

1 MICHAEL MCSHANE (CA State Bar #127944)
2 **AUDET & PARTNERS, LLP**
3 711 Van Ness Ave., Suite 500
4 San Francisco, CA 94102
5 Telephone: (415) 568-2555
6 Facsimile: (415) 568-2556
7 mmcshane@audetlaw.com

8 *Attorneys for Plaintiffs*
9 (Additional Counsel Listed in Signature Block)

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

12 **PAUL ORSHAN, DEANNA NESS, KYE WEASNER, MARGARET HART, and MICHAEL WALKER, individually, and on behalf of all others similarly situated,**

13 **Plaintiffs,**

14 **v.**

15 **APPLE INC.,**

16 **Defendant.**

17 **Case No. 5:14-cv-5659 EJD**

18 **SECOND CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT:**

- 19 **(1) CALIFORNIA’S UNFAIR COMPETITION LAW (§ 17200);**
- 20 **(2) CALIFORNIA’S FALSE ADVERTISING LAW (§ 17500 ET SEQ.);**
- 21 **(3) CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT (§ 1750 ET SEQ.)**

22 **JURY TRIAL DEMANDED**

23 Plaintiffs Paul Orshan, Deanna Ness, Kye Weasner, Margaret Hart, and Michael Walker,
24 individually and on behalf of all others similarly situated (or collectively “Plaintiffs”), file this
25 class action against Defendant Apple Inc. (“Apple” or “Defendant”). Plaintiffs allege the
26 following upon personal knowledge as to their actions and upon information and belief based
27 upon the investigation of their attorneys as to all other facts alleged in the Second Consolidated
28 and Amended Complaint (“Complaint”):

INTRODUCTION

1. This case challenges storage capacity misrepresentations, omissions, and other sharp business practices by Defendant in advertising, marketing and sale of certain Apple devices, as well as the inordinate amount of space consumed by Apple’s iOS 8 operating system (hereinafter “iOS8”). Reasonable consumers can and do make purchasing decisions based upon

1 the labeled and advertised storage space in a device, including willingness to pay more for a
2 device advertised to possess greater storage space. This is precisely what Apple did here as to
3 16GB iPhones and iPads (the “Devices”). Specifically, and as set forth in greater detail below,
4 iOS 8 used an unexpectedly large percentage of the storage capacity of the “Devices” and
5 consumed more space than subsequent iterations of iOS.

6 2. Since this case was originally filed in 2014, Apple has drastically increased the
7 size of the base memory of its most recent iPhone, the iPhone 14, which now has a base storage
8 capacity of 128 GB. The most updated version of the iPad, the iPad Pro, now also a base
9 memory of 128 GB. Apple has also changed the iOS to permit deletion of many applications,
10 several of these could not be deleted when this case was originally filed, and Apple has
11 materially revised the disclaimer. Apple has also offered limited cloud storage space at no
12 charge. All of these changes have occurred since the filing of this litigation.

13 3. Despite knowing that as much as 21.3% of the Devices’ advertised storage
14 capacity was dedicated to and consumed by iOS 8 and unavailable on purchased Devices that
15 had iOS 8 installed, Apple made no disclosure of this material fact to consumers.

16 4. Apple also forced consumers to retain applications on the Devices that many
17 consumers do not want but were unable to delete. For example, iOS 8.2 included the Apple
18 Watch as a required application that could not be deleted even if the consumer does not have an
19 Apple Watch, nor any desire to own one. This is but one of numerous applications forced on
20 consumers, including Plaintiffs and the class, that epitomizes Defendant’s disregard of its
21 advertising representations and warranties as to storage space. Nowhere did Apple disclose or
22 explain that this application or any other application already decreases the advertised storage
23 space on the purchased Devices.

24 5. Reasonable consumers, including Plaintiffs and the class, do not expect any
25 marked discrepancy between the advertised level of capacity and the available capacity of the
26 Devices. Without a disclosure or affirmative representation, no consumer would understand that
27 an extraordinary percentage of the Devices’ storage was unavailable based on the operating
28 system, forced applications and other storage space limitations such as the manner in which the

1 Complaint giving rise to Plaintiffs’ claims, including the dissemination of the false and
2 misleading advertising alleged herein, occurred in, and were directed from this District.

3 **THE PARTIES**

4 10. Plaintiff Paul Orshan is a citizen of the United States and resident of Costa Rica.
5 Plaintiff Deanna Ness is a citizen and resident of Minden, Nevada. Plaintiff Kye Weasner is a
6 citizen and resident of Santa Cruz, California. Plaintiff Margaret Hart is a citizen and resident of
7 Washington, DC. Plaintiff Michael Walker is a citizen and resident of California.

8 11. Defendant Apple Inc. (“Apple”) is a corporation organized under the laws of the
9 State of California, and has its principal place of business in Cupertino, California.

10 **BACKGROUND**

11 12. Storage capacity in computing and telecommunications is typically measured in a
12 digital unit called a byte. A kilobyte, or “KB,” is typically defined as one thousand, or 10^3 ,
13 bytes. A megabyte, or “MB,” is typically defined as one million, or 10^6 , bytes. A gigabyte, or
14 “GB,” is typically defined as one billion, or 10^9 , bytes.

15 13. Defendant advertised the storage capacity of the Devices in gigabytes, using the
16 acronym “GB.” Therefore the storage capacity of 16GB devices is advertised as 16 billion bytes.
17 The base storage unit was the basis for reasonable consumers to determine whether to buy the
18 iPhone or a competing device as well as to price how much storage was needed and at what cost.

19 14. In reality, nothing close to the advertised capacity of the Devices was available to
20 end users. Indeed, the discrepancy between advertised and available capacity is substantial and
21 beyond any possible reasonable expectation. For the Devices, the shortfall ranged from 18.1-
22 21.3%.

