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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 VICKY MALDONADO AND JUSTIN CARTER,
20 individually and on behalf of themselves and all
others similarly situated,

21 Plaintiffs,

22 v.

23 APPLE INC., APPECARE SERVICE
24 COMPANY, INC., AND APPLE CSC, INC.,

25 Defendants.
26
27
28

No. 3:16-cv-04067-WHO

Related Case:
English v. Apple Inc. et al.
Case No. 3:14-cv-01619-WHO

FIRST AMENDED COMPLAINT

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I. INTRODUCTION

1
2 1. When a company promises something, it must deliver it.

3 2. Defendants, in their written contracts, promised three distinct levels of warranty
4 care. First, in basic warranty situations, Defendants promised to repair or replace electronic
5 devices with new or “serviceable used” parts or devices. Second, with optional extended
6 warranties Defendants promised to use new or “refurbished” parts when repairing covered devices.
7 Third, in their optional extended warranties, Defendants promised an even higher level of care:
8 parts or devices that were new or “equivalent to new in performance and reliability” would be used
9 to repair or replace covered devices.

10 3. In Apple’s limited warranty it promises to replace electronic devices with “new or
11 previously used parts.” In their AppleCare Protection Plan, Defendants promised to exchange
12 unrepairable products with replacement devices that are “new or equivalent to new in performance
13 and reliability.” Consumers pay an additional fee for this protection. For AppleCare+, for which
14 consumers pay even more, Defendants also provide they will replace or repair products with
15 devices or parts that are “new or equivalent to new in performance and reliability.”

16 4. In handling their warranty claims, however, Defendants do not honor these
17 promises. Notwithstanding the different contract language and greater price paid by customers,
18 Defendants equate used, which includes refurbished and remanufactured, with “equivalent to new,”
19 and provide consumers with devices repaired with or replaced by devices made from previously
20 used parts.

21 5. When companies purposely choose different words to explain differences in
22 treatment and charge customers a premium for enhanced benefits, the plain meaning of words—
23 and differences between them—must control. This is especially so where the contract was written
24 by Defendants and offered on a “take it or leave it” basis. Treating “equivalent to new,”
25 “reconditioned,” “refurbished,” and “used” as interchangeable ignores the plain meaning of the
26 terms, the intent behind Defendants’ word choices, and that the affected consumers are those who
27 paid more for better coverage.

28

1 13. This Court has personal jurisdiction over Plaintiffs because they submit to this
2 Court's jurisdiction.

3 14. This Court has personal jurisdiction over Defendant Apple because it is a California
4 corporation, its principal place of business is in California, and it has conducted and continues to
5 conduct business in California.

6 15. This Court has personal jurisdiction over AppleCare Service Company and its "dba"
7 entity Apple CSC ("collectively "AppleCare Service") because their principal place of business is
8 in California, and they have conducted and continue to conduct business in the State of California.

9 16. Venue is proper in this District under 28 U.S.C. § 1391 because the events that gave
10 rise to the claims occurred in substantial part in this District.

11 17. Defendants developed and determined the language and terms used in the service
12 contracts and warranties that give rise to this action in California.

13 18. All marketing decisions related to Defendants' warranties and service contracts
14 were made in California.

15 19. All policies and procedures related to Defendants' warranties and service contracts
16 were made in California, including claims procedures and handling.

17 **IV. CHOICE OF LAW**

18 20. California law governs the substantive legal issues in this matter. AppleCare and
19 AppleCare+ provide that "the laws of the State of California govern [AppleCare/AppleCare+]
20 Plans purchased in the United States."

21 21. The policies and practices underlying the wrongful conduct alleged herein were
22 developed and implemented in California.

23 **V. FACTS**

24 **A. Apple Products**

25 22. Apple designs, manufactures and markets mobile communication and media
26 devices, personal computers, and portable digital music players, and sells a variety of related
27 software, services, accessories, networking solutions, and third-party digital content and
28 applications. Apple's products and services include iPhone®, iPad®, Mac®, iPod®, Apple Watch®,

1 Apple TV[®], a portfolio of consumer and professional software applications, iOS, OS X[®] and
2 watchOS[™] operating systems, iCloud[®], Apple Pay[®] and a variety of accessory, service and support
3 offerings.

4 23. iPhone is Apple's line of smartphones based on its iOS operating system. The
5 iPhone was first released in 2007. iPhone includes Siri[®], a voice-activated intelligent assistant, and
6 Apple Pay, Touch ID[™], and 3D Touch on qualifying devices. In September 2016, Apple
7 introduced iPhone 7 and 7 Plus, featuring an improved camera, longer battery life, and a water and
8 dust resistant design. iPhone works with the iTunes Store, App Store, and iBooks Store for
9 purchasing, organizing and playing digital content and apps. iPhone is compatible with both Mac
10 and Windows personal computers and Apple's iCloud services, which provide synchronization
11 across users' devices.

