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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 ELAINE ANDERSON, DIANA ATKINS,  
SCOTT BURST, BETH CHAVEZ, COLEA  
16 CHILDS, EUIHWAN CHO, ALISON  
COLEMAN, VICTORIA CORNWELL,  
17 DONALD DAHL, JACQUELINE DEMERITTE,  
CANDACE MARTINO, SCOTT SAPKOSKY  
18 and ERIK VILLAGRAN, on behalf of themselves  
and all others similarly situated,

19 Plaintiffs,

20 v.

21 APPLE INC., a California corporation,

22 Defendant.  
23

No. \_\_\_\_\_

CLASS ACTION COMPLAINT FOR BREACH  
OF EXPRESS AND IMPLIED WARRANTIES,  
VIOLATION OF THE CALIFORNIA  
CONSUMER LEGAL REMEDIES ACT AND  
UNFAIR COMPETITION LAW, FRAUDULENT  
CONCEALMENT, AND BREACH OF IMPLIED  
WARRANTY OF MERCHANTABILITY

**DEMAND FOR JURY TRIAL**

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1 All allegations made in this Complaint are based upon information and belief except those  
2 allegations that pertain to Plaintiffs, which are based on personal knowledge. Each allegation in this  
3 Complaint either has evidentiary support or, alternatively, pursuant to Federal Rule of Civil  
4 Procedure 11(b)(3), is likely to have evidentiary support after a reasonable opportunity for further  
5 investigation or discovery.

## 6 I. INTRODUCTION

7 1. Apple Inc. markets its iPhones as premium products with fast processors, reliable  
8 connectivity, and epic performance. Each year, many thousands of American consumers purchase  
9 Apple's products—so many, in fact, that they have made Apple one of the most valuable companies  
10 in the world.

11 2. Like every vendor, Apple has duties of truthfulness and candor to its customers. It  
12 also has the duty to not conceal material information that one of its newest iPhone models has  
13 inferior performance and inferior components relative to its other new models and the models of its  
14 competitors such that it will not maintain voice and data connections as advertised and promoted and  
15 as needed to support the normal and expected operation of the device.

16 3. Apple has violated these duties by designing, manufacturing, and selling their iPhone  
17 XR with defects that Apple was aware of. The iPhone XR is equipped with a 2x2 MIMO antenna  
18 array versus the 4x4 MIMO array Apple uses in its iPhone XS and iPhone XS Max and which  
19 Apple's competitors use on their phones priced comparably to the iPhone XR. Apple fails to disclose  
20 at the point of sale or otherwise inform consumers that this design difference causes the iPhone XR  
21 to have half the signal connectivity and 4G speed of the iPhone XS and iPhone XS Max and renders  
22 the XR far less capable of obtaining a reliable connection in the same areas where the XS and Max  
23 can reliably connect.

24 4. Apple has long known or should have known of the inadequacy of the iPhone XR  
25 antenna array from multiple sources. These sources include pre-release design, manufacturing, and  
26 testing data; warranty claims data; consumer complaints made directly to Apple, made to Apple  
27 resellers and cellular service providers, and/or posted on public online forums; testing done in  
28 response to those complaints; aggregate data and complaints from authorized resellers; and other

1 sources. Yet Apple failed to disclose and actively concealed the iPhone XR’s defect from the public,  
2 and continues to manufacture, distribute, and sell the iPhone XR without disclosing the defect.

3 5. Under Apple’s One-Year Limited Warranty, Apple “warrants the included hardware  
4 product and accessories against defects in materials and workmanship for one year from the date of  
5 original retail purchase.” The 2x2 MIMO antenna array in the iPhone XR, all of which share  
6 identical connectivity technology, are defective in material or workmanship under normal use.

7 6. Apple has not found a solution to the iPhone XR connectivity system defect. Instead,  
8 upon receiving an in-warranty complaint, Apple—if it does anything—simply replaces the defective  
9 iPhone XR with a new iPhone XR that has the identical defective connectivity system, leaving  
10 consumers caught in a cycle of use, malfunction, and replacement.

11 7. In January 2020, Apple admitted that iPhone XR users were having network  
12 connectivity issues on O2, a major cellular network in the United Kingdom. Apple has yet to offer a  
13 solution to consumers there or in the United States.

14 8. Plaintiffs bring this action for violation of California consumer protection acts and for  
15 breach of express and implied warranties on behalf of a nationwide class. Plaintiffs seek damages  
16 and equitable relief on behalf of themselves and all others similarly situated.

17 9. In this nationwide proposed class action, Plaintiffs seek monetary compensation for  
18 the degraded connectivity, reliability, and performance of their iPhone XR on their behalf and that of  
19 the putative nationwide class.

## 20 **II. JURISDICTION**

21 10. This Court has subject matter jurisdiction over this matter pursuant to the Class  
22 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed classes consist of 100 or  
23 more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and at  
24 least one plaintiff is a citizen of a state different from the defendant, which is a California  
25 corporation.

## 26 **III. VENUE**

27 11. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial  
28 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this judicial district.

1 Furthermore, Apple’s principal place of business is in this judicial district, and it is believed, and  
2 therefore alleged, that a substantial amount of the conduct of which Plaintiffs complain occurred in  
3 this judicial district. Also, Apple has marketed, advertised, and sold affected devices within this  
4 judicial district. Additionally, the San Jose division of this Court is the proper division for filing,  
5 given Apple’s headquarters in Cupertino, California.

6 **IV. PARTIES**

7 **A. Plaintiffs**

8 **1. Alabama Plaintiff Alison Coleman**

9 12. Plaintiff Alison Coleman (“Plaintiff” for purposes of this section) is a resident of  
10 Fosters, Alabama. Plaintiff purchased four iPhone XRs on or about January 1, 2019.

11 13. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
12 prior to purchasing them. Plaintiff was not made aware of any features of the iPhone XR that would  
13 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
14 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
15 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
16 she could use her iPhone XRs in a reliable manner as expected. Had she known about the inferior  
17 2x2 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for the phones, or she  
18 would have selected a different model or different manufacturer’s phone that did not use an inferior  
19 antenna array.

20 14. From soon after her purchases, Plaintiff began to experience connectivity issues with  
21 her iPhone XRs. Specifically, she would often be unable to hear caller’s voices or they would be  
22 unable to hear hers; she would have difficulty sending and receiving text messages; and she would  
23 have intermittent or inoperable data connections.

24 15. Plaintiff complained to Apple about these issues within one year of purchasing her  
25 iPhone XRs. Plaintiff contacted Apple, as well as an authorized dealer, on multiple occasions.  
26 Plaintiff was advised to reset her phones to factory default. She did this in an attempt to resolve her  
27 connectivity issues, but her iPhone XRs continue to have the problems described above.

1           16.     It was only recently that Plaintiff first learned, thanks to reports in the press, that  
2 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array  
3 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other  
4 smartphone manufacturers use throughout their product lines, including in phones at the same price  
5 point as the iPhone XR.

6           17.     Plaintiff continues to possess her affected phones. One of her iPhone XRs was  
7 provided to a family member who has also experienced the same connectivity issues.

8           2.       **California Plaintiff Diana Atkins**

9           18.     Plaintiff Diana Atkins (“Plaintiff” for purposes of this section) is a resident of Rohnert  
10 Park, California. Plaintiff purchased her iPhone XR on or about October 27, 2019.

11           19.     Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
12 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
13 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
14 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
15 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
16 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2  
17 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would  
18 have selected a different model or different manufacturer’s phone that did not use an inferior antenna  
19 array.

20           20.     From soon after her purchase, Plaintiff began to experience connectivity issues with  
21 her iPhone XR. Specifically, she would often be unable to hear caller’s voices or they would be  
22 unable to hear hers; she would have difficulty sending and receiving text messages; and she would  
23 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,  
24 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an  
25 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and  
26 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,  
27 including in phones at the same price point as the iPhone XR.

28           21.     Plaintiff continues to possess her affected phone.

1           **3. California Plaintiff Euihwan Cho**

2           22. Plaintiff Euihwan Cho (“Plaintiff” for purposes of this section) is a resident of  
3 Gardena, California. Plaintiff purchased his iPhone XR on or about June 1, 2019.

4           23. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
5 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
6 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
7 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
8 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
9 he could use his iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2  
10 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or he would  
11 have selected a different model or different manufacturer’s phone that did not use an inferior antenna  
12 array.