23 15. As noted above, although Defendant represented, disclosed, and advertised based
24 upon the decimal-based system of measurement, upon information and belief, the Devices
25 display available capacity based upon the binary definitions. This is confusing even to the
26 technically savvy because it prevents consumers from making the proverbial “apples to apples”
27 comparison. Exacerbating this confusion is the fact that rather than using the GiB representation,
28

1 as suggested by the ISQ, the graphic interface used on the Devices uses the abbreviation GB,
2 even though it is apparently referring to gibibytes, and not gigabytes.

3 16. Further, Defendant segregates the storage space of the Devices into a media
4 partition and a root partition. The media partition is the portion of the Device's storage that is
5 available to the consumer. Control of the root partition rests exclusively with Apple and
6 consumers have no ability to reduce the portion of the storage apportioned to Apple. It is
7 important to note that the root partition is larger than it needs to be and viable storage capacity on
8 the root partition side can remain unused even as the media partition becomes full and a
9 consumer is instructed to purchase iCloud space from Apple. Further, several users have
10 reported that, if a consumer "jailbreaks"¹ a Device, the root partition can be reduced in size to
11 accommodate a greater storage allocation to the consumer without comprising the functionality
12 of the Devices.²

13 FACTUAL ALLEGATIONS

14 17. Apple is in the business of, *inter alia*, designing, manufacturing, assembling,
15 advertising, and marketing its line of "iPhone" cellular telephones, with the first model released
16 on or about on June 29, 2007.

17 18. Apple marketed and sold the iPhone 6 and 6+, which it introduced on or about
18 September 9, 2014. Predecessor models include the iPhone 5s and 5c introduced on or about
19 September 10, 2013, and the iPhone 4s introduced on or about October 10, 2011. Apple also
20 manufactures and markets a line of "iPad" tablet devices, first introduced on April 3, 2010.³

21
22
23 ¹ The term "jailbreak" is used to describe the modification of a Device to remove some, or all,
24 controls or limitations set by the manufacturer, and may include substitution of the operating
25 system. Jailbreaking a Device typically voids the manufacturer's warranty, and is an option
26 pursued only by the most technically sophisticated and/or adventurous users.

27 ² Even more confusing, an alternative unit known as a "gibibyte" represents 1,073,741,824, or
28 ³⁰, bytes. While the gibibyte is represented by the acronym "GiB," Defendant sometimes uses
"GB" when referring to gibibytes. On information and belief, the Devices display their storage
capacity to users in gibibytes, but use the acronym "GB." This significantly complicates the
user's ability to compare the available storage on the Devices as compared to the storage
capacity as advertised by Defendant.

³ Since the initial filing of this case, Apple has introduced newer models that are not marketed
and advertised in relation to the available storage space in the same way as the Devices at issue
here.

1 19. Apple explicitly stated, marketed, and represented on its website, advertisements,
2 product packaging, and other promotional materials, that the iPhone 6 and 6+ were available
3 with a storage capacity of 16 gigabytes (16GB). This is the principal false representation made
4 by Defendant and relied upon by Named Plaintiffs Orshan, Ness, Weasner, Hart, and Walker.
5 Apple made similar representations with respect to earlier models of the iPhone. At all times
6 during the relevant time period, Defendant made similar representations concerning the storage
7 capacities of its 16GB iPads.

8 20. Specifically, Defendant made the representation that the Devices offered 16
9 gigabytes of storage, “16GB” or 16 billion bytes, in the following graphic:



10
11
12
13
14
15
16
17
18
19
20
21 21. In February 2014, Plaintiff Orshan purchased an iPhone 5S represented by Apple
22 to have 16GB of storage capacity from the AT&T Store located in Coral Gables, Florida.
23 Orshan purchased the devices on a payment plan of \$32.50 per month. The iPhone was
24 purchased with iOS 7 and was subsequently upgraded to iOS 8. Orshan purchased his iPhone 5S
25 primarily for personal, family, or household use.

26 22. In November 2012 Plaintiff Orshan also purchased an iPad represented by Apple
27 to have 16GB of storage capacity at the Apple Store in the Dadeland Mall. Orshan paid \$639.86
28

1 for the Device. The iPad was subsequently upgraded to iOS 8. Orshan purchased his iPad
2 primarily for personal, family, or household use.

3 23. Plaintiff Orshan purchased his iPhone and iPad in reliance on Defendant's claims,
4 on its website, advertisements, product packaging, and other promotional materials, that the
5 Devices came equipped with 16GB of storage space. Plaintiff Orshan viewed various materials,
6 including Apple's website before purchasing his iPhone and iPad, and packaging materials in the
7 store at the time of making the purchases, which specifically stated that the Devices possessed
8 16GB of storage capacity. Plaintiff Orshan was willing to—and did in fact—pay more to acquire
9 Devices with 16GB of storage capacity (rather than the less expensive 8GB of storage capacity)
10 because he wanted the greater capacity to store his personal data. In reliance on the fact that
11 Apple specifically represented that the Devices had 16GB of storage capacity, Plaintiff Orshan
12 expected that capacity would be available for his personal use. Absent that, it would not have
13 been of the same monetary value to him. Plaintiff upgraded to iOS 8 with the belief that the
14 upgrade would not substantially inhibit his available storage capacity. Defendant did not
15 adequately disclose in conjunction with upgrades to iOS 8 the additional and substantial storage
16 capacity that would be consumed by the upgrade. Had Plaintiff Orshan known that by upgrading
17 to iOS 8 he would substantially inhibit—and in fact decrease—his storage capacity, it would
18 have materially impacted his decision about whether to upgrade to iOS 8. However, in reality
19 because newer versions of iOS provide important security updates, it is important for
20 consumers—including Plaintiffs—to make the updates. In addition to security risks, failure to
21 implement operating system updates can also cause applications to cease functioning. But
22 Plaintiffs and consumers do not expect Defendant to foist unnecessary and unwanted
23 applications that cannot be erased in order to maintain the security of their Devices.

