

Copy

ORIGINAL FILED

2012 MAR -6 P 3:32

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 SHAWN A. WILLIAMS (213113)
 Post Montgomery Center
 3 One Montgomery Street, Suite 1800
 San Francisco, CA 94104
 4 Telephone: 415/288-4545
 415/288-4534 (fax)
 5 shawnw@rgrdlaw.com
 - and -
 6 PAUL J. GELLER
 STUART A. DAVIDSON
 7 MARK J. DEARMAN
 KATHLEEN L. BARBER
 8 120 East Palmetto Park Road, Suite 500
 Boca Raton, FL 33432
 9 Telephone: 561/750-3000
 561/750-3364 (fax)
 10 pgeller@rgrdlaw.com
 sdavidson@rgrdlaw.com
 11 mdearman@rgrdlaw.com
 kbarber@rgrdlaw.com

BARNOW AND ASSOCIATES, P.C.
 BEN BARNOW
 ERICH P. SCHORK
 One North LaSalle Street, Suite 4600
 Chicago, IL 60602
 Telephone: 312/621-2000
 312/641-5504 (fax)
 b.barnow@barnowlaw.com
 e.schork@barnowlaw.com

Attorneys for Plaintiff

[Additional counsel appear on signature page.]

E-filing

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

HRL

17 FRANK M. FAZIO, Individually and on)
 18 Behalf of All Others Similarly Situated,)

Plaintiff,)

vs.)

21 APPLE INC., a California corporation,)
 22)

Defendant.)

No. 12

1127

CLASS ACTION

COMPLAINT FOR:

1. VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT, CALIFORNIA CIVIL CODE §1750 *ET SEQ.*;
 2. VIOLATIONS OF THE UNFAIR COMPETITION LAW, CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200 *ET SEQ.*;
 3. BREACH OF EXPRESS WARRANTY;
 4. INTENTIONAL MISREPRESENTATION; AND
 5. NEGLIGENT MISREPRESENTATION
- DEMAND FOR JURY TRIAL

1 Plaintiff Frank M. Fazio ("Plaintiff"), individually and on behalf of all others similarly
2 situated, brings this Class Action Complaint against defendant Apple Inc. ("Apple" or "Defendant"),
3 and alleges as follows:

4 NATURE OF THE ACTION

5 1. This is a consumer class action brought by Plaintiff on behalf of himself and all others
6 similarly situated who purchased, for use and not resale, in the United States and its territories and its
7 protectorates, Apple's iPhone 4S (the "iPhone 4S").

8 2. The Apple iPhone, which includes several different versions (*e.g.*, iPhone 3, iPhone 4,
9 and iPhone 4S) functions as a mobile phone, an iPod, and an Internet communications device all in
10 one and features desktop-class email, web browsing, searching, and maps. The iPhone is compatible
11 with both Mac and Windows-based computers.

12 3. The iPhone 4S is the latest version of the iPhone and is distinguished by Defendant
13 from its other iPhone devices, including the iPhone 4, predominantly based on the inclusion and
14 touted benefits of a feature styled "Siri."

15 4. Through an extensive and comprehensive nationwide marketing campaign, Defendant
16 has conveyed the misleading and deceptive message that the iPhone 4S's Siri feature, a so-called
17 voice-activated assistant, performs useful functions and otherwise works as advertised.

18 5. For example, in many of Apple's television advertisements, individuals are shown
19 using Siri to make appointments, find restaurants, and even learn the guitar chords to classic rock
20 songs or how to tie a tie. In the commercials, all of these tasks are done with ease with the assistance
21 of the iPhone 4S's Siri feature, a represented functionality contrary to the actual operating results
22 and performance of Siri.

23 6. Defendant's advertising and marketing campaign is designed to cause consumers to
24 purchase the iPhone 4S over other smart phones because of its Siri feature.