12 24. iPad is Apple's line of multi-purpose tablets based on Apple's iOS operating
13 system, which includes iPad Air[®] and iPad mini[™]. iPad includes Siri and also includes Touch ID
14 on qualifying devices. In September 2015, Apple released the iPad Pro[™], featuring a 12.9-inch
15 Retina[®] display. iPad works with the iTunes Store, App Store and iBooks Store for purchasing,
16 organizing and playing digital content and apps, iPad is compatible with both Mac and Windows
17 personal computers and Apple's iCloud services.

18 25. iPod is Apple's line of portable media players, which Apple first released on
19 October 23, 2001. Since the initial launch, Apple had released multiple versions of the iPod,
20 including the iPod touch, which was released on September 5, 2007. The iPod touch looks similar
21 to an iPhone and shares many of the same capabilities, but without cellular capabilities. Apple
22 sells the iPad touch, nano, and shuffle and previously sold the classic. 25. AppleCare[®] offers a
23 range of support options for Apple's customers. These include assistance that is built into software
24 products, printed and electronic product manuals, online support including comprehensive product
25 information as well as technical assistance, the AppleCare Protection Plan ("AppleCare"), and the
26 AppleCare+ Protection Plan ("AppleCare+"). AppleCare is a fee-based service that typically
27 extends the service coverage of phone support, hardware repairs and dedicated web-based support
28 resources for Apple devices. Apple Care+ is a fee-based service offering additional coverage

1 under some circumstances for instances of accidental damage in addition to the services offered by
2 AppleCare.

3 26. From 2009 to the present, Apple, through its subsidiary AppleCare Service, has sold
4 AppleCare and AppleCare+ (the “Apple Contracts”), which can be purchased with the Device, or
5 within a set time period after purchase,

6 27. AppleCare+ can also be purchased as part of Apple’s “iPhone Upgrade Program,”
7 which allows a user to pay a monthly fee to receive annual iPhone upgrades and AppleCare+.

8 **B. Apple’s Limited Warranty**

9 28. Apple iPhones, iPods, and iPads (“Devices”) come with a one-year limited warranty
10 (the “Limited Warranty”), covering “defects in materials and workmanship.”

11 29. The Limited Warranty states that when submitting a claim under the warranty,
12 “Apple will, at its option:

- 13 (i) repair the Apple Product using new or previously used parts
14 that are equivalent to new in performance and reliability,
15 (ii) replace the Apple Product with the same model (or with your
16 consent a product that has similar functionality) formed from
17 new and/or previously used parts that are equivalent to new in
18 performance and reliability, or
19 (iii) exchange the Apple Product for a refund of your purchase
20 price.

21 30. The Limited Warranty specifies that that when repairing or replacing a Device,
22 Apple may use “used parts.”

23 31. Apple has referenced “used parts” in its Limited Warranty since at least 2009.

24 32. The Limited Warranty is not at issue in this litigation, but the precision of its
25 language regarding a promise of used parts is.

26 **C. AppleCare Promises to Replace with New or Equivalent to New Devices**

27 33. AppleCare is a two-year warranty or service contract that covers hardware,
28 specifically defects in “materials and workmanship” and technical support, including software
support.

1 34. From 2009 to 2011, AppleCare could be purchased to cover iPhones, iPads, and
2 iPods.

3 35. From 2012 to 2013, AppleCare could be purchased for iPods, but not iPhones or
4 iPads, and in 2014 AppleCare could no longer be purchased for iPods.

5 36. AppleCare could be purchased within the first year of owning the Device.

6 37. In purchasing AppleCare, a consumer enters a service contract with Apple’s wholly
7 owned subsidiary, AppleCare Service, with Apple as the contract administrator.

8 38. When submitting a claim under the AppleCare, the 2013 version of the contract
9 provides that “Apple will either (a) repair the defect at no charge, using new or refurbished parts
10 that are equivalent to new in performance and reliability, or (b) exchange the [Device] with a
11 replacement product that is new or equivalent to new in performance and reliability.”

12 39. AppleCare specifically states that if a Device is *repaired* under the contract
13 Defendants may use *refurbished* parts.

14 40. Conversely, AppleCare promises to provide new or “equivalent to new in
15 performance and reliability” if a Device is replaced

16 41. So a consumer pays more for AppleCare and is promised more than what is
17 contained in Apple’s Limited Warranty, which allows Apple to repair with or provide a
18 replacement device containing “used parts.”

19 42. When replacing the Device, “new or equivalent to new in performance and
20 reliability” cannot mean refurbished because Apple specifically agreed that repairs would use
21 refurbished parts but left the word refurbished out of its replacement provision.

