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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 NICHOLAS LUSSON, BRYANT
15 KUSHMICK, ALEXANDER SAENZ,
16 JOHN DENOMA, and NORA PENNER,
individually, and on behalf of all others
similarly situated,

17 Plaintiffs,

18 vs.

19 APPLE, INC.,

20 Defendant.

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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CLASS ACTION COMPLAINT



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I. INTRODUCTION

1. Plaintiffs Nicholas Lusson, Bryant Kushmick, Alexander Saenz, John DeNoma, and Nora Penner, individually and on behalf of all others similarly situated, allege the following against Apple, Inc. (“Defendant,” “Apple Corporation,” or “Apple”), based where applicable on personal knowledge, information and behalf, and/or the investigation of counsel.

2. Almost a decade ago, the Apple Corporation pioneered the cellular phone industry with the advent of the iPhone, a device that hundreds of millions of consumers across the globe have purchased. The iPhone has become a technological and cultural phenomenon, creating an enormous influence that has impacted all age groups and all socio-economic levels. The Apple Corporation has been both ingenious in its creation of these influential products and complete in its control of all aspects of their marketing, distribution, and repair. Apple’s enormous success with the iPhone has resulted in what is frequently described as a “cult-like following,” and the establishment of a powerful control over the technology marketplace now reflected in its corporate market capitalization of over \$700 billion.

3. As is invariably true of power and control, too much of a good thing becomes problematic and, even, abusive. Apple’s Error 53 code, for which this lawsuit seeks redress, represents Apple’s control over the product gone too far. Error 53 is the result of an imbedded function within iOS, Apple’s operating system, that affects iPhone 6, iPhone 6 Plus, iPhone 6s, and iPhone 6s Plus smartphones (collectively, “Affected Models”; generically, “device” or “devices” or “iPhones”). The code has rendered thousands of the Affected Models completely disabled or “bricked” after its users updated iOS or restored the device from a backup. After spending hundreds of dollars purchasing Affected Models, the Plaintiffs here had their phone rendered useless.

4. Consumers began receiving an Error 53 code in early 2015, and likely earlier. Many consumers raised the issue with Apple representatives immediately because an

1 inoperable phone represented hardships both personally and professionally. Apple
2 representatives told consumers that disabled phones could not be fixed under warranty and
3 were a problem the consumer created by using an unauthorized repair service to fix a
4 hardware issue with the phone. Some consumers had used a repair service other than an
5 Apple service to fix problems such as broken screens and “Home” buttons, but they pointed
6 out to Apple representatives that nothing in marketing materials or purchase documents ever
7 disclosed that their iPhone products would be destroyed by an imbedded software code if they
8 had repaired iPhones using an independent service and then updated to certain iOS
9 versions. Other consumers advised Apple representatives that no repairs had been done but
10 the error code had disabled their iPhone anyway. Apple has regularly advised consumers who
11 have experienced the Error 53 code that their situation will not be fixed under warranty and,
12 frequently, that the only solution is to purchase a new phone. Despite months of opportunity
13 to provide a replacement iPhone and/or restore existing iPhones, Apple has offered no remedy
14 to or relief for its customers. This lawsuit seeks to provide both remedy and relief for
15 consumers of the Affected Models who have experienced the Error 53 code.

16 5. The “security features” and “security” measures that gave rise to the Error 53
17 code were included within iOS version 8.0.1 and all subsequent versions of the iOS 8
18 operating system, as well as the iOS 9 operating system and subsequent versions. Despite
19 knowing about the security features, Apple took no steps to warn consumers and owners of
20 the Affected Models that updating software or restoring data would result in an Error 53 code
21 that would render the phone inoperable and cause data loss. As of November 2015, it was
22 estimated that more than 62 million units of the Affected Models were in use in the United
23 States, meaning that Apple’s misleading and unfair practices as alleged in this Complaint
24 have had and will continue to have a widespread impact on consumers throughout the nation.
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1 **II. FACTUAL ALLEGATIONS**

2 **A. The Devices**

3 6. Apple manufactures one of the most popular smartphones in the world, the
4 iPhone. Relevant to this case, Apple manufactures the Affected Models.

5 7. Apple has sold millions of the Affected Models. Indeed, more than 10 million
6 units of the iPhone 6 and iPhone 6 Plus were sold during the first three days the models after
7 they were released for purchase on September 19, 2014. Prices started at approximately \$649
8 for the iPhone 6 and approximately \$749 for the iPhone 6 Plus, with increasing prices based
9 on optional features such as expanded memory capacity.

10 8. The Affected Models contain a “Home button” located in the center of the
11 bottom-horizontal edge of the devices. The Home button is physically pressed to utilize many
12 functions of the Affected Models, such as progressing from the “Lock screen” (similar to a
13 screen saver on a personal computer) to the “Home screen,” which allows users to access the
14 device’s software applications (“apps”); digitally-stored information, such as photographs and
15 text messages; the device’s settings and control thereof; and other core functionalities of the
16 device.