13           24. From soon after his purchase, Plaintiff began to experience connectivity issues with  
14 his iPhone XR. Specifically, he would often be unable to hear caller’s voices or they would be  
15 unable to hear his; he would have difficulty sending and receiving text messages; and he would have  
16 intermittent or inoperable data connections. It was only recently that Plaintiff first learned, thanks to  
17 reports in the press, that Apple had designed and manufactured the iPhone XR with an inferior 2x2  
18 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS  
19 Max, and that other smartphone manufacturers use throughout their product lines, including in  
20 phones at the same price point as the iPhone XR.

21           25. Plaintiff continues to possess his affected phone.

22           **4. Florida Plaintiff Beth Chavez**

23           Plaintiff Beth Chavez (“Plaintiff” for purposes of this section) is a resident of Gibsonton,  
24 Florida. Plaintiff purchased her iPhone XR on or about April 6, 2019.

25           Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR prior to  
26 purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would render it  
27 less capable of voice and internet connectivity than other iPhone models. Specifically, Plaintiff was  
28 not made aware of the fact that the iPhone XR was equipped with an inferior 2x2 MIMO array that



1 would prevent it from adequately connecting to voice and data networks such that she could use her  
2 iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2 MIMO antenna  
3 array on the iPhone XR, Plaintiff would have paid less for this phone, or she would have selected a  
4 different model or different manufacturer's phone that did not use an inferior antenna array.

5 From soon after her purchase, Plaintiff began to experience connectivity issues with her  
6 iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be unable  
7 to hear hers; she would have difficulty sending and receiving text messages; and she would have  
8 intermittent or inoperable data connections. It was only recently that Plaintiff first learned, thanks to  
9 reports in the press, that Apple had designed and manufactured the iPhone XR with an inferior 2x2  
10 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS  
11 Max, and that other smartphone manufacturers use throughout their product lines, including in  
12 phones at the same price point as the iPhone XR.

13 26. Plaintiff continues to possess her affected phone.

14 5. **Florida Plaintiff Jacqueline Demeritte**

15 27. Plaintiff Jacqueline Demeritte ("Plaintiff" for purposes of this section) is a resident of  
16 Sunrise, Florida. Plaintiff purchased her iPhone XR on or about November 15, 2018.

17 28. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
18 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
19 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
20 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
21 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
22 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2  
23 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would  
24 have selected a different model or different manufacturer's phone that did not use an inferior antenna  
25 array.

26 29. From soon after her purchase, Plaintiff began to experience connectivity issues with  
27 her iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be  
28 unable to hear hers; she would have difficulty sending and receiving text messages; and she would

1 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,  
2 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an  
3 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and  
4 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,  
5 including in phones at the same price point as the iPhone XR.

6 30. Plaintiff continues to possess her affected phone.

7 **6. Georgia Plaintiff Colea Childs**

8 31. Plaintiff Colea Childs (“Plaintiff” for purposes of this section) is a resident of Atlanta,  
9 Georgia. Plaintiff purchased her iPhone XR on or about August 27, 2019.

10 32. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
11 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
12 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
13 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
14 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
15 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2  
16 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would  
17 have selected a different model or different manufacturer’s phone that did not use an inferior antenna  
18 array.

19 33. From soon after her purchase, Plaintiff began to experience connectivity issues with  
20 her iPhone XR. Specifically, she would often be unable to hear caller’s voices or they would be  
21 unable to hear hers; she would have difficulty sending and receiving text messages; and she would  
22 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,  
23 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an  
24 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and  
25 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,  
26 including in phones at the same price point as the iPhone XR.

27 34. Plaintiff continues to possess her affected phone.

1           7.     **Nevada Plaintiff Donald Dahl**

2           35.    Plaintiff Donald Dahl (“Plaintiff” for purposes of this section) is a resident of Las  
3 Vegas, Nevada. Plaintiff purchased his iPhone XR on or about August 15, 2019.

4           36.    Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
5 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
6 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
7 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
8 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
9 he could use his iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2  
10 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or he would  
11 have selected a different model or different manufacturer’s phone that did not use an inferior antenna  
12 array.

13          37.    From soon after his purchase, Plaintiff began to experience connectivity issues with  
14 his iPhone XR. Specifically, he would often be unable to hear caller’s voices or they would be  
15 unable to hear his; he would have difficulty sending and receiving text messages; and he would have  
16 intermittent or inoperable data connections. It was only recently that Plaintiff first learned, thanks to  
17 reports in the press, that Apple had designed and manufactured the iPhone XR with an inferior 2x2  
18 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS  
19 Max, and that other smartphone manufacturers use throughout their product lines, including in  
20 phones at the same price point as the iPhone XR.

21          38.    Plaintiff continues to possess his affected phone.

22           8.     **New York Plaintiff Candace Martino**

23          39.    Plaintiff Candace Martino (“Plaintiff” for purposes of this section) is a resident of  
24 Rochester, New York. Plaintiff purchased her iPhone XR on or about June 4, 2019.

25          40.    Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
26 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
27 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
28 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2

1 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
2 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2  
3 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would  
4 have selected a different model or different manufacturer's phone that did not use an inferior antenna  
5 array.

6 41. Prior to purchasing her iPhone XR, Plaintiff was using an iPhone 6 plus and never  
7 experienced any connectivity issues.

8 42. From soon after her purchase, Plaintiff began to experience connectivity issues with  
9 her iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be  
10 unable to hear her; she would experience dropped calls; she would have difficulty sending and  
11 receiving text message; and she had intermittent or inoperable data connections.

12 43. Plaintiff complained to Apple about these issues within one year of purchasing her  
13 iPhone XR. Plaintiff spent considerable time on the telephone with Apple trying to resolve these  
14 issues. She was advised to perform a factory reset of the phone. She did this, and repeatedly turned  
15 off and restarted her phone, to attempt to resolve her connectivity problems, but none of this has  
16 worked and her iPhone XR continues to have the problems described above.

17 44. It was only recently that Plaintiff first learned, thanks to reports in the press, that  
18 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array  
19 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other  
20 smartphone manufacturers use throughout their product lines, including in phones at the same price  
21 point as the iPhone XR.

22 45. Plaintiff continues to possess her affected phone.

23 **9. Pennsylvania Plaintiff Scott Sapkosky**

24 46. Plaintiff Scott Sapkosky ("Plaintiff" for purposes of this section) is a resident of  
25 Philadelphia, Pennsylvania. Plaintiff purchased his iPhone XR around May 2019.

26 47. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
27 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
28 render it less capable of voice and internet connectivity than other iPhone models. Specifically,

1 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
2 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
3 he could use his iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2  
4 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or he would  
5 have selected a different model or different manufacturer's phone that did not use an inferior antenna  
6 array.

7 48. From soon after his purchase, Plaintiff began to experience connectivity issues with  
8 his iPhone XR. He had difficulty hearing incoming calls and persons had difficulty hearing him.  
9 Additionally, calls would be dropped and fail to go through. Data connections were unreliable, and  
10 his phone was slow-running on WiFi and on cell towers. Text messages would often fail to send, and  
11 would regularly be received, if at all, long after they were sent.

12 49. Plaintiff attempted to troubleshoot the problem, including by clearing out the caches  
13 on his phone. He eventually went to an Apple Store, where he had his phone replaced with another  
14 iPhone XR. His second iPhone XR continues to have the problems described above.

15 50. It was only recently that Plaintiff first learned, thanks to reports in the press, that  
16 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array  
17 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other  
18 smartphone manufacturers use throughout their product lines, including in phones at the same price  
19 point as the iPhone XR.

20 51. Plaintiff stills owns the replacement iPhone XR.

21 10. **South Carolina Plaintiff Elaine Anderson**

22 52. Plaintiff Elaine Anderson ("Plaintiff" for purposes of this section) is a resident of  
23 Sumter, South Carolina. Plaintiff purchased two iPhone XRs on or about September 21, 2019.

24 53. Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
25 prior to purchasing them. Plaintiff was not made aware of any features of the iPhone XR that would  
26 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
27 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
28 MIMO array that would prevent it from adequately connecting to voice and data networks such that

1 she could use her iPhone XRs in a reliable manner as expected. Had she known about the inferior  
2 2x2 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for the phones, or she  
3 would have selected a different model or different manufacturer's phone that did not use an inferior  
4 antenna array.

5 54. From soon after her purchases, Plaintiff began to experience connectivity issues with  
6 her iPhone XRs. Specifically, she would often be unable to hear caller's voices or they would be  
7 unable to hear hers; she would have difficulty sending and receiving text messages; and she would  
8 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,  
9 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an  
10 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and  
11 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,  
12 including in phones at the same price point as the iPhone XR.