24 24. On November 7, 2014, Plaintiff Ness purchased an iPad Mini represented by
25 Apple to have 16GB of storage capacity from Walmart.com. Ness purchased the Device for
26 \$199. Ness purchased the Device primarily for personal, family, or household use. The iPad
27 Mini was purchased with iOS 6 and was subsequently upgraded to iOS 8.

28

1 25. Plaintiff Ness purchased her iPad Mini as a result of Defendant's omissions and
2 claims, on its website, advertisements, product packaging, and other promotional materials, that
3 the Device came equipped with 16GB of storage space without specifying how much Apple kept
4 for itself. Plaintiff Ness viewed various materials, including Apple's website before purchasing
5 her iPad Mini, and packaging materials in the store at the time of making the purchases, which
6 specifically stated that the Device possessed 16GB of storage capacity. Plaintiff Ness was
7 willing to—and did in fact—pay more to acquire a Device with 16GB of storage capacity (rather
8 than the less expensive 8GB of storage capacity) because she wanted the greater capacity to store
9 her personal data. In reliance on the fact that Apple specifically represented that the Devices had
10 16GB of storage capacity and omitted any mention of the substantial space it was keeping for
11 itself, Plaintiff Ness, acting as a reasonable consumer, expected that the full 16 GB of capacity
12 would be available for her personal use. Absent that, it would not have had the same monetary
13 value to her. Plaintiff Ness upgraded to iOS 8 with the belief that the upgrade would not
14 substantially inhibit her available storage capacity. Defendant did not adequately disclose in
15 conjunction with upgrades to iOS 8 the additional and substantial storage capacity that would be
16 consumed by the upgrade. Had Plaintiff Ness known that by upgrading to iOS 8 she would
17 substantially inhibit—and in fact decrease—her storage capacity, it would have materially
18 impacted her decision about whether to upgrade to iOS 8. However, because newer versions of
19 iOS provide important security updates, it is important for consumers—including Plaintiffs—to
20 make the updates. In addition to security risks, failure to implement operating system updates
21 can also cause applications to cease functioning. But Plaintiffs and consumers do not expect
22 Defendant to foist unnecessary and unwanted applications that cannot be erased in order to
23 maintain the security of their Devices.

24 26. On January 30, 2015, Plaintiff Weasner purchased an iPhone 6 represented by
25 Apple to have 16GB of storage capacity from an AT&T store in Stockton, California. Weasner
26 paid \$299 for the iPhone 6. The iPhone 6 was purchased with iOS 8 preinstalled.

27 27. Plaintiff Weasner purchased his iPhone 6 as a result of Defendant's omissions and
28 claims, on its website, advertisements, product packaging, and other promotional materials, that

1 the Device came equipped with 16GB of storage space without specifying how much Apple kept
2 for itself. Plaintiff Weasner viewed various materials, including Apple’s website before
3 purchasing his iPhone 6, and packaging materials in the store at the time of making the
4 purchases, which specifically stated that the Device possessed 16GB of storage capacity.
5 Plaintiff Weasner was willing to—and did in fact—pay more to acquire a Device with 16GB of
6 storage capacity (rather than the less expensive 8GB of storage capacity) because he wanted the
7 greater capacity to store his personal data. In reliance on the fact that Apple specifically
8 represented that the Device had 16GB of storage capacity and omitted any mention of the
9 substantial space it was keeping for itself, Plaintiff Weasner, acting as a reasonable consumer,
10 expected that the full 16GB of capacity would be available for his personal use. Absent that, the
11 Device would not have had the same monetary value to him. Had he known that the operating
12 system and other mandatory pre-installed software consumes a substantial portion of the
13 represented storage capacity, Weasner would not have been willing to pay the same price for the
14 Device or would not have elected to purchase the undersized 16GB model. As a consequence of
15 Apple’s misrepresentations and omissions, Plaintiff Weasner did not receive the benefit of the
16 bargain.

17 28. On September 13, 2015, Plaintiff Hart purchased an iPhone 5S represented by
18 Apple to have 16GB of storage capacity in the Washington, D.C. area. The iPhone 5S was
19 purchased with iOS 8 preinstalled.

20 29. Plaintiff Hart purchased her iPhone 5S as a result of Defendant’s omissions and
21 claims, on its advertisements, product packaging, and other promotional materials, that the
22 Device came equipped with 16GB of storage space without specifying how much Apple kept for
23 itself. Plaintiff Hart viewed various materials before purchasing her iPhone 5S, and packaging
24 materials in the store at the time of making the purchases, which specifically stated that the
25 Device possessed 16GB of storage capacity. Plaintiff Hart was willing to—and did in fact—pay
26 more to acquire a Device with 16GB of storage capacity (rather than the less expensive 8GB of
27 storage capacity) because she wanted the greater capacity to store her personal data. In reliance
28 on the fact that Apple specifically represented that the Device had 16GB of storage capacity and

1 omitted any mention of the substantial space it was keeping for itself, Plaintiff Hart, acting as a
2 reasonable consumer, expected that the full 16 GB of capacity would be available for her
3 personal use. Absent that, it would not have had the same monetary value to her. Had she
4 known that the operating system and other mandatory pre-installed software consumes a
5 substantial portion of the represented storage capacity, Hart would not have been willing to pay
6 the same price for the Device or would not have elected to purchase the undersized 16GB model.
7 As a consequence of Apple’s misrepresentations and omissions, Plaintiff Hart did not receive the
8 benefit of the bargain.

