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

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12 ADRIENNE MOORE, On Behalf of Herself and
All Others Similarly Situated,

Case No. _____

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Plaintiff,

CLASS ACTION COMPLAINT

14

v.

Jury Trial Demanded

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APPLE INC.

16

Defendant.

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NATURE OF THE ACTION

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1. Plaintiff Adrienne Moore (“Moore” or “Plaintiff”) hereby brings this action on behalf of herself and all other similarly situated persons within the United States who obtained wireless cellular service on an Apple iPhone or iPad device that was equipped with Apple’s iMessage service, and subsequently replaced that device (on which they were obtaining their wireless cellular service) with a non-Apple device instead. When Plaintiff and the putative class members subscribed to cellular service through these Apple iPhone or iPad devices, they had, as part of their cellular service contract and Apple device ownership, the ability to send and receive

1 text messages. To accomplish this task, these Apple device users employed an Apple service and
2 application that were part of Apple's software operating system, and that are known respectively
3 as iMessage and Messages. Unbeknownst to Plaintiff and the putative class members, however,
4 once they switched from an Apple iPhone or iPad to a non-Apple device for their wireless service
5 needs, Apple's iMessages and Message service and application still retained text messages that
6 were directed at these persons from other Apple users, and failed to deliver these text messages to
7 the putative class members as long as these putative class members continued using a non-Apple
8 device. In this manner, Apple tortiously interfered with the contract for cellular service between
9 these putative class members and their cellular telephone carrier in that Apple's actions prevented
10 the subscribers from receiving all of their text messages, as they were entitled to obtain through
11 their cellular wireless service contracts. Further, Apple failed to properly disclose to Plaintiff and
12 the putative class members, at the time that they owned their Apple iPhone or iPad devices (or
13 anytime thereafter) that, should they switch away from an Apple device to a non-Apple device,
14 Apple's iMessage and Messages service and application would act to prevent these persons from
15 receiving all their text messages on the non-Apple device that these class members used to replace
16 their Apple iPhone or iPad devices. Through this material omission, Apple violated the California
17 Legal Remedies Act. The foregoing conduct also amounts to a violation of California's Unfair
18 Competition Law.

19 **INTRADISTRICT ASSIGNMENT**

20 2. Pursuant to Local Civil Rules 3-2(e) and 3-5(c), Plaintiff maintains that Intradistrict
21 Assignment of this action to the Court's San Jose Division is appropriate because "a substantial
22 part of the events or omissions which give rise to the claim occurred" (Civil L.R. 3-2(c)) in
23 Apple's Cupertino headquarters in Santa Clara County.

24 **JURISDICTION AND VENUE**

25 3. This Court has subject-matter jurisdiction over this action pursuant to the Class
26 Action Fairness Act, 28 U.S.C. § 1332(d) because Plaintiff's Class Action Complaint pleads a
27 cause of action on behalf of a nationwide class whose members are of diverse citizenship than

28 Class Action Complaint

Adrienne Moore v. Apple Inc.,
No. _____

1 Apple's California citizenship, and the amount in controversy, exclusive of interest and costs,
2 exceeds \$ 5 million.

3 4. Venue is proper in this judicial district because Apple is headquartered within this
4 judicial district at 1 Infinite Loop in Cupertino, California 95014. Upon information and belief,
5 the marketing and disclosure decisions about Apple's iMessage service were made from within
6 Apple's headquarters. Venue in this judicial district is, therefore, proper pursuant to 28 U.S.C. §§
7 1391(b)(1) and 1391(b)(2). Through its corporate and retail presence in California, as well as its
8 significant sales of Apple devices within California (including the very devices at issue in this
9 Class Action Complaint), Apple is also amenable to personal jurisdiction in this State and judicial
10 district.

