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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**NICOLETTE BOSWELL, individually
and on behalf of all others similarly
situated,**

Plaintiff,

vs.

**APPLE, INC., a California corporation;
and DOES 1 through 10, inclusive,**

Defendants.

Case No.

CLASS ACTION COMPLAINT

- 1. Violations of 18 U.S.C. §§ 1030, *et seq.*
- 2. Violation of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*
- 3. Unjust Enrichment
- 4. Negligent Misrepresentation
- 5. Intentional Misrepresentation

DEMAND FOR JURY TRIAL

Plaintiff, NICOLETTE BOSWELL (“Plaintiff”), individually and on behalf of all others similarly situated United States residents, brings this complaint against Defendants, APPLE, INC., a California corporation; and DOES 1 through 10, inclusive, (collectively “Defendants” or “Apple”), and alleges as follows:

CLASS ACTION COMPLAINT

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VENUE AND JURISDICTION

1. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the jurisdiction of the Federal Courts over any class action in which any member of the Plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiff seeks to represent a national class, and more than 2/3 of the members of the putative class are citizens of different states than Apple. Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).

2. Defendant is a citizen of Florida. More than 2/3 of the putative Class are citizens of states other than Florida. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

3. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because Defendant conducts and transacts substantial business in, and may be found in, this District, and Plaintiff purchased the subject product of this action in this District.

PARTIES

4. Plaintiff NICOLETTE BOSWELL (“Plaintiff”), are adult individuals and residents of this District. At all times relevant herein, Plaintiff has resided in Palm Beach County, Florida and have been a citizen of this State. Plaintiff Nicolette Boswell purchased an Apple iPhone 4 on February 27, 2011, evidenced by the receipt attached hereto and incorporated herein as **EXHIBIT 1**. The covert

1 surveillance and subsequent recording of Plaintiff's movements was done without
2 her knowledge or consent and was not disclosed in any way by Defendant APPLE,
3 INC. The Apple iPhone 4 was one of the devices using the iOS4 operating
4 system. Plaintiff relied on Apple Inc.'s statements and omissions with regard to
5 protecting her privacy. Plaintiff has legitimate privacy and security interests in
6 her locations and reasonably believed this information would not be tracked by
7 Apple Inc., let alone maintained in an unencrypted format.

8 5. Defendant APPLE, INC. is a California corporation. Apple, Inc.
9 conducts substantial business throughout Florida, this District, and throughout the
10 entire United States by advertising and through the extensive use of distribution
11 channels that deliver and sell the goods and services to consumers.

12 6. Plaintiff also names Does 1–10 as Defendants in this action, whose
13 names and roles in this controversy have not presently been ascertained. At all
14 times relevant herein, these Doe Defendants, along with APPLE, INC. and its
15 employees, subsidiaries, affiliates, and other related entities, were the agents,
16 servants, and employees of each, and at all times relevant herein, each was acting
17 within the purpose and scope of that agency, service, and employment.

18 7. Whenever reference in this Complaint is made to any act or
19 transaction of the Defendant, such allegation shall also include the principals,
20 officers, directors, employees, agents, and/or representatives of Defendant who
21 committed, knew of, performed, authorized, ratified and/or directed such acts or
22 transactions on behalf of Defendant while actively engaged in the scope of their
23 duties.
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25 **GENERAL ALLEGATIONS**

26 8. Apple iPhones and 3G iPads secretly record and store details of all
27 their owners' movements. Plaintiff is informed and believes and thereby alleges
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1 that the location data is hidden from users but stored in an unencrypted format,
2 making it easy for Apple or third parties to later access.

3 9. This action arises out of Apple's failure to inform their customers and
4 users of the iPhone and 3G iPad that their movements were being tracked and
5 recorded.

6 10. Apple's pattern of conduct in tracking consumers' location and
7 subsequently storing the data was intentional.

8 11. All iPhones log, record and store users' locations based on latitude
9 and longitude alongside a timestamp. The iPhones store this information in a file
10 called "consolidated.db" or something similar. Apple intentionally began
11 recording this information with the release of its iOS 4 operating system in June
12 2010. Apple uses a cell-tower triangulation to obtain user location, thereby
13 recording user movements. Alternatively, Apple may use global positioning
14 system (GPS) data to obtain user location.