22 43. Although the language of the AppleCare contract has varied slightly from 2009 to
23 2013, since 2009 AppleCare has promised to replace Devices with products that are “new or
24 equivalent to new in performance and reliability.”

25 44. Similarly, since 2009 AppleCare has stated that repairs may be made with
26 “refurbished” or “serviceable used parts.”

27 45. Defendants charged these prices for AppleCare: \$69 for iPhones, \$99 for iPads, \$59
28 for the iPod touch and classic, and \$39 for the iPod nano and shuffle.

1 **A. AppleCare+ Promises to Replace or Repair with New or Equivalent to New Devices**

2 46. Apple unveiled AppleCare+ in October 2011.

3 47. From 2012 to the present, AppleCare+ is the only service contract Apple sells to
4 cover iPhones and iPads, adding coverage for iPods in late 2013.

5 48. AppleCare+ can be purchased with the Device or within sixty days of the original
6 purchase. Earlier iterations of AppleCare+ had to be purchased within thirty days of the original
7 purchase date.

8 49. AppleCare+ is a two-year warranty or service contract that covers both hardware
9 and accidental damage.

10 50. In purchasing AppleCare+, a consumer enters a service contract with Apple's
11 wholly owned subsidiary, AppleCare Service, with Apple as the contract administrator.

12 51. From the time it was unveiled until September 10, 2013, AppleCare+ provided
13 coverage exclusively for iPhones and iPads.

14 52. Under that coverage, if the iPhone or iPad had a "defect in material or
15 workmanship," Defendants promised to "repair the defect at no charge, using new or refurbished
16 parts that are equivalent to new in performance and reliability" or "exchange the Covered
17 [iPhone/iPad] with a replacement product that is new or equivalent to new in performance and
18 reliability, and is at least functionally equivalent to the original product."

19 53. If the iPhone or iPad suffered accidental damage, Defendants promised to "repair
20 the defect using new or refurbished parts that are equivalent to new in performance and reliability"
21 or "exchange the Covered [iPhone/iPad] with a replacement product that is new or equivalent to
22 new in performance and reliability, and is at least functionally equivalent to the original product."

23 54. If consumers were making a claim under the accidental damage provision, they had
24 to pay a \$49 "service fee" to receive a replacement device or repair.

25 55.

26 56. Before September 10, 2013, Defendants specifically stated that if they repair a
27 Device protected by AppleCare+, they may use refurbished parts.

28

1 57. Conversely, Defendants promised to replace iPhones and iPads with products that
2 are “new and equivalent to new in performance and reliability.”

3 58. When replacing the iPhone or iPad, “new or equivalent to new in performance and
4 reliability” cannot mean refurbished because Defendants specifically agreed that repairs would use
5 refurbished parts but left the word refurbished out of its replacement provision.

6 59. Starting on September 10, 2013, Defendants expanded AppleCare+ to include iPods
7 and other products.

8 60. Defendants also changed the terms of AppleCare+ on September 10, 2013.

9 61. Defendants continued to represent that they would repair accidental damage “using
10 new or refurbished parts that are equivalent to new in performance and reliability.”

11 62. Defendants also continued to promise they would exchange Devices under both its
12 hardware and accidental damage coverage with “with a replacement product that is new or
13 equivalent to new in performance and reliability.”

14 63. But, Defendants changed its AppleCare+ warranty for hardware repairs, removing
15 any reference to refurbished parts and promising to “repair the defect at no charge, using new parts
16 or parts that are equivalent to new in performance and reliability.”

17 64. If consumers are making a claim under the accidental damage provision, they must
18 pay a “service fee,” ranging from \$29 to \$79, to receive a replacement device or repair.¹

19 65. While AppleCare+ has had different iterations since September 10, 2013, the repair
20 and replacement terms have remained the same.

21 66. Defendants have had three price points for AppleCare+: \$129 for current iPhones,
22 excluding the iPhone SE; \$99 for all other iPhones and all iPads; and \$59 for all iPods, which
23 includes the iPod Classic and Touch. AppleCare+ is also included in the price of the iPhone
24 Upgrade Program.

25
26
27
28 ¹ Defendants also specify that they will charge \$29 to replace a damaged screen.

1 **B. Replacement Devices**

2 67. While Defendants represent that they will replace the covered Devices with product
3 that is new or equivalent to new, Defendants do not always honor this promise.

4 68. When a Device covered by the Apple Contracts cannot be repaired, Defendants will
5 replace the Device with one they represent to be new or equivalent to new in performance and
6 reliability.

7 69. The Device will not come in the original packaging, but rather will come in a plain
8 box with a label identifying the product name, storage capacity, and color. The label will say, for
9 example, “iPhone 5, GSM, 16GB, White.”

10 70. While some Devices will be new, upon information and belief the majority of
11 replacement Devices will contain used parts, which includes remanufactured or refurbished parts.

