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21 on behalf of herself and all others  
22 similarly situated

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

25 CHARLENE GALLION, on behalf of  
26 herself and all others similarly situated,

27 Plaintiff,

28 v.

APPLE, INC., a California corporation,  
and DOES 1-100, inclusive,

Defendants.

**CV No. 10 161 SC**

**COMPLAINT FOR EQUITABLE  
RELIEF AND DAMAGES**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**FILED**  
APR 15 2010  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
M  
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B



1 Plaintiff, Charlene Gallion, on behalf of herself and all others similarly  
2 situated, alleges as follows:

3 **PARTIES**

4 1. Plaintiff, Charlene Gallion, is a resident of San Francisco, California.

5 2. Defendant Apple, Inc. ("Apple"), is a corporation that was created  
6 under the laws of the State of California, and has its principal place of business in  
7 Cupertino, California.

8 3. Plaintiff is unaware of the true names and capacities of Does 1 through  
9 100 and sues them by fictitious names. Plaintiff will amend this Complaint to  
10 include these Doe defendants' true names and capacities when they are ascertained.  
11 Each Doe defendant is responsible in some manner, including without limitation, as  
12 aiders and abettors, for the conduct alleged in this Complaint.

13 4. At all times mentioned in this Complaint, each and every defendant  
14 was an agent, representative, or employee of each and every other defendant and in  
15 doing the things alleged in this Complaint, each and every defendant was acting  
16 within the course and scope of such agency, representation or employment and was  
17 acting with the consent, permission and authorization of each of the remaining  
18 defendants. Each defendant's actions alleged in this Complaint were ratified and  
19 approved by the other defendants and their respective officers, directors, or  
20 managing agents.

21 **JURISDICTION AND VENUE**

22 5. This Court has diversity jurisdiction over the claims asserted herein on  
23 behalf of a statewide class pursuant to 28 U.S.C. section 1332, as amended in  
24 February 2005 by the Class Action Fairness Act. Jurisdiction is proper because

- 25 a. the amount in controversy in this class action exceeds five million  
26 dollars, exclusive of interest and costs, the proposed class includes  
27 more than 100 members, more than one of whom reside in a state  
28 other than California; and

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b. Apple has purposefully availed itself of the privilege of conducting business activities within the State of California, where its officers direct, control, and coordinate Apple's corporate activities and where Apple engaged in the unlawful conduct alleged in this Complaint by, *inter alia*, designing and selling the Apple iPhone and the Apple iPod touch equipped with Liquid Submersion Indicators (which, for purposes of this Complaint, are referred to collectively as "Class Devices"); by drafting and/or approving the terms of the warranties that are included or are sold with Class Devices; by implementing and executing the illegal, unfair, fraudulent, and unconscionable corporate policies and practices alleged herein; and by maintaining systematic and continuous business contacts with the State, primarily through its Cupertino headquarters.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. section 1391, and California Civil Code section 1780(d), because the transactions alleged in this Complaint occurred in this judicial district.

**GENERAL ALLEGATIONS**

7. The iPhone is an internet and multimedia-enabled "smartphone" designed and marketed by Apple. Apple introduced the original iPhone for sale in the United States in or about June 2007. Since then, Apple has introduced the iPhone 3G and iPhone 3GS, and has sold iPhones at prices ranging from \$99 to \$499, depending on, *inter alia*, the features and storage capacity of the device, and whether the cost is subsidized as a result of entering into a contract for wireless services from the exclusive provider of those services, AT&T, Inc.

8. Due to an exclusive partnership between Apple and AT&T, the iPhone is configured to function only with the wireless services provided by AT&T. To activate and use all the iPhone's features, consumers must enter into a two-year contract with AT&T for wireless services.

1           9.     Apple also designs, markets, and sells the iPod touch throughout the  
2 United States. The iPod touch is virtually identical to the iPhone in design,  
3 manufacture, and features, except for those features that pertain to the iPhone's  
4 telephonic capabilities. Apple sells the iPod touch at prices ranging from \$199 to  
5 \$399, depending on, *inter alia*, their features and storage capacity.

6                           **The Standard Warranty and Extended Warranty**

7           10.    When consumers purchase Class Devices, they are advised by Apple  
8 and its agents—in the written material that accompanies the product, on the Apple  
9 official website and other sites and locations where Class Devices are sold—that the  
10 cost of Apple's standard one-year limited warranty (the "Standard Warranty") is  
11 included in the purchase price. Consumers are also told that the Standard  
12 Warranty protects Class Devices "against defects in materials and workmanship  
13 under normal use." Copies of the relevant portions of iPhone Standard Warranties  
14 in effect during the class period are attached hereto as collective Exhibit 1.<sup>1</sup>

15           11.    The terms of the Standard Warranty obligate Apple to "either (a)  
16 repair the hardware defect at no charge, using new parts or parts equivalent to new  
17 in performance and reliability, (b) exchange the product with a product that is new  
18 or equivalent to new in performance and reliability and is at least functionally  
19 equivalent to the original product, or (c) refund the purchase price of the product."

20           12.    Apple also offers consumers the opportunity to purchase the  
21 "AppleCare Protection Plan" for Class Devices, which Apple markets as providing  
22 "comprehensive coverage" under an extended warranty for two years from the date  
23 of original purchase (the "Extended Warranty"). The Extended Warranty may be  
24 purchased for the iPhone for an additional \$69.00 and for the iPod touch for an  
25 additional \$59.00. The terms of the Extended Warranty obligate Apple to repair or

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27           <sup>1</sup> The foreign-language portions of the Standard Warranty have been omitted  
28 from Exhibit 1. The terms of the iPod touch Standard Warranty is, for all purposes  
relevant to this Complaint, substantively the same as the iPhone Standard  
Warranty.

1 replace Class Devices if there is a defect in materials or workmanship during the  
2 coverage period. Copies of the current Extended Warranty that pertains to the  
3 iPhone and the iPod touch are attached hereto as collective Exhibit 2.

