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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAUL ORSHAN, CHRISTOPHER ENDARA, DAVID HENDERSON, and STEVEN NEOCLEOUS, individually, and on behalf of all others similarly situated, **Plaintiffs,** **v.** **APPLE INC.,** **Defendant.**	**Case No. 5:14-cv-5659 EJD** **CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT:** **(1) CALIFORNIA'S UNFAIR COMPETITION LAW (§ 17200);** **(2) CALIFORNIA'S FALSE ADVERTISING LAW (§ 17500 *ET SEQ.*);** **(3) CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT (§ 1750 *ET SEQ.*)** **JURY TRIAL DEMANDED**

Plaintiffs Paul Orshan ("Orshan"), Christopher Endara ("Endara"), David Henderson ("Henderson"), and Steven Neocleous ("Neocleous"), individually and on behalf of all others similarly situated (or collectively "Plaintiffs"), file this class action against Defendant Apple Inc. ("Apple" or "Defendant"). Plaintiffs allege the following upon personal knowledge as to their actions and upon information and belief based upon the investigation of their attorneys as to all other facts alleged in the Consolidated and Amended Complaint:

INTRODUCTION

1. This case challenges storage capacity misrepresentations, omissions, and other sharp business practices by Defendant in advertising, marketing and sale of certain Apple devices, as well as the inordinate amount of space consumed by Apple's iOS 8 operating system (hereinaftyer "iOS8"). Reasonable consumers can and do make purchasing decisions based upon

the labeled and advertised storage space in a device, including willingness to pay more for a device advertised to possess greater storage space. This is precisely what Apple did here as to 16GB iPhones and iPads (the "Devices"). Specifically, and as set forth in greater detail below, iOS 8 used an unexpectedly large percentage of the storage capacity the "Devices" and consumed more space than subsequent iterations of iOS.

2. Since this case was originally filed in 2014, Apple has quadrupled the size of the base memory of its most recent iPhone, the iPhone 11, which now has a base memory of 64 GB. The most updated version of the iPad, the iPad Pro, now has a base memory of 128 GB. Apple has also changed the iOS to permit deletion of many applications, several of these could not be deleted when this case was originally filed, and Apple has materially revised the disclaimer. Apple has also offered limited cloud storage space at no charge. All of these changes have occurred since the filing of this litigation.

3. Despite knowing that as much as 21.3% of the Devices' advertised storage capacity was dedicated to and consumed by iOS 8 and unavailable on purchased Devices that had iOS 8 installed, Apple made no disclosure of this material fact to consumers.

4. Apple also forced consumers to retain applications on the Devices that many consumers do not want, but were unable to delete. For example, iOS 8.2 included the Apple Watch as a required application that could not be deleted even if the consumer does not have an Apple Watch, nor any desire to own one. This is but one of numerous applications forced on consumers, including Plaintiffs and the class, that epitomizes Defendant's disregard of its advertising representations and warranties as to storage space. Nowhere did Apple disclose or explain that this application or any other application already decrease the advertised storage space on the purchased Devices.

5. Reasonable consumers, including Plaintiffs and the class, do not expect any marked discrepancy between the advertised level of capacity and the available capacity of the Devices. Without a disclosure or affirmative representation, no consumer would understand that an extraordinary percentage of the Devices' storage was unavialble based on the operating system, forced applications and other storage space limitations such as the manner in which the

root partition limited access. Defendant's disclaimer of "actual formatted capacity less" does not ameliorate Apple's misstatement and omissions because the space unavailable to consumers was not the result of formatting, which has a specific meaning.

6. By way of comparison, Defendant's chief competitor, Samsung, provided the following disclaimer language regarding the storage capacity of its flagship Galaxy S8 smartphone, "User memory is less than the total memory due to the storage of the operating system and software used to operate the features. Actual user memory will vary depending on the operator and may change after software upgrades are performed." Again, formatting is not the operating system or the applications present on the device, so no reasonable consumer could expect to lose as much as 20% of the capacity of the device as occurred here.

7. Compounding the harm to consumers, after Defendant provided materially less than the Devices' advertised capacity, Defendant aggressively marketed a monthly-fee-based storage system called iCloud. Using these sharp business tactics, Defendant gave less storage capacity than advertised, notifying the user that the storage capacity was almost full, only to later offer to sell storage capacity in a desperate moment, e.g., when a consumer is trying to record or take photos at a child or grandchild's recital, basketball game, or wedding. To put this in context, each gigabyte of storage Apple shortchanges its customers amounts to approximately 400-500 high resolution photographs. And, in a 16 GB device that has 20% of its storage capacity unavailable, a customer would be missing out on between approximately 1,280 and 1,600 high resolution photographs, or video recording totaling more than 30 minutes.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). The matter in controversy exceeds $5,000,000 exclusive of interests and costs, and this matter is a class action in which certain class members are citizens of States other than Defendant's state of citizenship.

