

1 RACHELE R. RICKERT (190634)
rickert@whafh.com
2 MARISA C. LIVESAY (223247)
livesay@whafh.com
3 **WOLF HALDENSTEIN ADLER**
FREEMAN & HERZ LLP
4 750 B Street, Suite 2770
San Diego, CA 92101
5 Telephone: 619/239-4599
Facsimile: 619/234-4599

6 GREGORY M. NESPOLE
gmn@whafh.com
7 JANINE L. POLLACK
pollack@whafh.com
8 RANDALL S. NEWMAN (190547)
newman@whafh.com
9 KATE M. McGUIRE
mcguire@whafh.com
10 **WOLF HALDENSTEIN ADLER**
FREEMAN & HERZ LLP
11 270 Madison Avenue
12 New York, NY 10016
13 Telephone: 212/545-4600
Facsimile: 212/545-4677

14 Counsel for Plaintiffs

15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION
18

19 ANTHONY BARTLING and) CASE NO.
20 JACQUELINE N. OLSON, on behalf)
of themselves and all others similarly)
21 situated,)
Plaintiff,) **CLASS ACTION COMPLAINT**
22)
23 v.) **DEMAND FOR JURY TRIAL**
24)
APPLE INC.,)
25)
Defendant.)

1 Plaintiffs Anthony Bartling and Jacqueline N. Olson (“Plaintiffs”), for their class action
2 complaint, allege upon personal knowledge as to themselves and their own actions, and upon
3 information and belief, including the investigation of counsel, as to all other matters as follows:

4 **NATURE OF ACTION**

5 1. Plaintiffs assert this class action against Defendant Apple Inc. (“Apple” or
6 “Defendant”) on behalf of all persons who purchased or leased a product containing a processor
7 designed by Apple with ARM based architecture (the “Apple Processor”), as a component of
8 another Apple product.¹ Apple Processors can be found in iPhones, iPads and the Apple TV
9 (cumulatively “iDevices”).

10 2. Apple Processors are, in effect, the “brains” of iDevices. They handle the execution
11 of instructions given by software programs. Given the vast number of instructions involved in
12 virtually every program, processor speed is highly significant to consumers. In addition, given that
13 consumers often store sensitive information such as passwords on their iDevices, processor security
14 is equally important.

15 3. Unfortunately, all Apple Processors are defective because they were designed by
16 Defendant Apple in a way that allows hackers and malicious programs potential access to highly
17 secure information stored on iDevices. The Apple Processors expose users to at least two types of
18 security risks (the “Security Vulnerabilities”), based on two hacking techniques, which have been
19 dubbed “Meltdown” and “Spectre” by the technology community. The first hacking technique is
20 known as “Meltdown” because it “melts security boundaries which are normally enforced by the
21 hardware,” and the other hacking technique is known as “Spectre” because its root cause is
22 speculative execution, and “because it is not easy to fix, it will haunt us for quite some time.”²

23 4. To protect themselves from the Meltdown technique, users will have to apply a
24 software patch that will cause a slowdown in the processor speed (the “Slowdown Problem”).

25 _____
26 ¹ The Apple Processors include, but are not limited to, A4, A5, A5X, A6, A6X, A7, A8,
A8X, A9, A9X, A10 Fusion and A11 Bionic processors.

27 ² <https://spectreattack.com/#faq-fix> (website of Graz University of Technology, among those
28 that discovered the defects).

1 5. There is no complete firmware or software patch for the Spectre risk at this time,
2 and it is not presently known whether any firmware or software patches that could be used to
3 eliminate the risk of the Spectre technique will slow processor speed or by how much. A long term
4 solution to completely eliminate the risk of the Spectre issue may require the development of new
5 hardware and/or architectures.

6 6. In short, Defendant has not been able to offer an effective repair to its customers. A
7 patch that cuts processor performance is not a legitimate solution, nor is any patch that does not
8 fully eliminate the Security Vulnerabilities that can be exploited by the Meltdown or Spectre
9 techniques.

10 7. Based upon information and belief, Defendant has known about the design defect
11 giving rise to the Security Vulnerabilities since at least June, 2017. Defendant has admitted that it
12 released an update to its iOS operating system software to address the Meltdown technique in
13 December, 2017, but Apple knew or should have known of the design defect much earlier and
14 could have disclosed the design defect more promptly. Even after it was aware of the Security
15 Vulnerabilities, Apple continued to sell and distribute iDevices without a repair or having made a
16 disclosure about the Apple Processor Security Vulnerabilities. The iDevices it sold and distributed
17 were not of the quality represented and were not fit for their ordinary purposes.