4 13. The Standard Warranty applicable to Plaintiff Gallion's iPhone  
5 excludes coverage for "damage caused by accident, abuse, misuse, *liquid spill or*  
6 *submersion*, flood, fire, earthquake, or other external causes," Exhibit 1 (emphasis  
7 added); other versions of the Standard Warranty in effect during the class period  
8 omit the "liquid spill or submersion" language, stating that they exclude coverage  
9 for "damage caused by accident, abuse, misuse, flood, fire, earthquake, or other  
10 external causes," *id.*

11 14. Apple has included similar language in the exclusion provision of the  
12 most recent versions of the iPhone and iPod Extended Warranties, a copy of which  
13 is attached hereto as collective Exhibit 2. See Exhibit 2 ¶ 1(b)(ii) (excluding  
14 coverage for damage "caused by accident, abuse, neglect, misuse (including faulty  
15 installation, repair or maintenance by anyone other than Apple or an Apple  
16 Authorized Service Provider), unauthorized modification, extreme environment  
17 (including extreme temperature or humidity), extreme physical or electrical stress  
18 or interference, fluctuation or surges of electrical power, lightning, static electricity,  
19 fire, acts of God or other external causes"). The damage-exclusion provisions of the  
20 Standard Warranty and Extended Warranty are collectively referred to herein as  
21 the "Liquid-Damage Exclusion."

22 15. The terms and conditions that govern retail repairs performed by  
23 Apple are set forth in a document titled "Apple, Inc. Repair Terms and Conditions,"  
24 a copy of which is attached hereto as Exhibit 3.

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1           19. Plaintiff is informed and believes that, in actuality and contrary to  
2 what Apple represents to consumers, Apple is aware that external Liquid  
3 Submersion Indicators cannot be relied upon to establish with any reasonable  
4 degree of certainty that a Class Device has even been exposed to (much less  
5 damaged by) liquid. Plaintiff is informed and believes that independent testing has  
6 demonstrated that Liquid Submersion Indicators can be triggered by, among other  
7 things, cold weather and humidity that are within Apple's technical specifications  
8 for the Class Devices.

9           20. Plaintiff is also informed and believes that external Liquid Submersion  
10 Indicators can be triggered by other types of moisture that should not cause damage  
11 in any event—such as a palm that becomes sweaty after a work-out, and other  
12 small amounts of moisture to which the devices would be exposed during ordinary,  
13 foreseeable use.<sup>3</sup>

14           21. In addition to the external Liquid Submersion Indicators, Class  
15 Devices contain *internal* Liquid Submersion Indicators, whose purpose is to assist  
16 Apple service personnel in verifying whether those devices have actually been  
17 damaged due to liquid spills or submersion. Plaintiff is informed and believes that  
18 the presence of actual damage by liquid spills or submersion can be verified by,  
19 *inter alia*, having a technician open the Class Device's outer cover to inspect the  
20 internal indicators and the internal components for actual damage caused by  
21 submersion or immersion in liquid (e.g., inoperable circuitry as a result of  
22 corrosion).

23           22. Plaintiff is informed and believes that Apple's corporate policy permits  
24 Apple representatives to conduct such inspections only in rare circumstances (e.g.,  
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26           <sup>3</sup> Apple recently revised the document that comprises Exhibit 4 by changing  
27 the name of the Liquid Submersion Indicator to the "Liquid *Contact* Indicator."  
28 (Emphasis added.) A copy of the new version of the document titled "iPhone and  
iPod: Water damage is not covered by warranty" (which Apple revised in December  
2009) is attached hereto as Exhibit 5.

1 when Apple technical-support personnel are directed to do so by Apple  
2 management), and that Apple corporate policy dictates that Apple personnel are to  
3 refuse warranty coverage under the Standard and Extended Warranties whenever  
4 an *external* Liquid Submersion Indicator has turned red or pink—without  
5 attempting to verify actual damage by examining the *internal* Liquid Submersion  
6 Indicators or by conducting an inspection to determine whether Class Devices have  
7 actually been damaged by a liquid spill or submersion.

8 23. Plaintiff is informed and believes that, in the rare event that a  
9 persistent consumer can persuade Apple personnel to inspect a Class Device for  
10 actual liquid spill or submersion damage that would legitimately void coverage  
11 under the Liquid-Damage Exclusion, Apple's corporate policy prohibits Apple  
12 personnel from (a) providing that consumer with a copy of any images that were  
13 taken to record the inspection, (b) allowing the consumer to record images of  
14 inspection on his or her own, and (c) being present when the inspection is  
15 conducted.<sup>4</sup>

16 "OUT OF WARRANTY SERVICE"

17 24. iPhone owners who wish to use their iPhone's telephonic features  
18 must enter into two-year wireless service contracts with AT&T, and must pay  
19 AT&T a substantial fee if they terminate that contract before the two-year period  
20 ends. Consequently, consumers who are denied warranty coverage for a  
21 malfunctioning or non-functional iPhone must either (a) bear the cost of replacing  
22 or repairing their iPhone to avoid having to pay monthly wireless bills for an iPhone  
23 that is partially or fully non-functional, or (b) forego replacing or repairing their  
24 iPhone and pay the early-termination fee charged by AT&T, and forfeit investments  
25 they have made in their iPhone (e.g., accessories, applications, digital media).

26  
27 <sup>4</sup> Questions about these policies have been raised by technology journalists in  
28 recent months. See, e.g., Michael Klurfield, "Apple iPhone Abuse Detection Sensors:  
Who is Abusing Whom?," *Techgeist*, Sept. 18, 2009 (available online at  
<http://techgeist.net/2009/09/apple-iphone-abuse-detection-sensors-abusing-2/>).

1           25. Plaintiff is informed and believes that, to quell the complaints of  
2 consumers who were refused warranty coverage under the Liquid-Damage  
3 Exclusion, Apple quietly began offering to sell replacement iPhones to consumers  
4 whose warranties had been voided as a result of its use of external Liquid  
5 Submersion Indicators at the reduced price of \$199, without requiring them to  
6 extend their wireless-service contracts. Plaintiff is informed and believes that  
7 Apple formalized this policy (which it calls "out of warranty service") and announced  
8 it to the general public in or about May 2009.