9 30. In September 2014, Plaintiff Walker purchased an iPhone 6 represented by Apple
10 to have 16GB of storage capacity. The iPhone 6 was purchased with iOS 8 preinstalled.

11 31. Plaintiff Walker purchased his iPhone 6 as a result of Defendant’s omissions and
12 claims, on its website, advertisements, product packaging, and other promotional materials, that
13 the Device came equipped with 16GB of storage space without specifying how much Apple kept
14 for itself. Plaintiff Walker viewed various materials before purchasing his iPhone 6, and
15 packaging materials in the store at the time of making the purchases, which specifically stated
16 that the Device possessed 16GB of storage capacity. Plaintiff Walker was willing to—and did in
17 fact—pay more to acquire a Device with 16GB of storage capacity (rather than the less
18 expensive 8GB of storage capacity) because he wanted the greater capacity to store his personal
19 data. In reliance on the fact that Apple specifically represented that the device had 16GB of
20 storage capacity and omitted any mention of the substantial space it was keeping for itself,
21 Plaintiff Walker, acting as a reasonable consumer, expected that the full 16GB of capacity would
22 be available for his personal use. Absent that, it would not have had the same monetary value to
23 him. Had he known that the operating system and other mandatory pre-installed software
24 consumes a substantial portion of the represented storage capacity, Walker would not have been
25 willing to pay the same price for the Device or would not have elected to purchase the
26 undersized 16GB model. As a consequence of Apple’s misrepresentations and omissions,
27 Plaintiff Walker did not receive the benefit of the bargain.

28

1 32. Plaintiffs Orshan, Ness, Weasner, Hart, Walker, and any reasonable consumer,
2 would not have expected (and could not have reasonably expected) that a shortfall ranging
3 between 18.1 – 21.3% existed between the advertised and available capacity of the Devices they
4 purchased.

5 33. Since the filing of the instant lawsuit—and despite its intervening dismissal—
6 Defendant no longer makes the same misleading representations to consumers about its storage
7 capacity.

8 34. For the current iPhone model, the iPhone 14, Defendant spells out
9 specifically the amount utilized by Apple’s operating system:

10
11 Available space is less and varies due to many factors. A standard configuration uses approximately 12GB to
12 17GB of space, including iOS 16 with its latest features and Apple apps that can be deleted. Apple apps that
13 can be deleted use about 4.5GB of space, and you can download them back from the App Store. Storage
14 capacity subject to change based on software version, settings, and iPhone model.⁴

15 35. Upon information and belief, Apple now appears to tell consumers how much
16 storage space is not available for use, stating that “[a] standard configuration uses approximately
17 12GB to 17GB of space, including iOS 16 with its latest features and Apple apps that can be
18 deleted. Apple apps that can be deleted use about 4.5GB of space, and you can download them
19 back from the App Store.” Despite the fact that a higher percentage of storage capacity was
20 unusable in the Devices, Apple now tells consumers how much storage capacity they cannot
21 access for the most recent iPhone models. However, because Apple did not disclose and in fact
22 hid this information related to the Devices, Plaintiffs and the putative Class members purchased
23 their Devices based on the reasonable understanding that they would have access to the full
24 storage capacity (or nearly the full storage capacity) of the Devices.

25 36. Storage capacity matters to reasonable consumers (including Plaintiffs and
26 putative Class members) precisely because of how it translates into their ability to store personal
27

28 ⁴ Language copied from <https://www.apple.com/shop/buy-iphone/iphone-14> (last visited: June 1, 2023).

1 information after purchase and to comparison shop between competing manufacturers and
2 between models within a manufacturer's line. Storage capacity constitutes a substantial
3 consideration that weighs into reasonable consumers' decision-making processes. Consumers
4 purchase Devices with greater storage capacity with the expectation that they will be able to
5 store a greater amount of personal information on those Devices and delay having to purchase a
6 replacement in the future. Indeed, this is why Apple makes representations regarding the storage
7 capacity of its products and boasts to consumers that its Devices have 16GB of storage capacity.
8 To a consumer, the fact that a device has a particular storage capacity matters mostly because it
9 impacts their ability to make use of that capacity. The fact that a device has a storage capacity is
10 not valuable to a reasonable consumer if that consumer cannot actually make use of that
11 capacity. And storage capacity was the principal price differentiator for the Devices. Higher
12 storage capacity costs more.

13 37. Apple should have disclosed the actual storage capacity available to users for its
14 various Devices and that upgrading to iOS 8 would result in a substantial decrease in available
15 storage capacity. Had Plaintiffs known that the operating system and other pre-installed software
16 consumes a substantial portion of the storage capacity of the Devices, they would have
17 reconsidered their decisions to purchase Devices, or would have paid less. In the same vein,
18 Apple's decision to include applications that are irrelevant to many consumers and cannot be
19 deleted further reduced the storage available to consumers, adding insult to injury.

20 38. Defendant employed false, deceptive, and misleading practices in connection with
21 marketing, selling, and distributing the Devices. In its advertising, marketing, and promotional
22 materials, including Apple's Internet website, product packaging, and product displays,
23 Defendant misrepresented the iPhone 6 as having 16GB of storage capacity.

24 39. Defendant's inclusion of the language that "actual formatted capacity less" did
25 not render its representations any less false. Merriam-Webster defines "format" as "a method of
26 organizing data (as for storage)." The reduction in the storage capacity available to Plaintiffs and
27 consumers was *not* due to formatting, but was due instead to Defendants' direct consumption of
28

1 the advertised storage to provide space for its operating system, pre-installed and mandatory
2 applications, and self-allocated excess root partition.