18 8. Plaintiffs would not have purchased the iDevices had they known of the Security
19 Vulnerabilities or they would not have paid the prices they paid for the iDevices (in which the
20 Apples Processors were a component) had they known that they would be subject to the Security
21 Vulnerabilities as well as a slowdown in speed and thus decrease in quality and value. Plaintiffs
22 have suffered an ascertainable injury and a loss of money or property as a result of Defendant's
23 wrongdoing.

24 **THE PARTIES**

25 9. Plaintiff Anthony Bartling is an individual residing in Milford, New Hampshire
26 who, in or about October, 2016, purchased two iPhone 6s Plus phones which contained Apple A9
27 processors. In or about December, 2017, Plaintiff Bartling upgraded one of the iPhone 6s phones
28 for an iPhone 8 Plus which contains an Apple A11 Bionic processor. The Apple Processors in his

1 iPhones have been exposed to the Security Vulnerabilities described herein and will be impacted by
2 the Slowdown Problem.

3 10. Plaintiff Jacqueline N. Olson is an individual residing in Locust Valley, New York
4 who, in or about September, 2017, purchased an iPhone 7 which contains an A10 Fusion processor.
5 The Apple Processor in her iPhone 7 has been exposed to the Security Vulnerabilities described
6 herein and will be impacted by the Slowdown Problem.

7 11. Defendant Apple is a California corporation with its principal place of business
8 located at 1 Infinite Loop, Cupertino, California 95014. Apple regularly conducts and transacts
9 business in this District as well as throughout the United States. Apple designed the Apple
10 Processors used in iDevices.

11 **JURISDICTION AND VENUE**

12 12. This Court has jurisdiction over this action under the Class Action Fairness Act, 28
13 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated claims of
14 the individual class members exceed the sum or value of \$5,000,000, exclusive of interest and
15 costs, and this is a class action in which Defendant Apple and members of the proposed plaintiff
16 classes, including the named Plaintiffs, are citizens of different states.

17 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Apple has its
18 principal place of business in this District, a substantial part of the events or omissions giving rise
19 to Plaintiffs' claims occurred here, and Apple is a corporation subject to personal jurisdiction in
20 this District and, therefore, resides here for venue purposes.

21 **FACTUAL ALLEGATIONS**

22 14. Defendant Apple is one of the world's largest manufacturers of mobile telephones
23 and tablet devices, and has been selling and distributing the iDevices incorporating the defective
24 Apple Processors for more than 10 years. Apple has sold millions of iDevices containing Apple
25 Processors, which it designed using architecture licensed from ARM Holdings PLC and which it
26 manufactured or had manufactured by third-parties in accordance with its designs.

27 15. On January 2, 2018, it was publicly reported that "a fundamental design flaw in
28 Intel's processor chips has forced a significant redesign of the Linux and windows kernels to

1 defang the chip-level security bug.” John Leyden & Chris Williams, *Kernel-memory-leaking Intel*
2 *processor design flaw forces Linux, Windows redesign*, THE REGISTER, January 2, 2018.³

3 16. On January 4, 2018, it was widely reported that the design defect exposed users to
4 two security vulnerabilities, called “Meltdown” and “Spectre,” respectively, both of which exposed
5 users to significant security risks and for neither of which was there a reasonable and adequate
6 solution. Cade Metz & Nicole Perlroth, *Researchers Discover Two Major Flaws in the World’s*
7 *Computers*, N.Y. TIMES, January 4, 2018.

8 17. On January 4, 2018, Apple announced that all Apple Processors were vulnerable to
9 the Meltdown and Spectre techniques.

10 18. The Meltdown and Spectre techniques allow hackers to take advantage of a modern
11 computer processor (or “CPU”) performance feature, called speculative execution. Speculative
12 execution attempts to improve speed by executing multiple instructions at once (or even in a
13 different order than when entering the CPU). To increase performance, the CPU *predicts* which
14 path of a branch is most likely to be taken, and will speculatively continue execution down that
15 path even before the branch is completed. If the prediction is wrong, speculative execution is rolled
16 back in a way that is intended to be invisible to software.