25 7. To the detriment of Plaintiff and the putative Class (as defined below), Defendant's
26 marketing campaign has succeeded. On January 25, 2012, Apple issued its financial results for its
27 fiscal 2012 first quarter ending December 31, 2011, and reported selling approximately 37 million
28

1 iPhones for the quarter. According to a recent iPhone blog, approximately 89% of the 37 million
2 iPhones sold that quarter, almost 33 million, were iPhone 4Ss.

3 8. Defendant's advertisements regarding the Siri feature are fundamentally and
4 designedly false and misleading. Notwithstanding Apple's extensive multi-million dollar advertising
5 campaign showcasing the Siri feature, and the fact that the iPhone 4S is more expensive than the
6 iPhone 4, the iPhone 4S's Siri feature does not perform as advertised, rendering the iPhone 4S
7 merely a more expensive iPhone 4.

8 9. Defendant's misrepresentations concerning the Siri feature of the iPhone 4S are
9 misleading, false, and reasonably likely to deceive and have deceived Plaintiff and members of the
10 putative Class.

11 10. Apple has its headquarters in California and sells the iPhone 4S throughout the
12 United States and its territories and protectorates. As a result of the misleading messages about the
13 iPhone 4S's Siri feature, conveyed through its nationwide advertising and marketing campaign,
14 Apple has been able to charge a significant price premium for the iPhone 4S.

15 11. Indeed, according to Apple's website, an iPhone 4S starts at \$199, while the iPhone 4
16 starts at \$99.¹

17 12. Defendant knew or should have known that the iPhone 4S does not perform in
18 accordance with the advertisements, marketing materials, and warranties disseminated by Defendant
19 in its nationwide marketing and advertising campaign.

20 13. Plaintiff brings this action on behalf of himself and all other similarly situated
21 consumers who purchased the iPhone 4S, in order to halt the dissemination of Apple's false and
22 misleading advertising message, and to obtain redress for those who have purchased an iPhone 4S.
23 Plaintiff alleges violations of the Consumers Legal Remedies Act, California Civil Code §1750 *et*
24 *seq.* (the "California Act"); violations of the Unfair Competition Law, California Business and
25

26 ¹ See http://store.apple.com/us/browse/home/shop_iphone/family/iphone/iphone4s (last visited
27 Feb. 28, 2012); [http://store .apple.com/us/browse/home/shop_iphone/family/iphone/iphone4](http://store.apple.com/us/browse/home/shop_iphone/family/iphone/iphone4) (last
28 visited Feb. 28, 2012).

1 Professions Code §17200 *et seq.* (the “UCL”); breach of express warranty; intentional
2 misrepresentation; and negligent misrepresentation.

3 **JURISDICTION AND VENUE**

4 14. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) as modified by the
5 Class Action Fairness Act of 2005, because at least one member of the Class is a citizen of a
6 different state than Defendant, there are more than 100 members of the Class, and the aggregate
7 amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.

8 15. Pursuant to 28 U.S.C. §1391(b), venue is proper in this District because a substantial
9 part of the events or omissions giving rise to the claims occurred in this District.

10 **INTRADISTRICT ASSIGNMENT**

11 16. A substantial part of the events or omissions which give rise to the claims in this
12 action occurred in the county of Santa Clara, and as such this action is properly assigned to the San
13 Jose branch of this Court.

14 **PARTIES**

15 17. Plaintiff Frank M. Fazio is a citizen and resident of the State of New York. On
16 November 19, 2011, Plaintiff purchased an iPhone 4S from a Best Buy retail store in Brooklyn, New
17 York for the price of \$299. In purchasing his iPhone 4S, Plaintiff was exposed to Apple’s
18 representations regarding the Siri feature. Plaintiff would not have paid the price he paid for the
19 iPhone 4S, if he had not seen these representations.

20 18. Defendant Apple is a California corporation with its headquarters and principal place
21 of business in Cupertino, California, within this District. Apple is the designer and manufacturer of
22 the iPhone 4S. Apple transacts substantial business throughout the State of California, through
23 advertising, marketing, and ownership of Apple retail stores in several California locations,
24 including in this District, where many members of the Class purchased their iPhone 4Ss.