3 40. Apple's disclosures were not sufficient to put reasonable consumers—including
4 Plaintiffs—on notice of the difference between the space promised and the space actually
5 received. Each Plaintiff and every consumer saw a uniform misstatement on the packaging of
6 every device.

7 41. Defendant knew, but concealed and failed to disclose in its advertising,
8 marketing, and promotional materials, that the operating system and other pre-installed software
9 consumed a substantial portion of the represented storage capacity of each of the Devices.
10 Defendant also failed to disclose that consumers were forced to retain certain applications that
11 significantly consumed the advertised storage capacity. These applications were not necessary
12 for the Devices to function; they were merely a forced tool by which Apple could sell additional
13 products or services.

14 42. During the pertinent time period, the list of applications that could not be deleted
15 included: calculator, calendar, camera, clock, compass, contacts, FaceTime, game center, iTunes
16 store, mail, maps, messages, music, newsstand, notes, passbook, photos, reminders, Safari,
17 stocks videos, voice memos, and weather. Thus, for a consumer who purchased a purported
18 "16GB" iPhone, iPad, or iPod with iOS 8 pre-installed, or who upgraded to iOS 8, as much as
19 21.3% of the represented storage capacity was inaccessible and unusable.

20 43. The following table depicts the discrepancy between represented storage capacity,
21 and storage capacity actually available to purchasers, on certain iPhones and iPads with iOS 8
22 installed:

Device	Represented Capacity	Capacity Available to User		Capacity Unavailable to User	
		(GB)	(GiB)	(GB)	(%)
iPhone 6+	16	11.8	12.7	3.3	20.6%
iPhone 6	16	12.1	13.0	3.0	18.8%
iPhone 5s	16	12.2	13.1	2.9	18.1%
iPad Air	16	11.7	12.6	3.4	21.3%
iPad	16	11.7	12.6	3.4	21.3%

1 44. The foregoing actual capacities are further confirmed by reports from several
2 purchasers and bloggers reported on various websites. For example, a purchaser complained that
3 his new iPhone 4 with a represented capacity of 8 GB had only 6.37 GB of storage. An Apple
4 representative conceded that “that is normal” and suggested that, if the user did “not like it,” to
5 “take it back.” *See* <https://discussions.apple.com/thread/3558683>. A blogger, similarly, reported
6 that a “16GB” iPad only affords 13GB of usable storage, and noted that “selling a 16GB iPad
7 that really only has 13GB available (after iOS is installed) – is deceptive.” *See*
8 [http://www.mcelhearn.com/apples-ios-apps-are-bloated-and-how-many-gigs-do-you-get-on-a-](http://www.mcelhearn.com/apples-ios-apps-are-bloated-and-how-many-gigs-do-you-get-on-a-16-gb-ios-device/)
9 [16-gb-ios-device/](http://www.mcelhearn.com/apples-ios-apps-are-bloated-and-how-many-gigs-do-you-get-on-a-16-gb-ios-device/). *See also* David Price, “What’s the true formatted storage capacity of an
10 iPhone, iPad or iPod?” (February 9, 2016), [https://www.macworld.com/article/671107/whats-](https://www.macworld.com/article/671107/whats-the-true-formatted-storage-capacity-of-an-iphone-ipad-or-ipod.html)
11 [the-true-formatted-storage-capacity-of-an-iphone-ipad-or-ipod.html](https://www.macworld.com/article/671107/whats-the-true-formatted-storage-capacity-of-an-iphone-ipad-or-ipod.html);
12 [http://www.imore.com/16gb-vs-64gb-vs-128gb-which-iphone-6-and-iphone-6-plus-storage-size-](http://www.imore.com/16gb-vs-64gb-vs-128gb-which-iphone-6-and-iphone-6-plus-storage-size-should-you-get)
13 [should-you-get](http://www.imore.com/16gb-vs-64gb-vs-128gb-which-iphone-6-and-iphone-6-plus-storage-size-should-you-get) (“out of 16GB of storage you get only 12~13”). Given Apple’s technological
14 sophistication (having designed the iOS, created the root partition, and programmed the forced
15 applications), media coverage addressing the issue, and complaints received directly from
16 consumers, it is beyond question that Apple was aware of this misrepresentation.

17 45. Apple’s misrepresentations and omissions were deceptive and misleading because
18 they omitted material facts that an average consumer would consider in deciding whether to
19 purchase its products, namely, that when using iOS 8, as much as 3.7 GB of the represented
20 storage capacity on a device represented to have 16GB of storage capacity was, in fact, not
21 available to the purchaser for storage. For example, Apple misrepresented that an iPhone 6+
22 with the base level of storage had “16GB” of storage space while it concealed, omitted and failed
23 to disclose that, on models with iOS 8 pre-installed, in excess 20% of that space was not
24 available storage space that the purchaser could access and use to store his or her own files.

25 46. In addition to making material misrepresentations and omissions to prospective
26 purchasers of Devices with iOS 8 pre-installed, Apple also made misrepresentations and
27 omissions to owners of Devices with predecessor operating systems. These misrepresentations
28 and omissions caused these consumers to “upgrade” their Devices from iOS 7 (or other operating

1 systems) to iOS 8. Apple failed to disclose that upgrading from iOS 7 to iOS 8 would cost a
2 Device user between 600MB and 1.3GB of storage space – a result that no consumer could
3 reasonably anticipate. This is confirmed by Plaintiffs’ counsels’ comparison of devices with iOS
4 7 and iOS 8 installations, and reports by others. *See* “iOS 8, thoroughly reviewed” (September
5 19, 2014), available online at [http://arstechnica.com/apple/2014/09/ios-8-thoroughly-](http://arstechnica.com/apple/2014/09/ios-8-thoroughly-reviewed/2/#install)
6 [reviewed/2/#install](http://arstechnica.com/apple/2014/09/ios-8-thoroughly-reviewed/2/#install).