17 9. The Home button itself contains a fingerprint-sensing chip (“Touch ID sensor”
18 or “sensor”) to enable “Touch ID” functionality. Touch ID allows a user to scan and store
19 their fingerprint in the device. Subsequently, a user may utilize their stored fingerprint as a
20 “passkey” to progress from the Lock screen to the Home screen by placing their finger on the
21 Home button, allowing the device to verify through the sensor a match between the current
22 user’s fingerprint and the stored fingerprint.

23 10. Touch ID also allows a user to access the functionality of a device’s apps. For
24 example, a user may use their fingerprint via the Touch ID sensor to complete purchases at
25 participating retailers using Apple Pay, an app that enables a user to store their credit and/or
26 debit card information and use those cards for purchases simply by scanning their device’s
screen using an electronic reader.

1 11. According to Apple, Touch ID “enhance[s] the user experience by making it
2 simpler and more intuitive to secure the device.”¹ Also according to Apple, an iPhone’s
3 hardware is tightly integrated to the software. “This architecture is central to security in iOS,
4 and never gets in the way of device usability.”²

5 **B. Apple Software Updates and “Error 53”**

6 12. The regular release of software updates and seamless integration between
7 software and hardware are primary marketing points for Apple to sell more iPhones. On its
8 website, Apple says the following about iPhones:

9 Every iPhone we’ve made – and we mean every single one – was built on the
10 same belief. That a phone should be more than a collection of features. That,
above all, a phone should be absolutely simple, beautiful, and magical to use.

11 It should have hardware and software that were designed to work with each
12 other. And enhance each other. By people who frequently see each other.
That’s how you make a phone that works ridiculously well.

13 And whenever there are shiny, new software updates with shiny, new features,
14 you should be able to sit back, relax, and know your phone will get them. ***And
be compatible with them.*** For years. For free.

15 (Emphasis added).

16 13. According to Apple, “Users receive iOS update notifications on the device and
17 through iTunes, and updates are delivered wirelessly, encouraging rapid adoption of the latest
18 security fixes.”³ Apple “pushes” Operating System updates to users’ devices connected to the
19 Internet. These “pushes” cause a prompt to appear on a user’s device informing the user of
20 the update and asking the user to choose to install the update then or later. When a user opts
21 to install the update later, the “push” prompt regularly reappears on the user’s device until the
22 user installs the update.

23 14. On or about September 24, 2014, Apple released “iOS 8.0.1,” an updated
24 version of Apple’s iOS 8 operating system for Apple devices. On or about September 16,

25 _____
26 ¹ “iOS Security – iOS 9.0 or later,” published by Apple in September 2015.

² “iOS Security – iOS 9.0 or later,” published by Apple in September 2015.

³ “iOS Security – iOS 9.0 or later,” published by Apple in September 2015.

1 2015, Apple released “iOS 9,” its newest operating system for Apple devices. iOS 8.0.1 and
2 all subsequent versions of the iOS 8 operating system, as well as iOS 9 and all subsequent
3 versions of that operating system (the “Operating System” or “Operating Systems”), were
4 designed, created, and provided by Apple to consumers for download and installation on their
5 devices, either wirelessly or through iTunes.

6 15. By Apple’s own public admissions, the Operating Systems contain so-called
7 “security measures” and “security checks” related to the Touch ID sensor. Specifically, in a
8 statement to *The Guardian* reported in a February 5, 2015, an Apple spokesperson stated:

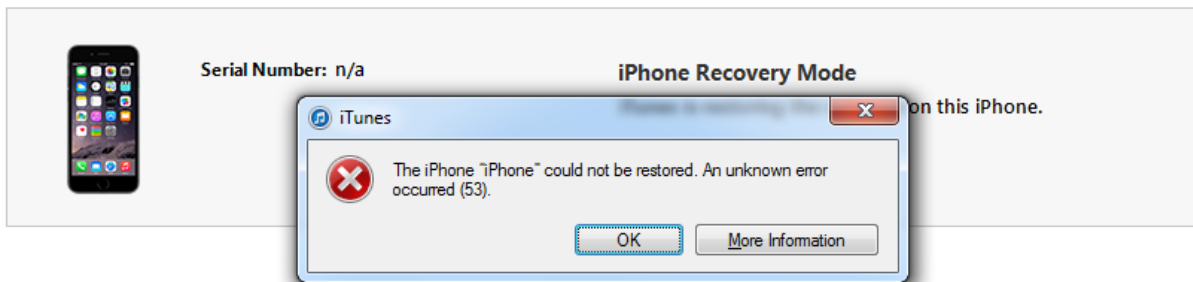
9 We protect fingerprint data using a secure enclave, which is uniquely paired to the
10 touch ID sensor.