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

19 20 13. Apple's terms of Service (available at [http://www.apple.com](http://www.apple.com/legal/itunes/uk/terms.html)
21 /legal/itunes/uk/terms.html) do not disclose its comprehensive tracking of users.
22 Plaintiff and other users did not provide any sort of informed consent to the
23 tracking at issue in this case.

24 14. Apple's omission of its uniform location tracking policies, practices
25 and procedures was material, as a reasonable consumer has a privacy interest in
26 his or her location and would find it important that a company was compiling each
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1 location he or she visited in an unencrypted format. Apple collects the location
2 information covertly, surreptitiously and in violation of law.

3 15. Plaintiff and Class members had no reasonable basis to believe every
4 physical location they visited with their iPhone or iPad would be monitored by
5 Apple and stored in an unencrypted format.

6 16. Apple tracks users' locations on its own, separate, apart and in
7 addition to the information it collects in conjunction with other businesses that
8 develop applications for Apple's devices. This action is not about the
9 applications. It is about Apple's collection of their customers' location
10 information.

11 17. Apple's iPhones and iPad 3Gs (collectively, the "Products") were
12 created to keep consumers "connected" at all times, and are thus carried by
13 consumers to essentially every location they travel to, making the information
14 collected by Apple highly personal, and valuable; indeed, in many instances it
15 may be information to which employers and family members are not privy.

16 18. That information about places frequently visited by a consumer are
17 stored unencrypted, and the accessibility of the unencrypted information collected
18 by Apple places consumers, including Plaintiff and the Class, at serious risk of
19 privacy invasions, including crimes such as theft and stalking.

20 19. Plaintiff and proposed Class members were harmed by Apple's
21 accrual of personal location, movement and travel histories because their personal
22 computers were used in ways they did not approve, and because they were
23 personally tracked just as if by a tracking device for which a court-ordered warrant
24 would ordinarily be required.

25 20. Plaintiff brings this action to stop Apple's illegal and intrusive
26 scheme of collecting personal location information.
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1 21. Plaintiff seeks an injunction requiring Apple to disable such tracking
2 in its next-released operating system for the relevant devices, which include at
3 least iPhones running iOS 4 operating systems and 3G iPads.

4 22. Plaintiff and Class Members also seek damages for violation of
5 statutory and common law privacy rights.

6 23. As a direct and proximate result of Defendants' conduct, Plaintiff and
7 the Class have suffered and/or will suffer irreparable and irreversible damage. As
8 such, Plaintiff, on behalf of the Class, seeks injunctive relief, compensatory and
9 punitive damages, statutory penalties and restitution for statutory and common law
10 violations of Florida law.

11 24. An injunction that would, among other things, require Apple to
12 reconfigure its software so that users' personal location information is not
13 collected, synced to other computers, nor stored in an unencrypted format, is
14 required to protect Plaintiff's and the Class' privacy rights for the following
15 reasons:

- 16 a. Apple knew or should have known that ordinary consumers acting
17 reasonably would not understand the Apple privacy policy to include
18 the location tracking and synchronizing at issue in this case.
- 19 b. Irreparable injury has resulted and continues to result from Apple's
20 unauthorized tracking of millions of Americans. Once Plaintiff and
21 the Class began carrying their Apple Products, Apple began tracking
22 their locations. This has happened in the past and continues to happen
23 all across the United States. It is unconscionable to allow Apple to
24 continue unlawfully and without proper consent tracking Plaintiff and
25 proposed Class members. If Apple wanted to track the whereabouts
26 of each of its products' users, it should have obtained specific,
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1 particularized informed consent such that Apple consumers across
2 America would not have been shocked and alarmed to learn of
3 Apple's practices in recent days.

4 c. No adequate remedy at law exists because users of Apple products
5 have no way to prevent Apple from collecting this information
6 because even if users disable the iPhone and iPad GPS components,
7 Apple's tracking system remains fully functional.