7 47. Apple did not enable users who upgraded to iOS 8 to revert back to iOS 7 or
8 another operating system. *See* “No path back: Apple stops signing iOS 7.1.2” (Sept. 27, 2014),
9 available online at [https://www.macworld.com/article/224249/no-path-back-apple-stops-signing-](https://www.macworld.com/article/224249/no-path-back-apple-stops-signing-ios-7-1-2.html)
10 [ios-7-1-2.html](https://www.macworld.com/article/224249/no-path-back-apple-stops-signing-ios-7-1-2.html); “There’s no turning back from iOS 8 if you upgrade from iOS 7.1.2” (Sept. 26,
11 2014), available online at <http://bgr.com/2014/09/26/downgrade-from-ios-8-to-ios-7-1-2/>).

12 48. Apple exploited the discrepancy between represented and available capacity for
13 its own gain by offering to sell, and by selling, cloud storage capacity to purchasers whose
14 internal storage capacity is at or near exhaustion. During the time period relevant to this
15 complaint, when the internal hard drive approached “full,” Defendants caused a pop up ad to
16 offer consumers the opportunity to purchase “iCloud” cloud storage. For this service, at all times
17 relevant to this complaint, Apple charged prices ranging from \$0.99 to \$29.99 *per month*.

18 49. This iCloud storage was the only practical way for consumers to obtain additional
19 storage. Apple operates in a closed system—it does not allow users to insert an SD card or other
20 internal storage medium (unlike certain competitors’ smartphones at the time, including most
21 phones that used the Android operating system at the time the original complaint in this action
22 was filed). Similarly, at all times relevant to this complaint, Apple also did not permit users to
23 freely transfer files between the Devices and a computer by using a “file manager” utility – an
24 option available to most users of Android or Windows-based portable devices.

25 50. Plaintiff Orshan purchased a 16GB iPhone 5S on or about February 2014 with (a
26 version of) iOS 7 pre-installed. On or about October 2014, Plaintiff upgraded the operating
27 system on his iPhone 5s to iOS 8 in reliance on Apple’s misrepresentations and omissions.
28 Plaintiff Orshan purchased a 16GB iPad on or about November 2012 and subsequently upgraded

1 the operating system on his iPad to iOS 8 in reliance on Apple’s misrepresentations and
2 omissions.

3 51. Plaintiff Ness purchased a 16GB iPad Mini on or about November 7, 2014 with (a
4 version of) iOS 6 pre-installed. Plaintiff Ness subsequently upgraded the operating system on her
5 iPad Mini to iOS 8 in reliance on Apple’s misrepresentations and omissions.

6 52. Plaintiff Weasner purchased a 16GB iPhone 6 on or about January 30, 2015 with
7 (a version of) iOS 8 preinstalled.

8 53. Plaintiff Hart purchased a 16GB iPhone 5S on or about September 13, 2015 with
9 (a version of) iOS 8 preinstalled.

10 54. Plaintiff Walker purchased a 16GB iPhone 6 in September 2014 with (a version
11 of) iOS 8 preinstalled.

12 55. Plaintiffs hereby bring this class action seeking redress for Defendant’s unfair
13 business practices, false or deceptive or misleading advertising, and violations of the Consumers
14 Legal Remedies Act ("CLRA").

15 **CLASS ACTION ALLEGATIONS**

16 56. This action may properly be maintained as a class action pursuant to Fed. R. Civ.
17 P. 23.

18 57. Plaintiffs bring this action as a class action on behalf of themselves and the
19 following classes (“the Classes”): (1)(a) an “iOS 8 Purchaser Class” consisting of all persons or
20 entities in the United States who purchased an iPhone or iPad with represented storage capacity
21 of 16GB with iOS 8 pre-installed for purposes other than resale or distribution, and (b) an “iOS 8
22 Purchaser CLRA Subclass” consisting of all persons in the United States who purchased an
23 iPhone or iPad with represented storage capacity of 16GB with iOS 8 pre-installed for personal,
24 family, or household use within the four years preceding the filing of this Complaint, (2)(a) an
25 “Upgrade Class” consisting of all persons or entities in the United States who upgraded an
26 iPhone or iPad with represented storage capacity of 16GB to iOS 8, and (b) an “Upgrade CLRA
27 Subclass” consisting of all persons or entities in the United States who upgraded an iPhone or
28

1 iPad used for personal, family or household use with represented storage capacity of 16GB to
2 iOS 8.

3 58. Excluded from the Classes are the Defendant, and all officers, directors,
4 employees, or agents of the Defendant.

5 59. The members of the Classes are so numerous that joinder of all members would
6 be impracticable. Plaintiffs do not know the exact size or identities of the proposed Classes,
7 since such information is in the exclusive control of Defendant. Plaintiffs, however, believe that
8 the Classes encompass many thousands of individuals.