9. Venue is proper in this Court because Defendant resides in this District, its Terms and Conditions require litigation here, and a substantial part of the events alleged in this

Complaint giving rise to Plaintiffs' claims, including the dissemination of the false and misleading advertising alleged herein, occurred in, and were directed from this District.

THE PARTIES

10. Plaintiff Paul Orshan is a citizen and resident of Miami, Florida. Plaintiff Christopher Endara is a citizen and resident of Miami, Florida. Plaintiff David Henderson is a citizen and resident of Arlington, Virginia. Plaintiff Steven Neocleous is a citizen and resident of Flushing, New York.

11. Defendant Apple Inc. ("Apple") is a corporation organized under the laws of the State of California, and has its principal place of business in Cupertino, California.

BACKGROUND

12. Storage capacity in computing and telecommunications is typically measured in a digital unit called a byte. A kilobyte, or "KB," is typically defined as one thousand, or 10^3, bytes. A megabyte, or "MB," is typically defined as one million, or 10^6, bytes. A gigabyte, or "GB," is typically defined as one billion, or 10^9, bytes

13. Defendant advertised the storage capacity of the Devices in gigabytes, using the acronym "GB." Therefore the storage capacity of 16GB devices is advertised as 16 billion bytes. The base storage unit was the basis for reasonable consumers to determine whether to buy the iPhone or a competing device as well as to price how much storage was needed and at what cost.

14. In reality, nothing close to the advertised capacity of the Devices was available to end users. Indeed, the discrepancy between advertised and available capacity is substantial and beyond any possible reasonable expectation. For the Devices, the shortfall ranged from 18.1-21.3%.

15. As noted above, although Defendant represented , disclosed, and advertised based upon the decimal-based system of measurement, upon information and belief, the Devices display available capacity based upon the binary definitions. This is confusing even to the technically savvy because it prevents consumers from making the proverbial "apples to apples" comparison. Exacerbating this confusion is the fact that rather than using the GiB representation,

as suggested by the ISQ, the graphic interface used on the Devices uses the abbreviation GB, even though it is apparently referring to gibibytes, and not gigabytes.

16. Further, Defendant segregates the storage space of the Devices into a media partition and a root partition. The media partition is the portion of the Device's storage that is available to the consumer. Control of the root partition rests exclusively with Apple and consumers have no ability to reduce the portion of the storage apportioned to Apple. It is important to note that the root partition is larger than it needs to be and viable storage capacity on the root partition side can remain unused even as the media partition becomes full and a consumer is instructed to purchase iCloud space from Apple. Further, several users have reported that, if a consumer "jailbreaks"[1] a Device, the root partition can be reduced in size to accommodate a greater storage allocation to the consumer without comprising the functionality of the Devices.[2]

FACTUAL ALLEGATIONS

17. Apple is in the business of, *inter alia,* designing, manufacturing, assembling, advertising, and marketing its line of "iPhone" cellular telephones, with the first model released on or about on June 29, 2007.

18. Apple marketed and sold the iPhone 6 and 6+, which it introduced on or about September 9, 2014. Predecessor models include the iPhone 5s and 5c introduced on or about September 10, 2013, and the iPhone 4s introduced on or about October 10, 2011. Apple also manufactures and markets a line of "iPad" tablet devices, first introduced on April 3, 2010.[3]

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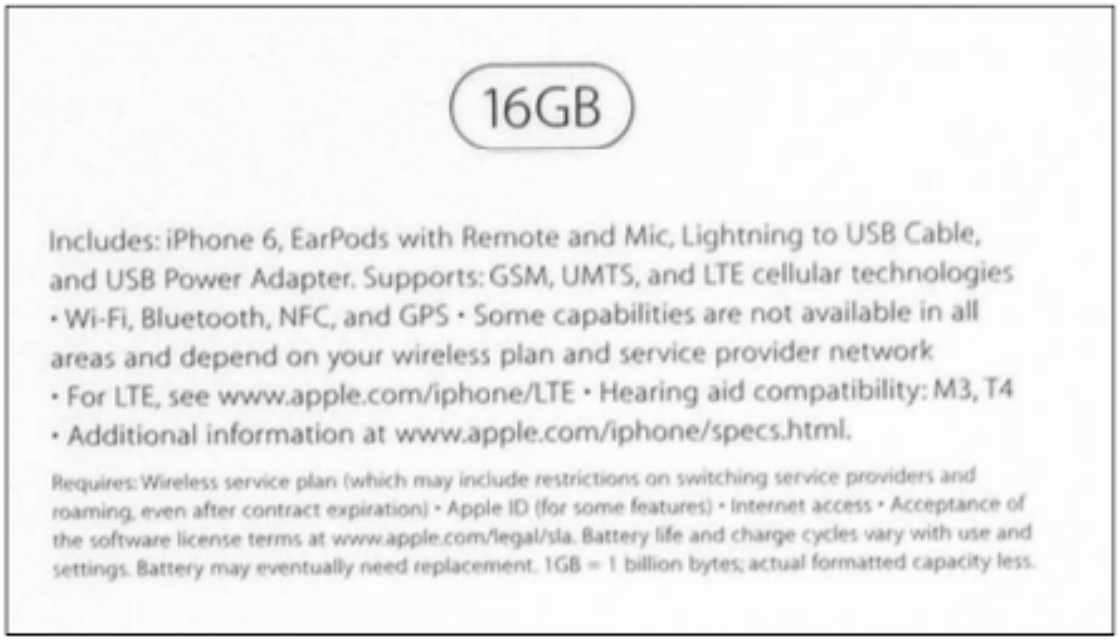
[1] The term "jailbreak" is used to describe the modification of a Device to remove some, or all, controls or limitations set by the manufacturer, and may include substitution of the operating system. Jailbreaking a Device typically voids the manufacturer's warranty, and is an option pursued only by the most technically sophisticated and/or adventurous users.