11 * * *

12 When iOS detects that the pairing fails, touch ID, including Apple Pay, is disabled so
13 the device remains secure.

14 16. In plainer language, the Operating Systems contain a feature that attempts to
15 verify whether the device’s original Touch ID “modules” are still present within the device
16 when installing the Operating Systems or restoring the device from a backup. If the attempt
17 fails, the alleged “security measures” are triggered and the device displays an “Error 53”
18 message:

19 **iPhone**



20 17. Catastrophically for users, Error 53 does far more than disable Touch ID:
21 Error 53 sends the device into “Recovery Mode,” requiring the user to plug the device into a
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1 personal computer and complete updating and restoration of the device using Apple's iTunes
2 software. Unfortunately, updating and restoring a device experiencing Error 53 via Recovery
3 Mode simply sends the device right back into Recovery Mode, trapping the device in an
4 endless loop.

5 18. In its practical effect, Error 53 renders devices entirely useless and inoperable
6 (colloquially known as "bricking" the device, i.e., rendering the device an inert, useless
7 brick). Data that was stored on the phone, such as photographs or video, is also permanently
8 gone unless previously saved at a retrievable location.

9 19. Even worse for users, numerous situations can lead to the failed verification
10 triggering Error 53. For example, replacement of the device's original Home button (that
11 contains the original Touch ID sensor) will trigger Error 53. Further, as Apple admits on its
12 support website addressing Error 53, replacements of the device's screens can trigger Error
13 53.

14 20. Additionally, replacements of the "flex cable" connected to the Home button
15 and Touch ID sensor and conveying fingerprint data to the Central Processing Unit can trigger
16 Error 53.

17 21. Moreover, Error 53 can be triggered even with no replacement or repair of the
18 Touch ID sensor or its components or apparent damage to or disassembly of the device. For
19 example, in an article originally published on April 15, 2015, on *The Daily Dot*, one iPhone 6
20 Plus user described the gradual degradation in performance and failure of his device's
21 touchscreen, Touch ID sensor, and Home and Lock buttons. Eventually, this user attempted
22 to install iOS 8.3. After several failed installations, the user attempted to install the update by
23 connecting the device to a personal computer and the iTunes software. Once connected, Error
24 53 triggered, rendering the device unusable.

1 22. As other examples, tears in the “flex cable,” a malfunction of the Touch ID
2 sensor in a never opened phone, minor liquid damage that enters the Home button and
3 disables the Touch ID sensor, or any other potential hardware issue can all trigger Error 53.

4 23. Once Error 53 triggers, affected users have no means of regaining access to or
5 use of the device or any digitally-stored information on the device that was not backed up
6 before Error 53 occurred. Instead, the only “solution” offered by Apple is a conveniently
7 profitable one for it: Purchase a new Apple smartphone.

8 **C. Apple Failed to Warn Consumers of the Risk of Error 53 When Installing the**
9 **Operating Systems**

10 24. Error 53 and its effects came as no surprise to Apple. As it widely
11 acknowledges, Apple has designed the iPhone hardware and software to work together:
12 “System security is designed so that both software and hardware are secure across all core
13 components of every iOS device.”⁴ “The tight integration of hardware and software on iOS
14 devices ensures that each component of the system is trusted, and validates the system as a
15 whole.”⁵ As such, Apple provides Apple technicians with the capability to synchronize new
16 Touch ID sensors or components with a device’s central processing unit, thus causing the
17 device to accept the new components and pass the check that otherwise results in Error 53.

18 25. On one hand, Apple purposely included the features triggering Error 53 within
19 the Operating Systems, and on the other, failed to disclose these features or the existence of
20 Error 53 to consumers with Affected Models when installing the Operating Systems.

21 26. Apple also did not and does not provide this synchronization capability to
22 independent repair vendors for Affected Models.

23 27. In many instances, Apple charges many times the amount charged by
24 independent repair vendors—sometimes hundreds of dollars—for simple repairs, such as

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⁴ “iOS Security – iOS 9.0 or later,” published by Apple in September 2015.

⁵ *Id.*

1 installation of a new Home button lacking the original Touch ID sensor that can trigger Error
2 53. This is only when Apple is willing to perform the requested repair, however. In many
3 instances, Apple will refuse to perform repairs, such as replacing a failed headphone jack
4 worth approximately \$7.00, instead insisting that customers must buy a new device. In
5 contrast, independent repair vendors will perform these repairs for little more than the cost of
6 parts and labor.

7 28. Apple knew or should have known that many owners of the Affected
8 Models would choose to utilize the reasonably-priced services of independent repair vendors
9 who had no ability to synchronize new Touch ID sensor components with the device in order
10 to prevent an Error 53 occurrence.

11 29. Despite this knowledge, however, Apple failed to disclose the security features
12 triggering Error 53, the existence of Error 53 itself, and/or the risk that the utilization of
13 independent repair services could trigger Error 53 to consumers when installing the Operating
14 Systems.