9           26. As a condition to being permitted to purchase a replacement iPhone at  
10 the reduced price, consumers were (and are) required to relinquish their current  
11 iPhone to Apple without compensation. Although this "out-of-warranty service"  
12 option is explained at page 3 of an Apple document titled "iPhone Service:  
13 Frequently Asked Questions," Apple does not explain—or even mention—that the  
14 offer is conditioned on consumers relinquishing their current iPhone to Apple  
15 without being compensated for it. A copy of that document is attached hereto as  
16 Exhibit 6.

17                           **PLAINTIFF GALLION'S EXPERIENCE WITH HER CLASS DEVICE**

18           27. Plaintiff Charlene Gallion's experience is typical of those she seeks to  
19 represent in this action. Plaintiff purchased an iPhone 3G from an Apple store  
20 located in Corte Madera, California, on or about September 18, 2008. In or about  
21 March 2009, Plaintiff noticed that her iPhone was not functioning properly initially,  
22 and it then ceased functioning.

23           28. Shortly after it ceased functioning, Plaintiff took her iPhone to a local  
24 Apple store and spoke with an Apple customer service representative about  
25 obtaining a free repair or replacement under the Standard Warranty. The Apple  
26 representative to whom Plaintiff presented her iPhone for repair examined it for a  
27 few minutes and verified that it would not function. The Apple representative then  
28



1 advised Plaintiff that she was not entitled to a cost-free repair or replacement of her  
2 iPhone.

3         29. The Apple representative advised Plaintiff that her iPhone's warranty  
4 was void because an external Liquid Submersion Indicator had been triggered.  
5 Plaintiff explained that her iPhone had not been immersed in liquid, but the Apple  
6 representative insisted that Plaintiff's iPhone had been damaged by liquid because  
7 the device's external Liquid Submersion Indicator had turned pink, and advised  
8 Plaintiff that it would not have done so unless her iPhone had been damaged by  
9 exposure to liquid.

10         30. Plaintiff asked the Apple representative if it was possible that  
11 something else had caused her iPhone to fail. The Apple representative remained  
12 steadfast, and insisted that the external Liquid Submersion Indicator could only be  
13 triggered by exposure to a "significant" amount of liquid, such as being dropped into  
14 a toilet or a glass of water.

15         31. Although confident her iPhone had not been damaged due to exposure  
16 to liquid, Plaintiff had no way to refute the Apple representative's repeated  
17 assertion that the Liquid Submersion Indicator was accurate and that it had  
18 determined her iPhone had been immersed in liquid.

19         32. After further discussion, the Apple representative offered to sell  
20 Plaintiff a replacement at a discounted price, provided she pay the tax on the full  
21 retail price of a new iPhone and relinquish her existing iPhone as a "trade in"—*i.e.*,  
22 without compensation. Accordingly, Plaintiff purchased a replacement iPhone 3G,  
23 paid the sales tax in full, and "traded in" her existing phone.

24         33. Approximately six months later, Plaintiff's replacement iPhone began  
25 malfunctioning. Once again, she brought her iPhone to a local Apple store for  
26 service and, once again, was told by an Apple representative that her warranty was  
27 invalid because the Liquid Submersion Indicators indicated that her iPhone had  
28 sustained water damage.

1           34. Although Plaintiff knew that her iPhone had not been submersed in  
2 liquid, much less sustained damage, she recognized the futility of further discussion  
3 in that regard.

4           35. Plaintiff was left to decide whether to abandon the investment she had  
5 made in her iPhones (and the accessories, applications, and other media that  
6 pertained to it) or to purchase another replacement. Plaintiff opted for the latter,  
7 and purchased a second replacement iPhone on or about September 19, 2009.

8           36. Plaintiff's experience with Apple is typical of the experience other  
9 owners of Class Devices have had with Apple, whose conduct has forced consumers  
10 to bear the cost of repairing or replacing devices that Apple should have provided,  
11 and should be providing, free of charge under the Standard Warranty and the  
12 Extended Warranty.

13           37. By virtue of the foregoing conduct, including, but not limited to, the  
14 enforcement of Apple's corporate policies and its misrepresentations and omissions  
15 of material facts about the true nature, purpose, and accuracy of the external Liquid  
16 Submersion Indicators, the right to coverage under the Standard Warranty and the  
17 Extended Warranty is rendered illusory. As a result of Apple's improper application  
18 of the Liquid-Damage Exclusion, Apple sells Class Devices with the intent to  
19 exclude them from the warranty coverage Apple promises consumers it will  
20 provide—even when consumers pay extra for Extended Warranty coverage—simply  
21 because their Liquid Submersion Indicator has been triggered, without any attempt  
22 by Apple to verify whether the Class Devices actually have been damaged as a  
23 result of submersion or immersion in liquid.

24           38. Accordingly, Plaintiff brings this action on behalf of herself and all  
25 others similarly situated for the purpose of obtaining a judicial declaration that the  
26 manner in which Apple applies the Liquid-Damage Exclusion to the Standard  
27 Warranty and the Extended Warranty is unconscionable and violates the public  
28 policy of the State of California, and obtaining an order enjoining Apple from

1 continuing to implement and enforce the policies that lead to its improper  
2 application of the Liquid-Damage Exclusion; to recover the sums Plaintiff and  
3 members of the proposed class have expended on repair and/or replacement of Class  
4 Devices as a result of Apple's improper application of the Liquid-Damage Exclusion;  
5 and to provide cost-free repair to members of the proposed class who were denied  
6 warranty coverage as a result of Apple's improper application of the Liquid-Damage  
7 Exclusion and have yet to repair or replace their Class Devices.

### 8 STATUTES OF LIMITATION

9 39. Any applicable statutes of limitation have been tolled by Apple's  
10 knowing and active concealment of the information it possessed about the true  
11 nature, purpose and characteristics of the external Liquid Submersion Indicators it  
12 installs on Class Devices, the true nature and scope of its Standard and Extended  
13 Warranties, and by its false and misleading representations with respect to its  
14 application of the Liquid-Damage Exclusion. Apple has kept Plaintiff and the  
15 members of the proposed class ignorant of vital information essential to the pursuit  
16 of these claims, without any fault or lack of diligence on their part. Plaintiff and  
17 members of the proposed class could not reasonably have discovered this  
18 information or what Apple knew about any of the issues and facts described herein.