13 55. Plaintiff continues to possess her affected phones.

14 11. **Texas Plaintiff Scott Burst**

15 56. Plaintiff Scott Burst ("Plaintiff" for purposes of this section) is a resident of Pearland,  
16 Texas. Plaintiff purchased his iPhone XR on or about September 17, 2019.

17 57. Plaintiff was not made aware of any features of the iPhone XR that would render it  
18 less capable of voice and internet connectivity than other iPhone models. Specifically, Plaintiff was  
19 not made aware of the fact that the iPhone XR was equipped with an inferior 2x2 MIMO array that  
20 would prevent it from adequately connecting to voice and data networks such that he could use his  
21 iPhone XR in a reliable manner as expected. Had he known about the inferior 2x2 MIMO antenna  
22 array on the iPhone XR, Plaintiff would have paid less for this phone, or he would have selected a  
23 different model or different manufacturer's phone that did not use an inferior antenna array.

24 58. From soon after his purchase, Plaintiff began to experience connectivity issues with  
25 his iPhone XR. Specifically, he would often be unable to hear caller's voices or they would be  
26 unable to hear his; he would have difficulty sending and receiving text message; and he has had  
27 intermittent or inoperable data connections.

1           59. Plaintiff complained to Apple about these issues within one year of purchasing his  
2 iPhone XR. He was advised to go to an Apple Store, where employees told him that he needed to do  
3 a factory reset of his phone and downgrade the operating system. He did this, and repeatedly turned  
4 off and restarted his phone to attempt to resolve his connectivity problems, but not of this worked  
5 and his iPhone XR continues to have the problems described above.

6           60. It was only recently that Plaintiff first learned, thanks to reports in the press, that  
7 Apple had designed and manufactured the iPhone XR with an inferior 2x2 MIMO antenna array  
8 instead of a 4x4 MIMO array that Apple uses in its iPhone XS and iPhone XS Max, and that other  
9 smartphone manufacturers use throughout their product lines, including in phones at the same price  
10 point as the iPhone XR.

11           61. Plaintiff continues to possess his affected phone.

12           **12. Texas Plaintiff Erick Villagran**

13           62. Plaintiff Erick Villagran is a resident of Round Rock, Texas. On January 30, 2020, he  
14 purchased a new iPhone XR from the AT&T store in Pflugerville, Texas.

15           63. Prior to purchasing his iPhone XR, Plaintiff was using a Galaxy S10 plus and never  
16 experienced any connectivity issues.

17           64. Shortly after acquiring his new iPhone XR, he began having connectivity issues with  
18 his new phone. He had difficulty hearing incoming calls and persons had difficulty hearing him.  
19 Additionally, calls would be dropped and fail to go through. Data connections were unreliable, with  
20 interrupted streaming and the inability to use many applications, especially streaming services. Text  
21 messages would often fail to send, and would regularly be received, if at all, long after they were  
22 sent.

23           65. Plaintiff contacted his service provider, AT&T, and they told him the problem was  
24 not with the service, but instead with his new iPhone XR.

25           66. Plaintiff still owns his iPhone XR. However, because of these connectivity issues,  
26 Plaintiff is thinking of replacing his iPhone XR with a different phone.

1           67.     When Plaintiff purchased his iPhone XR, he did so under the reasonable, but  
2 mistaken, belief that it would function normally and allow him to use the normal operating features  
3 of an iPhone, and would not have the serious connectivity issues that he has experienced.

4           68.     Had Plaintiff known that the iPhone XR had a 2x2 MIMO antenna array that would  
5 provide half the connection speed and deficient connectivity at any speed as compared to other  
6 iPhones and competitor models on the market, he would have paid less for his iPhone XR, or he  
7 would have purchased a different iPhone or a competitor's phone that did not have these issues.

8           **13.     Wisconsin Plaintiff Victoria Cornwell**

9           69.     Plaintiff Victoria Cornwell ("Plaintiff" for purposes of this section) is a resident of  
10 Racine, Wisconsin. Plaintiff purchased her iPhone XR on or about February 28, 2019.

11          70.     Plaintiff reviewed marketing materials and advertisements concerning the iPhone XR  
12 prior to purchasing it. Plaintiff was not made aware of any features of the iPhone XR that would  
13 render it less capable of voice and internet connectivity than other iPhone models. Specifically,  
14 Plaintiff was not made aware of the fact that the iPhone XR was equipped with an inferior 2x2  
15 MIMO array that would prevent it from adequately connecting to voice and data networks such that  
16 she could use her iPhone XR in a reliable manner as expected. Had she known about the inferior 2x2  
17 MIMO antenna array on the iPhone XR, Plaintiff would have paid less for this phone, or she would  
18 have selected a different model or different manufacturer's phone that did not use an inferior antenna  
19 array.

20          71.     From soon after her purchase, Plaintiff began to experience connectivity issues with  
21 her iPhone XR. Specifically, she would often be unable to hear caller's voices or they would be  
22 unable to hear hers; she would have difficulty sending and receiving text messages; and she would  
23 have intermittent or inoperable data connections. It was only recently that Plaintiff first learned,  
24 thanks to reports in the press, that Apple had designed and manufactured the iPhone XR with an  
25 inferior 2x2 MIMO antenna array instead of a 4x4 MIMO array that Apple uses in its iPhone XS and  
26 iPhone XS Max, and that other smartphone manufacturers use throughout their product lines,  
27 including in phones at the same price point as the iPhone XR.

28          72.     Plaintiff continues to possess her affected phone.



1 **B. Defendant Apple Inc.**

2 73. Apple Inc., the designer, manufacturer, and vendor of iPhones, is a California  
3 corporation. Apple maintains its headquarters and principal place of business in Cupertino,  
4 California. Upon information and belief, Apple took all decisions and actions complained of herein  
5 at or near its corporate headquarters in Cupertino, California, or elsewhere in the state of California.

6 74. Apple transacts substantial business throughout California, including by way of  
7 designing its products and operating system updates, devising and implementing policies regarding  
8 hardware design and components, devising and implementing its service and marketing strategies  
9 and policies, and managing distribution of its iPhone products from or via its California  
10 headquarters. It is believed, and therefore alleged, that substantially all of the misconduct alleged in  
11 this complaint occurred in or emanated from California.

12 **V. FACTUAL ALLEGATIONS**

13 **A. The Technology in the iPhone XR**

14 75. On or about September 21, 2018, Apple released its iPhone XS and iPhone XS Max.<sup>1</sup>  
15 These new flagship models of the iconic iPhone were equipped with a 4x4 MIMO antenna array. The  
16 iPhone XR, at issue in this case, was released on October 26, 2018.<sup>2</sup> Unlike the earlier released  
17 iPhone XS and XS Max, however, the iPhone XR was released with a 2x2 MIMO antenna array.

18 76. With two fewer branches on the antenna array, 2x2 MIMO is only capable of two  
19 streams of data for transmit and receive pathways, while 4x4 MIMO offers four streams. The  
20 differences between 2x2 MIMO and 4x4 MIMO affect not just the LTE cellular connection, but also  
21 industry standard 802.11ac WiFi connections.<sup>3</sup>

22 77. Testing has revealed that the increased pathways of the 4x4 MIMO array affects not  
23 only download and upload data speeds, but also network connectivity. That is, given the same signal  
24 strength from a cellular or WiFi antenna, the 2x2 MIMO antenna arrays do not connect as well and  
25

26 <sup>1</sup> See <https://historycooperative.org/the-history-of-the-iphone/> (last accessed April 3, 2020).

27 <sup>2</sup> See *id.*

28 <sup>3</sup> See <https://www.howtogeek.com/394266/what-is-4x4-mimo-and-does-my-smartphone-need-it/>  
(last accessed April 3, 2020).