[2] Even more confusing, an alternative unit known as a "gibibyte" represents 1,073,741,824, or 2^{30}, bytes. While the gibibyte is represented by the acronym "GiB," Defendant sometimes uses "GB" when referring to gibibytes. On information and belief, the Devices display their storage capacity to users in gibibytes, but use the acronym "GB." This significantly complicates the user's ability to compare the available storage on the Devices as compared to the storage capacity as advertised by Defendant.

[3] Since the intial filing of this case, Apple has introduced newer models that are not marketed and advertised in relation to the available storage space in the same way as the Devices at issue here.

19. Apple explicitly stated, marketed, and represented on its website, advertisements, product packaging, and other promotional materials, that the iPhone 6 and 6+ were available with a storage capacity of 16 gigabytes (16GB). This is the principal false representation made by Defendant and relied upon by Named Plaintiffs Orshan, Endara, Henderson, and Neocleous. Apple made similar representations with respect to earlier models of the iPhone. At all times during the relevant time period, Defendant made similar representations concerning the storage capacities of its 16GB iPads.

20. Specifically, Defendant made the representation that the Devices offered 16 gigabytes of storage, "16GB" or 16 billion bytes, in the following graphic:



21. In February, 2014, Plaintiff Orshan purchased two iPhone 5's represented by Apple to have 16GB of storage capacity from the AT&T Store located in Coral Gables, Florida. Orshan purchased the devices on a payment plan of $32.50 per month. Orshan purchased devices primarily for personal, family, or household use. The iPhones were purchased with iOS 7 and were subsequently upgraded to iOS 8.

22. In November, 2012 Plaintiff Orshan also purchased two iPads represented by Apple to have 16GB of storage capacity at the Apple Store in the Dadeland Mall. Orshan paid $639.86 for the devices. The iPads were subsequently upgraded to iOS 8.

23. Plaintiff Orshan purchased his iPhones and iPads in reliance on Defendant's claims, on its website, advertisements, product packaging, and other promotional materials, that the devices came equipped with 16GB of storage space. Plaintiff Orshan viewed various materials, including Apple's website before purchasing his iPhones and iPads, and packaging materials in the store at the time of making the purchases, which specifically stated that the Devices possessed 16GB of storage capacity. Plaintiff Orshan was willing to—and did in fact—pay more to acquire devices with 16GB of storage capacity (rather than the less expensive 8GB of storage capacity) because he wanted the greater capacity to store his personal data. In reliance

on the fact that Apple specifically represented that the devices had 16GB of storage capacity, Plaintiff Orshan expected that capacity would be available for his personal use. Absent that, it would not have been of the same monetary value to him. Plaintiff upgraded to iOS 8 with the belief that the upgrade would not substantially inhibit his available storage capacity. Defendant did not adequately disclose in conjunction with upgrades to iOS 8 the additional and substantial storage capacity that would be consumed by the upgrade. Had Plaintiff Orshan known that by upgrading to iOS 8 he would substantially inhibit—and in fact decrease—his storage capacity, it would have materially impacted his decision about whether to upgrade to iOS 8. However, in reality because newer versions of iOS provide important security updates, it is important for consumers—including Plaintiffs—to make the updates. In addition to security risks, failure to implement operating system updates can also cause applications to cease functioning. But Plaintiffs and consumers do not expect Defendant to foist unnecessary and unwanted applications that cannot be erased in order to maintain the security of their Devices.

24. In December, 2014, Plaintiff Endara purchased an iPhone 6 represented by Apple to have 16GB of storage capacity from the AT&T store located in Miami, Florida. Endara purchased the device on a payment plan of approximately $27 per month. Endara purchased the device primarily for personal use. The iPhone was purchased with iOS 8 pre-installed.