19 40. Apple was, and is, under a duty to disclose the true nature, purpose,  
20 and characteristics of the external Liquid Submersion Indicators installed in class  
21 Devices and the true nature, scope, and coverage of its Standard and Extended  
22 Warranties. Despite that duty, Apple knowingly, affirmatively, and actively  
23 concealed the facts alleged herein, and the concealment is ongoing. Because, *inter*  
24 *alia*, Apple took steps to conceal such information, Plaintiff and members of the  
25 class did not discover and could not have discovered these facts through the exercise  
26 of reasonable diligence.

27 41. Based on the foregoing, Apple is estopped from relying on any statutes  
28 of limitation in defense of this action. The causes of action alleged herein did or will

1 accrue only upon discovery of the facts alleged herein and Apple's fraudulent  
2 concealment thereof.

3 **CHOICE OF LAW**

4 42. This Court properly can and should apply California law to all of the  
5 claims and issues asserted herein. Apple is incorporated in and has its principal  
6 place of business in California, from which the decisions and the conduct giving rise to  
7 the substantive allegations in this Complaint have emanated. California thus has a  
8 strong connection to, and a compelling interest in adjudicating, the claims Plaintiff  
9 Gallion has alleged on behalf of herself and each member of the proposed class, and  
10 no state has a greater interest than California in having its law apply to this case.

11 **CLASS ALLEGATIONS**

12 43. Plaintiff brings this class action pursuant to Federal Rule of Civil  
13 Procedure 23 and, to the extent applicable, the provisions of and California Civil  
14 Code section 1781, on behalf of herself and all other persons similarly situated.

15 44. The class that Plaintiff seeks to represent is defined as follows: All  
16 persons who reside in the United States who (a) own a Class Device that is covered  
17 by the Standard Warranty or the Express Warranty; and/or (b) own or once owned  
18 a Class Device whose Standard Warranty or Extended Warranty expired after  
19 Apple denied warranty coverage for its repair or replacement because an external  
20 Liquid Submersion Indicator had been triggered, without determining whether the  
21 Class Device had actually been damaged by liquid.

22 45. Plaintiff also seeks to represent a subclass that includes each member  
23 of the proposed class described in Paragraph 41, above, who is a "consumer," as that  
24 term is defined by California Civil Code section 1761(d), or purchased "goods" or  
25 "consumer goods," as those terms are defined by California Civil Code sections 1761(a)  
26 and 1791(a), respectively (the "Consumer Subclass").

27 46. Excluded from the class are the following:

28 a. Apple, its subsidiaries, affiliates, officers, directors, and employees;

- 1           b. persons who have settled with and validly released Apple from
- 2           separate, non-class legal actions against Apple based on the conduct
- 3           alleged herein;
- 4           c. counsel, and the immediate families of counsel, who represent Plaintiff
- 5           in this action;
- 6           d. the judge presiding over this action;
- 7           e. jurors who are impaneled to render a verdict on the claims alleged in
- 8           this action; and
- 9           f. persons who purchased an Extended Warranty in Colorado or in Florida.

10           47. Plaintiff is informed and believes that the proposed class comprises  
11 millions of members. The class is, therefore, so numerous and geographically  
12 dispersed that joinder of all members in one action is impracticable.

13           48. Apple has acted with respect to Plaintiff and members of the proposed  
14 class in a manner generally applicable to each of them. There is a well-defined  
15 community of interest in the questions of law and fact involved, which affect all  
16 class members. The questions of law and fact common to the class predominate  
17 over the questions that may affect individual class members, including the  
18 following:

- 19           a. whether the external Liquid Submersion Indicators produce
- 20 false-positive results;
- 21           b. whether the external Liquid Submersion Indicators are designed
- 22 to produce false-positive results;
- 23           c. whether and when Apple knew the external Liquid Submersion
- 24 Indicators produce false-positive results;
- 25           d. whether the representations Apple has made about the nature,
- 26 purpose, and accuracy of the external Liquid Submersion Indicators are false;
- 27           e. whether Apple was, and is, under a duty to disclose information
- 28 about the true nature and purpose of the external Liquid Submersion Indicators;

1 f. whether Apple intentionally withheld, failed to disclose, and/or  
2 intentionally concealed information about the external Liquid Submersion  
3 Indicators;

4 g. whether relying on the external Liquid Submersion Indicators to  
5 treat the Standard Warranty and the Extended Warranty as void is unconscionable  
6 under the circumstances alleged herein;

7 h. whether Apple has breached its Standard and Extended  
8 Warranties by denying coverage when an external Liquid Submersion Indicator is  
9 triggered without verifying that Class Devices have actually been damaged by  
10 submersion or immersion in liquid;

11 i. whether Apple is subject to liability for common-law fraud;

12 j. whether Apple is subject to liability for violating the Consumers  
13 Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750-1784;

14 k. whether Apple's conduct has violated the Unfair Competition  
15 Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17209;

16 l. whether Apple's conduct has violated the False Advertising Law  
17 ("FAL"), Cal. Bus. & Prof. Code §§ 17500-17536;

18 m. whether Apple's conduct has violated the Song-Beverly  
19 Warranty Act, Cal. Civ. Code §§ 1790-1793.2;

20 n. whether Apple has been unjustly enriched as a result of its  
21 fraudulent conduct, such that it would be inequitable for Apple to retain the  
22 benefits conferred upon it by Plaintiff and the class;

23 o. whether Plaintiff's claims satisfy the criteria for class  
24 certification under California Code of Civil Procedure section 382 and/or California  
25 Civil Code section 1781;

26 p. whether compensatory or consequential damages should be  
27 awarded to Plaintiff and members of the proposed class;

28

1           q.     whether punitive damages should be awarded to Plaintiff and  
2 members of the proposed class;

3           r.     whether restitution should be awarded to Plaintiff and members  
4 of the proposed class;

5           s.     whether other, additional relief is appropriate, and what that  
6 relief should be.

7           49.    Plaintiff's claims are typical of the claims of all members of the class  
8 she proposes to represent in this action.