11 PARTIES

12 5. Plaintiff Adrienne Moore is a resident of California. For years pre-dating the filing
13 of this action, Plaintiff was an owner of an iPhone 4 device and subscribed to Verizon Wireless for
14 her cellular telephone needs. As part of her cellular service, she was entitled to obtain, *inter alia*,
15 voice telephone calls and text messages in exchange for a monthly fee. Plaintiff's iPhone 4
16 device operated Apple's OS software operating system that included, a messenger service
17 developed by Apple called iMessage. Within iMessage, a default Apple client application known
18 as Messages exists that allows users to send and receive texts, documents, photos, videos, contact
19 information, and group messages over Wi-Fi, 2G, 3G, or LTE networks to other Apple iOs or OS
20 X users, thus providing an alternative to standard SMS/MMS text messaging for most users with
21 devices running Apple's iOS 5 or later. During the time that Plaintiff was a Verizon Wireless
22 subscriber for her Apple iPhone 4, Apple prompted her to update her Apple software operating
23 system. As part of one of those updates, her iPhone 4 began using by default the iMessage
24 service to route text messages from and to her through Apple's Messages application when those
25 text messages involved other Apple device users that had the Apple iMessage service (i.e., all
26 other Apple devices running Apple iOS 5 or later). Unbeknownst and undisclosed to Plaintiff,
27 however, once she decided to replace her Apple iPhone 4 device with a Samsung Galaxy S5, as

1 she did on or about April 16, 2014, Apple's iMessage service and Message application still acted
2 so as to not deliver incoming text messages sent to her by Apple device users to her same cellular
3 telephone number, but that was now associated with a non-Apple device (i.e., her Samsung S5
4 device). Put simply, Apple's iMessage service and Messages application penalizes those Apple
5 device owners who deign to switch away from Apple to other non-Apple wireless cellular devices.
6 These former Apple device owners are penalized and injured by having Apple's iMessage service
7 and Messages application fail to deliver text messages sent from Apple devices to the new non-
8 Apple devices of these former Apple device users. This was the exact fate of Plaintiff, who, solely
9 as a result of Apple's iMessage's and Messages' doing, has lost or failed to received countless text
10 messages sent to her from Apple devices ever since she switched away from an Apple iPhone 4 to
11 a newer Samsung S5 phone.

12 6. Defendant Apple Inc. is a corporation organized under the laws of the State of
13 California, and having its principal place of business at 1 Infinite Loop in Cupertino, California
14 95014. Apple is one of the world's largest and most popular maker of, *inter alia*, wireless devices,
15 such as the various versions of the iPhone and iPad. These devices are operated by Apple's
16 software operating service, commonly abbreviated as iOS (which may be followed by a number or
17 roman numeral to designate the version of the software). Starting with the iOS 5 update to
18 Apple's software operating system on or about October 12, 2011, Apple introduced its iMessage
19 service and Messages client application. Apple's current CEO, Tim Cook, has previously touted
20 that Apple's iMessage delivers 28,000 messages per second.

21
22 **TEXT MESSAGING, APPLE'S iMESSAGES, AND APPLE'S WRONGFUL CONDUCT**
23 **DIRECTED AT THOSE SUBSCRIBERS WHO CHOOSE TO REPLACE THEIR APPLE**
DEVICES WITH NON-APPLE DEVICES.

24 7. This action concerns the practice of text messaging, also commonly referred to as
25 texting. Text messaging is the act of composing and sending a brief, electronic message between
26 two or more mobile phones, or fixed or portable devices over a phone network. The term
27 originally referred to messages sent using the Short Message Service ("SMS"). It has grown to

1 include messages containing image, video, and sound content (known as MMS messages). The
2 sender of a text message is known as a texter. Today, text messaging is the most widely used
3 mobile data service, with 74% of all mobile phone users worldwide, or 2.4 billion out of 3.3
4 billion phone subscribers.

5 8. Traditionally, text messages were and are sent between the texter and the recipient
6 through a cellular network. After the texter composes the text message and hits the “Send” or
7 similar button on his wireless device, the text message is transmitted in SMS format through the
8 cellular network to an interim facility known as the SMS Center. From there, the SMS
9 transmission is routed to a transmission tower of the network. The network’s transmission tower,
10 in turn, sends the message to the recipient’s wireless device through that device’s control channel.
11 At that point, the recipient receives notification on his device of the actual SMS (or MMS) text
12 message.

13 9. Given the popularity of text messaging, today, wireless service providers, like
14 Verizon Wireless, AT&T, Sprint, T-Mobile, and others, provide their users with the facility to
15 send and receive text messages (which, as detailed in paragraph 8 *supra*, make use of the carrier’s
16 wireless network for transmission of these text messages).

17 10. Part of the contractual relationship, therefore, between Plaintiff and other putative
18 class members and their respective wireless service providers (Verizon Wireless, in the case of
19 Plaintiff) is the subscriber’s ability to send and receive text messages as part of their subscription.