17 19. The design flaw exposes the processor’s kernel to vulnerability. A kernel is the
18 most vital software component of a computer, which serves as a go between among programs and
19 computer components, such as the processor and the memory. One of the kernel’s main tasks is to
20 prevent data in one program from being read by another when it should not.

21 20. The Meltdown and Spectre techniques allow hackers to abuse speculative execution
22 to access privileged memory – including that of the kernel – from a less-privileged user process
23 (such as a malicious application running) on the device.

24 21. Because of the newly-disclosed Security Vulnerabilities, it is possible for hackers to
25 use malicious software to gain access to sensitive data that is supposed to be protected by the
26

27 ³ https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/ (last visited January 4,
28 2018).

1 kernel, such as passwords, social security numbers, credit card and banking information, and
2 photographs. Significantly, unlike ordinary malware, which runs like applications, hackers
3 exploiting these kernel defects cannot be seen by antivirus software.⁴

4 22. As detailed below, the firmware and software patches to protect against the
5 Meltdown and Spectre techniques are wholly inadequate to eliminate the Security Vulnerabilities
6 that exist as a result of the defect in Apple Processors. The firmware and software “fixes” for the
7 Meltdown technique are expected to reduce processor speed by between 5 and 30%, with some
8 sources predicting the possibility of an even greater slowdown. There is no complete firmware or
9 software patch to fully protect against the Spectre technique at this time, and it is not clear whether
10 any of the patches necessary to fix Spectre will slow processors.

11 **The Defective Apple Processor’s Security Vulnerabilities:**

12 **The “Meltdown” Technique:**

13 23. Meltdown is the name given to an exploitation technique known as CVE-2017-5754
14 or “rogue data cache load.”

15 24. The Meltdown technique can enable a user process to read kernel memory, and
16 Apple admitted that its analysis suggests that it has the most potential to be exploited.

17 25. Apple claims it recently released updates for iDevices to protect against the
18 Meltdown technique without affecting the speed of the devices.

19 26. However, Apple provided no details regarding what iDevices it tested or how those
20 tests were conducted, and experts claim that processor slowdown is unavoidable given the way the
21 Meltdown patch works.

22 **The “Spectre” Techniques:**

23 27. Spectre is a name covering two different exploitation techniques known as CVE-
24 2017-5753 or “bounds check bypass,” and CVE-2017-5715 or “branch target injection.” These
25
26

27 ⁴ [http://nymag.com/selectall/2018/01/intel-chip-security-flaw-meltdown-spectre-what-to-know-](http://nymag.com/selectall/2018/01/intel-chip-security-flaw-meltdown-spectre-what-to-know-explainer.html)
28 [explainer.html](http://nymag.com/selectall/2018/01/intel-chip-security-flaw-meltdown-spectre-what-to-know-explainer.html) (last visited January 8, 2018).

1 techniques potentially make items in kernel memory available to user processes by taking
2 advantage of a delay in the time it may take the CPU to check the validity of a memory access call.

3 28. Although Apple claims that the Spectre techniques are difficult to exploit, even by
4 an application running locally on an iDevice, Apple did not disclose the likelihood of a successful
5 Spectre attack or how a user could prevent against such an attack. Apple did admit that the Spectre
6 techniques could be exploited in JavaScript running in a web browser and that it would release an
7 update for Safari on iOS to *mitigate* the Spectre exploitation techniques. Apple's statement
8 suggests that it cannot completely eliminate the Spectre exploitation techniques.

9 29. As with Meltdown, it is unlikely that an antivirus program will detect attacks using
10 the Spectre techniques.

11 **Apple's Knowledge of the Security Vulnerabilities:**

12 30. Based upon information and belief, Apple has long known of the Security
13 Vulnerabilities, but has done nothing about them until recently. On January 4, 2018, *Morningstar*
14 reported, in an article titled, "Intel Struggled With Securities Flaws for Months," that:

15 On June 1 last year, a member of Google's Project Zero security team notified Intel
16 and other chip makers of the vulnerabilities. Even with the lead time, Intel and
17 others are still trying to plug the security gaps. One issue is getting security updates
18 to billions of devices. Another is that some security patches could slow
19 performance, as the flaws affect chip features designed to speed up processors.⁵

20 31. ARM Holdings PLC, the company that licenses the ARM architecture to Apple,
21 admits that it was notified of the Security Vulnerabilities in June, 2017 by Google's Project Zero
22 and that it immediately notified its architecture licensees (presumably, including Apple) who create
23 their own processor designs of the Security Vulnerabilities.

