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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

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<p>FUMIKO LOPEZ, FUMIKO LOPEZ, as guardian of A.L., a minor, LISHOMWA HENRY, and JOSEPH HARMS, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>APPLE INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: 4:19-cv-04577-JSW</p> <p>AMENDED CLASS ACTION COMPLAINT</p> <p>DEMAND FOR JURY TRIAL</p> <p>Judge: Jeffrey S. White</p>
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1 Plaintiffs Fumiko Lopez, Fumiko Lopez, as guardian of A.L., a minor, Lishomwa Henry,
2 and Joseph Harms, (collectively “Plaintiffs”) complain upon knowledge as to themselves and their
3 own actions and upon information and belief as to all other matters against Defendant Apple Inc.
4 (“Apple” or “Defendant”), as follows:

5 **SUMMARY OF ALLEGATIONS**

6 1. This action arises from Apple’s unlawful and intentional interception and recording
7 of individuals’ confidential communications without their consent and subsequent unauthorized
8 disclosure of those communications to third parties from approximately October 2011 to the present
9 (the “Class Period”) in violation of federal and state law. Plaintiffs, on behalf of themselves and
10 similarly situated purchasers of Siri Devices (defined below) bring this suit under the Federal
11 Wiretap Act (“Wiretap Act”), 18 U.S.C. §2510, *et seq.*, Stored Communications Act (“SCA”), 18
12 U.S.C. §2701, *et seq.*, California Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§631(a) and
13 632, intrusion upon seclusion, invasion of privacy under Art. I, Sec. 1 of the California Constitution,
14 breach of contract, and California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code
15 §17200, and for declaratory and other equitable relief under the Declaratory Judgment Act, 28
16 U.S.C. §2201, *et seq.*

17 2. Siri is an artificial intelligence-based virtual assistant developed by Apple that allows
18 individuals to use their voice to ask questions and receive answers based on information available
19 on the internet and to give instructions for simple tasks that Siri executes. Apple preloads Siri on
20 devices it manufactures, specifically laptops (MacBook), desktop computers (iMac), smartphones
21 (iPhone), tablet computers (iPad), smart speakers (HomePod), music devices (iPod touch),
22 headphones (AirPods), wearable devices (Apple Watch), and home entertainment devices (Apple
23 TV) (collectively, “Siri Devices”). Siri Devices are sold throughout the United States at national
24 retailers, such as Wal-Mart, Best Buy, and Target, as well as through Apple’s own network of brick-
25 and-mortar stores. Apple does not allow its users to opt out of some functionalities of Siri, short of
26 disabling Siri altogether. By purchasing a Siri Device, users enter into a contract with Apple and
27 are thereby subject to Apple’s Software License Agreements (“SLA”) and Privacy Policy, which is
28 incorporated as part of the SLA.

1 3. Federal and state privacy laws uniformly recognize individuals’ reasonable
2 expectations of privacy in confidential communications, particularly those that take place in the
3 sanctity of one’s own home – a historically protected zone of privacy. Federal privacy laws prohibit
4 unauthorized interception, access, disclosure, and use of the contents of oral and electronic
5 communications. California specifically recognizes privacy as a fundamental right, and
6 accordingly, California law prohibits, among other things, eavesdropping, recording, and sharing of
7 confidential communications without the consent of all parties to the communication.

8 4. Well aware of consumers’ legitimate and reasonable expectations of privacy, Apple
9 assured, and continues to assure, its customers, like Plaintiffs and members of the Class and Subclass
10 (defined below) (respectively, “Class Members” and “Subclass Members”), that Siri Devices will
11 only listen to, record, and share their conversations with their consent, which can be given only: (i)
12 by uttering an activation command, like “Hey, Siri” (the “hot word”); (ii) by manually pressing a
13 button on the device; and (iii) in case of the AppleWatch, by raising the AppleWatch to one’s mouth
14 and beginning to talk. Consequently, individuals who have purchased or used Siri Devices and
15 interacted with Siri, including minors, have not consented to Apple recording or disclosing
16 conversations where “Hey, Siri” has not been uttered and no button on the device has been pressed.