25. Plaintiff Endara purchased his iPhone in reliance on Defendant's claims, on its website, advertisements, product packaging, and other promotional materials, promoting the claim that his iPhone 6 came equipped with 16GB of storage space. Plaintiff Endara viewed various materials, including Apple's website before purchasing his iPhone and packaging materials in the store at the time of making the purchase, which stated that his Device possessed 16GB of storage capacity. In reliance on the fact that Apple specifically represented that the device had 16GB of storage capacity, Plaintiff Endara expected that capacity would be available for his personal use. Absent that, it would not have been of the same monetary value to him. Had he known that in reality, the operating system and other mandatory pre-installed software consumes a substantial portion of the represented storage capacity, Endara would not have

purchased the 16GB of storage capacity or would not have been willing to pay the same price for it.

26. On April 1, 2012, Plaintiff Henderson purchased an iPad 2 represented by Apple to 16GB of storage capacity from the Apple Store located in Clarendon, Virginia. Henderson purchased the device primarily for personal, family, or household use. Henderson paid $522.90 for the device after tax and a $99 payment for AppleCare support. The iPad was purchased with a predecessor operating system to iOS 8.

27. Once Henderson upgraded to iOS 8, his iPad, which had previously performed almost flawlessly for him, slowed to a snail's pace and was no longer useful for any purpose other than reading a book. Henderson took the iPad to the Apple Genius Bar in the Apple Store in Clarendon, Virginia, and was told that they had received many complaints about iPads instantly becoming useless and that iPads with more memory seemed to fair better with the iOS 8. Henderson made multiple efforts to resolve the crash and speed issues with his iPad in store, through AppleCare and even with an individual in Corporate Executive Relations at Apple's executive offices. Ultimately, he was passed to an AppleCare iOS Senior Specialist who recommended that he jailbreak his device—an action that would void his warranty. Because his iPad would not perform properly, Henderson was forced to purchase a new iPad mini represented by Apple to have 32 GB of storage capacity.

28. Plaintiff Henderson purchased his iPad in reliance on Defendant's claims, on its website, advertisements, product packaging, and other promotional materials, that the device came equipped with 16GB of storage space. Plaintiff Henderson viewed various materials, including Apple's website before purchasing his iPad, and packaging materials in the store at the time of making the purchase, which specifically stated that the Device were available with 8GB or 16GB of storage capacity. Plaintiff Henderson was willing to—and did in fact—pay more to acquire devices with 16GB of storage capacity (rather than the less expensive 8GB of storage capacity) because he wanted the greater capacity to store his personal data. In reliance on the fact that Apple specifically represented that the devices had 16GB of storage capacity, Plaintiff Henderson expected that capacity would be available for his personal use. Absent that, it would

not have been of the same monetary value to him. Plaintiff upgraded to iOS 8 with the belief that the upgrade would not substantially inhibit his available storage capacity. Defendant did not adequately disclose in conjunction with upgrades to iOS 8 the additional and substantial storage capacity that would be consumed by the upgrade. Had Plaintiff Orshan known that by upgrading to iOS 8 he would substantially inhibit—and in fact decrease—his storage capacity, it would have materially impacted his decision to complete the upgrade to iOS 8.

29. In August 2012, Plaintiff Steven Neocleous purchased his 16 Gigabyte iPhone 5 from PC Richards and Sons in College Point, Queens New York. Plaintiff Neocleous purchased his Device primarily for personal, family, or household use. Plaintiff Neocleous paid $100 for his Device, which was purchased with iOS 7.

30. Plaintiff Neocleous purchased his Device relying on Defendant's representation that the Device had 16GB of storage space. At the time Plaintiff upgraded his phone from iOS 7 to iOS 8, Plaintiff was not made aware that the iOS 8 upgrade would consume substantial storage space and would not have upgraded his device had he known the upgrade would substantially reduce his available storage capacity.

31. Neither Plaintiff Orshan, Plaintiff Endara, Plaintiff Henderson, Plaintiff Neocleous, nor any reasonable consumer, expected (or could have reasonably expected) that a shortfall ranging between 18.1 – 21.3% existed between the advertised and available capacity of the Devices they purchased.

32. Since the filing of the instant lawsuit—and despite its intervening dismissal—Defendant no longer makes the same misleading representations to consumers about its storage capacity.

33. For the current iPhone model, the iPhone 11, Defendant spells out specifically the amount utilized by Apple's operating system:

> Available space is less and varies due to many factors. A standard configuration uses approximately 11GB to 14GB of space (including iOS and preinstalled apps) depending on the model and settings.

> Preinstalled apps use about 4GB, and you can delete these apps and restore them. Storage capacity subject to change based on software version and may vary by device.[4]

34. Upon information and belief, Apple now appears to tell consumers how much storage space is not available for use, stating that "[a] standard configuration uses approximately 11GB to 14GB of space (including iOS and preinstalled apps) depending on the model and settings. Preinstalled apps use about 4GB, and you can delete these apps and restore them." Despite the fact that a higher percentage of storage capacity was unusable in the Devices, Apple now tells consumers how much storage capacity they cannot access for the most recent iPhone models. However, because Apple did not disclose and in fact hid this information related to the Devices, Plaintiffs and the Class members purchased their Devices based on the reasonable understanding that they would have access to the full storage capacity (or nearly the full storage capacity) of the Devices.

