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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

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FUMIKO LOPEZ, and FUMIKO LOPEZ, as
guardian of A.L., a minor, individually and on
behalf of all others similarly situated,

Case No.: _____

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Plaintiffs,

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

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v.

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APPLE INC., a Delaware corporation,

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Defendant.

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1 Plaintiffs Fumiko Lopez, and Fumiko Lopez, as guardian of A.L. (collectively
2 “Plaintiffs”) complain upon knowledge as to themselves and their own actions and upon
3 information and belief as to all other matters against Defendant Apple Inc. (“Apple” or
4 “Defendant”), as follows:

5 **SUMMARY OF ALLEGATIONS**

6 1. This action arises from Defendant’s unlawful and intentional recording of
7 individuals’ confidential communications without their consent from approximately October 2011
8 to the present (the “Class Period”) in violation of the California Invasion of Privacy Act, Cal.
9 Penal Code §632, California Consumer Legal Remedies Act, Cal. Civ. Code §1750, and
10 California Unfair Competition Law, Cal. Bus. & Prof. Code §17200.

11 2. Siri is a voice-recognition software program developed by Apple that allows
12 individuals to use their voice to ask questions and receive answers based on information available
13 on the internet. Apple preloads Siri on devices it manufactures, including Apple’s iPhone
14 smartphones, iPad tablets, Apple Watches, AirPods headphones, HomePod smart speakers,
15 MacBook laptops, and iMac computers (“Siri Devices”).¹

16 3. Siri Devices are only supposed to record conversations preceded by the utterance of
17 “Hey Siri” (a “wake phrase”) or through a specific gesture, such as pressing the home button on a
18 device for a specified amount of time. California law prohibits the recording of oral
19 communications without the consent of all parties to the communication. California’s privacy laws
20 recognize the unique privacy interest implicated by the recording of someone’s voice. This privacy
21 interest has been heightened by recent reports government agencies of multiple countries are
22 secretly collecting voice samples with the aim of being able to “voiceprint” any living person, and
23 by the fact the private technology companies are constantly searching for ways to acquire and
24 exploit consumers’ personal information.

25 4. Individuals who have purchased or used Siri Devices and interacted with Siri have
26 not consented to Apple recording conversations where “Hey Siri” was not uttered or where they

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28 ¹ <https://support.apple.com/en-us/HT209014>

1 did not otherwise perform a gesture intending to activate Siri, such as pressing and holding down
2 the home button on a device for a certain period of time. Similarly, minors who did not purchase
3 Apple products or set them up in their homes have not consented to these recordings.

4 5. On July 26, 2019, The Guardian reported that Apple had hired contractors to
5 review recordings made by Siri Devices and that many recordings reviewed were made without
6 the knowledge of the individuals recorded. According to The Guardian's source, it is a "regular"
7 occurrence for Siri Devices to record nonconsenting individuals where no wake phrase has been
8 uttered or no button has been pushed. The content of the unauthorized recordings made by Siri
9 Devices include, according to The Guardian's source, "confidential medical information, drug
10 deals, and the recordings of couples having sex."

11 6. Significantly, Apple knows that unauthorized recordings are common and as such
12 tasks its human reviewers with, among other things, identifying whether Siri was deliberately
13 activated or not. Despite this, Apple has not informed consumers they are regularly being recorded
14 without consent.

15 7. Apple has sold millions of Siri Devices to consumers during the Class Period.
16 Many of these consumers would not have bought their Siri Devices if they had known Apple was
17 recording their conversations without consent.

18 8. Given the concealed and secretive nature of Defendant's conduct, more evidence
19 supporting the allegations in this Complaint will be uncovered after a reasonable opportunity for
20 discovery.

21 **JURISDICTION AND VENUE**

22 9. This Court has jurisdiction over the subject matter of this action pursuant to 28
23 U.S.C §1332(d), because the amount in controversy for the Class exceeds \$5,000,000 exclusive of
24 interest and costs, there are more than 100 putative class members defined below and minimal
25 diversity exists because the majority of putative class members are citizens of a state different than
26 Defendant.

27 10. This Court has general personal jurisdiction over Defendant because its principal
28 place of business is in California. Additionally, Defendant is subject to specific personal

1 jurisdiction in this State because a substantial part of the events and conduct giving rise to
2 Plaintiffs' claims occurred in this State.