8 d. Balance of the hardships favors Plaintiff and the Class because it is
9 easier for Apple to stop unlawfully tracking the every move of
10 Americans than it is for individual consumers to circumvent Apple's
11 sophisticated tracking programs. To require that Plaintiff and the
12 Class bear the consequences of Apple's deceptive privacy policy and
13 unlawful acquisition of personal location information would be
14 inequitable.

15 e. The public has an important privacy interest their locations. Without
16 an injunction, the unencrypted tracking information being synced
17 with computers and networked to the internet are unsecured. The
18 public interest would not be disserved, and indeed would be
19 advanced, by entering an injunction against Defendant.
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22 25. Plaintiff also seeks an order that Defendant was unjustly enriched as
23 a result of the conduct described herein, and that such funds be disgorged.
24 Because of Apple's omissions and concealment, Plaintiff and Class members
25 conveyed a benefit to Apple by purchasing its products, maintaining and
26 purchasing its service and then being tracked everywhere they subsequently
27 traveled. Apple appreciated the benefit conferred by Plaintiff in this transaction
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1 because it was enriched in the amount Plaintiff paid for the iPhone and iPad and
2 the monthly service. Plaintiff is entitled to have a refund of the amounts that she
3 paid for the iPhone, iPad 3G and monthly service charges due to the fraudulent
4 conduct of Defendants in an amount according to proof.

5 CLASS ALLEGATIONS

6 26. The Plaintiff brings this action on behalf of herself and the proposed
7 plaintiff Class members under Rules 23(b)(2) and (3) of the Federal Rules of Civil
8 Procedure. The proposed Class consists of:
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10 **All persons in the United States who purchased or owned an iPhone**
11 **with the iOS 4 operating system or a 3G iPad between the release of those**
12 **products for sale by Apple and the present. Excluded from the Class are**
13 **those who purchased the products for resale; members of the federal**
14 **judiciary and their relatives; and Defendant's officers, directors and**
15 **employees.**

16 27. While the exact number of Class members is unknown to the Plaintiff
17 at this time, Plaintiff is informed and believes and based upon such information
18 and belief alleges that there are millions of members of the proposed Class.
19 Approximately 59 million people now have an iPhone, and many of those run the
20 iOS 4 operating system at issue in this case, and about 10 million people have
21 purchased an iPad, many of those the 3G version at issue here. The Class is so
22 numerous that joinder of all members of the Class is impracticable.

23 28. This action involves questions of fact common to all Class members
24 because all Class members purchased, own or use iPhones or iPads under uniform
25 Apple privacy policies.
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1 29. This action involves question of law common to all Class members
2 because:

- 3 a. The Computer Fraud and Abuse Act, violated here, is national in
4 scope and applies to all prospective Class members; and
5 b. Apple's privacy invasions have violated Plaintiff's and Class
6 members' common law rights in uniform ways.

7 30. Plaintiff's claims are typical of those of other members of the Class
8 as there are no material differences in the facts and law underlying the claims of
9 Plaintiff and the Class and by prosecuting her claims Plaintiff will advance the
10 claims of Class members. Plaintiff has retained counsel competent and
11 experienced in the prosecution of this type of litigation.

12 31. The common questions of law and fact among all Class members
13 predominate over any issues affecting individual members of the Class, including
14 but not limited to:

- 15 a. whether Apple obtained and stored Plaintiff' location information;
16 b. whether Apple failed to disclose material terms in its privacy policy
17 regarding its collection of users' location information;
18 c. whether Apple intends to market or otherwise exploit users' location
19 information;
20 d. whether the alleged conduct constitutes violations of the laws
21 asserted herein;
22 e. whether Plaintiff and Class members are entitled to declaratory and
23 injunctive relief;
24 f. whether Plaintiff and Class members have sustained monetary loss
25 and the proper measure of that loss;
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1 g. whether Plaintiff and Class members have sustained consequential
2 loss, and to what measure; and

3 h. whether Apple's acts and omissions warrant punitive damages.

4 32. Class treatment of the claims set forth herein is superior to other
5 available methods for the fair and efficient adjudication of this controversy. The
6 expense and burden of individual litigation would make it impracticable or
7 impossible for proposed Class members to prosecute their claims individually.
8 Absent a class action, a multiplicity of individual lawsuits would be required to
9 address the claims between Class members and Apple, and inconsistent treatment
10 and adjudication of the claims would likely result.