35. Storage capacity matters to reasonable consumers (including Plaintiffs and putative Class members) precisely because of how it translates into their ability to store personal information after purchase and to comparison shop between competing manufacturers and between models within a manufacturer's line. Storage capacity constitutes a substantial consideration that weighs into reasonable consumers' decision making processes. Consumers purchase Devices with greater storage capacity with the expectation that they will be able to store a greater amount of personal information on those Devices and delay having to purchase a replacement in the future. Indeed, this is why Apple makes representations regarding the storage capacity of its products and boasts to consumers that its Devices have 16GB of storage capacity. To a consumer, the fact that a device has a particular storage capacity matters mostly because it impacts their ability to make use of that capacity. The fact that a device has a storage capacity is not valuable to a reasonable consumer if that consumer cannot actually make use of that capacity. And storage capacity was the principle price differentiator for the Devices. Higher storage capacity costs more.

[4] Language copied from https://www.apple.com/iphone-11/specs/ (last visited: June 9, 2020).

36. Apple should have disclosed the actual storage capacity available to users for its various Devices and that upgrading to iOS 8 would result in a substantial decrease in available storage capacity. Had Plaintiffs known that the operating system and other pre-installed software consumes a substantial portion of the storage capacity of the Devices, they would have reconsidered their decisions to purchase Devices, or would have paid less. In the same vein, Apple's decision to include applications that are irrelevant to many consumers and cannot be deleted further reduced the storage available to consumers, adding insult to injury.

37. Defendant employed false, deceptive, and misleading practices in connection with marketing, selling, and distributing the Devices. In its advertising, marketing, and promotional materials, including Apple's Internet website, product packaging, and product displays, Defendant misrepresented the iPhone 6 as having 16GB of storage capacity.

38. Defendant's inclusion of the language that "actual formatted capacity less" did not render its representations any less false. Merriam-Webster defines "format" as "a method of organizing data (as for storage)." The reduction in the storage capacity available to Plaintiffs and consumers was *not* due to formatting, but was due instead to Defendants' direct consumption of the advertised storage to provide space for its operating system, pre-installed and mandatory applications, and self-allocated excess root partition.

39. Apple's disclosures were not sufficient to put reasonable consumers—including Plaintiffs—on notice of the difference between the space promised and the space actually received. Each Plaintiff and every consumer saw a uniform misstatement on the packaging of every device.

40. Defendant knew, but concealed and failed to disclose in its advertising, marketing, and promotional materials, that the operating system and other pre-installed software consumed a substantial portion of the represented storage capacity of each of the Devices. Defendant also failed to dislcose that consumers were forced to retain certain applications that significantly consumed the advertised storage capacity. These applications were not necessary for the devices to function; they were merely a forced tool by which Apple could sell additional products or services.

41. During the pertinent time period, the list of applications that could not be deleted included: calculator, calendar, camera, clock, compass, contacts, FaceTime, game center, iTunes store, mail, maps, messages, music, newsstand, notes, passbook, photos, reminders, Safari, stocks videos, voice memos, and weather. Thus, for a consumer who purchased a purported "16GB" iPhone, iPad, or iPod with iOS 8 pre-installed, or who upgraded to iOS 8, as much as 21.3% of the represented storage capacity was inaccessible and unusable.

42. The following table depicts the discrepancy between represented storage capacity, and storage capacity actually available to purchasers, on certain iPhones and iPads with iOS 8 installed:

Device	Represented Capacity	Capacity Available to User		Capacity Unavailable to User	
	(GB)	(GiB)	(GB)	(GB)	**(%)**
iPhone 6+	16	11.8	12.7	3.3	20.6%
iPhone 6	16	12.1	13.0	3.0	18.8%
iPhone 5s	16	12.2	13.1	2.9	18.1%
iPad Air	16	11.7	12.6	3.4	21.3%
iPad	16	11.7	12.6	3.4	21.3%

43. The foregoing actual capacities are further confirmed by reports from several purchasers and bloggers reported on various websites. For example, a purchaser complained that his new iPhone 4 with a represented capacity of 8 GB had only 6.37 GB of storage. An Apple representative conceded that "that is normal" and suggested that, if the user did "not like it," to "take it back." *See* https://discussions.apple.com/thread/3558683. A blogger, similarly, reported that a "16GB" iPad only affords 13GB of usable storage, and noted that "selling a 16GB iPad that really only has 13GB available (after iOS is installed) – is deceptive." See http://www.mcelhearn.com/apples-ios-apps-are-bloated-and-how-many-gigs-do-you-get-on-a-16-gb-ios-device/ *See also* David Price, "What's an iPhone or iPad's true storage capacity?" (April 10, 2014), http://www.macworld.co.uk/feature/ipad/whats-iphone-or-ipads-true-storage-capacity-3511773/ ("a 16GB iPhone 5s offers 12.2GB of true capacity, and a 16GB iPhone 5c allows 12.6GB," apparently using the binary definition of gigabyte). *See also*

http://www.imore.com/16gb-vs-64gb-vs-128gb-which-iphone-6-and-iphone-6-plus-storage-size-should-you-get ("out of 16GB of storage you get only 12~13"). Given Apple's technological sophistication (having designed the iOS, created the root partition, and programmed the forced applications), media coverage addressing the issue, and complaints received directly from consumers, it is beyond question that Apple was aware of this misrepresentation.