3 11. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because a
4 substantial portion of the conduct described in this Complaint was carried out in this District.
5 Furthermore, Defendant Apple Inc. is headquartered in this District and subject to personal
6 jurisdiction in this District.

7 12. **Intradistrict Assignment (L.R. 3-2(c) and (e) and 3-5(b))**: This action arises in
8 Santa Clara County, in that a substantial part of the events which give rise to the claims asserted
9 herein occurred in Santa Clara County. Pursuant to L.R. 3-2(e), all civil actions which arise in
10 Santa Clara County shall be assigned to the San Jose Division.

11 **PARTIES**

12 **A. Plaintiffs**

13 13. Plaintiff Fumiko Lopez is a natural person and citizen of the State of California and
14 a resident of San Bernardino County.

15 14. Plaintiff A.L. is a minor and brings this suit by and through her legal guardian,
16 Plaintiff Fumiko Lopez. Plaintiff A.L. is a natural person and citizen of the State of California and
17 a resident of San Bernardino County.

18 **B. Defendant**

19 15. Defendant Apple Inc. ("Apple") is a business incorporated under the laws of the
20 State of Delaware with its principal place of business at 1 Infinite Loop, Cupertino, California.
21 Apple is engaged in the business of designing, manufacturing, distributing, and selling, *inter alia*,
22 smartphones, tablet computers, wearable technology, headphones, laptops and desktop computers
23 that come with software programs that Apple develops pre-installed. Apple designs its products in
24 California, and its marketing efforts emanate from California.

25 **SUBSTANTIVE ALLEGATIONS**

26 **I. APPLE AND SIRI**

27 16. Apple is one of the world's leading technology companies, designing and
28 manufacturing internet technology devices used by consumers worldwide. Apple designs (in

1 California), manufactures, and sells software and computer technology such as laptops
2 (MacBook), desktop computers (iMac), smartphones (iPhone), tablet computers (iPad), smart
3 speakers (HomePod), music devices (iPod touch), headphones (AirPods), wearable devices (Apple
4 Watch), and home entertainment devices (Apple TV).

5 17. Apple also designs and produces software. Apple’s iOS is the most popular of
6 Apple’s operating systems, and is pre-installed on iPhones, iPads, and iPod Touches (“iOS
7 Devices”). Other devices, such as Apple Watch, come with different operating systems designs by
8 Apple, such as watchOS.

9 18. All of these devices come with another software program developed by Apple, Siri,
10 pre-installed. According to Apple, Siri is a voice-activated “intelligent assistant” program that uses
11 the internet to perform a variety of tasks, including: providing users with information in response
12 to questions, play music, set alarms, timers, and reminders and control other internet-connected
13 home devices.

14 19. Siri is activated by a user uttering “Hey, Siri” or by a user performing some other
15 designated action such as pressing a button for a pre-programmed amount of time. Once activated,
16 Siri records your voice and translates your request into code.² This code is input into an algorithm
17 that determines what information a user is seeking or what task they want performed.

18 20. Siri Devices listen for the wake phrase by using a speech recognizer that records
19 and analyzes short snippets of audio from their surroundings. This audio is stored locally in the
20 Siri Device’s random-access memory (“RAM”). According to Apple, audio stored in a Siri
21 Device’s RAM is continuously overwritten as new audio is recorded and analyzed until the wake
22 phrase is detected. The speech recognizer then generates a “confidence score” that the audio
23 contained the wake phrase.

24 21. When a Siri Device detects a sufficiently high confidence score, it “wakes up,” or
25 “activates” Siri. At this point, the Siri Device begins transmitting audio to Apple for analysis. The
26 purpose of this analysis is to respond to user commands issued after the wake phrase. For

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28 ² <https://www.jameco.com/Jameco/workshop/Howitworks/how-siri-works.html>

1 example, if a user says, “Hey Siri, what is the weather in Los Angeles?” Siri will transmit that
2 audio to Apple for analysis and provide a response. Users can also ask Siri to, among other things,
3 set alarms (“Wake me up at 7 AM”), play music (“Play me something I’d like”), access text
4 messages (“Read my last message”), or control smart appliances (“Turn on the lights in the living
5 room”).