9           50.    Plaintiff will fairly and adequately represent and protect the interests  
10 of the class, and does not have interests that are antagonistic to or in conflict with  
11 those she seeks to represent.

12          51.    Plaintiff has retained counsel who have extensive experience in the  
13 prosecution of class actions and other forms of complex litigation.

14          52.    In view of the complexity of the issues and the expense that an  
15 individual plaintiff would incur if she or she attempted to obtain relief from a large,  
16 transnational corporation such as Apple, the separate claims of individual class  
17 members are monetarily insufficient to support separate actions. Because of the  
18 size of the individual class members' claims, few, if any, class members could afford  
19 to seek legal redress for the wrongs complained of in this Complaint.

20          53.    The class is readily definable, and prosecution as a class action will  
21 eliminate the possibility of repetitious litigation and will provide redress for claims  
22 too small to support the expense of individual, complex litigation. Absent a class  
23 action, class members will continue to suffer losses, Apple's violations of law will be  
24 allowed to proceed without a full, fair, judicially supervised remedy, and Apple will  
25 retain sums received as a result of its wrongdoing. A class action will provide a fair  
26 and efficient method for adjudicating this controversy.

27          54.    The prosecution of separate claims by individual class members would  
28 create a risk of inconsistent or varying adjudications with respect to thousands of

1 individual class members, which would, as a practical matter, dispose of the  
2 interests of the class members not parties to those separate actions or would  
3 substantially impair or impede their ability to protect their interests and enforce  
4 their rights.

5 55. The proposed class satisfies the certification criteria of Federal Rule of  
6 Civil Procedure 23 and, to the extent applicable, California Civil Code section 1781.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**  
9 **(Declaratory Relief)**

10 56. Plaintiff realleges and incorporates by reference the allegations set forth  
11 in each of the preceding paragraphs of this Complaint.

12 57. Pursuant to Federal Rule of Civil Procedure 57, Plaintiff seeks a  
13 declaration of the parties' rights and duties.

14 58. Among the unfair, fraudulent, and unlawful conduct Plaintiff has alleged  
15 in this Complaint is Apple's decision to equip Class Devices with external Liquid  
16 Submersion Indicators that provide false-positive results, thereby enabling Apple to  
17 use the Liquid-Damage Exclusion provision of its Standard and Extended Warranties  
18 as a means of avoiding its obligations under those warranties and to deny consumers  
19 the right to obtain cost-free repairs or replacements of their class Devices.

20 59. Plaintiff alleges that, under the circumstances alleged herein, the  
21 manner in which Apple has applied, and continues to apply, the Liquid-Damage  
22 Exclusion is unconscionable under, e.g., California Civil Code sections 1670.5 and  
23 1770(a)(19), and that Apple's efforts to limit its contractual obligations violates the  
24 public policy of the State of California, as articulated at, *inter alia*, California Civil  
25 Code sections 1667 and 1668. The Standard Warranty and the Extended Warranty  
26 agreements at issue in this lawsuit are contracts of adhesion and, as applied by Apple,  
27 the Liquid-Damage provisions of those agreements are unduly oppressive, particularly  
28 when considered in light of the parties' grossly unequal bargaining power.





1 with a product that is new or equivalent to new in performance and reliability and  
2 is at least functionally equivalent to the original product, or (3) refund the purchase  
3 price of the product.” Apple’s Standard Warranty and Extended Warranty are  
4 express warranties under California law.

5       63. The purchase price of Class Devices includes the Standard Warranty  
6 described herein, which is part of the basis of the bargain. Apple sells the Extended  
7 Warranty to class members for an additional fee.

8       64. Apple breached and continues to breach its express warranties by  
9 engaging in the conduct alleged herein.

10       65. Plaintiff timely provided Apple with written notice of its breaches of  
11 warranty by certified mail, and thereby provided Apple with an opportunity to correct  
12 or otherwise rectify the problems alleged herein before this Complaint was filed.  
13 Apple did not avail itself of that opportunity.

14       66. Plaintiff and proposed class members have been and continue to be  
15 damaged by Apple’s breach of its express warranties because Plaintiff and class  
16 members have paid for repairs to Class Devices or have spent money to buy  
17 replacement Class Devices that should have been covered by Apple. Furthermore,  
18 as a result of Apple’s breach of its express warranties, Plaintiff and class members  
19 have suffered damages in an amount to be determined at trial.

20       67. Therefore, Plaintiff and the other class members are entitled to legal  
21 and equitable relief against Apple, including damages, specific performance,  
22 rescission, restitution, attorneys’ fees, costs of suit, and other relief, as appropriate.

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1 **THIRD CLAIM FOR RELIEF**  
2 **(Violations of the Song-Beverly Consumer Warranty Act)**

3 68. Plaintiff realleges and incorporates by reference the allegations set forth  
4 in each of the preceding paragraphs of this Complaint.

5 69. Class Devices are “consumer goods” under Civil Code section 1791(a).

6 70. Plaintiff is a “buyer” under Civil Code section 1791(b).

7 71. Apple’s Standard Warranty is an “express warranty” under Civil Code  
8 section 1791.2, and the Extended Warranty is an express warranty as well as a  
9 service contract under Civil Code sections 1791.2 and 1794.4.

10 72. Apple breached and continues to breach its express warranties by  
11 engaging in the conduct alleged herein. Plaintiff, on behalf of herself and the  
12 proposed class, have notified Apple of the breach within a reasonable time.

13 73. Plaintiff and class members have been and continue to be damaged by  
14 Apple’s breach of its express warranties because Plaintiff and class members have  
15 paid for repairs to Class Devices or have spent money to buy replacement Class  
16 Devices that should have been covered by Apple. Furthermore, as a result of  
17 Apple’s breach of its express warranties, Plaintiff and class members have suffered  
18 damages in an amount to be determined at trial. Therefore, Plaintiff and members  
19 of the proposed class are entitled to legal and equitable relief against Apple,  
20 including damages, specific performance, rescission, restitution, attorneys’ fees,  
21 costs of suit, and other relief, as appropriate.