9 60. There are common questions of law or fact, among others, including:

- 10 a. The nature, scope and operations of the wrongful practices of Apple;
- 11 b. Whether Defendant knew the advertised storage capacity was not fully available
12 on the purchased Devices;
- 13 c. Whether Defendant's advertising, marketing, product packaging, and other
14 promotional materials were untrue, misleading, or reasonably likely to deceive a
15 reasonable consumer;
- 16 d. Would a reasonable consumer understand "less" to be up to, or in excess of 20%
17 of the available storage space;
- 18 e. What percentage of the reasonable person consuming public understood that
19 16GB was not actually 16GB, whether the "less" disclaimer was understood as up
20 to 20% of the storage, or understood that certain content could not be deleted
21 without voiding the product warranty;
- 22 f. Whether Defendant knew that its representations and/or omissions regarding the
23 Devices' storage capacity were false or misleading, but continued to make them.
- 24 g. Whether Apple's partial disclosure as to the Devicee' storage capacity created a
25 duty to disclose the amount of storage space actually unavailable to class
26 members;
- 27 h. Whether Defendant's failure to disclose the amount of storage space consumed by
28 its operating system and other pre-installed software was a material fact;

- 1 i. Whether Defendant's failure to disclose the available storage on the Apple
- 2 devices confused consumers who were comparing the available storage on
- 3 devices manufactured by others;
- 4 j. Whether Apple's forced inclusion of software violates the laws cited herein;
- 5 k. Whether Apple's partition of storage space beyond that necessary to operate the
- 6 devices is actionable misconduct;
- 7 l. Whether the value of the Devices is decreased based on the actual available
- 8 storage capacity to consumers;
- 9 m. Whether, by the misconduct as set forth in this Complaint, Apple engaged in
- 10 unfair or unlawful business practices, pursuant to California Business and
- 11 Professions Code § 17200, *et seq.*;
- 12 n. Whether Defendant's conduct violated the California Consumer Legal Remedies
- 13 Act;
- 14 o. Whether Defendant's conduct violated the California Business and Professions
- 15 Code § 17500, *et seq.*;
- 16 p. Whether, as a result of Apple's misconduct as set forth in this Complaint,
- 17 Plaintiffs and the Classes are entitled to damages, restitution, equitable
- 18 relief and other relief, and the amount and nature of such relief; and
- 19 q. Whether Apple has acted on grounds generally applicable to the Class,
- 20 making injunctive relief appropriate.

21 61. Plaintiffs' claims are typical of the members of the Classes because Plaintiffs and
22 all members of the Classes were injured by the same wrongful practices of Apple as described in
23 this complaint. Plaintiffs' claims arise from the same practices and course of conduct that gives
24 rise to the claims of the Classes' members, and are based on the same legal theories. Plaintiffs
25 have no interests that are contrary to or in conflict with those of the Classes they seek to
26 represent.

1 Complaint, including but not limited to, disseminating or causing to be disseminated from the
2 State of California, unfair, deceptive, untrue, or misleading advertising as set forth above in this
3 Complaint.

4 68. Defendant’s practices are likely to deceive, and have deceived, members of the
5 public.

6 69. Defendant knew, or should have known, that its misrepresentations, omissions,
7 failure to disclosure and/or partial disclosures omit material facts and are likely to deceive a
8 reasonable consumer.

9 70. Defendant continued to make such misrepresentations despite the fact it knew or
10 should have known that its conduct was misleading and deceptive.

11 71. By engaging in the above-described acts and practices, Defendant committed one
12 or more acts of unfair competition within the meaning of Unfair Competition Law, Cal. Bus. &
13 Prof. Code § 17200, *et seq.*

14 72. Plaintiffs and all members of the Classes suffered injury in fact as a result of
15 Defendant’s unfair methods of competition. As a proximate result of Defendant’s conduct,
16 Plaintiffs and members of the Classes were exposed to these misrepresentations and omissions,
17 purchased a Device(s) in reliance on these misrepresentations, and suffered monetary loss as a
18 result.

19 73. Plaintiffs, individually and on behalf of the Classes, seek an order of this Court
20 against Defendant awarding restitution, disgorgement, injunctive relief and all other relief
21 allowed under § 17200, *et seq.*, plus interest, attorneys’ fees and costs.

22 **COUNT II**

23 **California False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.***

24 74. Plaintiffs repeat and reallege the allegations set forth above as if fully contained
25 herein.

26 75. Plaintiffs bring this cause of action individually and on behalf of the Classes.

27 76. Apple is a California company disseminating advertising from California
28 throughout the United States.

1 77. Defendant has engaged in a systematic campaign of advertising and marketing the
2 Devices as possessing specific storage capacities. In connection with the sale of the Devices, and
3 the promotion of iOS 8, Defendant disseminated or caused to be disseminated false, misleading,
4 and deceptive advertising regarding storage capacity to the general public through various forms
5 of media, including but not limited to product packaging, product displays, labeling, advertising
6 and marketing. However, Defendant knew or reasonably should have known that the Devices do
7 not make available to users the advertised storage space, and that the failure to disclose the
8 storage space consumed by iOS 8 (both to prospective purchasers of Devices with iOS 8 pre-
9 installed and to prospective upgraders) was a material omission, and that Apple's disclaimer was
10 inadequate and factually incorrect.

11 78. When Defendant disseminated the advertising described herein, it knew, or by the
12 exercise of reasonable care should have known, that the statements concerning iOS 8 and the
13 storage capacity of its Devices were untrue or misleading, or omitted to state the truth about the
14 Devices' storage capacity, in violation of the False Advertising Law, Cal. Bus. & Prof. Code §
15 17500, *et seq.*

16 79. As a proximate result of Defendant's conduct, Plaintiffs and members of the Class
17 were exposed to these misrepresentations, omissions, and partial disclosures, purchased the
18 Devices in reliance on these misrepresentations, omissions, and partial disclosures, and suffered
19 monetary loss as a result. They would not have purchased the Devices, or would have paid
20 significantly less for them, and/or would not have upgraded their Devices to iOS 8, had they
21 known the truth regarding the actual storage capacities of the Devices when equipped with iOS
22 8.

23 80. Defendant made such misrepresentations despite the fact that it knew or should
24 have known that the statements were false, misleading, and/or deceptive.

25 81. There were reasonably available alternatives to further Defendant's legitimate
26 business interests, other than the conduct described herein.