1 suffer from an inferior connection to comparable devices equipped with the superior 4x4 MIMO  
2 array.<sup>4</sup>

3 **B. Consumer Reaction to the iPhone XR**

4 78. Customers have posted on Apple’s own forums and websites complaints about  
5 connectivity with the iPhone XR from soon after its initial release. For example, a customer  
6 identified as “saltrock04” posted the following on December 10, 2018:

7 I am intermittently having a strange issue with my iPhone XR on  
8 Sellular Connectivity. The phone just stops data and call connectivity,  
9 even though the cellular receptions bar is showing full signal. The only  
way you can tell it has happened is when you come to use the device,  
then you see there is no data and calls can’t be made or received. ....<sup>5</sup>

10 79. Consumers posted to other boards that their iPhone XR phones had issues from  
11 immediately after the release date. For example, “radiologyman” posted the following on December  
12 23, 2018:

13 Seems like my wife’s day one Iphone XR has reception issues, both  
14 with cellular signal and with random wifi disconnects. Is it worth  
15 exchanging it for a later production date unit? Seems like it was  
16 established on this forum that there is a variance in reception with the  
XS and XS Max models. What are may chances to persuade Apple to  
take it back in return for an Iphone X? Thanks!.<sup>6</sup>

17 80. And consumers have posted that recent software updates to their phones have not  
18 fixed the connectivity issues. For example, on October 16, 2019, “Bluestar\_dragon” posted:

19 I just got the XR 5 days ago. I’m coming from a 5s with no reception  
20 issues. The XR has been horrible with reception so far. I updated to  
iOS 13 and am still having issues.<sup>7</sup>

21 **C. Press Response to the iPhone XR**

22 81. The online technology press and forums have also widely reported and commented on  
23 the systemic connectivity issues of the iPhone XR. On December 19, 2018, less than two months  
24

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25 <sup>4</sup> See *id.*

26 <sup>5</sup> <https://discussions.apple.com/thread/250014593> (last accessed April 3, 2020).

27 <sup>6</sup> <https://forums.macrumors.com/threads/iphone-xr-reception-issues.2162007/> (last accessed  
28 April 3, 2020).

<sup>7</sup> [https://forums.macrumors.com/threads/iphone-xr-reception-issues.2162007/page-2#post-  
27409829](https://forums.macrumors.com/threads/iphone-xr-reception-issues.2162007/page-2#post-27409829) (last accessed April 3, 2020).

1 after the release of the iPhone XR, Matthew Miller from ZD Net published the article: “Goodbye  
2 iPhone XR: Signal strength and size bring me back to the iPhone XS.” After using the iPhone XR, he  
3 wrote: “After six weeks, I realized I just could not put up with the less capable wireless technology  
4 that daily made my streaming media pause on my commute and had calls drop without warning.”<sup>8</sup>

5 82. In a product review that Mr. Miller published on October 31, 2018, he wrote:

6 One difference between the iPhone XR and XS/XS Max that can be  
7 significant and is likely to be overlooked by the masses is the CAT 12  
8 vs CAT 16 LTE support. Qualcomm has an excellent tutorial on this  
9 that is applicable even to the Intel modems found in these new  
10 iPhones. Most people may focus on the theoretical 600 Mbps CAT 12  
11 vs 1 Gbps CAT 16 speeds. Speed differences are present, but that's not  
12 really the main concern here. CAT 12 devices have two antennas while  
13 CAT 16 devices have four; 2x2 MIMO vs 4x4 MIMO. In weak signal  
14 areas, this can be critical.

11 My commuter train spends most of its time on the fringes of towns  
12 along the way to Seattle and T-Mobile signal is weak most of the way.  
13 In my testing, the iPhone XR averages about 4-5 dBm less than the  
14 iPhone XS Max and a stunning 10 dBm less than the Note 9. Given the  
15 logarithmic scale for this measure that equates to the Note 9 have a  
16 signal three times as powerful as the iPhone XR. The iPhone XR is  
17 performing even worse than the Essential Phone, which is terrible in  
18 weak signal areas.<sup>9</sup>

16 83. A review in PC Magazine from November 5, 2018, just days after the release of the  
17 iPhone XR, highlighted its deficient connectivity:

18 Both the XS/Max and the XR use the same modem, the new Intel  
19 XMM7560. But the XR is missing two of the XS/Max's antenna  
20 branches, making it a 2x2 MIMO phone versus the XS/Max's 4x4  
21 MIMO. All flagship Android phones right now are 4x4 MIMO, as  
22 well, including XR-priced phones like the LG G7 and the OnePlus  
23 6T<sup>10</sup>

21 84. The article went on to explain that across the board, even when connected to a  
22 network only capable of 2x2 MIMO connection, the iPhone XR materially underperformed the  
23 iPhone XS and XS Max, and price-competitive models to the iPhone XR from other manufacturers.<sup>11</sup>

24  
25 <sup>8</sup> <https://www.zdnet.com/article/goodbye-apple-iphone-xr-signal-strength-and-size-put-the-iphone-xs-back-in-my-hand/> (last accessed April 3, 2020).

26 <sup>9</sup> <https://www.zdnet.com/product/apple-iphone-xr/> (last accessed April 3, 2020).

27 <sup>10</sup> <https://www.pcmag.com/news/exclusive-iphone-xs-crushes-xr-in-cellular-signal-test-results>  
28 (last accessed April 3, 2020).

<sup>11</sup> See *id.*

1           85. By January 2019, the financial world had also recognized the failings of the iPhone  
2 XR. In a January 7, 2019 article titled: “3 iPhone XR Problems that Create Huge Headaches for  
3 Apple,” Josh Enomoto wrote on Yahoo Finance:

4                   [T]he iPhone XR is itself a hot mess. When the company launched the  
5 fighter model, it was supposed to bridge the pricing gaps in the Apple  
6 iPhone. Apparently, management spent more time marketing the  
7 product than manufacturing it.

8                   According to various consumer reviews, the iPhone XR suffers from a  
9 litany of performance and connectivity issues. In addition, frustrated  
10 customers have reported numerous electronic gremlins. The kicker is  
11 that AAPL is still working on solutions. Therefore, if you come across  
12 an issue, you must hope a third-party resource has your answer.<sup>12</sup>

13           86. Despite several reports that Apple would attempt to resolve the iPhone XR  
14 connectivity issues by switching the phone to a 4x4 MIMO antenna array for its fall 2019 product  
15 release,<sup>13</sup> there is no evidence that it has done that, and even recent purchasers report the same  
16 connectivity issues as day-one purchasers.<sup>14</sup>

17           87. Apple engages in rigorous pre-release testing. Dozens of engineers are provided with  
18 pre-production units in the months leading up to a product launch and report back their experiences  
19 to Apple. Given the hardware differences in capability between the 2x2 MIMO antenna array in the  
20 iPhone XR and the twice-as-capable 4x4 MIMO antenna array in the iPhone XS, iPhone XS Max,  
21 and in other manufacturer’s devices at the same price-point as the iPhone XR, Apple’s pre-release  
22 testing revealed to Apple that the iPhone XR would have serious connectivity shortcomings as  
23 compared to consumers’ other choices in the marketplace. Yet Apple’s press release for the iPhone  
24 XR revealed none of this, instead deceptively suggesting that the iPhone XR shared the iPhone XS’  
25 “breakthrough technology”:

26                   At 8 a.m. local time on Friday, October 26, the new iPhone XR went  
27 on sale around the world. iPhone XR combines breakthrough  
28 technologies from iPhone XS in an all-screen glass and aluminum

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25           <sup>12</sup> <https://finance.yahoo.com/news/3-iphone-xr-problems-create-171951118.html> (last accessed  
26 April 3, 2020).

27           <sup>13</sup> See, e.g., [https://appleinsider.com/articles/19/01/17/2019-iphone-xr-may-get-same-antenna-  
28 tech-thats-in-the-iphone-xs](https://appleinsider.com/articles/19/01/17/2019-iphone-xr-may-get-same-antenna-tech-thats-in-the-iphone-xs) (last accessed April 3, 2020).

<sup>14</sup> See, e.g., <https://discussions.apple.com/thread/251019022> (post from Jan. 7, 2020, “my iPhone  
XR won’t stay connected to the WiFi”) (last accessed April 3, 2020).

1 design, featuring a stunning 6.1-inch Liquid Retina display — the most  
2 advanced LCD in a smartphone.<sup>15</sup>

3 88. Likewise, marketing on its website for the XR, even to this day, revealed none of the  
4 connectivity shortcomings of the 2x2 MIMO antenna array in the iPhone XR. Instead, in comparing  
5 the iPhone XR to the iPhone XS and XS Max, Apple makes no mention at all of the different MIMO  
6 antenna arrays or what the effect of this difference is on usability.<sup>16</sup>

7 **D. Apple’s Warranties and Response to the Defect**

8 89. Defendant issued to all original purchasers, including Plaintiffs and the other Class  
9 members, a written manufacturer’s warranty. This One-Year Limited Warranty states that Apple  
10 “warrants the included hardware product and accessories against defects in materials and  
11 workmanship for one year from the date of original retail purchase.”