11 33. The litigation and trial of Plaintiff's claims is manageable. Apple's
12 standardized "Terms and Conditions" at issue, Apple's uniform deployment of
13 operating systems that track each user in identical ways, the consistent provisions
14 of the relevant laws, and the readily ascertainable identities of many Class
15 members demonstrate that there would be no significant manageability problems
16 with prosecuting this lawsuit as a class action.

17 34. Apple has acted or refused to act on grounds that apply generally to
18 the Class so that final injunctive relief and corresponding declaratory relief are
19 appropriate.
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21 35. Unless a class-wide injunction is issued, Apple will continue to
22 commit the violations alleged, and the members of the Class will continue to be
23 tracked, unlawfully surveyed, and potentially endangered.

24 36. Apple has acted and refused to act on grounds generally applicable to
25 the Class, making appropriate final injunctive relief with respect to the Class as a
26 whole.
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1 37. Apple's acts and omissions are the direct and proximate cause of
2 damage as described in the following Causes of Action:

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**
5 **18 U.S.C. §§ 1030, ET SEQ.**
6 **(Plaintiff and Class Members Against All Defendants)**

7 38. Plaintiff re-alleges and incorporates by reference the allegations
8 contained in the paragraphs above, and those that come after as if fully set forth
9 here.

10 39. By secretly installing software that records users' every moves Apple
11 has accessed Plaintiff's computer and iPhone, in the course of interstate commerce
12 or communication, in excess of the authorization provided by Plaintiff as
13 described in the Computer Fraud and Abuse Act (the "Fraud Act") 18 U.S.C. §
14 1030(a)(2)(C).

15 40. Plaintiff's iPhones and iPads, and those of the Class, are protected
16 computers pursuant to 18 U.S.C. section 1030(e)(2)(B).

17 41. Apple further violated the Fraud Act by causing the transmission of a
18 program, information, code or command - both in deploying the iOS 4 operating
19 systems, and also as a result of the syncing of user handheld devices with their
20 laptop or desktop computers - and as a result caused harm aggregating at least
21 \$5,000,000 in value.

22 42. Apple's actions were knowing or reckless and, as described above,
23 caused harm to Plaintiff and proposed Class members.

24 43. Plaintiff seeks recovery for this loss, as well as injunctive and
25 declaratory relief to prevent future harm.
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SECOND CAUSE OF ACTION
FOR VIOLATIONS OF FLORIDA’S DECEPTIVE
AND UNFAIR TRADE PRACTICES ACT,
FLA. STAT. § 501.201, ET SEQ.

**(By Plaintiff, the Class against All Defendants, Including Does 1-100,
inclusive)**

44. Plaintiff repeats and re-alleges the allegations set forth above, and incorporate the same as if set forth herein at length.

45. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, *inter alia*, sections 501.201 to 201.213, *Florida Statutes*. The express purpose if the Act is to “protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202(2).

46. Defendants violated Florida’s Deceptive and Unfair Trade Practices Act§ 501.201, *et seq.* (“FDUTPA”) and similar laws of other States by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its business.

47. Plaintiff is a “consumer” as defined by the Florida Deceptive and Unfair Trade Practices Act.

48. Apple’s iPhone and/or iPad is a “good” within the meaning of the Act and Apple is engaged in trade or commerce within the meaning of the Act.

49. Plaintiffs’ subject purchase in this cause was a “consumer transaction” within the scope of the Florida Deceptive and Unfair Trade Practices Act.

1 50. Apple's unfair and deceptive practices are likely to mislead – and
2 have misled – the consumer acting reasonably under the circumstances and,
3 therefore, violate Section 500.04, *Florida Statutes*.

4 51. Defendants' covert use of the unlawful tracking device concealed in
5 its products constitutes deceptive and unfair trade practices. Defendants
6 intentionally failed to disclose to Plaintiff and Class members that the iPhone 4
7 and 3G iPad would track and record their every movement and location.

8 52. Apple knew its privacy terms and conditions policy was, and
9 continues to be, false, deceptive and untrue. Plaintiff and Class members had no
10 reason to believe their whereabouts would be monitored by Apple and stored in an
11 unencrypted format.