22 **FOURTH CLAIM FOR RELIEF**  
23 **(Fraud)**

24 74. Plaintiff realleges and incorporates by reference the allegations  
25 contained in preceding paragraphs of this Complaint.

26 75. At all times relevant herein, Apple made misrepresentations of  
27 material fact to Plaintiff and the class (a) regarding the true nature, purpose, and  
28 accuracy of the external Liquid Submersion Indicators; (b) regarding the scope,

1 characteristics, and availability of coverage the Standard Warranty and the  
2 Extended Warranty; and (c) regarding the reasons for denying Plaintiff and the  
3 class she proposes to represent coverage under its Standard and extended  
4 Warranties, including but not limited to advising Plaintiff and members of the class  
5 that their Class Devices had been damaged by liquid spill or submersion when they  
6 had not. Apple knew those representations were false when it made them.

7 76. Apple has also concealed material facts from Plaintiff and the class,  
8 including the following:

- 9 a. that the external Liquid Submersion Indicators do not  
10 accurately indicate that Class Devices have been damaged as a  
11 result of liquid spills or submersion in liquid when they have  
12 not;
- 13 b. that because the external Liquid Submersion Indicators are not  
14 reliable indicators of actual damage, Class Devices whose  
15 external Liquid Submersion Indicators have been triggered  
16 must be inspected by persons with expertise in conducting such  
17 inspections for the purpose of determining whether the problems  
18 for which consumers seek warranty coverage constitute damage  
19 caused by a spill or submersion in liquid; and
- 20 c. that Apple equipped Class Devices with external Liquid  
21 Submersion Indicators and uses their false-positive readings to  
22 avoid its obligations under its Standard and Extended  
23 Warranties.

24 77. Apple had a duty to disclose these facts, regardless of the existence of  
25 privity (*see, e.g.*, Cal. Civ. Code § 1711), by virtue of (a) Apple's exclusive knowledge  
26 about the reason it equipped Class Devices with external Liquid Submersion  
27 Indicators, the reliability of those indicators, its intention to rely on the false-positive  
28 results provided by those indicators to void its Standard and Extended warranties,

1 and its awareness that Plaintiff was not reasonably likely to discover these facts; **(b)**  
2 Apple's active concealment of those facts from Plaintiff and members of the class (by,  
3 *inter alia*, making false representations about the nature, purpose, and accuracy of  
4 the external Liquid Submersion Indicators, the nature and scope of Apple's obligations  
5 under its Standard and Extended Warranties, and the reasons for denying warranty  
6 coverage, and by enforcing a policy by which consumers are prohibited from recording  
7 or witnessing physical inspections of Class Devices); and **(c)** Apple's statutory and  
8 common-law obligations to disclose material information to the consumers of Class  
9 Devices, as alleged herein. Plaintiff would have acted differently if Apple had  
10 disclosed this information to Plaintiff and allowed her to make a fully-informed  
11 decision before she purchased her original iPhone, and before she purchased the  
12 iPhones she bought from Apple as replacements after Apple represented that the  
13 warranty for her original iPhone was void because their external Liquid  
14 Submersion Indicators had been triggered.

15 78. Apple's misrepresentations of material fact are uniform, some of which  
16 can be found in its warranty contracts and other documents comprising Exhibits to  
17 this Complaint.

18 79. The facts Apple has concealed from consumers are similarly material  
19 and uniform.

20 80. Apple made the misrepresentations of material facts and omitted the  
21 material facts alleged herein intentionally and/or recklessly, with the intention that  
22 Plaintiff and members of the class she proposes to represent rely on them. Plaintiff  
23 and the proposed class relied on Apple's misrepresentations and would have acted  
24 differently had the omitted facts been disclosed to her.

25 81. As a proximate result of Apple's misrepresentations and concealment  
26 and suppression of material facts, Plaintiff and the proposed class have sustained  
27 damage by, *inter alia*, **(a)** paying more for Class Devices than they would have paid if  
28 Apple had not misrepresented and concealed the facts alleged herein; **(b)** paying for

1 an Extended Warranty that Apple did not intend to honor in the event that a Liquid  
2 Submersion Indicator is triggered for reasons that have nothing to do with spills or  
3 submersion in liquid; and (c) being forced to pay for the repair or replacement of Class  
4 Devices while those devices were covered by a Standard or Extended Warranty as a  
5 result of Apple's fraudulent refusal to honor its obligations under those agreements.

6 82. Because Apple engaged in the conduct alleged herein deliberately and  
7 with willful and malicious intent, Plaintiff and the proposed class are entitled to an  
8 award of punitive damages. The total amount of damages suffered by Plaintiff and  
9 the class will be proved at trial.

10 **FIFTH CLAIM FOR RELIEF**  
11 **(Unfair and Deceptive Acts and Practices**  
12 **in Violation of the Consumers Legal Remedies Act)**

13 83. Plaintiff realleges and incorporates by reference the allegations set forth  
14 in each of the preceding paragraphs of this Complaint.

15 84. This claim for relief is brought pursuant to the CLRA. Plaintiff is a  
16 "consumer," as that term is defined by Civil Code section 1761(d) because she bought  
17 her iPhone for personal, family, or household purposes.

18 85. Plaintiff and members of the Consumer Subclass have engaged in a  
19 "transaction" with Apple, as that term is defined by Civil Code section 1761(e).

20 86. The conduct alleged in this Complaint constitutes unfair methods of  
21 competition and unfair and deceptive acts and practices for the purposes of the CLRA,  
22 and were undertaken by Apple in transactions intended to result in, and which  
23 resulted in, the sale of goods to consumers.

24 87. By engaging in the conduct alleged in paragraphs 10 through 35 and 73  
25 through 78 of this Complaint, Apple has violated subdivisions (a)(5), (a)(7), (a)(9),  
26 (a)(14), and (a)(19) of California Civil Code section 1770 by, *inter alia*,  
27 misrepresenting and falsely advertising that the price of Class Devices includes one  
28 year of coverage "against defects in materials and workmanship under normal use"  
under the Standard Warranty and that the Extended Warranty extends that coverage

1 to two years without disclosing Apple's policy of deeming warranty coverage void if a  
2 Liquid Submersion Indicator was triggered, regardless of whether the Class Device in  
3 question had actually been damaged by exposure to liquid.