25
26
27
28

1 **SUBSTANTIVE ALLEGATIONS**

2 **Background**

3 19. Apple manufactures, designs, produces, and sells several types of electronic products,
4 including, among others, personal computers, portable music players, cellular phones, and other
5 communication devices. Among these products is the well-known iPhone 4S, launched in October
6 2011.

7 **Apple's Deceptive Marketing Campaign**

8 20. On October 4, 2011, Apple issued a press release introducing Siri and stating:²

9 iPhone 4S also introduces Siri, an intelligent assistant that helps you get things done
10 just by asking. Siri understands context allowing you to speak naturally when you
11 ask it questions, for example, if you ask "Will I need an umbrella this weekend?" it
12 understands you are looking for a weather forecast. Siri is also smart about using the
13 personal information you allow it to access, for example, if you tell Siri "Remind me
14 to call Mom when I get home" it can find "Mom" in your address book, or ask Siri
15 "What's the traffic like around here?" and it can figure out where "here" is based on
16 your current location. Siri helps you make calls, send text messages or email,
17 schedule meetings and reminders, make notes, search the Internet, find local
18 businesses, get directions and more. You can also get answers, find facts and even
19 perform complex calculations just by asking.

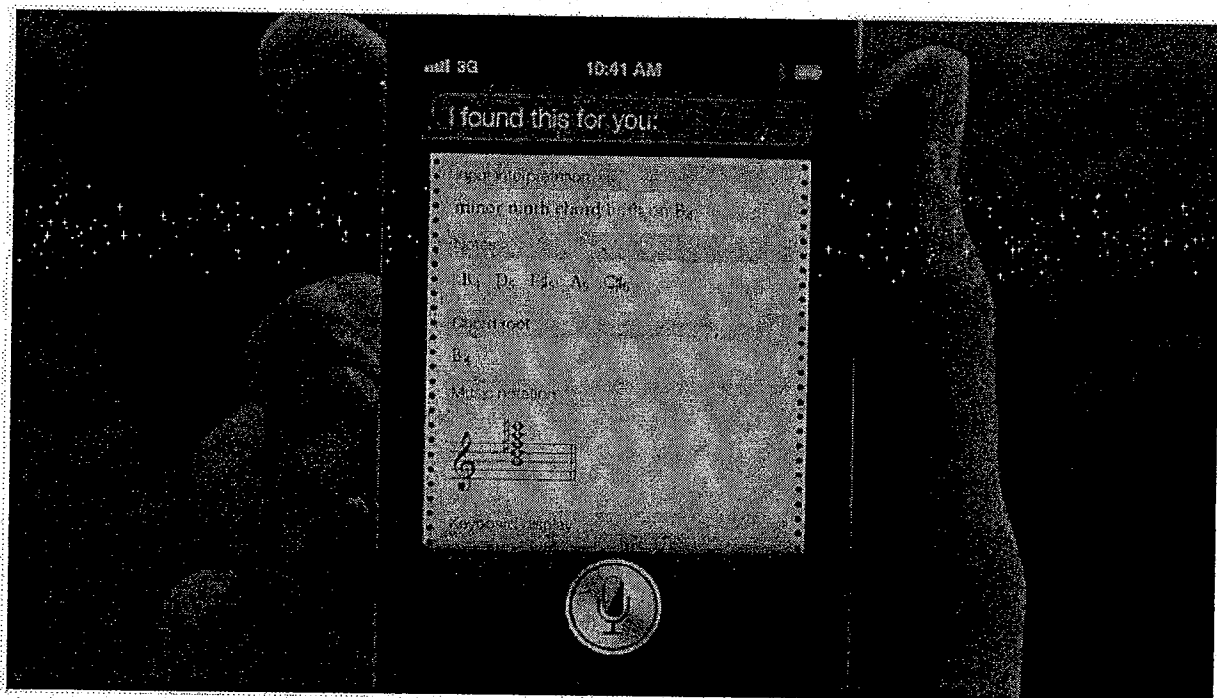
20 21. In many of Apple's video advertisements, individuals are shown using Siri to make
21 appointments, find restaurants, and even learn guitar chords to classic rock songs or how to tie a tie.