24 32. In fact, Apple either knew, or should have known, of the Security Vulnerabilities at
25 least throughout the Class Period (defined below). Had Apple been performing proper tests and
26 security checks of its Apple Processors, the Security Vulnerabilities would have been evident. No
27 fewer than three independent teams working separately (teams from Google Project Zero, Cyberus

28 ⁵ <http://news.morningstar.com/all/dow-jones/us-markets/201801049039/intel-wrestled-with-chip-flaws-for-months.aspx> (last visited January 4, 2018).

1 Technology, and the Graz University of Technology) were able to discover Meltdown, and two
2 independent teams (from Google Project Zero and a group of universities) were able to discover
3 Spectre.⁶ Apple, with its access to proprietary information, was in a much better position to
4 discover the Security Vulnerabilities than independent researchers. And, as the iDevices
5 containing the defective Apple Processors were at the center of its business, it had both the
6 obligation and motivation to do so.

7 33. Nonetheless, Apple has continued and continues to sell iDevices containing the
8 defective Apple Processors to this day. As a result, Plaintiffs and Class members have been
9 needlessly harmed.

10 34. The position in which this leaves consumers is clear. They have iDevices using
11 Apple Processors that are slower and more vulnerable to attacks by hackers than what consumers
12 bargained for. They have iDevices incorporating Apple Processors that are not adequate for their
13 ordinary purpose. Plaintiffs and other Class members would not have purchased iDevices, or
14 would not have paid as much for them, had they known the truth about the Security Vulnerabilities
15 to the Apple Processors.

16 **CLASS ALLEGATIONS**

17 35. Plaintiffs bring this action as a class action on behalf of themselves and all others
18 similarly situated for the purpose of asserting claims alleged in this Complaint on a common basis.
19 Plaintiffs' proposed classes are defined under Federal Rules of Civil Procedure 23(b)(2) and (3).
20 Plaintiffs propose to act as representatives of the following Nationwide Class ("Class") comprised
21 of all persons who reside and purchased or leased their iDevices in the United States at any time
22 since 2007 (the "Class Period").⁷

23 36. Plaintiffs also bring this action on behalf of two sub-classes: the New Hampshire
24 Sub-Class, comprised of all Class members who resided in New Hampshire when they purchased
25

26 ⁶ <https://spectreattack.com/#faq-fix> (last visited January 8, 2108).

27 ⁷ Tolling would apply to any applicable statutes of limitations because Plaintiffs and
28 proposed Class members could not have discovered the Security Vulnerabilities until they were
disclosed by Apple.

1 or leased iDevices or who purchased or leased iDevices in New Hampshire; and the New York
2 Sub-Class, comprised of all Class members who resided in New York when they purchased or
3 leased iDevices or who purchased or leased iDevices in New York. (Collectively, the Class and the
4 Sub-Classes are referred to as the “Classes”).

5 37. Excluded from the Classes are Apple; any person, firm, trust, corporation, officer,
6 director, or other individual or entity in which Apple has a controlling interest or which is related to
7 or affiliated with Apple; and the legal representatives, agents, affiliates, heirs, successors-in-
8 interest, or assigns of each such excluded party.

9 38. The Classes for whose benefit this action is brought are so numerous and
10 geographically dispersed that joinder of all members is impractical.

11 39. Plaintiffs are unable to state the exact number of members of the Classes without
12 discovery of Apple’s records but, on information and belief, allege that the Class members number
13 in the millions.

14 40. Plaintiffs are typical of the members of the Classes in that their claims are based on
15 the exact same facts and legal theories as the claims of all other Class members.