12 71. Because the Devices come in a plain boxes that do not state whether the Device is
13 new, refurbished, remanufactured, or used, consumers have no way of knowing whether the Device
14 they receive is actually new or contains used parts, which includes refurbished or remanufactured
15 parts.

16 72. When replacing a Device using the accidental damage coverage in AppleCare+,
17 consumers will also pay a “service charge” to receive one of these “plain box” Devices.

18 73. Defendants do not disclose in the Apple Contracts that replacement Devices will
19 contain refurbished, remanufactured, or used parts, but instead represent that the parts are new or
20 equivalent to new in performance and reliability.

21 74. By comparison, the Apple Contracts state that certain repairs may use refurbished
22 parts, indicating that “new or equivalent to new in performance and reliability” cannot mean
23 “refurbished.”

24 75. Defendants promised customers that purchased AppleCare+ on or after
25 September 10, 2013, that hardware repairs would also use parts that were “new or equivalent to
26 new in performance and reliability.”
27
28

1 76. While Defendants used new parts for some repairs, upon information and belief the
2 majority of AppleCare+ hardware repairs were made using used parts, including refurbished or
3 remanufactured parts.

4 77. Despite Defendants' use of used parts, they represent that the parts are new or
5 equivalent to new in performance and reliability.

6 **C. Refurbished, Remanufactured, or Used Parts Are Not New or Equivalent to New in**
7 **Performance and Reliability**

8 78. Used parts, including refurbished or remanufactured parts, can never be equivalent
9 to new parts in performance and reliability.

10 79. As a matter of basic engineering principles, as soon as an electronic part or product
11 is put into use, it degrades.

12 80. Once an electronic part or product is put in use it is subject to load conditions,
13 which includes operation of the device, humidity, dust, and shock (such as from dropping).

14 81. These load conditions cause degradation.

15 82. Every used, refurbished, or remanufactured electronic part or product has been
16 subject to load conditions.

17 83. Because of these load conditions, used, refurbished, or remanufactured parts can
18 never be "equivalent to new in performance and reliability."

19 84. Defendants have no way of knowing the load conditions a particular Device or part
20 has been subjected to and therefore cannot know whether used parts, including refurbished and
21 remanufactured parts, are "equivalent to new in performance and reliability."

22 **D. Plaintiffs**

23 85. Plaintiff Maldonado purchased a fourth generation iPad on September 8, 2013, for
24 \$829 (serial number DMPKN0FZF18G) from the Apple Store in First Colony Mall, in Sugarland,
25 Texas.

26 86. Along with the iPad, Maldonado purchased AppleCare+ for \$99.

27 87. On May 22, 2015, Maldonado took her iPad back to the First Colony Apple store
28 because it was constantly restarting and having hundreds of panics each day.

1 88. The Apple employee who assisted her suggested replacing the iPad under her
2 AppleCare+ hardware warranty.

3 89. The Apple employee took her original iPad and gave her a replacement iPad.

4 90.

5 91. Upon information and belief, the iPad Maldonado received was not new or
6 equivalent to new in performance and reliability, but refurbished, remanufactured, or contained
7 used parts.

8 92. Maldonado continued to have issues with the replacement iPad, as it would restart
9 several times a day.

10 93. Within a week, Maldonado took her replacement iPad to the First Colony Apple
11 Store.

12 94. An Apple employee again suggested the replacing the iPad under her AppleCare+
13 hardware warranty.

14 95. The Apple employee took her replacement iPad and gave her a second replacement
15 iPad.

16 96. Upon information and belief, the iPad Maldonado received was not new or
17 equivalent to new in performance and reliability, but refurbished, remanufactured, or contained
18 used parts.

19 97. Maldonado believed she was receiving iPads that were new or equivalent to new in
20 performance and reliability, based on the representations in her AppleCare+ contract.

21 98. Maldonado relied on Defendants' representations that she would receive a new or
22 equivalent to new Device when purchasing AppleCare+.

23 99. Had Maldonado known she would receive a refurbished, remanufactured, or used
24 replacement Device, she would not have purchased AppleCare+ or not have purchased it for the
25 contract price.

26 100. Plaintiff Carter purchased an iPhone6+, Gold 64GB (serial number
27 FK1NW29QG5QL) from the St. Johns Apple Store in Jacksonville, Florida on April 16, 2015 for
28 \$849.00.

1 101. Along with his iPhone, Carter purchased AppleCare+ for \$99.00. In all, Carter paid
2 \$1,014.36 for his iPhone6+ and AppleCare+ Warranty.

3 102. Sometime in January or February of 2016, Carter began to have issues with the
4 iPhone's battery. In July, he called AppleCare+ to report the continued battery issues and they sent
5 him a replacement iPhone6+ via Federal Express on July 11, 2016.