22 22. For example, a television advertisement entitled "Road Trip" shows a couple asking
23 Siri numerous questions while traveling to Santa Cruz, California, including "Where is the best
24 barbeque in Kansas City?," "Is there a rodeo in Amarillo today?," and "How big is the Grand
25 Canyon?"³ In response to the question, "[Are there] any gas stations we can walk to?," Siri
26 immediately answers, "I found two gas stations fairly close to you," and the name and star rating of
27 two gas stations show up on the user's iPhone 4S screen. Similarly, when asked "What does Orion
28 look like?," Siri responds with a map of the Orion constellation and states, "I found this for you."

2 ² <http://www.apple.com/pr/library/2011/10/04Apple-Launches-iPhone-4S-iOS-5-iCloud.html>
(last visited Feb. 27, 2012).

3 ³ Apple Inc., "TV Ads," <http://www.apple.com/iphone/videos/#tv-ads-rockgod> (last visited
Feb. 27, 2012).

1 23. Likewise, in the television advertisement entitled “Rock God,” a guitar player asks
2 Siri numerous questions including, “How do I play London Calling” and “[How do I play] Whole
3 Lotta Love?”⁴ In response to the question “[How do I play] a B Minor Ninth?,” Siri responds with
4 the proper notes, chord, and sheet music:



17 24. According to Apple’s website, four out of the seven most recent iPhone 4S television
18 advertisements focus solely on Siri.⁵

19 25. Apple’s website also touts Siri as a major selling point. For example, the “iPhone”
20 tab on Apple’s website brings you to welcome screen stating:⁶

21
22
23
24
25
26
27
28

⁴ Apple Inc., “TV Ads,” <http://www.apple.com/iphone/videos/#tv-ads-roadtrip> (last visited Feb. 27, 2012).

⁵ <http://www.apple.com/iphone/videos/#tv-ads-roadtrip> (last visited Feb. 28, 2012).

⁶ <http://www.apple.com/iphone/> (last visited Feb. 27, 2012).

1 **Introducing Siri.**

2 **The intelligent assistant**
3 **that's there to help. Just ask.**

4
5 Ask Siri to make calls, send texts, set reminders, and more. Just talk the way you
6 talk. Siri understands what you say and knows what you mean.

7 26. The website also contains a link to a video entitled "iPhone 4S Video," which
8 introduces the iPhone 4S as well as its new features.⁷ The iPhone 4S Video depicts multiple
9 demonstrations involving Siri and its capabilities. For instance, in response to the request, "Find me
10 an Italian restaurant in North Beach," Siri answers, "OK these 25 Italian restaurants are in North
11 Beach" as the iPhone 4S user screen shows the name and star rating of 25 Italian restaurants located
12 in North Beach. The iPhone 4S Video next shows a man jogging and asking Siri to "Move my
13 meeting with Kelly Altech to 12:00 p.m." Siri responds, "Note that you already have a meeting
14 about budgets at 12 p.m."

15 27. Also during the iPhone 4S Video, Scott Forstall, Senior Vice President iOS Software,
16 further comments on Siri, stating: "It's like this amazing assistant that listens to you, understands
17 you, can answer your questions and can even accomplish tasks for you. . . . A lot of devices can
18 recognize the words you say, but the ability to understand what you mean and act on it, that's the
19 breakthrough with Siri."