6 22. Siri has been included on all iOS devices running iOS5 or later since October 12,
7 2011. Today, Siri is pre-installed on each of the following devices: iPhone, iPad, iPod touch,
8 AirPods headphones, CarPlay, Apple Watch, HomePod, Mac, MacBook, and Apple TV. As of
9 January 2018, Apple claimed that Siri was “actively used on over half a billion devices.”³

10 23. Apple’s Terms of Service for iOS stated the following regarding Siri:

11 When you use Siri, the things you say will be recorded and sent to Apple
12 to process your requests. Your device will also send Apple other
13 information, such as your first name and nickname; the names, nicknames,
14 and relationship with you (e.g., “my dad”) of your address book contacts;
15 and song names in your collection (collectively, your “User Data”). All of
16 this data is used to help Siri understand you better and recognize what you
17 say. It is not linked to other data that Apple may have from your use of
18 other Apple services. **By using Siri, you agree and consent to Apple’s
19 and its subsidiaries’ and agents’ transmission, collection,
20 maintenance, processing, and use of this information, including your
21 voice input and User Data, to provide and improve Siri and other
22 Apple products and services[.](emphasis in original).**

23 24. Apple removed this language from its Terms of Service with its iOS9 version of its
24 operating system and instead covers the use of user data in its privacy policy, which now states in
25 relevant part:

26 We may collect and store details of how you use our services, including
27 search queries. This information may be used to improve the relevancy of
28 results provided by our services. Except in limited instances to ensure
quality of our services over the Internet, such information will not be
associated with your IP address.

27 ³ [https://www.apple.com/newsroom/2018/01/homepod-arrives-february-9-available-to-order-this-](https://www.apple.com/newsroom/2018/01/homepod-arrives-february-9-available-to-order-this-friday/)
28 [friday/](https://www.apple.com/newsroom/2018/01/homepod-arrives-february-9-available-to-order-this-friday/).

1 With your explicit consent, we may collect data about how you use your
2 device and applications in order to help app developers improve their
3 apps.⁴

4 25. Apple has sought to distinguish itself from competing technology companies such
5 as Facebook, Amazon, and Apple that have been implicated in scandals involving the collection,
6 sharing or selling of user data by touting its privacy protections. If an individual were to ask Siri
7 “Hey Siri, are you always listening” Siri is programmed to respond: “I only listen when you’re
8 talking to me.”

9 26. In July 2018 Congress sent a letter to Apple inquiring as to how they protect
10 consumer data. Apple responded with a letter that included the statement “[w]e believe privacy is
11 a fundamental human right” and went on to respond to specific questions asked in Congress’
12 letter. Relevant here are Apple’s responses to Question(s) 9 and 10, which are provided below:

13 **Question 9:** Do Apple’s iPhone devices have the capability to listen to
14 consumers without a clear, unambiguous audio trigger?

15 **Apple’s Response to Question 9:** iPhone doesn’t listen to consumers
16 except to recognize the clear, unambiguous audio trigger “Hey Siri[.]”

17 **Question 9(a):** If [Apple’s answer to Question 9 is] yes, how is this data
18 used by Apple? Please describe any use or storage of these data.

19 **Apples Response to Question 9(a):** iPhone doesn’t listen to consumers,
20 except to recognize the clear, unambiguous audio trigger “Hey Siri.” As
21 describe above, the on-device speech recognize runs in a short bugger and
22 doesn’t record audio or send audio to the Siri app if “Hey Siri” isn’t
23 recognized.

24 **Question 10:** Do Apple’s iPhone devices collect audio recordings of users
25 without consent?

26 **Apple’s Response to Question 10:** No.⁵

27 ⁴ <https://www.apple.com/legal/privacy/en-ww/>

28 ⁵ See Apple Response to July 9, 2018 Letter to Mr. Tim Cook, *available at*
<https://www.scribd.com/document/385685064/Apple-Response-to-July-9-Letter>

1 27. In 2018, Apple’s CEO Tim Cook accused rivals of conducting “surveillance” and
2 commented “not everyone sees it that way . . . [t]he desire to put profits over privacy is nothing
3 new.”

4 28. More recently, Apple ran television commercials declaring “Privacy. That’s
5 iPhone” and further stating “[i]f privacy matters in your life, it should matter to the phone your life
6 is on.” Apple also bought a billboard at a CES 2019, a consumer electronics convention held in
7 Las Vegas which read “What happens on your iPhone, stays on your iPhone.”