20 11. On or about October 12, 2011, Apple released its OS 5 update to the software
21 powering Apple wireless devices, such as iPhones and iPads. As part of that update, Apple
22 included its iMessage service, which contained Apple’s Messages client application. As part of
23 that and subsequent Apple software versions, Apple’s software on Apple iPhone and iPad wireless
24 devices would employ iMessage and Messages, instead of the traditional SMS network route, to
25 send text messages between users of Apple wireless devices who had an enabled iMessage
26 service on their device.

27 12. As a result of Apple’s software upgrade, if a user’s iPhone or iPad is running iOS

1 5 or greater, the Message messaging application will send text messages as an iMessage instead of
2 the usual text message when the text message is being sent between users who have the Apple
3 iMessage service on their devices. This means that if one is sending text messages with another
4 iOS 5 user, there is no SMS charge associated with the messaging. It is merely treated as an
5 additional data transfer.

6 13. The undisclosed drawback that forms the gravamen of this action concerns the
7 manner in which Apple's iMessage and Messages act once an iPhone or iPad user switches their
8 wireless telephone number to a non-Apple device, as Plaintiff did recently. Once that occurs, the
9 former Apple device user, who now uses a non-Apple device, is unable to receive text messages
10 sent to her by users of Apple devices that employ iMessage and Messages (i.e., all Apple wireless
11 devices operating OS 5 or more recent software versions).

12 14. Due to an undisclosed feature in Apple's iMessage and Messages service and
13 application, the Apple Message application does not recognize that the same telephone number of
14 the former Apple device user (who, herself, was previously receiving text messages through
15 iMessage) is no longer using an Apple device and hence is no longer using iMessage or Messages.
16 Thus, when a text message is sent from an Apple device user to a person whose telephone number
17 used to be associated with an Apple device but is now used on a non-Apple telephone, the
18 message is not delivered to the non-Apple device user on her new non-Apple device. Worse yet,
19 this person receives no notification whatsoever that a text message directed to her was not
20 delivered.

21 15. The effect is readily apparent. Solely as a result of Apple's doing, Plaintiff, like
22 other wireless carrier subscribers who replace their Apple devices with non-Apple wireless
23 devices, are penalized and unable to obtain the full benefits of their wireless service contracts
24 because Apple's iMessage and Messages service and application prevent these users from
25 receiving the text messages that they are entitled to receive as part of their wireless service
26 contracts with their wireless providers (Verizon Wireless, in the case of Plaintiff).

27 16. Apple knew but never disclosed that its iMessage service and Message application

1 would prevent Apple device owners from receiving text messages sent to them from other Apple
2 users once these Apple device owners replaced their devices with non-Apple wireless devices. To
3 the contrary, Apple touted the superior attributes and enhanced benefits of the iMessages and
4 Message service and application while omitting any mention of this serious consequence. Had
5 Plaintiff and the class members been informed by Apple that iMessage would work in such a
6 fashion so as to prevent them from receiving text messages, once they switched their Apple
7 devices to non-Apple devices, Plaintiff and the putative class members would not have
8 downloaded the iMessage and Messages service and application, or would not have purchased an
9 iPhone or other Apple device in the first instance.

10 **PLAINTIFF'S OWN EXPERIENCED WITH HAVING APPLE PREVENT HER FROM**
11 **RECEIVING HER TEXT MESSAGES ONCE SHE REPLACED HER IPHONE WITH A**
12 **NON-APPLE DEVICE**

13 17. Plaintiff is, and at all times relevant to this Class Action Complaint was, a
14 subscriber of Verizon Wireless service for her wireless voice and data needs. Up until
15 approximately April 16, 2014, Plaintiff owned and used an iPhone 4 as her wireless device (whose
16 wireless service was provided by Verizon Wireless). As part of her wireless service, Plaintiff
17 routinely sent and received text messages, including text messages from other Apple iPhone users.
18 Her iPhone operating system was loaded with Apple's iMessage and Messages service and
19 application, which her iPhone used to send and receive text messages.

20 18. On or about April 2014, Plaintiff switched from her Apple iPhone to a non-Apple
21 Android wireless telephone (a Samsung S5), but kept her same cellular telephone number.
22 Shortly after the switch away from an iPhone, Plaintiff began noticing that she was not receiving
23 text messages that she had been expecting to receive from texters who were using Apple iPhone or
24 iPad devices.