12 90. However, Apple knew, or at least should have known, of the defects at the time of  
13 sale or lease of the iPhone XR. Plaintiffs and Class members, however, had no such knowledge. The  
14 defects in the iPhone XR were and are latent in nature because they are not obvious or ascertainable  
15 upon reasonable examination and they were no disclosed in any advertising or marketing materials.

16 91. Despite having more than adequate opportunity to successfully remedy the defect(s)  
17 in the iPhone XR, Apple has failed to do so, and in many instances has instead merely replaced  
18 defective iPhone XR with defective iPhone XR.

19 92. Apple concealed, and continues to conceal, the fact that the iPhone XR contains an  
20 inferior 2x2 MIMO antenna array that renders the iPhone XR incapable of performing as reasonably  
21 expected. Apple also continues to conceal the fact that the replacement iPhone XRs it provides to  
22 purportedly repair the defect are equally defective. Despite its knowledge of this defect, Apple  
23 continues to sell defective iPhone XR smartphones. Therefore, Plaintiffs did not discover and could  
24 not have discovered this defect through reasonable diligence.

25 \_\_\_\_\_  
26 <sup>15</sup> <https://www.apple.com/newsroom/2018/10/iphone-xr-now-available-around-the-world/> (last  
accessed April 3, 2020).

27 <sup>16</sup> *See*  
28 [https://www.apple.com/iphone/compare/?device1=iphoneXS&device2=iphoneXSmax&device3=iph  
oneXR](https://www.apple.com/iphone/compare/?device1=iphoneXS&device2=iphoneXSmax&device3=iph<br/>oneXR) (last accessed April 3, 2020).

1            93. Plaintiffs and the other Class members reasonably relied on Apple's warranties  
2 regarding the quality, durability and other material characteristics of their iPhone XRs, including, but  
3 not limited to, the representation that the iPhone XRs contained no known defects (defects known to  
4 Apple) at the time of sale.

5                                    **VI. CHOICE OF LAW ALLEGATIONS**

6            94. Because this Complaint is brought in California, California's choice of law regime  
7 governs the state law allegations in this Complaint. Under California's choice of law rules, California  
8 law applies to the claims of all Class members, regardless of their state of residence or state of  
9 purchase.

10          95. Because Apple is headquartered—and made all decisions relevant to these claims—in  
11 California, California has a substantial connection to, and materially greater interest in, the rights,  
12 interests, and policies involved in this action than any other state. Application of California law to  
13 Apple and the claims of all Class members would not be arbitrary or unfair.

14                                    **VII. CLASS ALLEGATIONS**

15          96. Plaintiffs bring this action pursuant to the provisions of Fed. R. Civ. P. 23(a), (b)(2),  
16 and (b)(3), on behalf of themselves and the following proposed Nationwide Class:<sup>17</sup>

17            **All U.S. persons or entities who own or owned an iPhone XR.**

18          97. Plaintiffs also bring this claim on behalf of the following Express Warranty Subclass:

19                    All members of the Nationwide Class who presented their phone to  
20                    Apple, an authorized Apple reseller, or an authorized Apple service  
21                    center for repair of connectivity issues, whose iPhone XRs were not  
22                    fixed, or were replaced with iPhone XRs.

23          98. Excluded from the proposed class and subclass are Apple, its employees, officers,  
24 directors, legal representatives, heirs, successors, subsidiaries and affiliates, and the judicial officers  
25 and their immediate family members and associated court staff assigned to this case, as well as all  
26 persons who make a timely election to be excluded from the proposed classes.  
27

28                    <sup>17</sup> Throughout this complaint, the Nationwide Class is referenced as such, or as the Class.

1           99.     Certification of Plaintiffs' claims for classwide treatment is appropriate because  
2 Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as  
3 would be used to prove those elements in individual actions alleging the same claims.

4           100.    This action meets all applicable standards of Fed. R. Civ. P. 23 for class certification.  
5 More specifically, Plaintiffs can demonstrate:

6           101.    Numerosity. The members of the proposed class and subclass are so numerous and  
7 geographically dispersed that individual joinder of all proposed class members is impracticable. *See*  
8 Fed. R. Civ. P. 23(a)(1). While Plaintiffs believe that there are millions, if not tens of millions,  
9 of members of the proposed class and subclass,<sup>18</sup> the precise number of class and subclass members  
10 is unknown to them, but may be ascertained from Apple's books and records. In the 48 hour period  
11 following Plaintiffs' counsel's publication of their investigation of this matter, Plaintiffs' counsel  
12 was contacted by over 1,300 iPhone XR owners with connectivity complaints and that number  
13 continues to grow by hundreds per day. Class members may be notified of the pendency of this  
14 action by recognized, court-approved notice dissemination methods, which may include U.S. Mail,  
15 electronic mail, Internet postings, and/or published notice.

16           102.    Commonality and Predominance. This action involves common questions of law and  
17 fact, which predominate over any questions affecting individual class members. *See* Fed. R. Civ. P.  
18 23(a)(2) and (b)(3). These include, without limitation:

- 19               a.     Whether Apple engaged in the conduct alleged in this Complaint;
- 20               b.     Whether Apple designed, advertised, marketed, distributed, sold, or otherwise  
21               placed iPhone XRs into the stream of commerce in the United States;

22  
23  
24  
25           <sup>18</sup> *See, e.g.*, <https://wccftech.com/iphone-xr-top-selling-smartphone-of-2019-h1/> (stating that 26  
26 million iPhone XR were sold in the first half of 2019 alone) (last accessed April 3, 2019). *See also*  
27 <https://www.statista.com/statistics/804398/us-iphone-sales-by-model/> (48% of all U.S. iPhone sales  
28 in the first half of 2019 were iPhone XR); <https://www.businessinsider.com/iphone-xr-apple-best-selling-phone-in-2019-omdia-report-2020-2> (iPhone XR was most popular smartphone in the world in 2019 with over 46 million units sold).

- c. Whether Apple advised owners of iPhone XRs (including Plaintiffs and putative class members) of the use of 2x2 MIMO antenna arrays in the iPhone XR and the affect the use of this component would have on connectivity;
- d. Whether Apple had a common policy of concealing its decision to use the less-capable 2x2 MIMO antenna array in the iPhone XR;
- e. Whether the iPhone XR contains marketing, design, or manufacturing defects;
- f. Whether Apple knew about the defect(s), and, if so, for how long;
- g. Whether Apple marketed the iPhone XR as a high-performance device that was both powerful and speedy and capable of operating like its other iPhone devices;
- h. Whether Apple’s conduct, including but not limited to its alleged deceptive conduct, violates California consumer protection statutory or other laws, including the laws of other jurisdictions, as asserted herein;
- i. Whether Plaintiffs and members of the proposed classes are entitled to damages, as well as punitive, exemplary, or multiple damages, due to Apple’s conduct as alleged in this Complaint, and if so, in what amounts; and
- j. Whether Plaintiffs and other putative class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief as requested in this complaint.

103. Typicality. Plaintiffs’ claims are typical of the putative class members’ claims because, among other things, all such class members were comparably injured through Apple’s wrongful conduct as described above. *See* Fed. R. Civ. P. 23(a)(3).

104. Adequacy. Plaintiffs are adequate proposed class representatives because their interests do not conflict with the interests of the other members of the proposed class they seek to represent; because they have retained counsel competent and experienced in complex class action litigation; and because they intend to prosecute this action vigorously. The interests of the proposed classes will be fairly and adequately protected by Plaintiffs and their counsel. *See* Fed. R. Civ. P. 23(a)(4).



1           105.    Declaratory and Injunctive Relief. Apple has acted or refused to act on grounds  
2 generally applicable to Plaintiffs and the other members of the proposed classes, thereby making  
3 appropriate final injunctive relief and declaratory relief, as described below, with respect to the  
4 proposed classes as a whole. *See Fed. R. Civ. P. 23(b)(2).*

5           106.    Superiority. A class action is superior to any other available means for the fair and  
6 efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in  
7 the management of this class action. The damages or other financial detriment suffered by Plaintiffs  
8 and putative class members are relatively small compared to the burden and expense that would be  
9 required to individually litigate their claims against Apple, so it would be impracticable for members  
10 of the proposed classes to individually seek redress for Apple’s wrongful conduct. Moreover, even if  
11 class members could afford individual litigation, the court system could not. Individualized litigation  
12 creates a potential for inconsistent or contradictory judgments, and it increases the delay and expense  
13 to all parties and the court system. By contrast, the class action device presents far fewer  
14 management difficulties and provides the benefits of single adjudication, economy of scale, and  
15 comprehensive supervision by a single court. *See Fed. R. Civ. P. 23(b)(3).*

16                                   **VIII. CAUSES OF ACTION**

17   **COUNT I**  
18   **BREACH OF EXPRESS WARRANTY—**  
19   **MAGNUSON-MOSS WARRANTY ACT**  
  **(15 U.S.C. §§ 2301, ET SEQ.)**

20           107.    Plaintiffs repeat and incorporate the allegations set forth above as if fully alleged  
21 herein.