27 82. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and
28 the members of the Classes seek an order of this Court enjoining Defendant from continuing to

1 engage, use, or employ the above-described practices in advertising the sale of the Devices and
2 promoting iOS 8.

3 83. Likewise, Plaintiffs seek an order requiring Defendant to make full corrective
4 disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial
5 disclosures.

6 84. Plaintiffs, individually and on behalf of the Class, seek restitution, disgorgement,
7 injunctive relief, and all other relief allowable under § 17500, *et seq.*

8
9 **COUNT III**

10 **California Consumer Legal Remedies Act (“CLRA”), Cal. Civil Code § 1750, *et seq.***

11 85. Plaintiffs repeat and reallege the allegations set forth above as if fully contained
12 herein.

13 86. Plaintiffs bring this cause of action individually and on behalf of the Purchaser
14 and Upgrader CLRA Subclasses.

15 87. The acts and practices described in this Complaint were intended to result in the
16 sale of goods, specifically a cellular phone, in a consumer transaction.

17 88. The Defendant’s acts and practices violated, and continue to violate, the
18 Consumer Legal Remedies Act (“CLRA”) in at least the following respects:

19 a. Defendant violated California Civil Code § 1770(a)(5) by representing
20 that Devices on the one hand, and iOS 8, on the other hand, had characteristics,
21 uses, and benefits that they did not have, including representations that the
22 Devices had specific storage capacities when that is not, in fact, the case.

23 b. Defendant violated California Civil Code § 1770(a)(9) by advertising the
24 Devices as having specific storage capacities with the intent not to sell them as
25 advertised.

26 89. Plaintiffs and the Subclasses are entitled to equitable relief on behalf of the
27 members of the Subclasses in the form of an order, pursuant to Civil Code section 1780,
28 subdivisions (a)(2)-(5), prohibiting Defendant from engaging in the above-described violations of

1 the CLRA, to provide restitution or actual damages in the form of all monies paid for storage
2 capacity not realized, the inflated sale price of the Devices, the inclusion of forced applications,
3 punitive damages, and any other relief the Court deems proper. Plaintiffs further seeks reasonable
4 attorneys' fees under Civil Code section 1780(e).

5 90. Pursuant to California Civil Code section 1782, on January 8, 2015, Plaintiffs sent
6 a demand letter to Defendant via registered mail. Defendant refused to respond to the demand
7 letter, making the inclusion of damage claim appropriate under the CLRA.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray:

11 a. That this matter be certified as a class action with the Classes defined as set forth
12 above under pursuant to Fed. R. Civ. P. 23 and that the Plaintiffs be appointed Class
13 Representatives, and their attorneys be appointed Class Counsel.

14 b. That the Court enter an order requiring Defendant to immediately cease the
15 wrongful conduct as set forth above; enjoining Defendant from continuing to conduct business
16 via the unlawful and unfair business acts and practices complained of herein; and ordering
17 Defendant to engage in a corrective notice campaign;

18 c. That judgment be entered against Defendant for restitution, including
19 disgorgement of profits received by Defendant as a result of said purchases, cost of suit, and
20 attorneys' fees, and injunction; and

21 d. For such other equitable relief and pre- and post-judgment interest as the Court
22 may deem just and proper.

23 **JURY DEMAND**

24 Plaintiffs hereby demand a trial by jury.

25
26 Dated: June 2, 2023

Respectfully submitted,

27 /s/ Michael McShane

28 MICHAEL MCSHANE (SBN 127944)

LING Y. KUANG (SBN 296873)

1 KURT D. KESSLER (327334)
2 **AUDET & PARTNERS, LLP**
3 711 Van Ness Ave., Suite 500
4 San Francisco, CA 94102
5 Telephone: (415) 568-2555
6 Facsimile: (415) 568-2556
7 mmcshane@audetlaw.com
8 lkuang@audetlaw.com
9 kkessler@audetlaw.com

7 WILLIAM H. ANDERSON (Pro Hac Vice)
8 **HANDLEY FARAH & ANDERSON PLLC**
9 5353 Manhattan Circle, Suite 204
10 Boulder, CO 80303
11 Telephone: (303) 800-9109
12 Facsimile: (844) 300-1852
13 wanderson@hfajustice.com

12 MATTHEW K. HANDLEY
13 **HANDLEY FARAH & ANDERSON PLLC**
14 1201 Connecticut Avenue, NW
15 Suite 200K
16 Washington, DC 20036
17 Telephone: (303) 800-9109
18 mhandley@hfajustice.com

17 REBECCA P. CHANG
18 NICHOLAS J. JACKSON
19 **HANDLEY FARAH & ANDERSON PLLC**
20 33 Irving Pl.
21 New York, NY 10003
22 Telephone: (303) 800-9109
23 rchang@hfajustice.com

22 CHARLES J. LADUCA
23 **CUNEO GILBERT & LADUCA LLP**
24 4725 Wisconsin Avenue, N.W., Suite 200
25 Washington, DC 20016
26 Telephone: (202) 789-3960
27 Facsimile: (202) 789-1813
28 charlesl@cuneolaw.com

27 JON M. HERSKOWITZ (Pro Hac Vice)
28 **BARON & HERSKOWITZ**
9100 S. Dadeland Blvd.
Suite 1704

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

Miami, Fl. 33156
Telephone (305) 670-0101
Facsimile. (305) 670-2393
jon@bhfloridalaw.com

ROBERT SHELQUIST (Pro Hac Vice)
REBECCA PETERSON (SBN 241858)
LOCKRIDGE GRINDAL NAUEN PLLP
Suite 2200
100 Washington Avenue S
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
rkshelquist@locklaw.com
rapeterson@locklaw.com

Attorneys for Plaintiffs and the Proposed Class