17 5. On July 26, 2019, unsuspecting consumers learned that despite Apple’s assurances,
18 Apple has intercepted, recorded, disclosed, and misused private conversations of thousands of
19 individuals, including minors, without consent.¹ As reported by *The Guardian*, Apple collected
20 audio recordings of Siri users in numerous instances where a hot word is never spoken and used
21 these recordings for its own commercial and financial benefit, namely to improve the quality of Siri
22 voice assistant dictation. Worse, Apple disclosed these recordings to subcontractors without Siri
23 Devices users’ knowledge or consent. Each such recording and disclosure constitutes an egregious
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26 ¹ Alex Hern, *Apple contractors ‘regularly hear confidential detail’ on Siri recordings*, THE
27 GUARDIAN (Jul. 26, 2019), <https://www.theguardian.com/technology/2019/jul/26/apple-contractors-regularly-hear-confidential-details-on-siri-recordings> (“*The Guardian Article*”).
28 Unless otherwise indicated, all websites in this Amended Class Action Complaint (“Complaint”) were last visited on November 6, 2019.

1 breach of social norms and is a violation of federal and state law.

2 6. To be sure, Apple’s violations are deliberate and calculated to lead to increased
 3 revenues for Apple. Apple conceded – after the publication of *The Guardian* Article – that Siri
 4 “collects and stores certain information from [users’ device]” and “relies on . . . audio recording of
 5 a [users’] request and a computer-generated transcription of it” to improve Siri’s reliability.² After
 6 admitting that Apple’s conduct fell below “[its] high ideals,” Apple announced the temporary
 7 suspension of its quality improvement program.³ Apple profited handsomely from this invasion of
 8 privacy by using the content of conversations Apple admits it obtains without consent or
 9 authorization to improve the functionality of Siri and thereby gain an advantage over Apple’s
 10 competitors. In short, Apple intentionally, willfully, and knowingly violated consumers’ privacy
 11 rights, including within the sanctity of consumers’ own homes where they have the greatest
 12 expectation of privacy.

13 7. Apple has sold millions of Siri Devices to U.S. consumers during the Class Period.
 14 Plaintiffs and Class Members would not have bought their Siri Devices, or would have paid less for
 15 them, if they had known Apple was intercepting, recording, disclosing, and otherwise misusing their
 16 conversations without consent or authorization.⁴

17 JURISDICTION AND VENUE

18 8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
 19 §1331 because Plaintiffs allege violations of federal law, including the Wiretap Act, 18 U.S.C.
 20 §2510, *et seq.*, and the SCA, 18 U.S.C. §2701, *et seq.* The Court has supplemental jurisdiction over
 21 Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367(a).

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 23
 24 ² *Improving Siri’s privacy protections*, APPLE (Aug. 28, 2019),
<https://www.apple.com/newsroom/2019/08/improving-siris-privacy-protections/>.

25 ³ *Id.*

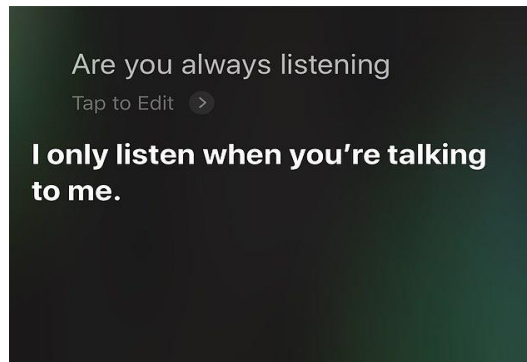
26 ⁴ For convenience, Plaintiffs use variations of the phrase “intercepting, recording, disclosing,
 27 and otherwise misusing” throughout the Complaint in an effort to summarize the range of conduct
 28 that Plaintiffs allege is unlawful as set forth in the Claims for Relief below. Use of this phrase,
 however, is not intended to limit the scope of any required elements set forth in each respective
 Claim for Relief alleged herein.