22           108.    Plaintiffs Burst, Coleman, Martino, Sapkosky and Villagran (“Plaintiffs” for purposes  
23 of this cause of action) bring this claim on behalf of the Express Warranty Subclass.

24           109.    The defective iPhone XR’s are consumer products as defined in 15 U.S.C. § 2301(1).

25           110.    Plaintiffs and Subclass members are consumers as defined in 15 U.S.C. § 2301(3).

26           111.    Apple is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

27           112.    Apple provided Plaintiffs and Subclass members “written warranties” within the  
28 meaning of 15 U.S.C. § 2301(6).

1 113. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs  
2 properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

3 114. In the course of selling the defective iPhone XR, Apple expressly warranted in its  
4 One-Year Limited Warranty that it “will either repair, replace, or refund your iPhone at its own  
5 discretion. Warranty benefits are in addition to rights provided under local consumer laws.”

6 115. Upon information and belief, Apple’s standard warranty language is identical for all  
7 iPhone XRs sold nationwide.

8 116. Apple did not provide at the time of sale, and has not provided since then, iPhone XR  
9 smartphones conforming to its express warranties.

10 117. Apple breached and continues to breach express warranties because the defective  
11 connectivity technology/systems, including the 2x2 MIMO antenna arrays, were present in the  
12 iPhone XR at the time of sale.

13 118. Apple breached and continues to breach express warranties because Apple did not  
14 (and does not) cover the full expenses associated with repairing and/or replacing the defective  
15 connectivity technology/systems in Plaintiffs’ and the Subclass members’ defective iPhone XRs.

16 119. Plaintiffs have attempted to have their iPhone XRs repaired under the warranty. Apple  
17 breached and continues to breach express warranties because it either fails to repair the iPhone XR or  
18 merely replaces the defective iPhone XR with a new or refurbished iPhone XR and is unable to  
19 successfully repair the defects in Plaintiffs’ and the Subclass members’ iPhone XRs, despite having  
20 had reasonable opportunities to do so. As such, the express warranties fail their essential purpose.

21 120. Apple’s refusal to provide an adequate repair or replacement violates 15 U.S.C.  
22 § 2304.

23 121. Despite the fact that the iPhone XRs connectivity technology/systems continue to fail  
24 despite being “repaired” or “replaced,” Apple continues to replace the defective iPhone XR with  
25 identical or substantially similar iPhone XRs. Thus, the defect is permanent in nature.

26 122. Apple fraudulently concealed material information from Plaintiffs and the Subclass  
27 regarding the existence and extent of the defects. Apple also fraudulently concealed the material fact  
28 that the replacement iPhone XRs were defective. Therefore, any limitations imposed by Apple as to

1 the scope of its obligations under the express warranties to repair and replace defective parts and/or  
2 any disclaimers in the written warranties prepared by Apple that purport to preclude recovery by  
3 Plaintiffs or the Class members are unconscionable, both substantively and procedurally, and are  
4 unenforceable as a matter of law.

5 123. Any such limitations or exclusions have been imposed unilaterally by Apple via  
6 adhesive, “take it or leave it” contracts with no ability by Plaintiffs or the Subclass members to  
7 negotiate the substance or coverage of the warranties, and Plaintiffs and the Subclass members did  
8 not have any meaningful choices of reasonably available alternative sources of supply of suitable  
9 iPhone XR smartphones free of the above unconscionable conditions.

10 124. Furthermore, Apple’s express warranty fails in its essential purpose because the  
11 contractual remedy is insufficient to make Plaintiffs and the Subclass members whole and because  
12 Apple has failed and/or refused to adequately provide the promised remedies within a reasonable  
13 time.

14 125. Also, as alleged herein, at the time that Apple warranted and sold the iPhone XR, it  
15 knew that the smartphones were defective, and Apple wrongfully and fraudulently misrepresented  
16 and/or concealed material facts regarding the iPhone XR. Plaintiffs and the Subclass members were  
17 therefore induced to purchase the iPhone XR under false and/or fraudulent pretenses.

18 126. Further, the enforcement under these circumstances of any limitations whatsoever on  
19 the recovery of incidental and/or consequential damages is barred because any such limitations work  
20 to reallocate the risks between the parties in an unconscionable and objectively unreasonable manner,  
21 and result in overly harsh or one-sided results that shock the conscience, especially in light of the fact  
22 that Apple simply placed replaced defective iPhone XRs with identically manufactured, and thus  
23 similarly defective iPhone XRs when those smartphones are brought in for repairs.

24 127. Moreover, many of the damages flowing from the iPhone XRs cannot be resolved by  
25 the limited remedies contained in the express warranty as those incidental and consequential  
26 damages have already been suffered due to Apple’s fraudulent conduct as alleged herein and due to  
27 their failure to provide such limited remedy within a reasonable time. Therefore, any limitation on  
28

1 Plaintiffs’ and the Subclass members’ remedies would cause the available remedy to be insufficient  
2 to make them whole.

3 128. Apple was previously provided notice of the defects in the iPhone XR by numerous  
4 customer complaints, letters, emails, and other communications from Subclass members, resellers,  
5 technology press, and repair facilities.

6 129. Plaintiffs and the Subclass members have suffered damages directly and proximately  
7 caused by Apple’s breach of the express warranty and are entitled to recover damages including, but  
8 not limited to, out of pocket expenses and diminution of value.

9 **COUNT II**  
10 **BREACH OF IMPLIED WARRANTY—**  
11 **MAGNUSON-MOSS WARRANTY ACT**  
**(15 U.S.C. §§ 2301, ET SEQ.)**

12 130. Plaintiffs re-allege and incorporate each and every allegation set forth above as if  
13 fully written herein.

14 131. Plaintiffs bring this claim on behalf of the Nationwide Class.

15 132. The iPhone XRs are “consumer products” within the meaning of 15 U.S.C. § 2301.

16 133. Plaintiffs and members of the Class are “consumers” within the meaning of 15 U.S.C.  
17 § 2301 because they are persons entitled under applicable state law to enforce against the warrantor  
18 the obligations of its express and implied warranties.

19 134. Apple is a “supplier” of consumer products to consumers and a “warrantor” within the  
20 meaning of 15 U.S.C. § 2301.

21 135. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs  
22 properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

23 136. Section 2310(d)(1) of Chapter 15 of the United States Code provides a cause of action  
24 for any consumer who is damaged by the failure of a warrantor to comply with a written or implied  
25 warranty.

26 137. Apple made written and implied warranties regarding the iPhone XR to Plaintiffs and  
27 Class members within the meaning of 15 U.S.C. § 2301. Apple provided Plaintiffs and other Class  
28

1 members an implied warranty of merchantability within the meaning of the Magnuson-Moss  
2 Warranty Act, 15 U.S.C. § 2301(7).

3 138. Apple breached the implied warranty of merchantability because the iPhone XR was  
4 not fit for the ordinary purpose for which such goods are used. As described throughout the  
5 Complaint, the iPhone XR contains defects which render them inconvenient, and imperfect such that  
6 Plaintiffs and Class members would not have purchased the iPhone XR had they known of the  
7 defects.

8 139. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and  
9 are not required to give Apple notice and an opportunity to cure until such time as the Court  
10 determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil  
11 Procedure.

12 140. Plaintiffs, individually and on behalf of the other Class members, seek all damages  
13 permitted by law, including diminution in value of their iPhone XRs, in an amount to be proven at  
14 trial.

15 141. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class  
16 members are entitled to recover a sum equal to the aggregate amount of costs and expenses  
17 (including attorneys' fees based on actual time expended) determined by the Court to have  
18 reasonably been incurred by Plaintiffs and the other Class members in connection with the  
19 commencement and prosecution of this action.

20 142. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C.  
21 § 2310(d)(1) and damages as a result of Apple's violation of its written and/or implied warranties.

22 **COUNT III**  
23 **VIOLATIONS OF THE CALIFORNIA CONSUMER**  
24 **LEGAL REMEDIES ACT**  
**(CAL. CIV. CODE § 1750, ET SEQ.)**

25 143. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
26 herein.