15 III. CLASS ALLEGATIONS

16 30. Plaintiffs bring this action on behalf of themselves and as a class action,
17 pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
18 Procedure on behalf of the following Class:

19 All persons or entities in the United States who are owners of an “Error 53 Device.”
20 Error 53 Devices include, without limitation, Apple iPhone 6, iPhone 6 Plus, iPhone
21 6s, iPhone 6s Plus, and iPhone 6 units rendered inoperable by Error 53.

22 31. Excluded from the Class are individuals who have personal injury claims
23 resulting from occurrences of Error 53. Also excluded from the Class are Apple and its
24 subsidiaries and affiliates; all persons who make a timely election to be excluded from the
25 Class; governmental entities; and the judge to whom this case is assigned and his/her
26 immediate family. Plaintiffs reserve the right to revise the Class definition based upon
information learned through discovery.

1 32. Certification of Plaintiffs' claims for class-wide treatment is appropriate
2 because Plaintiffs can prove the elements of their claims on a class-wide basis using the same
3 evidence as would be used to prove those elements in individual actions alleging the same
4 claims.

5 33. This action has been brought and may be properly maintained on behalf of the
6 Class proposed herein under Federal Rule of Civil Procedure 23.

7 **A. Numerosity**

8 34. The members of the Class are so numerous and geographically dispersed that
9 individual joinder of all Class members is impracticable. While Plaintiffs are informed and
10 believe that there are not less than hundreds of thousands of members of the Class, the precise
11 number of Class members is unknown to Plaintiffs, but may be ascertained from Apple's
12 records. Class members may be notified of the pendency of this action by recognized, Court-
13 approved notice dissemination methods, which may include U.S. mail, electronic mail,
14 Internet postings, and/or published notice.

15 **B. Commonality and Predominance**

16 35. This action involves common questions of law and fact, which predominate
17 over any questions affecting individual Class members, including, without limitation:

- 18 (a) Whether Apple engaged in the conduct alleged herein;
- 19 (b) Whether Apple designed, advertised, marketed, distributed, sold, or
20 otherwise placed the Affected Models and/or the Operating Systems into the stream of
21 commerce in the United States;
- 22 (c) Whether the Operating Systems contain features triggering Error 53 in
23 Affected Models;
- 24 (d) Whether Apple knew about the features triggering Error 53 and/or
25 Error 53 itself and, if so, how long Apple has known;
- 26

1 (e) Whether Apple designed, manufactured, marketed, and distributed the
2 Operating Systems containing features that trigger Error 53;

3 (f) Whether Apple's conduct violates consumer protection statutes and
4 other laws as asserted herein;

5 (g) Whether Plaintiffs' and the other Class members' devices were
6 rendered inoperable by Error 53;

7 (h) Whether Plaintiffs and the other Class members are entitled to
8 equitable relief, including, but not limited to, restitution or injunctive relief; and

9 (i) Whether Plaintiffs and the other Class members are entitled to damages
10 and other monetary relief and, if so, in what amount.

11 **C. Typicality**

12 36. Plaintiffs' claims are typical of the other Class members' claims because,
13 among other things, all Class members were comparably injured through Apple's wrongful
14 conduct as described above.

15 **D. Adequacy**

16 37. Plaintiffs are adequate Class representatives because their interests do not
17 conflict with the interests of the other members of the Class they seek to represent; Plaintiffs
18 have retained counsel competent and experienced in complex class action litigation; and
19 Plaintiffs intend to prosecute this action vigorously. The Class's interests will be fairly and
20 adequately protected by Plaintiffs and their counsel.

21 **E. Declaratory and Injunctive Relief**

22 38. Apple has acted or refused to act on grounds generally applicable to Plaintiffs
23 and the other members of the Class, thereby making appropriate final injunctive relief and
24 declaratory relief, as described below, with respect to the Class as a whole.

25 **F. Superiority**

26 39. A class action is superior to any other available means for the fair and efficient
adjudication of this controversy, and no unusual difficulties are likely to be encountered in the

1 management of this class action. The damages or other financial detriment suffered by
2 Plaintiffs and the other Class members are relatively small compared to the burden and
3 expense that would be required to individually litigate their claims against Apple, so it would
4 be impracticable for members of the Class to individually seek redress for Apple's wrongful
5 conduct.

6 40. Even if Class members could afford individual litigation, the court system
7 could not. Individualized litigation creates a potential for inconsistent or contradictory
8 judgments, and increases the delay and expense to all parties and the court system. By
9 contrast, the class action device presents far fewer management difficulties, and provides the
10 benefits of single adjudication, economy of scale, and comprehensive supervision by a single
11 court.

12 IV. JURISDICTION AND VENUE

13 41. This Court has subject matter jurisdiction over this action under 28 U.S.C. §
14 1332(d) because (a) at least one member of the putative class action is a citizen of a state
15 different from Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of
16 interest and costs, and (c) none of the exceptions under the subsection apply to this action.

17 42. This Court has personal jurisdiction over the Defendant because it conducts
18 significant business in this District and the unlawful conduct alleged in the Complaint
19 occurred in, was directed to, and/or emanated from this District.