8 **II. SIRI IS RECORDING INDIVIDUALS WITHOUT THEIR CONSENT**

9 29. On July 26, 2019 The Guardian, citing an anonymous whistleblower, reported that
10 Apple has been recording individuals without consent and has been storing and sending those
11 recordings to humans for review: “although Apple does not explicitly disclose it in its consumer-
12 facing privacy documents, a small proportion of Siri recordings are passed on to contractors[.]
13 They are tasked with grading the responses on a variety of factors, **including whether the**
14 **activation of the voice assistant was deliberate or accidental.**” (emphasis added).

15 30. Apple responded by acknowledging the practice and claiming:

16 A small portion of Siri requests are analysed to improve Siri and dictation.
17 User requests are not associated with the user’s Apple ID. Siri responses
18 are analysed in secure facilities and all reviewers are under the obligation
19 to adhere to Apple’s strict confidentiality requirements.

20 31. However, The Guardian’s source claims that contractors “regular[ly]” listen to
21 unauthorized recordings where there has been no utterance of a wake phrase or other device
22 interaction. These conversations include “confidential conversations between doctors and patients,
23 business deals, seemingly criminal dealings, sexual encounters and so on. These recordings are
24 accompanied by user data showing location, contact details and app data” which, according to the
25 anonymous contractor would not make it “difficult to identify the person that you’re listening to,
26 especially with accidental trigger – address names and so on.”

27 32. Thus, far from requiring a “clear, unambiguous trigger” as Apple claimed in its
28 response to Congress, Siri can be activated by nearly anything, including “[t]he sound of a zip” or

1 an individual raising their arms and speaking. Once activated, Siri records everything within range
2 of the Siri Devices' microphone and sends it to Apple's servers.

3 33. As a result, the regularity of triggers on Siri Devices such as the Apple Watch is
4 "incredibly high." Despite this, Apple has no system in place to deal with accidental recordings.

5 **III. APPLE UNLAWFULLY RECORDED PLAINTIFFS WITHOUT THEIR**
6 **CONSENT**

7 34. Plaintiffs here each owned and/or interacted with a Siri Device during the Class
8 Period and were recorded by Apple without their consent.

9 35. Plaintiffs Fumiko Lopez and A.L. owned an iPhone XR and iPhone 6. Plaintiffs
10 Lopez and A.L. interacted with Siri on their iPhone XR and iPhone 6 devices ("Siri Devices")
11 repeatedly during the Class Period. As described above, Apple and these Siri Devices unlawfully
12 recorded Plaintiffs Lopez and A.L. without their consent on multiple occasions, including when
13 they failed to utter a wake phrase.

14 36. At no point did Plaintiffs consent to these unlawful recordings. Apple does not
15 disclose that Siri Devices record conversations that are not preceded by a wake phrase or gesture.
16 Plaintiffs Lopez and A.L., therefore, did not agree to be recorded by their Siri Devices,
17 respectively. Moreover, Apple could not have obtained consent from Plaintiff A.L., a minor
18 without an Apple account.

19 37. Plaintiffs would like to continue to use Siri Devices in the future, but will be
20 uncertain as to whether Apple ceased its unlawful practices and violation of their privacy rights
21 without the equitable relief requested herein, specifically an injunction prohibiting Apple from
22 engaging in the unlawful practices alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 38. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23
25 individually and on behalf of the following Class:

26 All individuals who were recorded by a Siri Device without their consent
27 from at least as early as October 12, 2011 to the present (the "Class
28

1 Period”). Within the Class is a Subclass of those who are or were minor
2 children and were recorded by a Siri Device during the Class Period.⁶

3 39. Excluded from each Class are: (1) any Judge or Magistrate presiding over this
4 action and any members of their families; (2) Defendant, Defendant’s subsidiaries, parents,
5 successors, predecessors, and any entity in which Defendant or its parents have a controlling
6 interest and their current or former employees, officers, and directors; (3) persons who properly
7 execute and file a timely request for exclusion from the Class; (4) persons whose claims in this
8 matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel
9 and Defendant’s counsel; and (6) the legal representatives, successors, and assigns of any such
10 excluded persons.

11 40. Ascertainability: Membership of the Class is defined based on objective criteria,
12 and individual members will be identifiable from Defendant’s records, including the Apple
13 accounts associated with each Siri Device.