16 41. There are questions of law and fact common to the Classes which predominate over
17 any questions affecting only individual members. The common questions of law and fact affecting
18 the rights of all members of the Classes include the following:

- 19 a. whether Defendant’s Apple Processors are defective;
- 20 b. whether Defendant’s Apple Processors are vulnerable to the Meltdown
21 techniques;
- 22 c. whether Defendant’s Apple Processors are vulnerable to the Spectre
23 techniques;
- 24 d. whether the remedies to eliminate or mitigate the Meltdown and Spectre
25 techniques slow down Apple Processors;
- 26 e. whether any slowdown to Apple Processors is material;
- 27 f. whether the remedies to eliminate or mitigate the Meltdown and Spectre
28 techniques are effective;

- 1 g. when Defendant knew of the Security Vulnerabilities in the Apple
- 2 Processors;
- 3 h. whether Defendant violated consumer protection laws by selling or leasing
- 4 iDevices containing the defective Apple Processors;
- 5 i. whether Defendant breached any warranties in connection with the sale or
- 6 lease of the iDevices containing the defective Apple Processors;
- 7 j. whether Plaintiffs are entitled to injunctive relief; and
- 8 k. the appropriate measure and amount of compensation for Plaintiffs and the
- 9 Classes.

10 42. Each of these common questions of law and fact is identical for each and every
11 member of the Classes.

12 43. Plaintiffs are members of the Classes they seek to represent, and their claims arise
13 from the same factual and legal basis as those of the other members of the Classes. Plaintiffs assert
14 the same legal theories as do all members of the Classes.

15 44. Plaintiffs will thoroughly and adequately protect the interests of the Classes, having
16 obtained qualified and competent legal counsel to represent themselves and those similarly situated.

17 45. The prosecution of separate actions by individual members of the Classes would
18 create a risk of inconsistent adjudications and would cause needless expenditure of judicial
19 resources, and as such prosecution on a Class basis is superior to other methods of adjudication.

20 **COUNT I**
21 **Breach of Implied Warranty**
22 **(Individually and on Behalf of the Classes)**

23 46. Plaintiffs incorporate by reference paragraphs 1 through 45 above as if fully set forth
24 herein.

25 47. This claim is asserted on behalf of Plaintiffs and the Classes.

26 48. Defendant is a “merchant” and the iDevices are “goods” as defined under the
27 Uniform Commercial Code.

28

1 49. Pursuant to U.C.C. § 2-314, an implied warranty that goods are merchantable is
2 implied in every contract for a sale of goods. Defendant impliedly warranted that the iDevices
3 were of a merchantable quality.

4 50. Defendant breached the implied warranty of merchantability because the iDevices
5 contain defective Apple Processors and were and are not of a merchantable quality due to the
6 Security Vulnerabilities and the associated problems and failures in the Apple Processors caused by
7 the Security Vulnerabilities.

8 51. Plaintiffs' and each Class member's interactions with Defendant suffice to create
9 privity of contract between Plaintiffs and all other members of the Classes, on the one hand, and
10 Defendant, on the other hand; however, privity of contract need not be established nor is it required
11 because Plaintiffs and the absent Class members are intended third-party beneficiaries of contracts
12 between Defendant and its resellers, authorized dealers, and, specifically, of Defendant's implied
13 warranties.

14 52. Defendant's resellers, dealers, and distributors are intermediaries between
15 Defendant and consumers. These intermediaries sell iDevices containing Apple Processors to
16 consumers and are not, themselves, consumers of Apple Processors, and therefore have no rights
17 against Defendant with respect to Plaintiffs' and all other Class members' purchases of iDevices.
18 Defendant's warranties were designed to influence consumers who purchased iDevices.

19 **COUNT II**
20 **Breach of Express Warranty**
(On Behalf of Plaintiffs and the Classes)

21 53. Plaintiffs incorporate by reference paragraphs 1 through 45 above as if fully set forth
22 herein.

23 54. This claim is asserted individually and on behalf of Plaintiffs and the Classes.

24 55. Pursuant to U.C.C. § 2-313, an affirmation of fact, promise, or description made by
25 the seller to the buyer which relates to the goods and becomes a part of the basis of the bargain
26 creates an express warranty that the goods will conform to the affirmation, promise, or description.

27 56. Defendant is a "merchant" and the iDevices are "goods" within the meaning of the
28 U.C.C.

1 57. Defendant markets iDevices touting the increase in speed in its latest Apple
2 processor. After implementation of a patch necessary to protect against the Security
3 Vulnerabilities, the speed increases are not as represented.

4 58. Plaintiffs and other Class members are the intended recipients of Apple's express
5 warranties about the quality and nature of the iDevices containing the Apple Processors, including
6 the speed and security of those iDevices. Plaintiffs and the other Class members are also intended
7 third-party beneficiaries of contracts between Defendant and its resellers, authorized dealers, and
8 specifically, of Defendant's express warranties.