44. Apple's misrepresentations and omissions were deceptive and misleading because they omitted material facts that an average consumer would consider in deciding whether to purchase its products, namely, that when using iOS 8, as much as 3.7 GB of the represented storage capacity on a device represented to have 16GB of storage capacity was, in fact, not available to the purchaser for storage. For example, Apple misrepresented that an iPhone 6+ with the base level of storage had "16GB" of storage space while it concealed, omitted and failed to disclose that, on models with iOS 8 pre-installed, in excess 20% of that space was not available storage space that the purchaser could access and use to store his or her own files.

45. In addition to making material misrepresentations and omissions to prospective purchasers of Devices with iOS 8 pre-installed, Apple also made misrepresentations and omissions to owners of Devices with predecessor operating systems. These misrepresentations and omissions caused these consumers to "upgrade" their Devices from iOS 7 (or other operating systems) to iOS 8. Apple failed to disclose that upgrading from iOS 7 to iOS 8 would cost a Device user between 600MB and 1.3GB of storage space – a result that no consumer could reasonably anticipate. This is confirmed by Plaintiffs' counsels' comparison of devices with iOS 7 and iOS 8 installations, and reports by others. *See* "iOS 8, thoroughly reviewed" (September 19, 2014), available online at http://arstechnica.com/apple/2014/09/ios-8-thoroughly-reviewed/2/#install.

46. Apple did not enable users who upgraded to iOS 8 to revert back to iOS 7 or another operating system. *See* "How to downgrade from iOS 8 to iOS 7: Apple stops signing iOS 7.1.2, and blocks iOS downgrades (Sept. 29, 2014), available online at http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-

3522302/; "There's no turning back from iOS 8 if you upgrade from iOS 7.1.2" (Sept. 26, 2014), available online at http://bgr.com/2014/09/26/downgrade-from-ios-8-to-ios-7-1-2/).

47. Apple exploited the discrepancy between represented and available capacity for its own gain by offering to sell, and by selling, cloud storage capacity to purchasers whose internal storage capacity is at or near exhaustion. During the time period relevant to this complaint, when the internal hard drive approached "full," Defendants caused a pop up ad to offer consumers the opportunity to purchase "iCloud" cloud storage. For this service, at all times relevant to this complaint, Apple charged prices ranging from $0.99 to $29.99 *per month*.

48. This iCloud storage was the only practical way for consumers to obtain additional storage. Apple operates in a closed system—it does not allow users to insert an SD card or other internal storage medium (unlike certain competitors' smartphones at the time, including most phones that used the Android operating system at the time the original complaint in this action was filed). Similarly, at all times relevant to this complaint, Apple also did not permit users to freely transfer files between the Devices and a computer by using a "file manager" utility – an option available to most users of Android or Windows-based portable devices.

49. Plaintiff Orshan purchased a 16GB iPhone 5s on or about February 2014 with (a version of) iOS 7 pre-installed. On or about October 2014, Plaintiff upgraded the operating system on his iPhone 5s to iOS 8 in reliance on Apple's misrepresentations and omissions.

50. Plaintiff Endara purchased a 16GB iPhone on or about December 2014 with iOS 8 pre-installed.

51. Plaintiff Henderson purchased a 16GB iPad on April 1, 2012, and upgraded to iOS 8 in late 2014, with the catastrophic results described above. Plaintiff Henderson's experience is a quintessential example of what fuels people's fears concerning planned obsolescence by Apple.

52. Plaintiff Neocleous purchased a 16GB iPhone 5 in August 2012, which came pre-installed with iOS 7. Plaintiff Neocleous subsequently upgraded to iOS 8.

53. Plaintiffs hereby bring this class action seeking redress for Defendant's unfair business practices, false or deceptive or misleading advertising, and violations of the Consumers Legal Remedies Act ("CLRA").

CLASS ACTION ALLEGATIONS

54. This action may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23.

55. Plaintiffs bring this action as a class action on behalf of themselves and the following classes ("the Classes"): (1)(a) an "iOS 8 Purchaser Class" consisting of all persons or entities in the United States who purchased an iPhone or iPad with represented storage capacity of 16GB with iOS 8 pre-installed for purposes other than resale or distribution, and (b) an "iOS 8 Purchaser CLRA Subclass" consisting of all persons in the United States who purchased an iPhone or iPad with represented storage capacity of 16GB with iOS 8 pre-installed for personal, family, or household use within the four years preceding the filing of this Complaint, (2)(a) an "Upgrade Class" consisting of all persons or entities in the United States who upgraded an iPhone or iPad with represented storage capacity of 16GB to iOS 8, and (b) an "Upgrade CLRA Subclass" consisting of all persons or entities in the United States who upgraded an iPhone or iPad used for personal, family or household use with represented storage capacity of 16GB to iOS 8.