1 21. When a Siri Device detects a sufficiently high confidence score, it “wakes up,” or
2 “activates” Siri. At this point, the Siri Device begins transmitting audio to Apple for analysis. The
3 purpose of this analysis is to respond to user commands issued after the hot word. For example, if
4 a user says, “Hey Siri, what is the weather in Los Angeles?” Siri will transmit that audio to Apple
5 for analysis and provide a response. Users can also ask Siri to, among other things, set alarms
6 (“Wake me up at 7 AM”), play music (“Play me something I’d like”), access text messages (“Read
7 my last message”), or control smart appliances (“Turn on the lights in the living room”).

8 22. Siri has been included on all Siri Devices since October 12, 2011. As of January
9 2018, Apple claimed that Siri was “actively used on over half a billion devices.”⁶

10 23. Apple’s SLAs⁷ expressly incorporate Apple’s Privacy Policy and state that
11 information will be treated in accordance with Apple’s Privacy Policy.⁸

12 24. In order to distinguish itself from competing technology companies such as
13 Facebook, Amazon, and Google that have been implicated in scandals involving the collection,
14 sharing, or selling of user data, Apple touts its privacy protections. If an individual were to ask Siri
15 “Are you always listening,” Siri is programmed to respond: “I only listen when you’re talking to
16 me.”⁹



23 ⁶ Press Release, APPLE, HomePod arrives February 9, available to order this Friday (Jan. 23,
24 2018), [https://www.apple.com/newsroom/2018/01/homepod-arrives-february-9-available-to-order-
this-friday/](https://www.apple.com/newsroom/2018/01/homepod-arrives-february-9-available-to-order-this-friday/).

25 ⁷ APPLE, Software License Agreements, <https://www.apple.com/legal/sla/>.

26 ⁸ APPLE, Privacy, Privacy Policy (Aug. 29, 2019), [https://www.apple.com/legal/privacy/en-
ww/](https://www.apple.com/legal/privacy/en-ww/).

27 ⁹ James Pero, *Apple APOLOGIZES for letting contractors listen to Siri recordings 'of people*
28 *having sex' without users' knowledge and says the program will now only apply to those who opt-*

1 25. In July 2018, Congress sent a letter to Apple inquiring as to how they protect
2 consumer data. Apple responded with a letter stating, “We believe privacy is a fundamental human
3 right.” Apple’s response also answered questions Congress asked, including:

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

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

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

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

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

16 **Apple’s Response to Question 10:** No.¹⁰

17 26. More recently, Apple ran television commercials declaring “Privacy. That’s iPhone”
18 and further stating “[i]f privacy matters in your life, it should matter to the phone your life is on.”
19 Apple also bought a billboard at CES 2019, a consumer electronics convention held in Las Vegas,
20 which read: “What happens on your iPhone, stays on your iPhone.” Unfortunately, Apple doesn’t
21 live up to the privacy protections it claims it offers.

22 **II. Users of Siri Devices Reasonably Expected That Their Private Conversations Would**
23 **Not Be Intercepted, Recorded, Disclosed, or Otherwise Misused**

24 27. Plaintiffs’ and Class Members’ expectation of privacy in their confidential and
25 private communications, which Apple intercepted, recorded, disclosed, or otherwise misused, is
26 deeply enshrined in California’s Constitution. Article I, section 1 of the California Constitution

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28 *in*, DAILY MAIL (Aug 28, 2019), <https://www.dailymail.co.uk/sciencetech/article-7404513/Apple-APOLOGIZES-Siri-listening-practices-says-program-apply-opt-in.html>.

¹⁰ See Letter from Timothy Powderly, Director, Federal Government Affairs, Apple, to
Representative Greg Walden, United States House of Representatives (Aug. 7, 2018),
<https://www.macrumors.com/2018/08/07/apple-responds-to-house-on-privacy/>.

1 provides: “All people are by nature free and independent and have inalienable rights. Among these
2 are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and
3 pursuing and obtaining safety, happiness, *and privacy*.” Art. I., Sec. 1, Cal. Const. [Emphasis
4 added].