20 28. On January 25, 2012, Apple issued its financial results for its fiscal 2012 first quarter
21 ending December 31, 2011, and reported selling approximately 37 million iPhones for the quarter.
22 According to a recent iPhone blog, approximately 89% of the 37 million iPhones sold that quarter
23 were iPhone 4Ss.⁸ In addition, the blog estimated that approximately 42% of current iPhone 4S

24
25 ⁷ Apple Inc., "Watch the iPhone 4S video," <http://www.apple.com/iphone> (last visited Feb.
26 27, 2012).

27 ⁸ <http://www.theiphoneblog.net/iphone-4s-contributed-89-of-total-us-iphone-sales/> (last visited
28 Feb. 27, 2012).

1 users cancelled their contracts with other carriers in order to purchase the iPhone 4S.⁹ Indeed, a
2 Consumer Intelligence Research poll of 6,316,365 iPhone users found that from October 2001
3 through the end of 2011, 36% of iPhone 4S users had switched from a different platform.¹⁰

4 **Plaintiff Purchases the iPhone 4S and**
5 **Soon Learns Siri Does Not Perform As Advertised**

6 29. On November 19, 2011, Plaintiff purchased his iPhone 4S, Serial Number
7 C39GFCDJDFFF, from a Best Buy retail store in Kings County, New York.

8 30. Promptly after the purchase of his iPhone 4S, Plaintiff realized that Siri was not
9 performing as advertised. For instance, when Plaintiff asked Siri for directions to a certain place, or
10 to locate a store, Siri either did not understand what Plaintiff was asking, or, after a very long wait
11 time, responded with the wrong answer.

12 31. Upon information and belief, Plaintiff's problems with Siri are not unique, and they
13 have repeatedly occurred with use of the iPhone 4S.

14 32. In addition to the fact that Siri does not perform as advertised, recent reports have
15 shown that continuous Siri usage dramatically increases an iPhone 4S users' monthly data usage, and
16 can easily push users over their data plans.¹¹

17 33. Defendant had actual or constructive knowledge of the iPhone 4S's shortcomings
18 prior to its distribution. Indeed, buried in Apple's website is the amorphous sentence: "Siri is
19 currently in beta and we'll continue to improve it over time."¹²

20 34. To the detriment of consumers, however, the bulk of Apple's massive marketing and
21 advertising campaign, including its dominant and expansive television advertisements, fail to

22
23 ⁹ *Id.*

24 ¹⁰ http://www.phonearena.com/news/Breaking-down-Apple-iPhone-4S-buyers-with-statistics_id26184 (last visited Feb. 27, 2012).

25 ¹¹ Jacqui Cheng, *Siri, how much data do you gobble up in a month?*, Ars Technica,
26 <http://arstechnica.com/apple/news/2011/11/how-data-heavy-is-siri-on-an-iphone-4s-ars-investigates.ars> (last visited Mar. 6, 2012).

27 ¹² <http://www.apple.com/iphone/features/siri-faq.html> (last visited Feb. 27, 2012).
28

1 mention the word “beta” and the fact that Siri is, at best, a work-in-progress. Indeed, it is only
2 through following a series of links within Apple’s website, including a footnote at the bottom of a
3 page,¹³ that one would learn that Siri is only a work-in-progress.¹⁴

4 35. Similarly, Apple never disclosed that the Siri transactions depicted in its television
5 commercials are fiction and that actual consumers using actual iPhone 4Ss cannot reasonably expect
6 Siri to perform the tasks performed in Apple’s commercials.

7 36. The information withheld from Plaintiff and the other Class members is material and
8 would have been considered by a reasonable person, as are the misrepresentations regarding Siri, all
9 as more detailed herein.

10 CLASS ACTION ALLEGATIONS

11 37. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
12 Procedure 23(a) and 23(b) on behalf of himself and all others similarly situated as members of the
13 following Class:

14 All persons in the United States who purchased, for use and not resale, an Apple
15 iPhone 4S (the “Class”).

16 38. Subject to additional information obtained through further investigation and
17 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or
18 amended complaint. Specifically excluded from the proposed Class are Defendant and its officers,
19 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
20 principals, servants, partners, joint ventures, or entities controlled by Defendant; its heirs, successors,
21 assigns, or other persons or entities related to or affiliated with Defendant; its directors, or any of
22 them; the Judge assigned to this action; and any member of the Judge’s immediate family.