25 19. Upon discovering this problem with receipt of text messages, Plaintiff
26 initially contacted Verizon Wireless. She was told that all she needed to do was to "turn off"
27 iMessage in her old iPhone. Plaintiff did so, but this did not resolve the problem because while

1 she now receives text messages sent from some iPhones, she still fails to receive text messages
2 that are sent to her from other iPhones.

3 20. Plaintiff contacted Verizon Wireless again. The personnel at Verizon Wireless
4 informed Plaintiff that this has been an issue when people switch from an Apple iPhone or other
5 Apple device to a non-Apple phone. Verizon Wireless attempted to do some more
6 troubleshooting with Plaintiff, but this was to no avail, as her problem persisted. Verizon Wireless
7 patched Plaintiff to Apple for assistance.

8 21. Apple personnel informed Plaintiff that even though she had turned iMessage off in
9 her old iPhone she may still not be receiving all her text messages because some texters using
10 Apple devices may not be using the latest Apple iOS version. Rather than Apple coming up with
11 a solution to a problem created by Apple, Apple's representative instead suggested to Plaintiff that
12 Plaintiff get her text message senders to update their Apple iOS to the latest version, or have them
13 delete and then re-add Plaintiff as their contact, or have Plaintiff and these unsuccessful Apple
14 texters start a new text conversation with Plaintiff.

15 22. Aside from the fact that Plaintiff should not be tasked with the mission of coming
16 up with fixes to a flaw in Apple's own service and application, the suggestions proffered by
17 Apple's personnel proved wholly unworkable and did not solve the issue. First, precisely because
18 the texts are not being delivered to Plaintiff, it is impossible for Plaintiff to identify ahead of time
19 which persons are sending her undelivered text messages from Apple devices that are not running
20 the latest Apple iOS (and, even if she could, many Apple users may be unwilling to update their
21 iOS to the latest version). The other two "solutions" suggested by Apple—that she be deleted and
22 then re-added as a contact, or that a new text conversation be started with her, were tried by
23 Plaintiff and some of her unsuccessful Apple texters, but that did not solve the problem (these
24 Apple "suggestions" also suffer from the same flaw that it is impossible for Plaintiff to discern
25 ahead of time all people who are attempting to send her text messages precisely because these text
26 messages are not being delivered to Plaintiff as a result of the flaw in iMessage and Messages).

27 23. The unfortunate and unacceptable state of affairs, therefore, is that Plaintiff,

1 as well as the other putative class members, now have text messages that are routinely not
2 delivered to them (and neither Plaintiff nor the putative class members are notified of the failed
3 delivery attempt) solely because they deigned to use Apple's iMessage and Message service and
4 application, but ultimately chose to replace their Apple devices with a non-Apple phone or device.
5

6 **THE EXPERIENCES OF THE PUBLIC AT LARGE AND APPLE'S INDIFFERENCE TO**
7 **THIS OUTCRY**

8 24. Plaintiff's experiences are bad enough to warrant action. Unfortunately,
9 Plaintiff's experience is neither isolated nor anomalous. Across the country, countless of similarly
10 situated former Apple device owners, who have since switched away from Apple to a non-Apple
11 device, have experienced the same fate of undelivered text messages.

12 25. So pervasive is the problem that a number of public internet fora have been
13 launched where former Apple device owners have posted their experiences and complaints online
14 in the hope of getting the matter resolved. To date, these complaints have fallen on deaf ears, as
15 Apple has failed to come up with a solution to the undelivered text message problem of Apple's
16 own making.

17 26. Further evidencing the pervasiveness of the problem, on May 14, 2014,
18 Business
19 Insider published a news article authored by Jim Edwards entitled, "*An Apple Employee Admits*
20 *That iPhones Often Won't Deliver Texts If You Switch To Android.*" A copy of the news article
21 was publicly posted on the Yahoo! News webpage and is viewable at
22 <http://finance.yahoo.com/news/apple-employee-admits-iphones-often-140622623.html> (last
23 visited May 14, 2014). A copy of the article is also attached hereto as Exhibit 1 to this Class
24 Action Complaint. The article details the nature of the problem, Apple's persistent denial or
25 indifference to it, and Apple's belated admission that there is a problem but highlights Apple's
26 inability or unwillingness to solve it. To quote from the news article:

27 For years, Apple has said very little about persistent rumors that its iPhone

1 text messaging system in some way discriminates against Android users,
2 either by delivering messages to them late or not delivering them at all.