6 103. After using his first replacement device for a few months, Carter began
7 experiencing the same battery issues with his iPhone. In October 2016, he called AppleCare+,
8 explained the battery issues, and was told he would be getting a replacement device.

9 104. Carter received a second replacement iPhone6+ (serial number F9CSC0TNG5QL)
10 on October 28, 2016 via U.S. mail.

11 105. Upon information and belief, Carter's second replacement iPhone6+ is not new or
12 equivalent to new but refurbished, remanufactured, or used.

13 106. Before even opening the second iPhone6+, Carter had the phone professionally
14 inspected.

15 107. The second replacement iPhone6+ was bent out of the box.

16 108. The second replacement iPhone6+ also has dented and scratched internal parts and
17 components, including a dented loud speaker.

18 109. The rear camera on the second replacement iPhone6+ appears to have been removed
19 for inspection and/or service.

20 110. The rear camera flex cable had a hand engraved marking on it, resembling a "1."

21 111. The charging dock flex cable and headphone jack on second replacement iPhone6+
22 appear to have been replaced and/or serviced.

23 112. Carter briefly used this iPhone but continued to have battery issues.

24 113. Carter again called Apple and reported he was having ongoing battery issues with
25 his replacement device.

26 114. Carter received a third replacement iPhone6+ (serial number DTRSG0D5G5QL) on
27 November 4, 2016 via U.S. mail.

28

1 115. Upon information and belief, Carter's third replacement iPhone6+ is not new or
2 equivalent to new but refurbished, remanufactured, or used.

3 116. Carter once again had the iPhone6+ professionally inspected before opening the
4 box.

5 117. The third iPhone 6+ had similar issues to the second iPhone6+, in that it was
6 slightly bent out of the box and had a few small scratches on the interior of the device.

7 118. Because the third replacement iPhone6+ appeared to be refurbished or
8 remanufactured as well, he returned it to Apple.

9 119. Carter believed he was receiving iPhones that were new or equivalent to new in
10 performance and reliability, based on the representations in his AppleCare+ contracts.

11 120. Carter, when purchasing AppleCare+, understood from Defendants' representations
12 that he would receive a device that was new or equivalent to new in performance and reliability.

13 121. Had Carter known he would receive refurbished, remanufactured, or used
14 replacement Devices, he would not have purchased AppleCare+ or not have purchased it for the
15 contract price.

16
17 **VI. CLASS ACTION ALLEGATIONS**

18 122. Plaintiffs bring this action under Federal Rule of Civil Procedure 23(b)(2) and (b)(3)
19 individually and for this Class of similarly situated individuals:

20 All individuals who purchased AppleCare or AppleCare+ (either
21 directly or through the iPhone Upgrade Program) on or after
22 January 1, 2009, and received a replacement Device that contained
23 used parts, including refurbished or remanufactured parts, or who
24 purchased AppleCare+ on or after September 10, 2013, and had their
25 Device repaired under the hardware provision with used parts,
26 including refurbished or remanufactured parts.

27 123. Excluded from the Class are Apple, AppleCare Services, their co-conspirators,
28 officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries
or affiliated companies; class counsel and their employees; and the judicial officers and their
immediate family members and associated court staff assigned to this case, and all persons within

1 the third degree of relationship to any such persons. The class is ascertainable by objective criteria
2 and can be established (and notice accomplished) through Defendants' business records.

3 124. **Numerosity.** The Class is so numerous that joinder of all members is unfeasible
4 and not practical. Apple sells millions of Devices each year. In July 2016, Apple announced that,
5 since its debut, it had sold a billion iPhones alone. One website projected that Apple purchasers
6 spent \$7.3 million on AppleCare and AppleCare+ in 2015 alone.² Although the precise number of
7 Apple owners who purchased the Apple Contracts is unknown, a reasonable estimate based on
8 these projected sales figures indicates the number is at least in the hundreds of thousands. The
9 exact size of the Class is easily ascertainable, as each class member can be identified by using
10 Defendants' records. Plaintiffs are informed and believe that there are millions of Class members.

11 125. **Commonality and Predominance.** Questions of law and fact common to all Class
12 members exist and predominate over questions affecting only individual Class members, including,
13 *inter alia*:

- 14 a. Whether Defendants promised to replace the Class members' Devices with
15 Devices that did not contain used parts, including remanufactured or
16 refurbished parts;
- 17 b. Whether Defendants replaced the Class members' Devices with used,
18 remanufactured, or refurbished Devices;
- 19 c. Whether Defendants' promise to replace the Class members' Devices with
20 ones that were "equivalent to new" means that Defendants cannot use used
21 parts, including refurbished or remanufactured parts;
- 22 d. Whether Defendants satisfied their obligation to provide Class members' with
23 Devices or parts that were equivalent to new in performance and reliability;
- 24 e. Whether used, refurbished, or remanufactured parts can be equivalent to new
25 in performance and reliability;
- 26 f. Whether the word "refurbished" in the Apple Contracts means something
27 other than "equivalent to new in performance and reliability";
- 28 g. Whether Defendants breached their contracts with the Class members;

² Warranty Week, Apple's Warranty and AppleCare Programs, available at
<http://www.warrantyweek.com/archive/ww20151210.html>.