14 41. Numerosity: The exact number of members of the Class is unknown and
15 unavailable to Plaintiffs at this time, but individual joinder in this case is impracticable. The Class
16 likely consists of thousands of individuals, if not millions of individuals, and their members can be
17 identified through Defendant’s records.

18 42. Predominant Common Questions: The Class’s claims present common questions of
19 law and fact, and those questions predominate over any questions that may affect individual Class
20 members. Common questions for the Class include, but are not limited to, the following:

21 a. Whether Siri Devices record individuals absent that user uttering a wake
22 phrase or otherwise activating the device;

23 b. Whether Siri Devices record children who interact with them; and

24 c. Whether individuals who use Siri Devices have a reasonable expectation of
25 privacy under California law.

26 _____
27 ⁶ Plaintiffs have defined the Class based on currently available information and hereby
28 reserve the right to amend the definition of the Class, including, without limitation, the Class
Period.

1 43. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of the
2 proposed Class. Plaintiffs and Class members suffered an invasion of privacy as a result of
3 Defendant's wrongful conduct that is uniform across the Class.

4 44. **Adequate Representation:** Plaintiffs have and will continue to fairly and adequately
5 represent and protect the interests of the Class. They have retained counsel competent and
6 experienced in complex litigation and class actions, including privacy violations. Plaintiffs have
7 no interest that is antagonistic to those of the Class, and Defendant have no defenses unique to
8 Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this action on
9 behalf of the members of the Class, and they have the resources to do so. Neither Plaintiffs nor
10 their counsel have any interest adverse to those of the other members of the Class.

11 45. **Substantial Benefits:** This class action is appropriate for certification because class
12 proceedings are superior to other available methods for the fair and efficient adjudication of this
13 controversy and joinder of all members of the Class is impracticable. This proposed class action
14 presents fewer management difficulties than individual litigation, and provides the benefits of
15 single adjudication, economies of scale, and comprehensive supervision by a single court. Class
16 treatment will create economies of time, effort, and expense and promote uniform decision-
17 making.

18 46. Plaintiffs reserve the right to revise the foregoing class allegations and definitions
19 based on facts learned and legal developments following additional investigation, discovery, or
20 otherwise.

21 **CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS**

22 47. California's substantive laws apply to every member of the Class, regardless of
23 where in the United States the Class member resides. Defendant's iOS Terms of Service states:

24 **12. Controlling Law and Severability.** This License will be governed
25 by and construed in accordance with the laws of the State of California,
26 excluding its conflict of law principles. This License shall not be governed
27 by the United Nations Convention on Contracts for the International Sale
28 of Goods, the application of which is expressly excluded.⁷

⁷ See <https://www.apple.com/legal/sla/>

1 48. By choosing California law for the resolution of disputes in the agreement, Apple
2 concedes that it is appropriate for this Court to apply California law to the instant dispute.

3 49. Further, California's substantive laws may be constitutionally applied to the claims
4 of Plaintiffs and the Class under the Due Process Clause, 14th Amend. §1, and the Full Faith and
5 Credit Clause, Art. IV §1 of the U.S. Constitution. California has significant contact, or
6 significant aggregation of contacts, to the claims asserted by Plaintiffs and all Class members,
7 thereby creating state interests that ensure that the choice of California state law is not arbitrary or
8 unfair.

9 50. Defendant's United States headquarters and principal place of business is located in
10 California. Defendant also owns property and conduct substantial business in California, and
11 therefore California has an interest in regulating Defendant's conduct under its laws. Defendant's
12 decision to reside in California and avail itself of California's laws, and to engage in the
13 challenged conduct from and emanating out of California, renders the application of California
14 law to the claims herein constitutionally permissible.

15 51. California is also the state from which Defendant's alleged misconduct emanated.
16 This conduct similarly injured and affected Plaintiffs and all other Class members.

17 52. The application of California laws to the Class is also appropriate under
18 California's choice of law rules because California has significant contacts to the claims of
19 Plaintiffs and the proposed Class, and California has a greater interest in applying its laws here
20 than any other interested state.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **Violation of the California Invasion of Privacy Act**
24 **Cal. Penal Code §632**
25 **(On Behalf of Plaintiffs and the Class)**

26 53. Plaintiffs re-allege and incorporate the preceding allegations of this Complaint with
27 the same force and effect as if fully restated herein.

28 54. Plaintiffs and Class members owned or interacted with Siri through Siri Devices
during the Class Period.