5 28. The phrase “*and privacy*” was added in 1972 after voters approved a proposed
6 legislative constitutional amendment designated as Proposition 11. Critically, the argument in favor
7 of Proposition 11 reveals that the legislative intent was to curb businesses’ control over the
8 unauthorized collection and use of consumers’ personal information, stating in relevant part:

9 *The right of privacy is the right to be left alone.* It is a fundamental and compelling
10 interest. It protects **our homes**, our families, our thoughts, our emotions, our
11 expressions, our personalities, our freedom of communion, and our freedom to
12 associate with the people we choose. *It prevents government and business
interests from collecting and stockpiling unnecessary information about us and
from misusing information gathered for one purpose in order to serve other
purposes or to embarrass us.*

13 *Fundamental to our privacy is the ability to control circulation of personal*
14 *information.* This is essential to social relationships and personal freedom. The
15 proliferation of government and business records over which we have no control
16 limits our ability to control our personal lives. Often we do not know that these
records even exist and we are certainly unable to determine who has access to
them.¹¹ [Emphasis added].

17 29. Consistent with the language of Proposition 11, a number of studies examining the
18 collection of consumers’ personal data confirms that the surreptitious taking of personal,
19 confidential, and private information from hundreds of thousands of individuals, as Apple has done
20 here, violates expectations of privacy that have been established as general social norms. Privacy
21 polls and studies uniformly show that the overwhelming majority of Americans consider one of the
22 most important privacy rights to be the need for an individual’s affirmative consent before a
23 company collects and shares its customers’ personal data. Indeed, a recent study by *Consumer*
24 *Reports* shows that 92% of Americans believe that internet companies and websites should be
25 required to obtain consent before selling or sharing their data, and the same percentage believe
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27 ¹¹ Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov.
28 7, 1972) at 27.

1 internet companies and websites should be required to provide consumers with a complete list of
2 the data that has been collected about them.¹² Similarly, a study published in the *Harvard Business*
3 *Review* shows that consumers are largely unaware of how their personal information is used by
4 businesses, with fewer than 20% of consumers realizing that they share their communication history,
5 IP addresses, and web-surfing history when using a standard web browser.¹³ A recent article
6 published by *USA Today* revealed that 93% of parents who use voice-activated devices say “it is
7 important to know when their family’s voices are being recorded [and an] equal number said it’s
8 important to control whatever information is collected about them.”¹⁴ It also is simply common
9 sense that voice-activated software like Siri should only become activated when a hot word is spoken
10 or the device is manually triggered.

11 30. The expectation of privacy is heightened in one’s own home, which historically is a
12 legally protected zone of privacy. Indeed, the passage of California’s Proposition 11 evidences that
13 voters sought to definitively ensure that a right of privacy was recognized in one’s own home. It is
14 undeniable that Siri Devices are used in the home, and some can *only* be used in the home. As the
15 name implies, HomePod speakers, necessarily, are located in the home. And, market research
16 indicates that one-quarter of smart speakers are located in the bedroom, where there is an even
17 greater expectation of privacy.¹⁵

18 31. However, *regardless* of where a Siri Device is used, Apple *itself* assures Plaintiffs
19 and Class Members that Siri Devices will *only* listen to and record their private confidential

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21 ¹² *Consumers Less Confident About Healthcare, Data Privacy, and Car Safety, New Survey*
22 *Finds*, CONSUMER REPORTS (May 11, 2017), <https://www.consumerreports.org/consumer-reports/consumers-less-confident-about-healthcare-data-privacy-and-car-safety/>.

23 ¹³ Timothy Morey, Theodore Forbath, and Allison Shoop, *Customer Data: Designing for*
24 *Transparency and Trust*, HARVARD BUSINESS REVIEW (May 2015),
<https://hbr.org/2015/05/customer-data-designing-for-transparency-and-trust>.

25 ¹⁴ Edward C. Baig, *Hey, Apple and Alexa: Parents worry voice assistants can listen in on*
26 *kids, survey finds*, USA TODAY (Mar. 28, 2019),
<https://www.usatoday.com/story/tech/talkingtech/2019/03/28/parents-dont-want-smart-speakers-to-secretly-record-kids-survey/3288806002/>.