56. Excluded from the Classes are the Defendant, and all officers, directors, employees, or agents of the Defendant.

57. The members of the Classes are so numerous that joinder of all members would be impracticable. Plaintiffs do not know the exact size or identities of the proposed Classes, since such information is in the exclusive control of Defendant. Plaintiffs, however, believe that the Classes encompass many thousands of individuals.

58. There are common questions of law or fact, among others, including:

a. The nature, scope and operations of the wrongful practices of Apple;

b. Whether Defendant knew the advertised storage capacity was not fully available on the purchased Devices;

c. Whether Defendant's advertising, marketing, product packaging, and other promotional materials were untrue, misleading, or reasonably likely to deceive a reasonable consumer;

d. Would a reasonable consumer understand "less" to be up to, or in excess of 20% of the available storage space;

e. What percentage of the reasonable person consuming public understaood that 16GB was not actually 16GB, whether the "less" disclaimer was understood as up to 20% of the storage, or understood that certain content could not be deleted without voiding the product warranty;

f. Whether Defendant knew that its representations and/or omissions regarding the Devices' storage capacity were false or misleading, but continued to make them.

g. Whether Apple's partial disclosure as to the Devicee' storage capacity created a duty to disclose the amount of storage space actually unavailable to class members;

h. Whether Defendant's failure to disclose the amount of storage space consumed by its operating system and other pre-installed software was a material fact;

i. Whether Defendant's failure to disclose the available storage on the Apple devices confused consumers who were comparing the available storage on devices manufactured by others;

j. Whether Apple's forced inclusion of software violates the laws cited herein;

k. Whether Apple's patition of storage space beyond that necessary to operate the devices is actionable misconduct;

l. Whether the value of the Devices is decreased based on the actual available storage capacity to consumers;

m. Whether, by the misconduct as set forth in this Complaint, Apple engaged in unfair or unlawful business practices, pursuant to California Business and Professions Code § 17200, *et seq.*;

n. Whether Defendant's conduct violated the California Consumer Legal Remedies Act;

o. Whether Defendant's conduct violated the California Business and Professions Code § 17500, *et seq.;*

p. Whether, as a result of Apple's misconduct as set forth in this Complaint, Plaintiffs and the Classes are entitled to damages, restitution, equitable relief and other relief, and the amount and nature of such relief; and

q. Whether Apple has acted on grounds generally applicable to the Class, making injunctive relief appropriate.

59. Plaintiffs' claims are typical of the members of the Classes because Plaintiffs and all members of the Classes were injured by the same wrongful practices of Apple as described in this complaint. Plaintiffs' claims arise from the same practices and course of conduct that gives rise to the claims of the Classes' members, and are based on the same legal theories. Plaintiffs have no interests that are contrary to or in conflict with those of the Classes they seek to represent.

60. Plaintiffs will fairly and adequately represent the interests of the members of the Classes. Plaintiffs' interests are the same as, and not in conflict with, the other members of the Classes. Plaintiffs' counsel is experienced in class action and complex litigation.

61. Questions of law or fact common to the members of the Classes predominate and a class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Classes is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by Classes members are likely to be in the millions of dollars, the individual damages incurred by each Class member resulting from Apple's wrongful conduct are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual members of the Classes prosecuting separate claims is remote and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or

contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action and certification of the Classes is proper.

62. Relief concerning Plaintiffs' rights under the laws herein alleged and with respect to the Classes would be proper on the additional ground that Apple has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to members of each Class as a whole.

COUNT I

California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*

63. Plaintiffs repeat and reallege the allegations set forth above as if fully contained herein.

64. Plaintiffs bring this cause of action individually and on behalf of the Classes.

65. Defendant has violated California Business and Professions Code § 17200 by engaging in unfair, unlawful, and fraudulent business acts or practices as described in this Complaint, including but not limited to, disseminating or causing to be disseminated from the State of California, unfair, deceptive, untrue, or misleading advertising as set forth above in this Complaint.

66. Defendant's practices are likely to deceive, and have deceived, members of the public.

67. Defendant knew, or should have known, that its misrepresentations, omissions, failure to disclosure and/or partial disclosures omit material facts and are likely to deceive a reasonable consumer.

68. Defendant continued to make such misrepresentations despite the fact it knew or should have known that its conduct was misleading and deceptive.

69. By engaging in the above-described acts and practices, Defendant committed one or more acts of unfair competition within the meaning of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*

70. Plaintiffs and all members of the Classes suffered injury in fact as a result of Defendant's unfair methods of competition. As a proximate result of Defendant's conduct, Plaintiffs and members of the Classes were exposed to these misrepresentations and omissions, purchased a Device(s) in reliance on these misrepresentations, and suffered monetary loss as a result.