1 55. Plaintiffs and Class members reasonably expected, based on Apple's
2 representations, that Apple was not recording them unless they uttered one of the wake phrases.

3 56. Despite Apple's representations, Plaintiffs' Siri Devices created recordings that
4 were transmitted to Apple of interactions not preceded by the utterance of a wake phrase during
5 the Class Period. These recordings were made without Plaintiffs' consent.

6 57. Additionally, Plaintiffs and the Class members who are minors never consented to
7 being recorded by Apple, nor did Apple even attempt to seek such consent. The parents of
8 Plaintiffs and Class members who are minors likewise never consented to Apple recording their
9 children's interactions with such Siri Devices.

10 58. Apple has publicly acknowledged in news reports that such unauthorized recording
11 occurred during the Class Period.

12 59. By recording Plaintiffs and the Class members when they didn't use a wake phrase
13 or otherwise consent, Apple "intentionally and without the consent of all parties to a confidential
14 communication" used an "electronic amplifying or recording device to . . . record the confidential
15 communication" in violation of California law. See Cal. Penal Code §632.

16 60. Apple is able, and the Court should require it, to destroy the recordings of
17 Plaintiffs' and the Class members' interactions with Siri devices, and to implement functionality
18 sufficient to prevent unauthorized recordings in the future.

19 61. Plaintiffs, individually and on behalf of the Class, seek: (1) an injunction requiring
20 Apple to obtain consent prior to recording a minor's Siri interactions and to delete those
21 recordings already made, and to implement functionality sufficient to prevent unauthorized
22 recordings in the future; (2) damages of \$5,000 per violation under Cal. Penal Code §637.2; and
23 (3) costs and reasonable attorneys' fees under Cal. Code of Civil Procedure §1021.5.

24 **SECOND CLAIM FOR RELIEF**
25 **Violation of the California Unfair Competition Law**
26 **Cal. Business & Professions Code §17200**
27 **(On Behalf of Plaintiffs and the Class)**

28 62. Plaintiffs re-allege and incorporate the preceding allegations of this Complaint with
the same force and effect as if fully restated herein.

1 63. Apple engaged in business acts and practices deemed “unlawful” under the UCL,
2 because, as alleged above, Apple unlawfully recorded and stored Plaintiffs and Class members’
3 interactions without consent in violation of California Invasion of Privacy Act, Cal. Penal Code
4 §632, and California Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.

5 64. Apple also engaged in business acts and practices deemed “unlawful” under the
6 UCL, because, Apple unlawfully recorded and stored Plaintiff A.L.’s and minor Class members’
7 interactions without consent, which violates public policy as declared by specific statutory
8 provisions, including California Family Code §6701 and §6710, which prohibit Defendant from
9 obtaining consent by minors.

10 65. Specifically, California Family Code §6701 states that: “A minor cannot do any of
11 the following: (a) Give a delegation of power” California Family Code §6710 states that:
12 “Except as otherwise provided by statute, a contract of a minor may be disaffirmed by the minor
13 before majority or within a reasonable time afterwards or, in case of the minor’s death within that
14 period, by the minor’s heirs or personal representative.”

15 66. Apple did not obtain the minor Plaintiff A.L.’s consent to record their confidential
16 communications. Apple could not obtain consent to record the minor Plaintiff A.L.’s confidential
17 communications. To the extent that Apple attempts to claim that it obtained the minor Plaintiff
18 A.L.’s consent, pursuant to California Family Code §6710, Plaintiff A.L. disaffirms such consent.

19 67. Apple also engaged in business acts or practices deemed “unfair” under the UCL
20 because, as alleged above, Apple failed to disclose during the Class Period that these Siri Devices
21 were recording, storing, and analyzing Plaintiffs’ and the Class members’ speech without their
22 consent. Unfair acts under the UCL have been interpreted using three different tests: (1) whether
23 the public policy which is a predicate to a consumer unfair competition action under the unfair
24 prong of the UCL is tethered to specific constitutional, statutory, or regulatory provisions; (2)
25 whether the gravity of the harm to the consumer caused by the challenged business practice
26 outweighs the utility of the defendant’s conduct; and (3) whether the consumer injury is
27 substantial, not outweighed by any countervailing benefits to consumers or competition, and is an
28

1 injury that consumers themselves could not reasonably have avoided. Defendants' conduct is
2 unfair under each of these tests. Apple's conduct alleged is unfair under all of these tests.