20 43. This Court has pendant and supplemental subject matter jurisdiction over the
21 state law claims pursuant to 28 U.S.C. § 1367.

22 44. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant
23 maintains its headquarters and principal place of business in this District and a substantial part
24 of the events giving rise to Plaintiffs' Complaint occurred in this District.

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V. PARTIES

A. Nicholas Lusson

45. Plaintiff Lusson, a citizen of San Francisco, California, purchased a 64 gigabyte iPhone 6 in or around the fall of 2014. He paid the standard upgrade fee for an AT&T contracted phone.

46. In or around December 2015, Plaintiff Lusson’s iPhone received water damage and stopped working. On or around January 2, 2016, Plaintiff Lusson took his iPhone to a repair vendor to be fixed. The repair vendor replaced his screen and home button. The iPhone worked perfectly after the repair.

47. Approximately two weeks later, Plaintiff Lusson received a notification for an Operating System update. He attempted to install the update and the Error 53 code appeared. Plaintiff Lusson took his iPhone to an Apple store, where he was advised to buy a new phone because Apple is “not responsible for third party repairs.”

48. Plaintiff Lusson would not have attempted to install the Operating System update had he been warned or notified by Apple that Error 53 might occur and/or that his device might be rendered inoperable and unusable.

B. Bryant Kushmick

49. Plaintiff Bryant Kushmick, a citizen of Satellite Beach, FL, purchased an iPhone 6 on or around September 19, 2014.

50. After Plaintiff Kushmick purchased the iPhone 6, it developed a small crack in the Home button and the Touch ID sensor stopped working. Plaintiff Kushmick did not think much of the cracked Home button, as he did not use the device’s Touch ID functionality and the device otherwise functioned perfectly.

51. The day Apple released iOS 9, Plaintiff Kushmick attempted to install the Operating System. The installation started and Error 53 appeared.

1 52. Subsequently, Plaintiff Kushmick visited an Apple store an hour's drive away.
2 After making Plaintiff Kushmick wait for two hours, Apple offered to replace the phone for
3 approximately \$300.00. Plaintiff Kushmick declined.

4 53. Plaintiff Kushmick has not been able to use his iPhone 6 since Error 53
5 occurred and eventually bought a new smartphone from Apple for approximately \$1,100.00.

6 54. Plaintiff Kushmick would not have attempted to install the Operating System
7 update had he been warned or notified by Apple that Error 53 might occur and/or that his
8 device might be rendered inoperable and unusable.

9 **C. Alexander Saenz**

10 55. Plaintiff Alexander Saenz, a citizen of Wellington, Florida, purchased an
11 iPhone 6 in or around November 2014. He purchased the phone for the cost of a retail 2-year
12 agreement price, which was either \$199.00 or \$299.00.

13 56. Plaintiff Saenz began having issues with his iPhone Home button responding.
14 He took the device to a repair vendor, who advised him that the Touch ID would no longer
15 work after repair. Plaintiff Saenz consented to the repair and paid \$25.00 for the work and
16 parts. His phone worked sans Touch ID until he updated to iOS 9.2.0, at which point he
17 received the Error 53 code and his phone lost all functionality. The update occurred before he
18 was able to successfully back-up the data on his phone.

19 57. Plaintiff Saenz took his iPhone back to the independent repair vendor, who was
20 unable to diagnose the issue. Plaintiff Saenz then took the phone to an Apple store, where he
21 was advised that they could not restore it and that he would need to buy a new phone.

22 58. Plaintiff Saenz would not have attempted to install the Operating System
23 update had he been warned or notified by Apple that Error 53 might occur and/or that his
24 device might be rendered inoperable and unusable.

1 **D. John DeNoma**

2 59. Plaintiff John DeNoma, a citizen of Monmouth, Oregon, purchased an iPhone
3 6 Plus in or around March 2014. He purchased the phone for approximately \$700.

4 60. In or around November 2014, Plaintiff DeNoma's iPhone screen shattered.
5 The device was taken to an Apple store that quoted \$129.00 to replace the phone screen.
6 Shortly later, a small dent on the top of the phone was observed, and the Apple technician
7 stated that the screen could not be repaired because of the dent, and that purchasing a \$349
8 replacement device was the only option.

9 61. Plaintiff DeNoma decided to replace the screen himself after researching how
10 to do so. While replacing the screen, he broke the ribbon cable that connected the Touch ID
11 to the device, so he ended up replacing the entire home button. The iPhone worked great after
12 the repair.

13 62. Sometime in or around December 2015, Plaintiff DeNoma updated the iPhone
14 to iOS 9.1.2. Halfway through the process, the device froze and the Error 53 code appeared.

15 63. Plaintiff DeNoma would not have attempted to install the Operating System
16 update had he been warned or notified by Apple that Error 53 might occur and/or that his
17 device might be rendered inoperable and unusable.