27 ¹⁵ Dave Chaffey, *Consumer use of voice-controlled digital assistants / smart speakers*, SMART
28 INSIGHTS (Jan. 15, 2018), <https://www.smartinsights.com/digital-marketing-strategy/consumer-use-of-voice-controlled-digital-assistants-smart-speakers/>.

1 communications and transmit the recordings thereof to Apple if users give consent by speaking a
 2 hot word or otherwise activating “active listening” mode. Accordingly, in its official privacy policy
 3 specific to the Siri Devices, “Ask Siri, Dictation & Privacy (“Siri Privacy Policy”),”¹⁶ Apple states
 4 that “Siri is designed to protect your information and enable you to choose what you share.”¹⁷

5 32. As to sharing personal information with third parties, Apple denies sharing any of
 6 users’ personal information absent their explicit consent or authorization. For example, prior to
 7 recently updating its privacy policy following the filing of this Complaint, Apple’s Approach to
 8 Privacy webpage – which is expressly integrated into Apple’s Privacy Policy¹⁸ – stated that
 9 “*personal data should always be protected on [the Siri Device] and never shared without [users’]*
 10 *permission.*”¹⁹ [Emphasis added]. Apple then gives guarantees of its commitment to protecting
 11 users’ privacy, by stating in relevant part, “We’re always up front about what we collect from you,
 12 and we give you the controls to adjust these settings.”²⁰ The Approach to Privacy webpage also
 13 states that “Apps can use Siri to respond to your requests or send audio to Apple to transcribe to text
 14 – *but only if you give your permission first.*”²¹ [Emphasis added].

15 33. These assurances confirm the reasonableness of Plaintiffs’ and Class Members’
 16 expectation of privacy in the context of their homes and in the presence of Apple Devices *in any*
 17 *location*. Based on Apple’s representations, Plaintiffs and Class Members did not expect that their
 18 private and confidential information would be intercepted, recorded, disclosed, or otherwise
 19 misused, including by being listened to by unauthorized third parties. Despite Apple’s assurances,
 20 Apple intercepted, recorded, disclosed, and otherwise misused intimate conversations, including,
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22 ¹⁶ APPLE, Ask Siri, Dictation & Privacy, <https://support.apple.com/en-us/HT210657>.

23 ¹⁷ *Id.*

24 ¹⁸ Siri Devices are subject to Apple’s SLAs, which expressly adopt and incorporate Apple’s
 25 Privacy Policy. Apple assures users that their “information will be treated in accordance with
 Apple’s Privacy Policy.”

26 ¹⁹ Apple, Privacy, This is how we protect your privacy, [https://web.archive.org/web/20190801204312/https://www.apple.com/privacy/approach-to-](https://web.archive.org/web/20190801204312/https://www.apple.com/privacy/approach-to-privacy/)
 27 [privacy/](https://web.archive.org/web/20190801204312/https://www.apple.com/privacy/approach-to-privacy/) (archive dated August 1, 2019).

28 ²⁰ *Id.*

²¹ *Id.*

1 *inter alia*, private discussions between doctors and patients, confidential business deals, and sexual
2 encounters, for Apple’s own business and commercial purposes.

3 **III. Apple Intercepts, Records, Discloses, and Otherwise Misuses Individuals’ Private and**
4 **Confidential Communications Without Consent or Authorization**

5 34. On July 26, 2019, *The Guardian* reported that Apple has been recording individuals
6 confidential and private conversations without their consent and has been storing and sending those
7 recordings to humans for review: “[A] small portion of Siri recordings are passed on to contractors
8 working for the company around the world [who] are tasked with grading the responses on a variety
9 of factors, including whether the activation of the voice assistant was deliberate or accidental,
10 whether the query was something Siri could be expected to help with and whether Siri’s response
11 was appropriate [.]”²²