4 88. In actuality, and unbeknown to Plaintiff and members of the proposed  
5 class, Apple's Standard and Extended Warranties were (and are) illusory. By selling  
6 Class Devices with an illusory Standard Warranty and by selling Extended Warranty  
7 coverage that is equally illusory, Apple has represented, and continues to represent,  
8 that Class Devices and the Standard and Extended Warranties that pertain to them  
9 have characteristics, uses and benefits, or qualities that they do not have, and that  
10 they are of a particular standard, quality, or grade, when they are not, in violation  
11 of Civil Code section 1770, subsections (a)(5) and (a)(7).

12 89. By engaging in the conduct alleged herein, above, Apple has also  
13 advertised, and continues to advertise, goods with the intent not to sell them as  
14 advertised, in violation of California Civil Code section 1770(a)(9). Additionally,  
15 Apple has violated and continues to violate subsections California Civil Code section  
16 1770, subsections (a)(14) and (a)(19), by engaging in the conduct alleged herein,  
17 including, but not limited to, inserting a Liquid-Damage Exclusion provision in its  
18 Standard Warranty and its Extended Warranty that is unconscionable as applied  
19 under the circumstances alleged herein; by voiding its Standard Warranty and its  
20 Extended Warranty in an unconscionable manner; by failing to disclose that Apple  
21 does not intend to honor the terms of its Standard Warranty and its Extended  
22 Warranty if an external Liquid Submersion Indicator is triggered; and by  
23 representing that the sale of Class Devices and the sale of the Extended Warranty  
24 policies conferred rights and remedies, which they did not.

25 90. Plaintiff seeks an order awarding actual and, because Apple engaged in  
26 the conduct alleged herein deliberately and with willful and malicious intent, punitive  
27 damages. The total amount of damages suffered by Plaintiff and the class will be  
28 proved at trial.



1           deceitful conduct in violation of California Civil Code sections 1709  
2           through 1711, as alleged in **(ii)** its violations of the Consumers Legal  
3           Remedies Act, California Civil Code sections 1770(a)(5), (a)(7), (a)(9),  
4           (a) (14), and (a)(19); **(iii)** its violations of the False Advertising Law,  
5           California Business & Professions Code sections 17500 through 17536;  
6           and **(iv)** its violations of the Song-Beverly Consumer Warranty Act,  
7           Civil Code sections 1791 through 1793.2.

8           **b. Fraudulent Conduct:** Apple has violated the UCL's proscription  
9           against fraud as a result of engaging in the fraudulent and deceitful  
10          conduct alleged in paragraphs 10 through 35 and 73 through 78 of this  
11          Complaint.

12          **c. Unfair Conduct:** Apple has violated the UCL's proscription against  
13          unfair conduct as a result of engaging in the conduct alleged in this  
14          Complaint.

15          96. Apple's violations of the UCL continue to this day. As a direct and  
16          proximate result of Apple's violations of the UCL, Plaintiff has suffered actual  
17          damage in that, *inter alia*, she paid more for his Class Devices than she would have  
18          had Apple not represented that their purchase price includes the Standard  
19          Warranty and paid for a replacement iPhone because Apple refused Plaintiff's  
20          request that it provide her with a cost-free repair or replacement pursuant to the  
21          Standard Warranty.

22          97. Pursuant to Section 17203 of the UCL, Plaintiff and the class seek an  
23          order that **(a)** enjoins Apple from continuing to rely on the external Liquid  
24          Submersion Indicators as a basis for denying Standard and Extended Warranty  
25          coverage; **(b)** requires Apple to honor the terms of its Standard and Extended  
26          Warranty policies; **(c)** enjoins Apple from continuing to make false representations  
27          regarding the characteristics and scope of its Standard and Extended Warranties,  
28          and the nature, purpose, and accuracy of external Liquid Submersion Indicators;

1 (d) compels Apple to extend warranty coverage by tolling the coverage period from  
2 the date on which Apple denied coverage based on a triggered external Liquid  
3 Submersion Indicator until the date on which Plaintiff and the class; and (ii) by  
4 adding the amount of coverage that remained as of the date of tolling (e.g., if six  
5 months of warranty coverage remained as of the date on which Apple denied  
6 coverage, six months of coverage would remain as of the date on which judgment is  
7 entered in favor of Plaintiff and the proposed class); (e) requires Apple to make full  
8 restitution of all moneys wrongfully obtained from its violations of the UCL, as  
9 alleged in this Complaint; and (f) requires Apple to pay Plaintiff's and the class's  
10 attorney fees and costs.

11 **SEVENTH CLAIM FOR RELIEF**  
12 **(Unjust Enrichment)**

13 98. Plaintiff realleges and incorporates by reference the allegations set  
14 forth in each of the preceding paragraphs of this Complaint.

15 99. By engaging in the conduct described in this Complaint, Apple has  
16 been unjustly enriched by, *inter alia*, (a) its sale of Class Devices at inflated prices  
17 due to the ostensible inclusion of a one-year Standard Warranty, (b) the sale of  
18 Extended Warranties; (c) avoiding the costs associated with complying with Class  
19 Devices' Standard and Extended Warranties; (d) charging consumers to repair  
20 Class Devices while those devices were covered by Standard and/or Extended  
21 Warranties; (e) selling consumers replacement Class Devices while those devices  
22 were covered by Standard and Extended Warranties and (f) requiring consumers to  
23 "trade in" their iPhones without providing them with any compensation for it.

24 100. As a proximate result of Apple's conduct, Apple obtained secret profits  
25 by which it became unjustly enriched at Plaintiff's and the class Members' expense.  
26 Under the circumstances alleged herein, it would be unfair for Apple to retain the  
27 profits it has unjustly obtained at the expense of the Apple and the class.