3 Now an Apple customer support employee has admitted to Lifehacker's
4 Adam Pash that, in fact, "a lot" of users have this problem: If you switch
5 from an iPhone to an Android, iMessage won't deliver texts from iPhone
6 users to your new Android phone.

7 There is no fix in sight, Pash says he was told. (At Business Insider, I've
8 had a version of this problem firsthand: My iPhone colleagues get my
9 texts immediately; those on Android seem to get them later, up to a few
10 minutes behind.)

11

12 Apple's customer support was initially useless when Pash called for help.
13 Pash writes:

14 Apple Support: "Can you try deleting the contact from your new iPhone
15 and re-adding it?"

16 Me: "I can't tell everyone I know to delete and re-add me as a contact."

17 Eventually, the service rep admitted there was a problem. Pash writes:

- 18 • This is a problem a lot of people are facing.
- 19 • The engineering team is working on it but is apparently clueless as to how
20 to fix it.
- 21 • There are no reliable solutions right now — for some people the standard
22 fixes work immediately; many others are in my boat.

23 This is, apparently, a key admission from Apple. Previously the company
24 had advised people to actively switch off iMessage before disposing of
25 their old iPhone in favor of an Android. Its help page hints at how long the
26 Android text issue lasts, too:

27 If you want to transfer your SIM card or phone number to a device that
28 doesn't support iMessage Go to Settings > Messages and turn off iMessage
if you plan to transfer your SIM card or phone number from an iPhone to a
device that doesn't support iMessage. If you don't, other iOS devices might
continue to try to send you messages using iMessage, instead of using
SMS or MMS, for up to 45 days.

We asked Apple for further comment but did not immediately get a
response.

Ex. 1 hereto at 1-2.

1 30. Questions of law and fact common to Plaintiff and the class exist and predominate
2 over any such questions affecting only individual class members. Among these common,
3 predominating questions are:

- 4 a. Whether Apple’s iMessage and Messages service and client application contain
5 a feature or flaw that causes text messages sent from iPhone users to not be
6 delivered to class members who switched their wireless service away from an
7 iPhone or iPad to a non-Apple device;
- 8 b. Whether Apple’s employ of its iMessage and Messages service and client
9 application in such a manner so as not to deliver text messages to users who
10 switch their wireless service away from an Apple device tortiously interferes
11 with the contracts between these users and their respective wireless carrier,
12 pursuant to which the users are contractually entitled to receive and send text
13 messages;
- 14 c. Whether Apple properly and appropriately disclosed that its iMessage and
15 Messages service and client application would prevent class members from
16 receiving certain text messages once these class members switched their
17 wireless service away from an Apple device;
- 18 d. Whether Apple’s conduct, as alleged herein, has injured or is likely to
19 imminently injure the class members; and,
- 20 e. The proper remedy;

21 31. Plaintiff’s claims are typical of class members’ claims in that they are based on the
22 same underlying facts, events, and circumstances relating to Apple’s conduct; namely, the non-
23 delivery of text messages once Plaintiff and the class members switched their wireless service
24 away from an Apple.

25 32. Plaintiff will fairly and adequately represent and protect the interests of the
26 class, has no interests incompatible with the interests of the class, and has retained counsel
27 competent and experienced in class litigation. Plaintiff, herself, has experienced the injury being

1 complained of, because she has had text messages that were not delivered to her following her
2 switch away from an Apple iPhone 4 equipped with iMessage and Messages to a non-Apple
3 wireless telephone.

4 33. Class treatment is superior to other options for resolution of the controversy
5 because the relief sought for each class member is relatively small such that, absent representative
6 litigation, it would be unfeasible for class members to redress the wrongs done to them,
7 particularly when litigating against such a large and well financed corporate entity like Apple.
8 Moreover, absent class-wide adjudication, there would be a risk of multiple lawsuits against
9 Defendant that could impose inconsistent and incompatible standards of conduct on Apple
10 regarding, *inter alia*, its disclosure, text messaging, or application functionality obligations.