- 1 h. Whether Defendants violated Magnuson-Moss Warranty Act, 15 U.S.C. §
- 2 2301, *et seq.*;
- 3 i. Whether Defendants violated the Song Beverly Consumer Warranty Act, Cal.
- 4 Civ. Code § 1790, *et seq.*;
- 5 j. Whether Defendants violated the California Consumer Legal Remedies Act,
- 6 Cal. Civ. Code § 1750, *et seq.*;
- 7 k. Whether Defendants violated California’s False Advertising Law, Cal. Bus. &
- 8 Prof. Code § 17500; and
- 9 l. Whether Defendants violated California’s Unfair Competition Law, Cal. Bus.
- 10 & Prof. Code § 17200, *et seq.*

11 126. **Typicality.** Plaintiff’s claims are typical of the claims of the Class, as they arise out
12 of the same conduct of Defendants, involve the same legal theories, and challenge the same
13 practices of Defendants. Plaintiffs and all Class members have been subjected to the same
14 practices and hold the same rights, are all entitled to the same legal and equitable relief, and have
15 suffered the same impact and injury, and sustained similar damage by paying an amount for service
16 contracts that they would not have paid or greater than that which they would have paid had the use
17 of used parts been disclosed.

18 127. **Adequacy.** Plaintiffs and their counsel will fairly and adequately represent the
19 interests of the Class members. Plaintiffs have no interests antagonistic to, or in conflict with, the
20 interests of the other Class members, and they will zealously pursue their claims. Plaintiffs’
21 lawyers are highly experienced in the prosecution of consumer class actions and complex
22 commercial litigation, capable of providing the financial resources needed to litigate this matter to
23 conclusion, and have litigated other consumer rights matters in a class context.

24 128. **Superiority.** A class action is superior to all other available methods for fairly and
25 efficiently adjudicating the claims of Plaintiffs and the Class members. Plaintiffs and the Class
26 members—many of whom are unaware of their rights—have been harmed by Defendants’
27 misrepresentations. Litigating this case as a class action reduces the possibility of repetitious
28 litigation relating to Defendants’ wrongful actions and provides an efficient mechanism for
adjudication for Class members, whose claims are too small to warrant individual litigation.

1 145. The Apple Contracts are “service contracts” within the meaning of the Magnuson-
2 Moss Warranty Act, 15 U.S.C. § 2301(8), because they are each a “contract in writing to perform,
3 over a fixed period of time or for a specified duration, services relating to the maintenance or repair
4 (or both) of a consumer product.”

5 146. The Magnuson-Moss Warranty Act sets forth rules governing warranties “to
6 improve the adequacy of information available to consumers” and to “prevent deception.” 15
7 U.S.C. § 2302(a).

8 147. As written warranties, the Apple Contracts must provide “[t]he elements of the
9 warranty in words or phrases which would not mislead a reasonable, average consumer as to the
10 nature or scope of the warranty.” 15 U.S.C. § 2302(a)(13).

11 148. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer damaged by the
12 failure of a warrantor or service contractor to comply with a warranty or service contract.

13 149. AppleCare Services promised to replace the covered Devices with products that are
14 new or equivalent to new in performance and reliability but instead replaced them with Devices
15 containing used parts, including refurbished or remanufactured parts.

16 150. AppleCare Services specifically disclosed that it would use refurbished parts when
17 repairing the Devices, which would lead a reasonable consumer to believe that replacements would
18 not use refurbished, used, or remanufactured parts.

19 151. Apple Care Services’ representation, that it would use refurbished parts in repairs
20 but not replacements, was deceptive.

21 152. For AppleCare+ contracts purchased starting September 10, 2013, AppleCare
22 Services promised to perform hardware repairs “using new parts or parts that are equivalent to new
23 in performance and reliability.” Despite this representation, AppleCare Services utilized used
24 parts, including refurbished or remanufactured parts, when making hardware repairs.

25 153. AppleCare Services specifically disclosed they would use refurbished parts in
26 making accidental damages repairs, which would lead a reasonable consumer to believe that
27 warranty repairs would not use refurbished, used, or remanufactured parts.

28

1 161. Plaintiffs are “buyers” or “retail buyers” under Cal. Civ. Code § 1791(b), because
2 they are individuals who bought consumer goods.