12 53. Had Plaintiff and Class members known that Defendants' products
13 would track and record their movements in unencrypted format, they would not
14 have purchased the products from Defendants.

15 54. As a direct and proximate result of Defendants' violations of
16 FDUTPA, Plaintiff and the Class have suffered injury in fact and loss of money or
17 property and suffered economic and non-economic damages as described above in
18 detail and prayed for below.

19 55. The damages suffered by the Plaintiff and the Class were directly and
20 proximately caused by the deceptive, misleading and unfair practices of Apple, as
21 described above.

22 56. Therefore, as a direct and proximate result of Defendants' violations
23 of FDUTPA, Plaintiff and the Class have suffered injury in fact and loss of money
24 or property and suffered economic and non-economic damages as described above
25 in detail and prayed for below.
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1 57. Pursuant to FLA. STAT. § 501.211(1), Plaintiffs and the Class seek a
2 declaratory judgment and court order enjoining the above described wrongful acts
3 and practices of the Defendant and for restitution and disgorgement.

4 58. Additionally, pursuant to Section 501.211(2) and Section 501.2105,
5 Plaintiffs and the Class make claims for damages, punitive damages, attorney's
6 fees and costs.

7 **THIRD CAUSE OF ACTION:**
8 **UNJUST ENRICHMENT**

9 **(By Plaintiff and the Class as against all Defendants)**

10 59. Plaintiff re-alleges and incorporates by reference the allegations
11 contained in the paragraphs above as if fully set forth herein.

12 60. Plaintiff and the Class members conferred a benefit on Defendants by
13 purchasing the iPhone 4 and 3G iPads ("the Products").

14 61. Defendants' omissions and concealment of its intent to use the
15 products to track Plaintiff's movements induced Plaintiff to confer said benefit on
16 Defendants.

17 62. Defendants have profited from unlawful, unfair, misleading, and
18 deceptive practices and advertising at the expense of Plaintiff and Class members,
19 under circumstances in which it would be unjust for Apple to be permitted to
20 retain the benefit.

21 63. Specifically, (1) Defendants have compiled private information of
22 Plaintiff' whereabouts in unencrypted format *without Plaintiff's informed consent*
23 and (2) Plaintiff would not have purchased Defendants' Products had they been
24 fully aware of the ramifications of their transaction.
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1 64. Plaintiff and Class members do not have an adequate remedy at law
2 against Defendants. Even if users disable the iPhone and iPad GPS components,
3 Apple's tracking system remains fully functional.

4 65. Plaintiff and Class members are entitled to restitution of the excess
5 amount paid for the Apple iPhone, over and above what they would have paid if
6 Defendants had disclosed the use of its unlawful tracking device.

7 66. Plaintiff and Class members are entitled to restitution in an amount
8 not less than the purchase price of the Apple iPhone.

9 67. Plaintiff and Class members are also entitled to disgorgement of the
10 profits Defendants derived from the sale of the Apple iPhone.

11 **FOURTH CAUSE OF ACTION:**
12 **NEGLIGENT MISREPRESENTATION**

13 **(By Plaintiff and the Class as against all Defendants)**

14 68. Plaintiff re-alleges and incorporates by reference the allegations
15 contained in the paragraphs above, and those that come after as if fully set forth
16 here.

17 69. At all times since 2009 in advertising for and soliciting customers,
18 Apple omitted a material fact—that purchasers would be tracked at all times
19 during its sale of iPhones and iPad 3Gs to consumers and that records of the
20 tracking would be maintained and may be maintained indefinitely.

21 70. Apple was negligent in making the omission because it should have
22 known that whether their every movement would be tracked, recorded, and stored
23 for later use was material to consumers.

24 71. In making that omission, Apple intended or expected that Plaintiff
25 and Class members would rely on the omission.

26 72. Plaintiff and the Class justifiably relied on Apple's omissions about
27 its tracking of purchasers, and would not have purchased Apple's products but for
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1 the omission. Plaintiff and the Class were damaged in amounts equal to the price
2 they paid for Apple products and their monthly service charges.