11 34. Apple has acted or refused to act on grounds generally applicable to the class,
12 thereby making final injunctive relief and corresponding declaratory relief appropriate.
13 Specifically, Apple has employed iMessage and Messages as part of its operating systems, and
14 that service and client application works in such a fashion that causes class members to not receive
15 certain text messages once they switch their wireless service to a non-Apple device. Apple has not
16 adequately disclosed this adverse consequence of using iMessage and Messages, and has not
17 properly disclosed or provided a fix or remedy to prevent this from occurring or to recover the
18 misdelivered text messages. If Plaintiff prevails on the merits of her claims, then final injunctive
19 relief mandating that Apple remedy the consequences brought about by its conduct, and that it
20 prevent it from reoccurring, would be proper.

21
22 **COUNT I**

23 **(TORTIOUS INTERFERENCE WITH CONTRACT)**

24 35. Plaintiff hereby incorporates each and every paragraph of this Class Action
25 Complaint with the same force and effect as if each of these paragraphs had been fully restated
26 herein.

27 36. Plaintiff and the class members are subscribers to wireless cellular service who

1 have a contractual relationship with a wireless carrier or service provider (Verizon Wireless, in the
2 case of Plaintiff) to receive cellular service on their non-Apple cellular telephone or other wireless
3 device (the Samsung S5, in Plaintiff's case). As part of that contract, Plaintiff and the class
4 members are entitled to, *inter alia*, send and receive text messages in exchange for the monthly fee
5 and charges they pay to their wireless carrier.

6 37. Plaintiff and all class members were users of an Apple iPhone, iPad, or iPod Touch
7 device that received cellular service from the class member's wireless service provider. At some
8 point, Plaintiff and the class members switched the wireless device on which they received cellular
9 service from their carrier from an Apple device to a non-Apple device. Although the contract they
10 had with their wireless carrier entitles Plaintiff and the class members to send and receive text
11 messages on their non-Apple device, Apple tortiously interferes with this contractual relationship
12 and prevents Plaintiff and the class members from obtaining the full benefits of this contractual
13 relationship by having its iMessage and Messages service and application act to prevent certain
14 text messages sent to Plaintiff and the class members from being delivered to Plaintiff and the
15 class members on their non-Apple devices.

16 38. Apple was aware of the existence of the wireless service contract between, on the
17 one hand, Plaintiff or the class members and, on the other hand, the class members' wireless
18 service providers because these same class members were Apple device owners whose wireless
19 accounts were updated by the wireless service provider to reflect that they no longer were to
20 receive their wireless service on their former Apple devices, but instead, were to have their
21 wireless service be provided on non-Apple devices that the class members had chosen as
22 replacements for their Apple devices.

23 39. Apple's tortious interference with the contract between Plaintiff or the class
24 members and their respective wireless carriers has resulted in an actual breach of these contracts
25 because, as a result of Apple's tortious interference, the wireless carrier is no longer able to deliver
26 all sent text messages to Plaintiff and the class members, as the carrier is called upon to do under
27 its contracts with Plaintiff or the class members.

- 1 b. § 1770(a)(7): representing that goods are of a particular standard, quality,
2 or grade if they are of another;
3 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.
4

5 45. As a result, Plaintiff and the putative class members have suffered irreparable
6 harm and are entitled to injunctive and equitable relief, as well as reasonable attorneys' fees and
7 costs of suit. At this time, Plaintiff does not seek monetary damages as part of her CLRA claim.
8 Following the filing of this Class Action Complaint, Plaintiff will mail Apple a CLRA demand
9 letter in the manner required by statute. If Apple does not agree and perform the relief requested in
10 the demand letter within 30-days of its receipt, Plaintiff reserves the right to amend this Class
11 Action Complaint to also then assert a claim for relief for money damages under the CLRA.

12
13 **COUNT III**

14 **(VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW, Calif. Bus. And**
15 **Prof. Code, § 17200 et. seq.)**

16 46. Plaintiff incorporateS by reference each of the paragraphs of this Class
17 Action Complaint with the same force and effect as if those allegations had been fully restated
18 here.

19 47. California's Unfair Competition Law ("UCL") prohibits any "unlawful, unfair or
20 fraudulent business act or practice." (Cal. Bus. & Prof. Code § 17200).

21 48. Apple's business practice of distributing, marketing, and its iMessage and
22 Messages service and application in the manner described herein and without disclosing that the
23 iMessage and Messages service and application would prevent its users from receiving certain text
24 messages after they replaced their Apple devices with non-Apple devices is unlawful because it,
25 *inter alia*, violates the CLRA and tortuously interferes with Plaintiff's and the class members'
26 contracts with their wireless service providers, as is alleged in this Class Action Complaint.