27 144. Plaintiffs bring this claim on behalf of the Nationwide Class.

1           145. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et*  
2 *seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken  
3 by any person in a transaction intended to result or which results in the sale or lease of goods or  
4 services to any consumer.”

5           146. The iPhone XRs are “goods” as defined in Cal. Civ. Code § 1761(a).

6           147. Plaintiffs and the other Class members are “consumers” as defined in Cal. Civ. Code  
7 § 1761(d), and Plaintiffs, the other Class members, and Apple are “persons” as defined in Cal. Civ.  
8 Code § 1761(c).

9           148. As alleged herein, Apple made misleading representations and omissions concerning  
10 the benefits, performance, and reliability of the iPhone XR, including the connectivity  
11 technology/system.

12           149. In purchasing the iPhone XR, Plaintiffs and other Class members were deceived by  
13 Apple’s failure to disclose its knowledge of the defect in its iPhone XR.

14           150. Apple’s conduct as described herein was and is in violation of the CLRA. Apple’s  
15 conduct violates at least the following enumerated CLRA provisions:

- 16           i. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,  
17 approval, characteristics, uses, benefits, or quantities that they do not have.
- 18           ii. Cal Civ. Code § 1770(a)(7): Representing that goods are of a particular  
19 standard, quality, or grade if they are of another.
- 20           iii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as  
21 advertised.
- 22           iv. Cal Civ. Code § 1770(a)(16): Representing that goods have been supplied in  
23 accordance with a previous representation when they have not.

24           151. Apple intentionally and knowingly misrepresented and omitted material facts  
25 regarding the iPhone XR, specifically regarding the connectivity technology/system, with an intent to  
26 mislead Plaintiffs and Class members.

27           152. In purchasing the iPhone XR, Plaintiffs and other Class members were deceived by  
28 Apple’s failure to disclose its knowledge of the defect in the connectivity technology/system.

1           153. Plaintiffs and other Class members had no way of knowing Apple’s representations  
2 were false, misleading, and incomplete or knowing the true nature of the iPhone XR.

3           154. As alleged herein, Apple engaged in a pattern of deception and public silence in the  
4 face of a known defect with its iPhone XR. Plaintiffs and other Class members did not, and could  
5 not, unravel Apple’s deception on their own.

6           155. Apple knew or should have known its conduct violated the CLRA.

7           156. Apple owed Plaintiffs and the Class members a duty to disclose the truth about its  
8 faulty iPhone XR because Apple:

- 9                   i. Possessed exclusive knowledge of the defect in the iPhone XR;  
10                   ii. Intentionally concealed the foregoing from Plaintiffs and Class members;  
11                   and/or  
12                   iii. Made incomplete representations in advertisements and on its website, failing  
13                   to warn the public or to publicly admit that the iPhone XR was defective.

14           157. Apple had a duty to disclose that the connectivity technology/system in the iPhone  
15 XR was fundamentally flawed as described herein, because Plaintiffs and the other Class members  
16 relied on Apple’s material misrepresentations and omissions regarding the features of the iPhone XR.

17           158. Apple’s conduct proximately caused injuries to Plaintiffs and the other Class  
18 members that purchased the iPhone XR and suffered harm as alleged herein.

19           159. Plaintiffs and the other Class members were injured and suffered ascertainable loss,  
20 injury-in-fact, and/or actual damage as a proximate result of Apple’s conduct in that Plaintiffs and  
21 the other Class members incurred costs, including overpaying for their iPhone XRs that have  
22 suffered a diminution in value.

23           160. Apple’s violations cause continuing injuries to Plaintiffs and other Class members.

24           161. Apple’s unlawful acts and practices complained of herein affect the public interest.

25           162. Apple knew of the defective connectivity technology/system, and that the iPhone XR  
26 was materially compromised by such defects.

27           163. The facts concealed and omitted by Apple from Plaintiffs and other Class members  
28 are material in that a reasonable consumer would have considered them to be important in deciding

1 whether to purchase an iPhone XR or pay a lower price. Had Plaintiffs and the other Class members  
2 known about the defective nature of the iPhone XR, they would not have purchased the iPhone XR  
3 or would not have paid the prices they paid.

4 164. Plaintiffs' and the other Class members' injuries were proximately caused by Apple's  
5 unlawful and deceptive business practices.

6 165. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining Apple from  
7 engaging in the methods, acts, or practices alleged herein, including further concealment of the  
8 defect in the iPhone XR.

9 166. Plaintiffs sent out a notice letter on April 6, 2020.

10 167. If Apple does not rectify its conduct within 30 days, Plaintiffs will amend this  
11 complaint to request the following forms of relief pursuant to Cal. Civ. Code § 1782:

- 12 i. Actual damages;
- 13 ii. Restitution of money to Plaintiffs and Class members, and the general public;
- 14 iii. Punitive damages;
- 15 iv. An additional award of up to \$5,000 to each Plaintiffs and any Class member  
16 who is a "senior citizen";
- 17 v. Attorneys' fees and costs; and
- 18 vi. Other relief that this Court deems proper.

19 **COUNT IV**  
20 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
**(CAL. BUS. & PROF. CODE § 17200, ET SEQ.)**

21 168. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
22 herein.

23 169. Plaintiffs bring this claim on behalf of the Nationwide Class.

24 170. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et*  
25 *seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act  
26 or practice and unfair, deceptive, untrue, or misleading advertising."

27 171. Apple's conduct, as described herein, was and is in violation of the UCL. Apple's  
28 conduct violates the UCL in at least the following ways:



- i. By failing to disclose that the connectivity technology/system in the iPhone XR was defective;
- ii. By selling iPhone XR s that suffer from such defects;
- iii. By knowingly and intentionally concealing from Plaintiffs and the other Class members that the iPhone XR was defective;
- iv. By marketing iPhone XRs as reliable, powerful, fast, and defect free, with cutting edge technology, all while knowing of the defect related to the connectivity technology/system; and
- v. By violating other California laws, including California consumer protection laws.

172. Apple intentionally and knowingly misrepresented and omitted material facts regarding the iPhone XR with intent to mislead Plaintiffs and the other Class members.

173. In purchasing the iPhone XRs, Plaintiffs and the other Class members were deceived by Apple's failure to disclose the defect related to the connectivity technology/system.

174. Plaintiffs and the other Class members reasonably relied upon Apple's false misrepresentations and omissions. They had no way of knowing that Apple's representations were false, misleading, and incomplete. As alleged herein, Apple engaged in a pattern of deception and public silence in the face of a known defect with its iPhone XR. Plaintiffs and the other Class members did not, and could not, unravel Apple's deception on their own.

175. Apple knew or should have known that its conduct violated the UCL.

176. Apple owed Plaintiffs and the other Class members a duty to disclose the truth about its iPhone XR because Apple:

- i. Possessed exclusive knowledge of the defect in the iPhone XR;
- ii. Intentionally concealed the foregoing from Plaintiffs and the other Class members; and/or
- iii. Made incomplete representations by failing to warn the public or to publicly admit that the iPhone XR was defective.

1 177. Apple had a duty to disclose that the connectivity technology/system in the iPhone  
2 XR was fundamentally flawed as described herein, because Plaintiffs and the other Class members  
3 relied on Apple's material misrepresentations and omissions.

4 178. Apple's conduct proximately caused injuries to Plaintiffs and the other Class  
5 members that purchased the iPhone XR and suffered harm as alleged herein.

6 179. Plaintiffs and the other Class members were injured and suffered ascertainable loss,  
7 injury-in-fact, and/or actual damage as a proximate result of Apple's conduct in that Plaintiffs and  
8 the other Class members incurred costs, including overpaying for their iPhone XRs that have  
9 suffered a diminution in value.

10 180. Apple's violations cause continuing injuries to Plaintiffs and Class members.

11 181. Apple's unlawful acts and practices complained of herein affect the public interest.

12 182. Apple's misrepresentations and omissions alleged herein caused Plaintiffs and the  
13 other Class members to make their purchases of their iPhone XRs. Absent those misrepresentations  
14 and omissions, Plaintiffs and the other Class members would not have purchased iPhone XRs, would  
15 not have purchased the iPhone XR at the prices they paid, and/or would have purchased alternative  
16 smartphones that did not contain defective connectivity technology/systems that failed to live up to  
17 reasonable consumer expectations or industry standards.

18 183. Accordingly, Plaintiffs and the other Class members have suffered injury-in-fact,  
19 including lost money or property, as a result of Apple's misrepresentations and omissions.