3 68. As described above, Apple's conduct violates the policies underlying California's
4 Privacy Law as well as Family Code §6710. The gravity of the harm of Apple's secret recording
5 of Plaintiffs' and Class members' communications, including those by minors, is significant and
6 there is no corresponding benefit to consumers of such conduct. Finally, because Plaintiffs and
7 Class members were completely unaware of Apple's secret recordings, they could not have
8 possibly avoided the harm.

9 69. Under the UCL, a business practice that is likely to deceive an ordinary consumer
10 constitutes a deceptive business practice. Apple's failure to disclose that Siri Devices were
11 recording, storing, and analyzing Plaintiffs' and the Class members' communications without their
12 consent is likely to deceive Class members and, in fact, did deceive Plaintiffs. Apple's conduct
13 therefore constitutes deceptive business practices in violation of Cal. Bus. & Prof. Code §17200.

14 70. Had Plaintiffs known that their communications would be recorded, they would not
15 have purchased Siri Device. Plaintiffs and the Class members have a property interest in any
16 recordings of their communications. By surreptitiously recording the Plaintiffs' and Class
17 members' communications, Apple has taken property from Plaintiffs and the Class members
18 without providing just or any compensation.

19 71. Plaintiffs, individually and on behalf of the Class, seek: (1) an injunction requiring
20 Apple to obtain consent prior to recording a minor's Siri interactions and to delete those
21 recordings already made, and to implement functionality sufficient to prevent unauthorized
22 recordings in the future; and (2) restitution of Plaintiffs' and the Class members' money and
23 property lost as a result of Apple's acts of unfair competition.

24 **THIRD CLAIM FOR RELIEF**
25 **Violation of the California Consumers Legal Remedies Act**
26 **Cal. Civ. Code §1750, *et seq.***
27 **(On Behalf of Plaintiffs and the Class)**

28 72. Plaintiffs re-allege and incorporate the preceding allegations of this Complaint with
the same force and effect as if fully restated herein.

1 73. Apple unlawfully recorded and stored Plaintiffs’ and Class members’ interactions
2 without consent in violation of California Invasion of Privacy Act, Cal. Penal Code §632.

3 74. By failing to disclose that Siri Devices were recording, storing, and analyzing
4 Plaintiffs’ and the Class members’ communications without consent, Apple engaged in “unfair
5 methods of competition and unfair or deceptive acts . . . in a transaction . . . that result[ed] . . . in
6 the sale . . . of goods” to Plaintiffs and the Class members in violation of Cal. Civ. Code §1750
7 and Cal. Civ. Code §1770(a)(5), (7), (9), (14), and (16). Indeed, Apple’s conduct constitutes a
8 failure to disclose material information – information that Apple has a legal duty to disclose under
9 Penal Code §632.

10 75. Plaintiffs would not have purchased Siri Devices had Apple disclosed these
11 practices.

12 76. Plaintiffs, individually and on behalf of the Class, seek: an injunction requiring
13 Apple to obtain consent prior to recording a minor’s Siri interactions and to delete those
14 recordings already made, and to implement functionality sufficient to prevent unauthorized
15 recordings in the future; and any other relief which the court deems proper.

16 77. Pursuant to §1782(a) of the CLRA, on August 6, 2019, Plaintiffs’ counsel notified
17 Defendant in writing by certified mail of the particular violations of §1770 of the CLRA and
18 demanded that it rectify the problems associated with the actions detailed above and give notice to
19 all affected consumers of Defendant’s intent to act. If Defendant fails to respond to Plaintiffs’
20 letter or agree to rectify the problems associated with the actions detailed above and give notice to
21 all affected consumers within 30 days of the date of written notice, as proscribed by §1782,
22 Plaintiffs will move to amend their Complaint to pursue claims for actual, punitive, and statutory
23 damages, as appropriate against Defendant. As to this cause of action, at this time, Plaintiffs seek
24 injunctive relief and attorneys’ fees and costs pursuant to §1780(e).