3 162. The Devices are “consumer goods” under Cal. Civ. Code § 1791(a), because they
4 are products used or bought primarily for personal, family, or household purposes.

5 163. The Apple Contracts are “service contracts” under Cal. Civ. Code § 1791(o),
6 because they are written contracts to perform services relating to the maintenance or repair of a
7 consumer product.

8 164. As service contracts, the Apple Contracts must explain the steps AppleCare Services
9 will take to carry out its obligations under the contract. Cal. Civ. Code § 1794.4(c)(6).

10 165. AppleCare Services represented that it would replace covered Devices with new or
11 equivalent to new Devices, and for AppleCare+ purchased starting September 10, 2013, repair
12 hardware defects with new or equivalent to new parts.

13 166. AppleCare Services instead gave Plaintiffs and the Class replacement Devices with
14 refurbished, remanufactured, and used parts. AppleCare Services also repaired Devices covered by
15 AppleCare+ starting September 10, 2013, with refurbished, remanufactured, and used parts.

16 167. AppleCare Services failed to comply with its obligations under the Apple Contracts.
17 Cal. Civ. Code § 1794(a).

18 168. As a direct and proximate result of AppleCare Services’ failure to comply with the
19 Apple Contracts, Plaintiffs and the other Class members received goods whose defective condition
20 substantially impairs their value to Plaintiffs and the other Class members. Plaintiffs and the other
21 Class members have been damaged because of the diminished value of their Devices, the products’
22 malfunctioning, and the nonuse of their Devices.

23 169. Under Cal. Civ. Code § 1794(a) and (b), Plaintiffs and the other Class members are
24 entitled to damages and other legal and equitable relief, including, at their election, the right to
25 replacement of their Devices, reimbursement for the cost of their Devices, or the cost to repair their
26 Devices.

1 179. The use of refurbished, remanufactured, or refurbished parts in Plaintiffs' Devices
2 was material to Plaintiffs, as was Defendants' concealment of this conduct.

3 180. Had Plaintiffs and the other Class members known they would not receive new or
4 equivalent to new Devices and parts, they would not have purchased the Apple Contracts and/or
5 paid as much for them.

6 181. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and
7 its concealment of and failure to disclose the use of refurbished, remanufactured, or refurbished
8 parts in Plaintiffs' Devices.

9 182. Under Cal. Civ. Code § 1780(a)(1), Plaintiffs, individually and on behalf of the
10 other Class members, seek actual damages against Defendants for the harm caused by Defendants'
11 violations of the CLRA as alleged.

12 183. Plaintiffs seek an order enjoining Defendants' unfair or deceptive acts or practices
13 and restitution under Cal. Civ. Code § 1780(a)(2), (3).

14 184. Plaintiffs, individually and on behalf of the other Class members, seek punitive
15 damages against Defendants under Cal. Civ. Code § 1780(a)(4) because they willfully and
16 consciously disregarded of the rights of Plaintiffs and the Class. Defendants intentionally and
17 willfully concealed material facts that only they knew. Defendants' unlawful conduct constitutes
18 malice, oppression, and fraud warranting punitive damages under Cal. Civ. Code § 3294.

19 185. Plaintiffs, individually and on behalf of the other Class members, seek costs of
20 court, attorneys' fees under Cal. Civ. Code § 1780(e), and any other just and proper relief available
21 under the CLRA.

22 186. Plaintiff Maldonado, for herself and as a representative of the Class, including
23 Plaintiff Carter, sent a notice and demand over thirty days before suing, as specified by Cal. Civ.
24 Code § 1782(a), and Defendants have not offered a correction, repair, replacement, or remedy.
25 Nonetheless, Plaintiff Carter will send notice as specified by Cal. Civ. Code § 1782(a) to
26 Defendants.

COUNT V

**VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW
CAL. BUS. & PROF. CODE § 17500, *et seq.*
(Against All Defendants)**

187. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs.

188. Cal. Bus. & Prof. Code § 17500 makes it unlawful for a company to induce the public to enter into an obligation related to personal property with a statement made in advertising, marketing, or publication it knows is untrue or misleading, or with the exercise of reasonable care should know is untrue or misleading.

189. Defendants caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which, if exercising reasonable care, would have been known to Defendants to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

190. Defendants have violated Cal. Bus. & Prof. Code § 17500 because the misrepresentations and omissions regarding whether a consumer would receive new or equivalent to new Devices, as set forth, were material and likely to deceive a reasonable consumer.

191. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, because of Defendants' unfair, unlawful, and/or deceptive practices. In purchasing the Apple Contracts, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendants regarding the quality and source of the replacement Devices and AppleCare+ hardware repairs. Defendants' representations turned out not to be true because the replacement Devices and AppleCare+ hardware repair parts were not new or equivalent to new, but refurbished, remanufactured, or used. Had Plaintiffs and the other Class members known this, they would not have purchased the Apple Contracts and/or paid as much for them. Plaintiffs and the other Class members overpaid for their Apple Contracts and did not receive the benefit of their bargain.