18 **E. Nora Penner**

19 64. Plaintiff Nora Penner, a citizen of Peoria, Arizona, purchased an iPhone 6 in or
20 around July 2015. She purchased the phone through a subsidized T-Mobile carrier plan and is
21 still currently making monthly payments for the purchase price of the phone.

22 65. In or around November 2015, Plaintiff Penner's iPhone 6 fell into a toilet for a
23 brief second. Plaintiff Penner took her iPhone to be repaired at a repair shop, where the repair
24 vendor repaired some internal water corrosion but did not replace the screen or Home button.
25 After the repair, Plaintiff Penner's iPhone 6 began working again, including the Touch ID
26 functionality.

1 66. In or around January 2016, Plaintiff Penner's iPhone 6 Touch ID stopped
2 functioning. Shortly thereafter, Plaintiff Penner attempted to update the Operating System to
3 iOS 9.2.1. The installation started and Error 53 appeared.

4 67. On or around February 6, 2016, Plaintiff Penner visited an Apple store. Apple
5 offered to replace the phone for \$299.00 and called T-Mobile to see whether Plaintiff would
6 qualify for an upgrade, which would also cost money.

7 68. Plaintiff Penner has not been able to use her iPhone 6 since and has instead
8 been using an old cellular phone in its place.

9 69. Plaintiff Penner would not have attempted to install the Operating System
10 update had she been warned or notified by Apple that Error 53 might occur and/or that her
11 device might be rendered inoperable and unusable.

12 **F. Defendant Apple, Inc.**

13 70. Apple, Inc., is a corporation organized under the laws of California, with its
14 principal place of business at 1 Infinite Loop, Cupertino, CA, 95014.

15 71. At all relevant times, Apple manufactured, distributed, sold, and warranted the
16 Affected Models and/or the Operating Systems throughout the nation. Apple and/or its agents
17 designed the Affected Models and/or the Operating Systems, including the features triggering
18 Error 53.

19 **VI. CAUSES OF ACTION**

20 **A. Claims Asserted on Behalf of the Nationwide Class**

21 **1. Count I – Negligence**

22 72. Plaintiffs incorporate by reference all preceding allegations as though fully set
23 forth herein.

24 73. Plaintiffs bring this claim on behalf of themselves and the proposed Class.

25 74. Apple owed a duty to Plaintiffs and the Class members to use reasonable care
26 to ensure that the Operating Systems were safe, reliable, and functional for Affected Models
or, at the very least, would not render Affected Models inoperable and unusable.

1 75. Apple also owed a duty to Plaintiffs and the Class members to disclose that the
2 Operating Systems contained features that could trigger Error 53, Error 53's existence, and/or
3 that the features and/or Error 53 could render Affected Models inoperable and unusable.

4 76. Apple further owed a duty to Plaintiffs and the Class members to disclose that
5 the Operating Systems contained features that could trigger Error 53, Error 53's existence,
6 and/or that the features and/or Error 53 could render Affected Models inoperable and
7 unusable if Plaintiffs and the Class members utilized independent repair services.

8 77. Apple's duties arose from Apple's design, creation, manufacture, distribution,
9 and provision of the Operating Systems to Plaintiffs and the Class members. Further, Apple's
10 duties arose from its acts of affirmatively "pushing" prompts to install the Operating Systems
11 to Plaintiffs' and the Class members' devices.

12 78. Apple knew or should have known that the Operating Systems contained
13 features that would trigger Error 53 and that Error 53 and/or the features would render
14 Affected Models inoperable and unusable because Apple designed the Affected Models and
15 the Operating Systems and controlled how the Operating Systems' so-called security features
16 would affect the functionality of Affected Models failing to pass the check triggering Error 53

17 79. Apple breached its duties by failing to use reasonable measures to ensure the
18 Operating Systems' features would not render Affected Models inoperable and/or by failing
19 to warn or disclose that installation or attempted installation—either with or without
20 utilization of independent repair services—of the Operating Systems on Affected Models
21 could render the devices inoperable and unusable.

22 80. It was reasonably foreseeable that Apple's breach of its duties would result in
23 injury to Plaintiffs and the Class members, including but not limited to the loss of their
24 devices, the cost of any services utilized in an attempt to remedy the inoperability of their
25 devices, and the cost of purchasing a replacement device.
26

1 81. Accordingly, Plaintiffs and the Class members seek an order declaring that
2 Apple's conduct constitutes negligence, and awarding them damages in an amount to be
3 determined at trial.

4 **2. Count II – Negligent Misrepresentation**

5 82. Plaintiffs incorporate by reference all preceding allegations as though fully set
6 forth herein.

7 83. Plaintiffs bring this claim on behalf of themselves and the proposed Class.

8 84. Apple had a duty to disclose to Plaintiffs and the Class members that the
9 Operating Systems contained features that could trigger Error 53; the existence of Error 53
10 itself; and, far from simply disabling Touch ID, that the true nature of Error 53 and/or the
11 features was to render Plaintiffs' and the Class members' devices unusable and inoperable.