27 49. Apple's business practice of distributing, marketing, and its iMessage and

1 Messages service and application in the manner described herein is also an unfair business practice
2 because it, *inter alia*, threatens to harm competition in its incipiency. Class members and others
3 who become aware that switching their Apple iPhone or other wireless devices in favor of non-
4 Apple products will result in these persons not being able to receive text messages sent to them by
5 other Apple users are likely to be disincentivized from switching from Apple to an Apple
6 competitor. That much has been underscored now that the issue with Apple's iMessage and
7 Messages service and application has been made public in news articles, such as the Business
8 Insider publication attached hereto as Exhibit 1. As that publication reports "Apple is punishing
9 you for ditching your iPhone by cutting you off from your friends, and they want to make it feel
10 like you need to be on an Apple device to talk to the people you care about." Exhibit 1 hereot at 1
11 (internal quotation marks omitted).

12 50. Plaintiff sustained legal injury in using Apple's iMessage and Messages service
13 and application at a time when Apple was violating the UCL because, *inter alia*, Plaintiff made a
14 purchase she would not have made at all, or not on the terms that she did, as a result of being
15 unaware of the undisclosed adverse consequence of using Apple's iMessage and Messages service
16 and application, and then switching away from an Apple device. Plaintiff has also sustained legal
17 injury as a result of Apple's UCL violations in that she has been unable to receive the full benefit
18 of her contractual bargain with her wireless carrier as a result of Apple's actions that prevent
19 Plaintiff from receiving all her text messages, as she was entitled to receive under her wireless
20 service contract.

21 51. In making their of Apple devices, Plaintiff and the class members conveyed
22 money and other intangible benefits onto Apple and, hence, are entitled to, *inter alia*, restitution
23 and all other remedies available under the UCL. Plaintiffs are also entitled to and do seek
24 declaratory and injunctive relief including, but not limited to, a Court Order forcing Apple to fix
25 the iMessage and Messages service and application in such a manner that will stop the service
26 from preventing Plaintiff and the class members from receiving text messages sent to them from
27 other Apple users while Plaintiff and the class members have a non-Apple device, and to require

1 Apple to issue corrective advertising or other disclosure campaign to warn class members about
2 the adverse consequences of having used iMessage and Messages and subsequently switching to a
3 non-Apple device, and informing class members how to remedy the adverse consequences brought
4 about by iMessage and Message once the class members switch to a non-Apple device.
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the other members of the
8 Class, requests award and relief as follows:

9 A. An order certifying that this action is properly brought and may be maintained as a
10 class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed
11 Class Counsel.

12 B. Damages to compensate Plaintiff and the Class members for Apple's tortious
13 interference with Plaintiff's and the Class members' contracts with their wireless carriers (money
14 damages are not being currently sought as redress under the CLRA, but may be sought if and
15 when Apple fails to comply with Plaintiff's CLRA demand letter), with such damages to be
16 awarded to Class members from a common fund Ordered by the Court to be set up and funded by
17 Apple;

18 C. Restitution in such amount to be determined by the Court;

19 D. A mandatory injunction requiring Apple to fix its iMessage and Messages service
20 and application, such that these products do not continue to prevent Plaintiff and the Class
21 members from receiving all their text messages sent to them for other Apple devices, and requiring
22 Apple to deliver to Plaintiff and the Class members all previous text messages that were not
23 delivered to them on their non-Apple devices as a result of the Apple iMessage and/or Messages
24 service and application;

25 E. An Order for injunctive relief requiring Apple to employ corrective disclosure that
26 warns Class members and the public about the adverse consequences of using iMessage and
27

1 Messages and subsequently switching from an Apple device to a non-Apple device, and
2 instructing Plaintiff and the Class members as to how to remedy these adverse consequences;

3 F. An order awarding Plaintiff her costs of suit, reasonable attorneys' fees, and pre
4 and post-judgment interest.

5 G. An Order directing Apple to disseminate a Court-approved notice to the absent
6 Class members, informing them about the pendency of this class action, and their rights in that
7 regard;

8 H. Such other and further relief as may be deemed necessary or appropriate.

9
10 **JURY DEMAND**

11 Plaintiff hereby demands a jury trial for all issues so triable.

12
13 Dated: May 15, 2014

/s/ Roy A. Katriel (SBN 265463)

Roy A. Katriel, Esq. (SBN 265463)

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