23 39. *Numerosity.* The members of the Class are so numerous that their individual joinder
24 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the Class contains
25 millions of members. The precise number of Class members is unknown to Plaintiff. The true

26 ¹³ See n.1, <http://www.apple.com/iphone/features/#siri> (last visited Feb. 27, 2012).

27 ¹⁴ <http://www.apple.com/iphone/features/siri-faq.html> (last visited Feb. 27, 2012).

28

1 number of Class members is known by Defendant, however, and, thus, may be notified of the
2 pendency of this action by first class mail, electronic mail, and by published notice.

3 40. *Existence and Predominance of Common Questions of Law and Fact.* Common
4 questions of law and fact exist as to all members of the Class and predominate over any questions
5 affecting only individual Class members. These common legal and factual questions include, but are
6 not limited to, the following:

7 (a) Whether Siri works as advertised;

8 (b) Whether Defendant knew that its representations about Siri were false and
9 misleading but continued to disseminate them;

10 (c) Whether Defendant's claims are false, misleading, or reasonably likely to
11 deceive;

12 (d) Whether Defendant engaged in false or deceptive advertising;

13 (e) Whether Defendant violated the California Act;

14 (f) Whether Defendant violated the UCL;

15 (g) Whether Defendant breached any express warranty to Plaintiff and the other
16 Class members;

17 (h) Whether Defendant intentionally misrepresented material facts relating to the
18 character and quality of the iPhone 4S's Siri feature;

19 (i) Whether Defendant negligently misrepresented material facts relating to the
20 character and quality of the iPhone 4S's Siri feature;

21 (j) Whether Defendant failed to disclose material facts about the limitations of
22 the performance of the iPhone 4S's Siri feature;

23 (k) Whether Plaintiff and the other Class members have sustained monetary loss
24 and the proper measure of that loss;

25 (l) Whether Plaintiff and the other Class members are entitled to damages and the
26 proper measure of damages; and

27 (m) Whether Plaintiff and the other Class members are entitled to declaratory and
28 injunctive relief.

1 41. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in
2 that Defendant manufactured, marketed, advertised, sold, and warranted the iPhone 4S, including its
3 Siri features, to Plaintiff and all other members of the Class.

4 42. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests
5 of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action
6 litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or
7 antagonistic interests to those of the Class.

8 43. **Superiority.** A class action is superior to all other available means for the fair and
9 efficient adjudication of this controversy. The damages or other financial detriment suffered by
10 individual Class members is relatively small compared to the burden and expense that would be
11 entailed by individual litigation of their claims against Defendant. It would thus be virtually
12 impossible for Class members, on an individual basis, to obtain effective redress for the wrongs done
13 to them. Furthermore, even if Class members could afford such individualized litigation, the court
14 system could not. Individualized litigation would create the danger of inconsistent or contradictory
15 judgments arising from the same set of facts. Individualized litigation would also increase the delay
16 and expense to all parties and the court system from the issues raised by this action. By contrast, the
17 class action device provides the benefits of adjudication of these issues in a single proceeding,
18 economies of scale, and comprehensive supervision by a single court, and presents no unusual
19 management difficulties under the circumstances here.

20 44. In the alternative, the Class may be also certified because:

21 (a) the prosecution of separate actions by individual Class members would create
22 a risk of inconsistent or varying adjudication with respect to individual Class members that would
23 establish incompatible standards of conduct for Defendant;

24 (b) the prosecution of separate actions by individual Class members would create
25 a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
26 interests of other Class members not parties to the adjudications, or substantially impair or impede
27 their ability to protect their interests; and/or

28

1 (c) Defendant has acted or refused to act on grounds generally applicable to the
2 Class thereby making appropriate final declaratory and/or injunctive relief with respect to the
3 members of the Class as a whole.