12 85. Likewise, Apple had a further duty to disclose to Plaintiffs and the Class
13 members that the Operating Systems contained features that could trigger Error 53, the
14 existence of Error 53 itself, and/or that Error 53 and/or the features could render their devices
15 unusable and inoperable if Plaintiffs and the Class members utilized the services of
16 independent repair vendors.

17 86. Apple negligently and/or carelessly misrepresented, omitted, and concealed
18 from consumers material facts relating to the Operating Systems.

19 87. These misrepresentations and omissions were material and concerned the
20 specific characteristics of an operating system that a reasonable consumer would consider in
21 choosing to install the Operating Systems on their device.

22 88. As a result of Apple's misstatements and omissions, it was under a duty to
23 disclose the additional facts necessary to avoid any misrepresentation or confusion. Further,
24 Apple knew of its misrepresentations and omissions because Apple designed the Affected
25 Models and the Operating Systems and controlled how the Operating Systems' so-called
26

1 security features would affect the functionality of Affected Models failing to pass the check
2 triggering Error 53.

3 89. At the time Apple failed to disclose, concealed, suppressed and/or omitted
4 material information, Apple knew, or by the exercise of reasonable care should have known,
5 that the statements were false and misleading to reasonable consumers.

6 90. Plaintiffs and Class members justifiably relied on Apple's misrepresentations
7 and omissions about the Operating Systems. Plaintiffs and Class members were unaware of
8 the falsity of Apple's misrepresentations and omissions and, as a result, justifiably relied on
9 them in installing the Operating Systems on their devices. Had Plaintiffs and Class members
10 been aware of the true nature of the Operating Systems and features triggering Error 53
11 therein, they would have chosen not to install the Operating Systems. Plaintiffs request that
12 this Court order Apple to disable the Operating Systems' features that render devices
13 completely unusable and inoperable upon instances of Error 53.

14 91. As a direct and proximate result of Apple's misrepresentations and omissions
15 of material fact, Plaintiffs and Class members have suffered damages and losses as alleged
16 herein in an amount to be determined at trial.

17 **3. Count III - Violation of California Unfair Competition Law (Cal. Bus. &**
18 **Prof. Cod §§ 17200, et seq.)**

19 92. Plaintiffs incorporate by reference all preceding allegations as though fully set
20 forth herein.

21 93. Plaintiffs bring this Count on behalf of themselves and the proposed Class.

22 94. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§
23 17200, et seq., proscribes acts of unfair competition, including "any unlawful, unfair or
24 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

25 95. Apple's conduct, as described herein, was and is in violation of the UCL.
26 Apple's conduct violates the UCL in at least the following ways:

1 (a) By knowingly and intentionally concealing from Plaintiffs and the
2 other Class members that the Operating Systems contained features that trigger Error
3 53 and/or render Affected Models inoperable and unusable;

4 (b) By knowingly and intentionally concealing from Plaintiffs and the
5 other Class members that the Operating Systems contained features rendering them
6 unable to utilize the services of independent repair vendors without a risk of triggering
7 Error 53 and/or rendering their Affected Models inoperable and unusable;

8 (c) By marketing Apple software updates as compatible with devices
9 when, in fact, the Operating Systems contained features that could render Affected
10 Models inoperable and unusable when merely attempting to install them;

11 (d) By violating other California laws

12 96. Apple's misrepresentations and omissions alleged herein caused Plaintiffs and
13 the other Class members to install the Operating Systems that subsequently triggered Error 53
14 in their devices, rendering the devices inoperable and unusable. Absent those
15 misrepresentations and omissions, Plaintiffs and the other Class members would not have
16 installed the Operating Systems.

17 97. Accordingly, Plaintiffs and the other Class members have suffered injury in
18 fact including lost money or property as a result of Apple's misrepresentations and omissions.

19 98. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or
20 practices by Apple under Cal. Bus. & Prof. Code § 17200.

21 99. Plaintiffs request that this Court enter such orders or judgments as may be
22 necessary to enjoin Apple from continuing its unfair, unlawful, and/or deceptive practices and
23 to restore to Plaintiffs and members of the Class any money it acquired by unfair competition,
24 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof.
25 Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.
26

1 **4. Count IV - Violation of California False Advertising Law (Cal. Bus. &**
2 **Prof. Code §§ 17500, et seq.)**

3 100. Plaintiffs incorporate by reference all preceding allegations as though fully set
4 forth herein.

5 101. Plaintiffs bring this Count on behalf of themselves and the proposed Class.

6 102. California Bus. & Prof. Code § 17500 states:

7 It is unlawful for any . . . corporation...with intent directly or indirectly to dispose of
8 real or personal property . . . to induce the public to enter into any obligation relating
9 thereto, to make or disseminate or cause to be made or disseminated . . . from this state
10 before the public in any state, in any newspaper or other publication, or any
11 advertising device, . . . or in any other manner or means whatever, including over the
12 Internet, any statement . . . which is untrue or misleading, and which is known, or
13 which by the exercise of reasonable care should be known, to be untrue or misleading.