1 192. All of the wrongful conduct alleged occurred, and continues to occur, in the conduct
2 of Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized course
3 of conduct that is ongoing, both in the state of California and nationwide.

4 193. Plaintiffs, individually and on behalf of the other Class members, request that this
5 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
6 their unfair, unlawful, or deceptive practices and to restore to Plaintiffs and the other Class
7 members any money Defendants acquired by unfair competition, via restitution or disgorgement,
8 and for any other just and proper relief.

9 **COUNT VI**

10 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**
11 **CAL. BUS. & PROF. CODE § 17200, et seq.**
(Against All Defendants)

12 194. Plaintiffs reallege and incorporate by reference the allegations in the preceding
13 paragraphs.

14 195. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et*
15 *seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business
16 act or practice and unfair, deceptive, untrue or misleading advertising.”

17 196. Defendants’ conduct violates the UCL. Defendants’ conduct violates the UCL in, at
18 a minimum, these ways:

- 19 a. By concealing from Plaintiffs and the Class members that the replacement
20 Devices and repair parts were refurbished, remanufactured, or used;
- 21 b. By marketing the Apple Contracts as providing new or equivalent to new
22 replacement Devices or repairs;
- 23 c. By instituting a business practice where used Devices and parts, including
24 refurbished and remanufactured Devices and parts, are given to consumers in
25 lieu of new or equivalent to new Devices and parts; and
- 26 d. By violating other California laws, including California laws governing false
27 or deceptive advertising and consumer protection.

28 197. Defendants’ misrepresentations and omissions caused Plaintiffs and the other Class
members to purchase or pay more for the Apple Contracts. Absent those misrepresentations and

1 omissions, Plaintiffs and the other Class members would not have purchased the Apple Contracts
2 or would not have purchased the Apple Contracts at the prices they paid.

3 198. Defendants have violated the UCL because the misrepresentations and omissions
4 regarding promises of new or equivalent to new Devices were material and likely to deceive a
5 reasonable consumer. Phone quality is important to consumers.³

6 199. Accordingly, Plaintiffs and the other Class members have suffered injury in fact,
7 including lost money and undesirable, defective merchandise, as a result of Defendants'
8 misrepresentations and omissions.

9 200. Plaintiffs seek to enjoin under Cal. Bus. & Prof. Code § 17203 further unlawful,
10 unfair, and fraudulent acts or practices by Defendants.

11 201. Plaintiffs, individually and on behalf of the other Class members, request that this
12 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
13 their unfair, unlawful, and/or deceptive practices; to restore to Plaintiffs and members of the Class
14 to the equipment they are entitled to as a matter of law; to restore, via restitution or disgorgement,
15 any monies Defendants acquired by unfair competition, as provided by Cal. Bus. & Prof. Code §§
16 17203 & 3345; and for such other relief as may be just and proper.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs, individually and for members of the Class, respectfully request
19 that the Court enter judgment in their favor and against Defendants, as follows:

20 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as
21 Class Counsel and Plaintiffs as class representatives;

22 B. An order temporarily and permanently enjoining Defendants from continuing the
23 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint, and
24 requiring Defendant to offer to replace, and, if accepted, replace at no cost, the Device of any class
25 member who received a Device or repair with used parts, including refurbished or remanufactured
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27 ³ Christopher Versace, *What Do Consumers Want In A New Smartphone?* Forbes (Aug. 21,
28 2013), <http://www.forbes.com/sites/chrisversace/2013/08/21/what-do-consumers-want-in-a-new-smartphone/#32558f5d47b3>.

1 parts, when entitled to a Device or parts that are new or equivalent to new in performance and
2 reliability;

3 C. An order declaring that under the Apple Contracts, Defendants cannot repair or
4 replace Devices with parts or Devices that are used or contain used parts, including refurbished and
5 remanufactured parts or Devices, where the contractual obligation requires new or equivalent to
6 new in performance and reliability;

7 D. Costs, restitution, damages, and/or disgorgement, each in an amount to be
8 determined;

9 E. Punitive damages;

10 F. A civil penalty of two times actual damages;

11 G. Pre- and post-judgment interest on any amounts awarded;

12 H. An award of costs and attorneys' fees where authorized by law; and

13 I. Such other or further relief as may be appropriate.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs demand a trial by jury on all issues so triable.
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DATED: November 14, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed electronically via the Court's ECF system, on November 14, 2016. Notice of electronic filing will be sent to all parties by operation of the Court's electronic filing system.

DATED: November 14, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Robert B. Carey

ROBERT B. CAREY

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