3 73. Apple's omissions were material and directly and proximately caused
4 ordinary consumers acting reasonably, Plaintiff and Class members included, to
5 buy the iPhone and iPad products. Without Apple's omissions of its covert
6 intentions, Plaintiff would not have purchased the products and suffered damages.

7 **FIFTH CAUSE OF ACTION:**
8 **INTENTIONAL MISREPRESENTATION**
9 **(By Plaintiff and the Class as against all Defendants)**

10 74. Plaintiff re-alleges and incorporates by reference the allegations
11 contained in the paragraphs above, and those that come after as if fully set forth
12 here.

13 75. Apple represented to Plaintiff and Class members that it would not
14 collect information about their every movement and location, and omitted
15 disclosing this to Plaintiff and the Class.

16 76. Apple knew its privacy terms and conditions policy was, and
17 continues to be, false, deceptive and untrue. Apple omitted the fact that Apple will
18 track users, and intended for Plaintiff and Class members to rely on its deceptive
19 statements.

20 77. Plaintiff and Class members had no reason to believe their physical
21 locations could or would be monitored by Apple and stored in an unencrypted
22 format.

23 78. Apple's omission of its location tracking policies, practices and
24 procedures was material, as a reasonable consumer has a privacy interest in his or
25 her location and would find it important that a company was recording each
26 location he or she visited and storing them in an unencrypted format.
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1 79. Apple's fraud is comprised of both the illegal tracking of its users and
2 the concealment of such activity from its consumers.

3 80. Plaintiff and Class members, acting as ordinary consumers,
4 reasonably relied on Apple's representations. Plaintiff had a right to rely on
5 Apple's representations. Plaintiff's and Class members' reliance on Apple's
6 omissions was a substantial factor in causing their harm. Plaintiff and Class
7 members were damaged in the amount of money required to purchase Apple's
8 products and the monthly service charges on their accounts.

9 81. Apple had and continues to have a duty of good faith, which
10 implicitly includes a duty not to deceive consumers, and also not to conduct this
11 sort of covert digital surveillance on consumers. Undoubtedly, Apple has a duty to
12 refrain from stalking consumers. That, however, is exactly what Apple has done
13 and continues to do. Apple has collected and maintained the location history of
14 Plaintiff and the Class, in an unprotected format in conscious disregard of the
15 rights, including privacy rights, of the Plaintiff and Class Members.

16 82. To remedy Apple's intentional omission to consumers, and omission
17 of clarifying statements during the sales process, Plaintiff and Class members seek
18 to rescind the contracts, and thereby disgorge all monies paid to Apple for these
19 products.
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21 83. Plaintiff and the Class seek and are entitled to punitive damages from
22 Apple pursuant to this cause of action.

PRAYER FOR RELIEF

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24 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly
25 situated, prays for relief pursuant to each cause of action set forth in this
26 Complaint as follows:
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1 1. For an order certifying that the action may be maintained as a class
2 action, certifying Plaintiff as representative of the Class, and designating their
3 counsel as counsel for the Class;

4 2. For an award of equitable relief as follows:

5 (a) Enjoining Defendants from making any claims for the goods
6 and services found to violate Florida law as set forth above;

7 (b) Requiring Defendants to make full restitution of all monies
8 wrongfully obtained as a result of the conduct described in this
9 Complaint;

10 (c) Requiring Defendants to disgorge all ill-gotten gains flowing
11 from the conduct described in this Complaint;

12 (d) Requiring Defendants to immediately cease its wrongful
13 conduct;

14 (e) Enjoining Defendants' unfair, unlawful and fraudulent
15 conduct;

16 (f) Requiring Defendants to engage in a corrective notice
17 campaign;

18 (g) Requiring Defendants to refund to Plaintiff and all members of
19 the Class the funds paid to Defendants for the Products;

20 3. For an award of attorney's fees and costs;

21 4. For an award of damages to be determined at trial;

22 5. For an award of statutory damages to be determined at trial;

23 6. For an award of punitive damages to be determined at trial;

24 7. For pre- and post-judgment interest on any amounts awarded; and

25 8. For any other legal and equitable relief as this Court may deem just
26 and proper.
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

DATED: June 2, 2011

Respectfully submitted,

/s/ Brian W. Smith
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