14 103. Apple caused to be made or disseminated through California and the United
15 States, through advertising, marketing and other publications, statements that were untrue or
16 misleading, and which were known, or which by the exercise of reasonable care should have
17 been known to Apple, to be untrue and misleading to consumers, including Plaintiffs and the
18 other Class members.

19 104. Apple has violated § 17500 because the misrepresentations and omissions
20 regarding the safety, reliability, functionality, and compatibility of the Operating Systems as
21 set forth in this Complaint were material and likely to deceive a reasonable consumer.

22 105. Plaintiffs and the other Class members have suffered an injury in fact,
23 including the loss of money or property, as a result of Apple's unfair, unlawful, and/or
24 deceptive practices. In installing or attempting to install the Operating Systems on Affected
25 Models, Plaintiffs and the other Class members relied on the misrepresentations and/or
26 omissions of Apple with respect to the safety, reliability, and functionality of the Operating
 Systems and their compatibility with Affected Models. Apple's representations turned out not
 to be true because the Operating Systems contain features that can and do trigger Error 53 in
 Affected Models and/or render Affected Models inoperable and unusable. Furthermore,
 Apple's representations turned out not to be true because the Operating Systems contain

1 features that can and do trigger Error 53 in Affected Models and/or render Affected Models
2 inoperable and unusable if a user utilized an independent vendor for repairs. Had Plaintiffs
3 and the other Class members known this, they would not have installed or attempted to install
4 the Operating Systems. Accordingly, Plaintiffs and the other Class members installed or
5 attempted to install the Operating Systems expecting safe, reliable, and functional software
6 that was compatible with their devices that instead resulted in an inoperable and unusable
7 device.

8 106. All of the wrongful conduct alleged herein occurred, and continues to occur, in
9 the conduct of Apple's business. Apple's wrongful conduct is part of a pattern or generalized
10 course of conduct that is still perpetuated and repeated, both in the State of California and
11 nationwide.

12 107. Plaintiffs, individually and on behalf of the other Class members, request that
13 this Court enter such orders or judgments as may be necessary to enjoin Apple from
14 continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the
15 other Class members any money Apple acquired by unfair competition, including restitution
16 and/or restitutionary disgorgement, and for such other relief set forth below.

17 **5. Count V- Unjust Enrichment**

18 108. Plaintiffs incorporate by reference all preceding allegations as though fully set
19 forth herein.

20 109. Plaintiffs assert this Count on behalf of themselves and the proposed Class.

21 110. After experiencing Error 53, Plaintiffs and Class members conferred an
22 economic benefit on Apple by purchasing new smartphones from Apple or paying Apple for
23 related services.

24 111. Apple's financial benefits resulting from its unlawful conduct as described
25 throughout this Complaint are economically traceable to the features contained within the
26

1 Operating Systems that trigger Error 53, Error 53's existence, and/or the features' and/or
2 Error 53's rendering Affected Models inoperable and unusable.

3 112. The economic benefit of the purchase price of new devices and/or services
4 derived by Apple through its concealment, misrepresentations, failures to disclose, and/or
5 omission regarding the features' and Error 53's potential effects on Affected Models is a
6 direct and proximate result of Apple's unlawful acts.

7 113. It would be inequitable and unjust for Apple to be permitted to retain any of
8 the unlawful proceeds resulting from their illegal and inequitable conduct.

9 114. As alleged in this Complaint, Apple has been unjustly enriched as a result of its
10 wrongful conduct and unfair competition. Plaintiffs and the Class members are accordingly
11 entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings,
12 profits, compensation, and benefits which may have been obtained by Apple as a result of
13 such business practices.

14 VII. PRAYER FOR RELIEF

15 WHEREFORE, Plaintiffs, individually and on behalf of members of the Class,
16 respectfully request the following relief:
17

- 18 A. Certification of the proposed Class, including appointment of Plaintiffs'
19 counsel as Class Counsel;
- 20 B. An order temporarily and permanently enjoining Apple from continuing the
21 unlawful, deceptive, and unfair business practices alleged in this Complaint;
- 22 C. Injunctive relief in the form of a software update preventing Error 53 from
23 rendering Affected Models completely inoperable and unusable and/or
24 rendering "bricked" devices operable and usable again;
- 25 D. Injunctive relief in the form of putting all repair or replacement costs under
26 warranty;

- E. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- F. For treble and/or punitive damages as permitted by applicable laws;
- G. An order requiring Apple to pay both pre- and post-judgment interest on any amounts awarded;
- H. An award of costs and attorneys' fees; and
- I. Such other or further relief as may be appropriate.

VIII. JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

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1 Respectfully submitted,

2 Dated: February 11, 2016

NICHOLAS LUSSON, individually and on behalf of
3 all other similarly situated

4 By: /s/ Darrell L. Cochran
5 One of Plaintiffs' Attorneys

6
7 By: /s/ Timothy A. Scott

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