9 59. As a direct and proximate result of Defendant's breach of express warranties,
10 Plaintiffs and all other Class members have suffered damages, injury in fact, and ascertainable loss
11 in an amount to be determined at trial, including but not limited to repair and replacement costs,
12 monetary losses associated with the slow processor speed, diminished value of their iDevices, and
13 loss of use of or access to their iDevices.

14 **COUNT III**
15 **Negligence**
16 **(Individually and On Behalf of the Classes)**

17 60. Plaintiffs incorporate by reference paragraphs 1 through 45 above as if fully set forth
18 herein.

19 61. This claim is asserted individually and on behalf of Plaintiffs and the Classes.

20 62. Defendant Apple owed a duty of care to Plaintiffs and Class members, arising from
21 the sensitivity of the information stored on iDevices and the foreseeability of the Apple Processor's
22 data safety shortcomings resulting in an intrusion, to exercise reasonable care in safeguarding
23 sensitive personal information. It also had a duty of care to ensure that Apple Processors would
24 function at the quality and speed levels it represented. This duty included, among other things,
25 designing, maintaining, monitoring, and testing its processors, to ensure that Class members' data
26 and computers were adequately secured and that the processors would function as promised.

27 63. Defendant Apple owed a duty to Class members to implement processes that would
28 detect a major defect in a timely manner.

1 unfair and deceptive practices. Thus, it would be unjust or inequitable for Defendant to retain the
2 benefit without restitution to Plaintiffs and the other members of the Classes.

3 **COUNT V**

4 **Violations of New Hampshire's Consumer Protection Act,
N.H. Rev. Stat. Ann. § 358-A, *et seq.***

5 **(Plaintiff Bartling, Individually and on behalf of the proposed New Hampshire Sub-Class)**

6 75. Plaintiffs incorporate by reference paragraphs 1 through 45 above as if fully set forth
7 herein.

8 76. Apple has represented to Plaintiff Bartling and members of the New Hampshire
9 Sub-Class that its iDevices contain Apple Processors that have characteristics, uses, and benefits
10 that they do not have, in violation of RSA § 358-A:2(V).

11 77. Apple has also represented to Plaintiff Bartling and members of the New Hampshire
12 Sub-Class that its iDevices contained Apple Processors that were of a particular standard, quality or
13 grade which they were not, in violation of RSA § 358- A:2(VII).

14 78. In addition, Plaintiff Bartling and the New Hampshire Sub-Class members have
15 suffered injury in fact and lost money or property as a result of unfair competition and deceptive
16 acts by Apple, as Plaintiff and the New Hampshire Sub-Class members purchased iDevices
17 containing Apple Processors which they otherwise would not have been purchased, or paid more
18 for the iDevices than they would have paid if Apple had not made misrepresentations and/or
19 concealed or omitted material information about the quality and characteristics of the Apple
20 Processors, including the processors' speed and security.

21 79. Plaintiff Bartling and the New Hampshire Sub-Class members relied upon Apple to
22 disclose all pertinent information about the Apple Processors.

23 80. The actions of Apple, as complained of herein, constitute unfair and deceptive
24 practices committed in violation of the New Hampshire Consumer Protection Act.

25 81. Plaintiff Bartling and the New Hampshire Sub-Class members have suffered
26 damages as a result of the conduct of Apple, because Plaintiff and the New Hampshire Sub-Class
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1 members were misled into purchasing iDevices which were not what Apple represented them to be
2 or paying more for the iDevices containing Apple Processors than they otherwise would have.

3 82. Apple was aware, or by the exercise of reasonable care should have been aware, that
4 the representations detailed herein were untrue or misleading. Apple was also aware, or by the
5 exercise of reasonable care should have been aware, that the concealments and omissions detailed
6 herein should have been timely disclosed to consumers. Apple was also aware, or by the exercise
7 of reasonable care should have been aware, that it was engaging in unfair or deceptive acts or
8 practices.

9 83. Plaintiff Bartling and the members of the New Hampshire Sub-Class have each been
10 directly and proximately injured by the conduct of the Defendant, including by overpaying for the
11 iDevices containing Apple Processors that they would not otherwise have purchased, being
12 exposed to security and processor slow down risks.