20 184. Plaintiffs request that this Court enter such orders or judgments as may be necessary  
21 to restore to Plaintiffs and Class members any money Apple acquired by unfair competition,  
22 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code  
23 § 17203 and Cal. Civ. Code § 3345; and for such other relief as may be appropriate.

24 **COUNT V**  
25 **FRAUD BY CONCEALMENT**  
**(BASED ON CALIFORNIA LAW)**

26 185. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
27 herein.

28 186. Plaintiffs bring this claim on behalf of the Nationwide Class.

1 187. Apple intentionally concealed that the iPhone XR is defective.

2 188. Apple further affirmatively misrepresented to Plaintiffs in advertising and other forms  
3 of communication, including standard and uniform material provided with each iPhone XR and on  
4 its website, that the iPhone XRs it was selling had no significant defects, that the iPhone XR was  
5 reliable, fast, and would perform and operate properly.

6 189. Apple knew about the defect in the iPhone XR when these representations were made.

7 190. The iPhone XRs purchased by Plaintiffs and the other Class members contained  
8 defective connectivity technology/systems.

9 191. Apple had a duty to disclose that the iPhone XR contained a fundamental defect as  
10 alleged herein, because Plaintiffs and the other Class members relied on Apple's material  
11 representations.

12 192. As alleged herein, at all relevant times, Apple has held out the iPhone XR to be free  
13 from defects such as the defect related to the connectivity technology/system. Apple touted and  
14 continues to tout the many benefits and advantages of the iPhone XR, but nonetheless failed to  
15 disclose important facts related to the defect. This made Apple's other disclosures about the iPhone  
16 XR deceptive.

17 193. The truth about the defective iPhone XR was known only to Apple; Plaintiffs and the  
18 other Class members did not know of these facts and Apple actively concealed these facts from  
19 Plaintiffs and Class members.

20 194. Plaintiffs and the other Class members reasonably relied upon Apple's deception.  
21 They had no way of knowing that Apple's representations were false, misleading, or incomplete. As  
22 consumers, Plaintiffs and Class members did not, and could not, unravel Apple's deception on their  
23 own. Rather, Apple intended to deceive Plaintiffs and Class members by concealing the true facts  
24 about the iPhone XR.

25 195. Apple's false representations and omissions were material to consumers because they  
26 concerned qualities of the iPhone XR that played a significant role in the value of the iPhone XR.

27 196. Apple had a duty to disclose the connectivity technology/system defect and violations  
28 with respect to the iPhone XR because details of the true facts were known and/or accessible only to

1 Apple, because Apple had exclusive knowledge as to such facts, and because Apple knew these facts  
2 were not known to or reasonably discoverable by Plaintiffs or Class members.

3 197. Apple also had a duty to disclose because it made general affirmative representations  
4 about the technology and innovations included with its iPhone XR, without telling consumers that  
5 one of the features had a fundamental defect that would affect the quality, speed and performance of  
6 the iPhone XR.

7 198. Apple's disclosures were misleading, deceptive, and incomplete because they failed to  
8 inform consumers of the additional facts regarding the defect in the connectivity technology/system  
9 as set forth herein. These omitted and concealed facts were material because they directly impact the  
10 value of the iPhone XR purchased by Plaintiffs and Class members.

11 199. Apple has still not made full and adequate disclosures and continues to defraud  
12 Plaintiffs and Class members by concealing material information regarding the defect in the iPhone  
13 XR.

14 200. Plaintiffs and Class members were unaware of the omitted material facts referenced  
15 herein, and they would not have acted as they did if they had known of the concealed and/or  
16 suppressed facts, in that they would not have purchased or paid as much for iPhone XRs with faulty  
17 connectivity technology/systems, and/or would have taken other affirmative steps in light of the  
18 information concealed from them. Plaintiffs' and Class members' actions were justified. Apple was  
19 in exclusive control of the material facts, and such facts were not generally known to the public,  
20 Plaintiffs, or Class members.

21 201. Because of the concealment and/or suppression of facts, Plaintiffs and Class members  
22 sustained damage because they own iPhone XRs that are diminished in value as a result of Apple's  
23 concealment of the true quality of those smartphones. Had Plaintiffs and Class members been aware  
24 of the defect in the iPhone XR, and the Company's disregard for the truth, Plaintiffs and Class  
25 members would have paid less for their iPhone XR or would not have purchased them at all.

26 202. The value of Plaintiffs' and Class members' iPhone XR has diminished as a result of  
27 Apple's fraudulent concealment of the defective connectivity technology/system, which has made  
28

1 any reasonable consumer reluctant to purchase an iPhone XR, let alone pay what otherwise would  
2 have been fair market value for the iPhone XR.

3 203. Accordingly, Apple is liable to Plaintiffs and Class members for damages in an  
4 amount to be proven at trial.

5 204. Apple's acts were done wantonly, maliciously, oppressively, deliberately, with intent  
6 to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations  
7 that Apple made to them, in order to enrich Apple. Apple's conduct warrants an assessment of  
8 punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be  
9 determined according to proof.

10 **COUNT VI**  
11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
12 **(CAL. COM. CODE § 2314)**

13 205. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
14 herein.

15 206. Plaintiffs bring this claim on behalf of the Nationwide Class.

16 207. Apple is and was at all relevant times a merchant with respect to smartphones such as  
17 the iPhone XR under Cal. Com. Code § 2104.

18 208. A warranty that the iPhone XRs were in merchantable condition was implied by law  
19 in the instant transaction, pursuant to Cal. Com. Code § 2314.

20 209. Apple marketed the iPhone XRs as reliable, fast, innovative and technologically  
21 advanced smartphones that would functions as reasonably expected by consumers and in accordance  
22 with industry standards. Such representations formed the basis of the bargain in Plaintiffs' and Class  
23 members' decisions to purchase the iPhone XR.

24 210. Plaintiffs and other Class members purchased the iPhone XR from Apple, or through  
25 Apple's authorized agents for retail sales. At all relevant times, Apple was the manufacturer,  
26 distributor, warrantor, and/or seller of the iPhone XRs.

27 211. Apple knew or had reason to know of the specific use for which the iPhone XRs were  
28 purchased.

1 212. Because of the defect in the connectivity technology/system, the iPhone XRs were not  
2 in merchantable condition when sold and are not fit for the ordinary purpose of providing reliable  
3 voice and data telecommunications.

4 213. Apple knew about the defect in the iPhone XR, allowing Apple to cure its breach of  
5 its warranty if it chose.

6 214. Apple's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis  
7 consumers is unconscionable and unenforceable here. Specifically, Apple's warranty limitation is  
8 unenforceable because they knowingly sold a defective product without informing consumers about  
9 the defect. The time limits contained in Apple's warranty periods were also unconscionable and  
10 inadequate to protect Plaintiffs and other Class members. Among other things, Plaintiffs and other  
11 Class members had no meaningful choice in determining these time limitations, the terms of which  
12 unreasonably favored Apple. A gross disparity in bargaining power existed between Apple and other  
13 Class members, and Apple knew of the defect at the time of sale.

14 215. Plaintiffs and Class members have complied with all obligations under the warranty,  
15 or otherwise have been excused from performance of said obligations as a result of Apple's conduct  
16 described herein. Affording Apple a reasonable opportunity to cure the breach of written warranties  
17 therefore would be unnecessary and futile.

18 216. Accordingly, Apple is liable to Plaintiffs and Class members for damages in an  
19 amount to be proven at trial.

20 **IX. REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and  
22 that of the proposed classes, and against Defendant, as follows:

23 A. Certification of the proposed Nationwide Class, including appointment of Plaintiffs'  
24 counsel as class counsel;

25 B. Damages, including punitive damages; restitution; penalties; and disgorgement in  
26 amounts to be determined at trial;

27 C. An order requiring Apple to pay both pre- and post-judgment interest on any amounts  
28 awarded;

1 D. An award of costs, expenses, and attorneys' fees;

2 E. Orders temporarily and then permanently enjoining Apple from continuing the unfair  
3 and deceptive business practices alleged in this Complaint, in particular the ongoing sale of the  
4 iPhone XR without replacing the defective connectivity technology/system, and orders effecting the  
5 correction or mitigation of the unfair and deceptive practices alleged herein; and

6 F. Such other or further relief as may be appropriate.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand a jury trial for all claims so triable.

9 Dated: April 6, 2020

HAGENS BERMAN SOBOL SHAPIRO LLP

10 /s/ Shana E. Scarlett

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