71. Plaintiffs, individually and on behalf of the Classes, seek an order of this Court against Defendant awarding restitution, disgorgement, injunctive relief and all other relief allowed under § 17200, *et seq*., plus interest, attorneys' fees and costs.

COUNT II

California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*

72. Plaintiffs repeat and reallege the allegations set forth above as if fully contained herein.

73. Plaintiffs bring this cause of action individually and on behalf of the Classes.

74. Apple is a California company disseminating advertising from California throughout the United States.

75. Defendant has engaged in a systematic campaign of advertising and marketing the Devices as possessing specific storage capacities. In connection with the sale of the Devices, and the promotion of iOS 8, Defendant disseminated or caused to be disseminated false, misleading, and deceptive advertising regarding storage capacity to the general public through various forms of media, including but not limited to product packaging, product displays, labeling, advertising and marketing. However, Defendant knew or reasonably should have known that the Devices do not make available to users the advertised storage space, and that the failure to disclose the storage space consumed by iOS 8 (both to prospective purchasers of Devices with iOS 8 pre-installed and to prospective upgraders) was a material omission, and that Apple's disclaimer was inadequate and factually incorrect.

76. When Defendant disseminated the advertising described herein, it knew, or by the exercise of reasonable care should have known, that the statements concerning iOS 8 and the storage capacity of its Devices were untrue or misleading, or omitted to state the truth about the

Devices' storage capacity, in violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq*.

77. As a proximate result of Defendant's conduct, Plaintiffs and members of the Class were exposed to these misrepresentations, omissions, and partial disclosures, purchased the Devices in reliance on these misrepresentations, omissions, and partial disclosures, and suffered monetary loss as a result. They would not have purchased the Devices, or would have paid significantly less for them, and/or would not have upgraded their Devices to iOS 8, had they known the truth regarding the actual storage capacities of the Devices when equipped with iOS 8.

78. Defendant made such misrepresentations despite the fact that it knew or should have known that the statements were false, misleading, and/or deceptive.

79. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

80. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and the members of the Classes seek an order of this Court enjoining Defendant from continuing to engage, use, or employ the above-described practices in advertising the sale of the Devices and promoting iOS 8.

81. Likewise, Plaintiffs seek an order requiring Defendant to make full corrective disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial disclosures.

82. Plaintiffs, individually and on behalf of the Class, seek restitution, disgorgement, injunctive relief, and all other relief allowable under § 17500, *et seq*.

COUNT III

California Consumer Legal Remedies Act ("CLRA"), Cal. Civil Code § 1750, *et seq.*

83. Plaintiffs repeat and reallege the allegations set forth above as if fully contained herein.

84. Plaintiffs bring this cause of action individually and on behalf of the Purchaser and Upgrader CLRA Subclasses.

85. The acts and practices described in this Complaint were intended to result in the sale of goods, specifically a cellular phone, in a consumer transaction.

86. The Defendant's acts and practices violated, and continue to violate, the Consumer Legal Remedies Act ("CLRA") in at least the following respects:

a. Defendant violated California Civil Code § 1770(a)(5) by representing that Devices on the one hand, and iOS 8, on the other hand, had characteristics, uses, and benefits that they did not have, including representations that the Devices had specific storage capacities when that is not, in fact, the case.

b. Defendant violated California Civil Code § 1770(a)(9) by advertising the Devices as having specific storage capacities with the intent not to sell them as advertised.

87. Plaintiffs and the Subclasses are entitled to equitable relief on behalf of the members of the Subclasses in the form of an order, pursuant to Civil Code section 1780, subdivisions (a)(2)-(5), prohibiting Defendant from engaging in the above-described violations of the CLRA, to provide restitution or actual damages in the form of all monies paid for storage capacity not realized, the inflated sale price of the Devices, the inclusion of forced applications, punitive damages, and any other relief the Court deems proper. Plaintiffs further seeks reasonable attorneys' fees under Civil Code section 1780(e).

88. Pursuant to California Civil Code section 1782, on January 8, 2015, Plaintiffs sent a demand letter to Defendant via registered mail. Defendant refused to respond to the demand letter, making the inclusion of damage claim appropriate under the CLRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

a. That this matter be certified as a class action with the Classes defined as set forth above under pursuant to Fed. R. Civ. P. 23 and that the Plaintiffs be appointed Class Representatives, and their attorneys be appointed Class Counsel.

b. That the Court enter an order requiring Defendant to immediately cease the wrongful conduct as set forth above; enjoining Defendant from continuing to conduct business

via the unlawful and unfair business acts and practices complained of herein; and ordering Defendant to engage in a corrective notice campaign;

c. That judgment be entered against Defendant for restitution, including disgorgement of profits received by Defendant as a result of said purchases, cost of suit, and attorneys' fees, and injunction; and

d. For such other equitable relief and pre- and post-judgment interest as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: July 17, 2020

Respectfully submitted,

/s/ Michael McShane
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