13 84. As a result of the conduct of Apple, as alleged herein, Plaintiff Bartling and the New
14 Hampshire Sub-Class should be awarded actual damages, restitution, and punitive damages
15 pursuant to N.H. Rev. Stat. Ann. § 358-A:10(I), and any other relief the Court deems appropriate.

16 **COUNT VI**
17 **Violation of New York General Business Law § 349**
(Plaintiff Olson, Individually and on behalf of the New York Sub-Class)

18 85. Plaintiffs incorporate by reference paragraphs 1 through 45 above as if set forth fully
19 herein.

20 86. New York General Business Law (“GBL”) § 349(a) provides that “deceptive acts or
21 practices in the conduct of any business, trade or commerce or in the furnishing of any service in
22 this state are hereby declared unlawful.”

23 87. The conduct of Defendant alleged herein violates GBL § 349 in that Defendant
24 engaged in the unfair and deceptive practices described herein, which included representing to the
25 consuming public, including Plaintiff Olson and the New York Sub-Class, that Apple Processors
26
27

28

1 have certain speeds and characteristics that they do not, and failing to disclose that the Apple
2 Processors were defective exposing them to the Security Vulnerabilities and slow-down risks.

3 88. Defendant's acts and practices described above are likely to mislead a reasonable
4 consumer acting reasonably under the circumstances.

5 89. Defendant has willfully and knowingly violated GBL § 349 because, in order to
6 increase its own profits, Defendant intentionally engaged in deceptive and false advertising,
7 misrepresentations and omission of material facts and/or deceptive acts of practices regarding its
8 iDevices and Apple Processors as discussed above.

9 90. As a result of Defendant's deceptive and misleading acts or practices, Plaintiff
10 Olson and the other members of the New York Sub-Class have been injured because they
11 purchased Defendant's iDevices without full disclosure of the material facts discussed above.
12

13 91. As a result of Defendant's conduct in violation of GBL § 349, Plaintiff Olson and
14 the other members of the New York Sub-Class have been injured as alleged herein in amounts to be
15 proven at trial because if Defendant had disclosed the information discussed above about the
16 defective Apple Processors in the iDevices and otherwise been truthful about their security and
17 slowdown risks, they would not have purchased or paid as much for Defendant's iDevices. As a
18 result, pursuant to GBL § 349, Plaintiff Olson and the New York Sub-Class are entitled to make
19 claims against Defendant for actual or statutory damages to be determined at trial, but for not less
20 than fifty (50) dollars per New York Sub-Class member, such damages to be trebled up to one
21 thousand dollars.
22

23 92. Additionally, pursuant to GBL § 349, Plaintiff Olson and the New York Sub-Class
24 make claims for attorneys' fees, costs, and injunctive relief requiring Defendant to adequately
25 disclose the omitted information and remedy the Security Vulnerabilities described above.
26
27
28

REQUESTS FOR RELIEF

1 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against
2 Defendant Apple as follows:

- 3 a. permanently enjoining Apple from engaging in the wrongful conduct complained of
- 4 herein;
- 5 b. certifying the Nationwide Class or, in the alternative, the New Hampshire and New
- 6 York Sub-Classes as defined herein, and appointing Plaintiffs and their Counsel to
- 7 represent the Nationwide Class, the New Hampshire Sub-Class and the New York
- 8 Sub-Class;
- 9 c. awarding actual damages, consequential damages, incidental damages, statutory
- 10 damages, punitive damages, pre- and post-judgment interest, litigation expenses and
- 11 court costs in an amount to be determined at trial;
- 12 d. awarding Plaintiffs and the Classes their reasonable attorneys’ fees and costs; and
- 13 e. granting such other and further relief as the Court may deem just and proper.
- 14

DEMAND FOR TRIAL BY JURY

15 Plaintiffs hereby demand a trial by jury.

16 DATED: January 8, 2018

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
RACHELE R. RICKERT
MARISA C. LIVESAY**

/s/ Rachele R. Rickert

RACHELE R. RICKERT

750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
GREGORY M. NESPOLE
JANINE L. POLLACK
RANDALL S. NEWMAN
KATE M. McGUIRE
270 Madison Avenue
New York, NY 10016
Telephone: 212/545-4600
Facsimile: 212/545-4677**

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APPLE CHIP/24366

Counsel for Plaintiffs