego 330 West Broadway, San Diego, California 92101

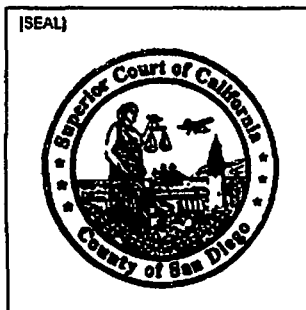
CASE NUMBER: (Número del Caso): 37-2010-00103365-CU-OE-CTL

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): Cohelan Khoury & Singer; Michael D. Singer (SBN 115301), J. Jason Hill (SBN 179630) 605 "C" Street, Suite 200, San Diego, California 92101, 619.995.3001

DATE: (Fecha) NOV 18 2010

Clerk, by (Secretario) J. Perkins T. Perkins 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: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
[ ] other (specify):
4. [ ] by personal delivery on (date):

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  BIANCA WOFFORD AND SUZANN LENNOX on behalf of themselves, and all others similarly situated</p>	<p><b>DEFENDANTS</b>                  APPLE INC., a California corporation, and DOES 1 through 100</p>
<p><b>(b)</b> County of Residence of First Listed Plaintiff <u>San Diego</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant <u>Santa Clara</u>                  (IN U.S. PLAINTIFF CASES ONLY)                  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
<p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number)                  Timothy D. Cohelan                  COHELAN ICHOURY &amp; SINGER                  605 C Street, Suite 200                  San Diego, CA 92101-5305                  Tel: (619) 595-3001</p>	<p>Attorneys (If Known)                  Penelope A. Preovolos, Andrew D. Muhlback, Alexei Klestoff                  MORRISON &amp; FOERSTER LLP                  425 Market Street, 32nd Floor                  San Francisco, CA 94105                  Tel: (415) 268-7000</p>

'11CV0034 DMS NLS

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;">Citizen of This State</td> <td style="text-align: center;">Citizen of Another State</td> <td style="text-align: center;">Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">Incorporated and Principal Place of Business In Another State</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3 Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State	Citizen of Another State	Incorporated or Principal Place of Business In This State	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
PTF	DEF	PTF	DEF														
Citizen of This State	Citizen of Another State	Incorporated or Principal Place of Business In This State	Incorporated and Principal Place of Business In Another State														
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 5														
<input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <table style="width: 100%;"> <tr> <td style="vertical-align: top;"> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> </td> <td style="vertical-align: top;"> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury—Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> </td> </tr> <tr> <td colspan="2" style="vertical-align: top;"> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> </td> </tr> </table>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury—Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p>	<p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>		<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>
<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury—Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p>						
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<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p><b>PRISONER PETITIONS</b></p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>	<p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p>			
		<p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus - Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 400 State Recapportment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from  5 another district (specify)

6 Multidistrict Litigation

Appeal to District  7 Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. ~~1441~~, 1446, 1453

Brief description of cause:  
 Alleges unfair business practices, false advertising, interference with contract, and breach of implied contract

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: January 7, 2011

SIGNATURE OF ATTORNEY OF RECORD  
 s/ Penelope A. Preovolos

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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 www.FormsWorkflow.com