28 101. Accordingly, Plaintiff seeks an order establishing Apple as a  
constructive trustee of the profits that served to unjustly enrich Apple, together

1 with interest during the period in which Apple has retained such funds, and  
2 requiring Apple to disgorge those funds to Plaintiff and members of the proposed  
3 class in a manner to be determined by the Court.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of herself and all others similarly  
6 situated, prays for relief in this Complaint as follows:

7 1. For an order certifying that the action may be maintained as a class  
8 action, on behalf of the proposed class, the Consumer Subclass, and any other  
9 subclass(es) the Court may deem appropriate;

10 **AS TO THE FIRST CAUSE OF ACTION**

11 2. For a judicial declaration pursuant to Federal Rule of Civil Procedure  
12 57 that (a) Apple's limitation of warranty coverage on the ignition locks in class  
13 Vehicles violates the public policy of the State of California for the reasons set forth in  
14 California Civil Code sections 1667 and 1668, and that such a limitation is  
15 unconscionable because the warranty agreements at issue in this lawsuit are  
16 contracts of adhesion, and because they are unduly oppressive, particularly when  
17 considered in light of the parties' radically unequal bargaining power; (b) that a  
18 triggered external Liquid Submersion Indicator is not (and was not) a sufficient  
19 basis on which to invoke the Liquid-Damage Exclusion unless a physical inspection  
20 of the Class Device establishes that it was actually damaged by submersion or  
21 immersion in liquid; and (c) that if Apple cannot establish that a Class Device was  
22 actually damaged, the coverage period applicable to that Class Device is tolled from  
23 the date on which Apple denied coverage based on a triggered external Liquid  
24 Submersion Indicator until the date on which owners of those Class Devices receive  
25 notification that Apple's invocation of the Liquid-Damage Exclusion was not valid;

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**AS TO THE SECOND CAUSE OF ACTION**

3. For an order providing Plaintiff and the proposed class with legal and equitable relief against Apple, including damages, specific performance, restitution, attorneys' fees, costs of suit, and other relief as appropriate;

**AS TO THE THIRD CAUSE OF ACTION**

4. For an order providing Plaintiff and the proposed class with legal and equitable relief against Apple, including damages, specific performance, restitution, attorneys' fees, costs of suit, and other relief, as appropriate;

**AS TO THE FOURTH CAUSE OF ACTION**

5. For an award of monetary damages, including but not limited to, compensatory, incidental and consequential damages commensurate with proof at trial for the acts complained of herein;

6. For an award of punitive damages in an amount consistent with applicable statutes and precedent;

**AS TO THE FIFTH CAUSE OF ACTION**

7. For an order awarding damages pursuant to California Civil Code section 1780(a)(1);

8. For an order pursuant to California Civil Code section 1780(a)(2) enjoining Apple from continuing to rely on the external Liquid Submersion Indicators as a basis for denying Standard and Extended Warranty coverage for Class Devices without confirming they have actually been damaged by submersion or immersion in liquid, and from making false representations regarding the nature, characteristics, and scope of its Standard and Extended Warranties and the Liquid Submersion Indicators on Class Devices;

9. For an order pursuant to California Civil Code section 1780, subdivisions (a)(2) and (a)(5) requiring Apple to extend the warranty on all Class Devices by tolling the coverage period applicable to that Class Device from the date on which Apple denied coverage based on a triggered external Liquid Submersion

1 Indicator until the date on which owners of those Class Devices receive notification  
2 that Apple's invocation of the Liquid-Damage Exclusion was not valid;

3 10. For an order awarding restitution pursuant to California Civil Code  
4 section 1780(a)(3);

5 11. For an order awarding punitive damages pursuant to California Civil  
6 Code section 1780 (a)(4);

7 AS TO THE SIXTH CAUSE OF ACTION

8 12. For an order that (a) enjoins Apple from continuing to rely on the  
9 external Liquid Submersion Indicators as a basis for denying Standard and  
10 Extended Warranty coverage; (b) requires Apple to honor the terms of its Standard  
11 and Extended Warranty policies; (c) enjoins Apple from continuing to make false  
12 representations regarding the characteristics and scope of its Standard and  
13 Extended Warranties, and the nature, purpose, and accuracy of external Liquid  
14 Submersion Indicators; (d) compels Apple to extend warranty coverage (i) by tolling  
15 the coverage period from the date on which Apple denied coverage based on a  
16 triggered external Liquid Submersion Indicator until the date on which Plaintiff  
17 and the class is right to coverage is determined and (ii) by adding the amount of  
18 coverage that remained as of the date of tolling (e.g., if six months of warranty  
19 coverage remained as of the date on which Apple denied coverage, six months of  
20 coverage would remain as of the date on which judgment is entered in favor of  
21 Plaintiff and the proposed class); (e) requires Apple to make full restitution of all  
22 moneys wrongfully obtained from its violations of the UCL, as alleged in this  
23 Complaint; and (f) requires Apple to pay Plaintiff's and the class's attorney fees and  
24 costs;

25 AS TO THE SEVENTH CAUSE OF ACTION

26 13. For an order compelling Apple to provide restitution of the amounts by  
27 which it has been unjustly enriched by, *inter alia*, (a) its sale of  
28 Class Devices at inflated prices due to the ostensible inclusion of a one-year

1 Standard Warranty, (b) the sale of Extended Warranties; (c) avoiding the costs  
2 associated with complying with Class Devices' Standard and Extended Warranties;  
3 (d) charging consumers to repair Class Devices while those devices were covered by  
4 Standard and/or Extended Warranties; (e) selling consumers replacement Class  
5 Devices while those devices were covered by Standard and Extended Warranties  
6 and (f) requiring consumers to "trade in" their iPhones without providing them with  
7 any compensation for it.

8 AS TO ALL CAUSES OF ACTION

- 9 14. For an award of attorney fees;  
10 15. For an award of costs;  
11 16. For an award of pre- and post-judgment interest on any amounts  
12 awarded; and  
13 17. For any and all other relief the Court deems just and appropriate.


14 DEMAND FOR JURY TRIAL

15 Plaintiff and the proposed class demand a jury trial in this action for all the  
16 causes of action so triable.

17 DATED: April 15, 2010

FAZIO | MICHELETTI LLP

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by   
Jeffrey L. Fazio  
Attorneys for Plaintiff, Charlene Gallion,  
on behalf of herself and all others similarly  
situated