4 45. The claims asserted herein are applicable to all consumers throughout the United
5 States who purchased, for use and not resale, the iPhone 4S.

6 46. Adequate notice can be given to Class members directly using information
7 maintained in Defendant's records or through notice by publication.

8 47. Damages may be calculated from the claims data maintained in Defendant's records,
9 so that the cost of administering a recovery for the Class can be minimized. However, the precise
10 amount of damages available to Plaintiff and the other members of the Class is not a barrier to class
11 certification.

12 COUNT I

13 **Violations of the Consumers Legal Remedies Act** 14 **California Civil Code §1750, et seq.**

15 48. Plaintiff realleges and incorporates by reference the previous allegations as if fully set
16 forth herein.

17 49. This cause of action is brought pursuant to the California Act. Plaintiff and the other
18 Class members are consumers as defined by California Civil Code §1761(d). The product is a good
19 within the meaning of the California Act.

20 50. Defendant violated and continues to violate the California Act by engaging in the
21 following practices proscribed by California Civil Code §1770(a) in transactions that were intended
22 to result in, and did result in, the sale of the product:

23 (a) Representing that the iPhone 4S has characteristics and benefits which it does
24 not have;

25 (b) Representing that the iPhone 4S is of a particular standard, quality, or grade,
26 which it is not;

27 (c) Advertising the iPhone 4S with intent not to sell it as advertised; and
28

1 (d) Representing that the iPhone 4S has been supplied in accordance with
2 previous representations when it has not.

3 51. Defendant knew, or should have known, that its representations and advertisements
4 regarding the iPhone 4S were unsubstantiated, false, and misleading.

5 52. Pursuant to California Civil Code §1782(d), Plaintiff seeks a Court order enjoining
6 the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

7 53. Pursuant to §1782 of the California Act, Notice to Defendant was satisfied when
8 Plaintiff sent a notice letter by certified mail to Defendant's Chief Executive Officer, Timothy Cook.

9 54. Defendant has failed to rectify or agree to rectify the problems associated with the
10 actions detailed above or give notice to all affected consumers within 30 days of the date of written
11 notice pursuant to §1782 of the California Act. Plaintiff hereby provides Defendant with an
12 additional 30 days from the date of this Complaint after which time Plaintiff will, without further
13 amendment, seek actual, punitive, and statutory damages, as appropriate. Defendant's conduct is
14 malicious, fraudulent, and wanton, and provides misleading information.

15 **COUNT II**

16 **Violation of California's Unfair Competition Law**
17 **California Business and Professions Code §17200, et seq.**

18 55. Plaintiff realleges and incorporates by reference the previous allegations as if fully set
19 forth herein.

20 56. The UCL prohibits any "unlawful . . . business act or practice." Defendant violated
21 §17200's prohibition against engaging in unlawful acts and practices by, inter alia, engaging in false
22 and misleading advertising and omitting material facts, as set forth more fully herein, violating
23 California Civil Code §§1572-1573, 1709-1711 and 1770, and the common law.

24 57. Plaintiff reserves the right to allege other violations of law, which constitute other
25 unlawful business acts or practices. Such conduct is ongoing and continues to this date.

26 58. The UCL also prohibits any "unfair or fraudulent business act or practice."

27 59. Defendant's acts, omissions, misrepresentations, practices, and non-disclosures
28 alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in

1 that its conduct is substantially injurious to consumers, offends public policy, and is immoral,
2 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
3 attributable to such conduct.

4 60. As stated in this Complaint, Plaintiff alleges violations of consumer protection, unfair
5 competition, and truth in advertising laws in California resulting in harm to consumers. Plaintiff
6 asserts violations of the public policy of engaging in false and misleading advertising, unfair
7 competition, and deceptive conduct towards consumers. The conduct constitutes violations of the
8 unfair prong of the UCL. There were reasonably available alternatives to further Defendant's
9 legitimate business interests, other than the conduct described herein.