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FOURTH CLAIM FOR RELIEF
Violation of the Declaratory Judgment Act
28 U.S.C. §2201, et seq.
(On Behalf of Plaintiffs and the Class)

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78. Plaintiffs re-allege and incorporate the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

79. Under the Declaratory Judgment Act, 28 U.S.C. §§2201, et seq., this Court is authorized to enter a judgment declaring the rights and legal relations of the parties and grant further necessary relief. Furthermore, the Court has broad authority to restrain acts, such as here, that are tortious and that violate the terms of the federal and state statutes described in this complaint.

80. An actual controversy has arisen in the wake of Defendant's recording of Plaintiffs' and Class members' communications without their consent and Defendant's common law and statutory duties, which prohibit Defendant from eavesdropping or recording confidential communications.

81. Plaintiffs continue to suffer injury and damages as described herein as Defendant continue to record Plaintiffs' and Class members' communications, including communications by minors whose consent to record Defendant cannot obtain.

82. Pursuant to its authority under the Declaratory Judgment Act, this Court should enter a judgment declaring, among other things, the following:

a. Defendant continues to owe a legal duty to not record Plaintiffs' and Class members' confidential communications under, *inter alia*, the common law, California Invasion of Privacy Act, Cal. Penal Code §632, and California Family Code §6710;

b. Defendant continues to breach its legal duties by continuing to record Plaintiffs' and Class members' confidential communications; and

c. Defendant's ongoing breaches of its legal duty continue to cause Plaintiffs and the Class harm.

1 83. The Court should also issue corresponding injunctive relief requiring Defendant to
2 cease recording Plaintiffs' and Class members' confidential communications. This injunction
3 should direct Defendant to alter the data recording practices on all Siri Devices and to prohibit
4 such devices from recording confidential communications, including any communications by
5 minors.

6 84. If an injunction is not issued, Plaintiffs will suffer irreparable injury and lack an
7 adequate legal remedy in the event of Defendant's ongoing conduct

8 85. California law prohibits the recording of oral communications without the consent
9 of all parties to the communication. California's privacy laws recognize the unique privacy
10 interest implicated by the recording of someone's voice. That privacy interest has been
11 heightened by companies exploiting consumers' private data. Given that Defendant continues to
12 record confidential communications, including those of minors, the risk of continued violations of
13 California law is real, immediate, and substantial. Plaintiffs do not have an adequate remedy at
14 law because many of the resulting injuries are reoccurring and Plaintiffs will be forced to bring
15 multiple lawsuits to rectify the same conduct.

16 86. The hardship to Plaintiffs and the Class if an injunction is not issued exceeds the
17 hardship to Defendant if an injunction is issued. On the other hand, the cost to Defendant of
18 complying with an injunction by complying with California law and by ceasing the recording of
19 confidential communications is relatively minimal, and Defendant has a pre-existing legal
20 obligation to avoid invading the privacy rights of consumers.

21 87. Issuance of the requested injunction will serve the public interest by preventing
22 ongoing recording of confidential communications without consent, and recording of confidential
23 communications of minors, thus eliminating the injuries that would result to Plaintiffs, the Class,
24 and the potentially millions of consumers who own or use Siri Devices.

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PRAYER FOR RELIEF

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2 WHEREFORE, Plaintiffs on behalf of themselves and the proposed Class respectfully
3 request that the Court enter an order:

4 A. Certifying this case as a class action on behalf of the Class defined above,
5 appointing Plaintiffs as representatives of the Class, and appointing their counsel as class counsel;

6 B. Declaring that Apple’s actions, as set out above, violate California’s privacy laws
7 cited herein;

8 C. Declaring that Apple’s actions, as set out above, violate California’s Business &
9 Professions Code cited herein;

10 D. Declaring that Apple’s actions, as set out above, violate California’s Civil Code
11 cited herein;

12 E. Requiring Apple to delete all recordings of the Class members, and to implement
13 functionality to prevent further recording of the Class members without prior consent;

14 F. Awarding damages, including nominal, statutory, and punitive damages where
15 applicable, to Plaintiffs and the Class in the amount to be determined at trial;

16 G. Awarding Plaintiffs and the Class their costs of suit, including reasonable
17 attorneys’ and experts’ fees and expenses;

18 H. Awarding Plaintiffs and the Class pre-and post-judgment interest, to the extent
19 allowable;

20 I. Awarding such other further injunctive and declaratory relief as is necessary to
21 protect the interests of Plaintiffs and the Class; and

22 J. Awarding such other and further relief as the Court deems reasonable and just.
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

Dated: August 7, 2019

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