10 61. Defendant's claims, non-disclosures, and misleading statements, as more fully set
11 forth above, were false, misleading, and/or likely to deceive the consuming public within the
12 meaning of the UCL.

13 62. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and
14 the other Class members. Plaintiff has suffered injury in fact and has lost money as a result of
15 Defendant's unfair conduct.

16 63. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts and
17 practices in false advertising, entitling Plaintiff and the other Class members to judgment and
18 equitable relief against Defendant as set forth in the Prayer for Relief.

19 64. Additionally, pursuant to California Business & Professions Code §17203, Plaintiff
20 seeks an order requiring Defendant to immediately cease such acts of unlawful, unfair, and
21 fraudulent business practices and requiring Defendant to engage in a corrective advertising
22 campaign.

23 **COUNT III**

24 **Breach of Express Warranty**

25 65. Plaintiff realleges and incorporates by reference the previous allegations as if fully set
26 forth herein.

27 66. Plaintiff and each member of the Class formed a contract with Defendant at the time
28 Plaintiff and the other Class members purchased Defendant's iPhone 4S. The terms of the contract

1 employed by Defendant to merchandise and market the iPhone 4S. Specifically, Apple's television
2 commercials showed Siri performing a variety of functions and tasks that Siri is incapable of
3 performing in the manner advertised.

4 76. Defendant's representations were made with the intent that the general public,
5 including Plaintiff and the other Class members, rely upon them. Defendant's representations were
6 made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.
7 If Plaintiff and the Class had been aware of these suppressed facts, Plaintiff and the Class would not
8 have purchased the iPhone 4S at the price sold by Defendant. In reliance upon these
9 misrepresentations, Plaintiff purchased the iPhone 4S for use of Siri as described in Defendant's
10 advertising.

11 77. Upon information and belief, Plaintiff and the Class allege that Defendant
12 misrepresented material facts with the intent to defraud Plaintiff and the Class. The information
13 withheld from Plaintiff and the other Class members is material and would have been considered by
14 a reasonable person, as are the misrepresentations regarding Siri, all as more detailed herein.

15 78. Plaintiff purchased the iPhone 4S under the impression that the iPhone 4S's Siri
16 feature functions as advertised, the direct and proximate results of which were injury and harm to
17 Plaintiff and the Class.

18 **COUNT V**

19 **Negligent Misrepresentation**

20 79. Plaintiff realleges and incorporates by reference the previous allegations as if fully set
21 forth herein.

22 80. Defendant negligently and recklessly misrepresented various material facts regarding
23 the quality and character of the iPhone 4S's Siri feature, under circumstances where Defendant either
24 knew or reasonably should have known that the representations were not true. These
25 misrepresentations were contained in various advertising and marketing from Defendant, and such
26 misrepresentations were further reiterated and disseminated by the officers, agents, representatives,
27 servants, or employees of Defendant acting within the scope of their authority.

28

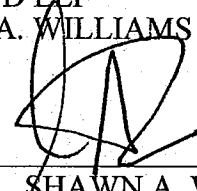
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

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

DATED: March 6, 2012

ROBBINS GELLER RUDMAN
& DOWD LLP
SHAWN A. WILLIAMS



SHAWN A. WILLIAMS

Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
PAUL J. GELLER
STUART A. DAVIDSON
MARK J. DEARMAN
KATHLEEN L. BARBER
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
ROBERT M. ROTHMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

BARNOW AND ASSOCIATES, P.C.
BEN BARNOW
ERICH P. SCHORK
One North LaSalle Street, Suite 4600
Chicago, IL 60602
Telephone: 312/621-2000
312/641-5504 (fax)

Attorneys for Plaintiff

C:\Documents and Settings\DeborahD\Local Settings\Temporary Internet Files\OLK11\Cpt iPhone 4S Siri.doc