12 35. According to a whistleblower contractor, Siri Devices can be accidentally woken up
13 by a “sound of a zip,” or, in case of an Apple Watch, by raising the watch to one’s mouth and
14 beginning to talk, in which case Siri is automatically activated. The accidental triggers on Apple
15 Watch are “incredibly high,” making Apple Watch, along with the HomePod, the most frequent
16 source of accidental recordings.²³ Once activated, Siri records everything within range of the Siri
17 Devices’ microphone and sends it to Apple’s servers. Thus, far from requiring a “clear,
18 unambiguous trigger,” as Apple claimed in its response to Congress, Siri can be activated by nearly
19 anything.

20 36. Users’ confidential conversations following these false triggers, as well as Siri’s
21 responses to them, include “countless instances of recordings featuring private discussions between
22 doctors and patients, confidential business deals, sexual encounters, and so on.”²⁴ As reported by
23 *The Guardian*, these recordings can be as long as 30 seconds and “are accompanied by user data
24 showing location, contact details, and app data.”²⁵ As such, they contain significant levels of

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26 ²² *The Guardian* Article, *supra* n.1.

27 ²³ *Id.*

28 ²⁴ *Id.*

²⁵ *Id.*

1 identifying information from which the users' identity can be ascertained, in violation of users'
2 privacy rights.

3 37. Notwithstanding the severity of these violations, Apple does little to address and
4 remedy the problem, including having no specific procedures in place to deal with sensitive
5 recordings, other than reporting accidental triggers as a "technical problem."²⁶ To make things
6 worse, Apple does not vet the personnel who review and listen to the recordings, nor does it
7 meaningfully restrict the scope of data that contractors have access to.²⁷ What Apple does have in
8 place, instead, are performance quotas to encourage its contractors to "get through work as fast as
9 possible."²⁸ This is because Apple is singularly focused on its own financial and commercial
10 benefit, which is to sell as many Siri Devices as possible, and to generate significant profit, even
11 when it is to the detriment of Plaintiffs and Class Members.

12 38. Following the publication of *The Guardian* Article, Apple admitted that Apple
13 reviews a portion of the audio recordings and their computer-generated transcripts to measure how
14 well Siri was responding and to improve its reliability.²⁹ In an official statement, published to its
15 website on August 28, 2019, Apple acknowledged it failed to "fully liv[e] up to [its] high ideals."³⁰
16 In the context of the same announcements, Apple announced a temporary suspension of its human
17 review program and the revisions to its policies, including adding an opt in feature for users who
18 elect to participate in human review of their recorded interactions with Siri.³¹ Additionally, Apple
19 committed to no longer retain audio recordings of Siri interactions.³²

20 39. As with the recordings Apple obtains with consent, Apple analyzes the recordings it
21 obtains where no hot word has been uttered or button pushed to improve the functionality of Siri,

22
23 ²⁶ *Id.*

24 ²⁷ *Id.*

25 ²⁸ *Id.*

26 ²⁹ Apple, Newsroom, Improving Siri's privacy protections (Aug. 28, 2019),
<https://www.apple.com/newsroom/2019/08/improving-siris-privacy-protections/>.

27 ³⁰ *Id.*

28 ³¹ *Id.*

³² *Id.*

1 and thereby market and sell more Siri Devices. By analyzing consumers' conversations without
2 their authorization or consent, Apple is profiting from its invasion of such consumers' privacy.

3 40. Significantly, Siri makes no distinction between the voices of adults and children.
4 As a result, Apple is recording children's conversations, and disclosing the content of those
5 communications to third parties, whenever those children say a word that *remotely* sounds like a hot
6 word to the Siri Device. This is especially troubling as children *cannot* consent to being recorded
7 by the Siri Device or to having their communications disclosed.

8 41. Apple therefore engaged in several unlawful actions by capturing Plaintiffs' and
9 Class Members' communications without the utterance of a hot word or manual activation of the
10 Siri Device, and subsequently disclosing those communications without authorization. As set forth
11 with specificity in the Claims for Relief, Apple: (1) intentionally intercepted oral communications
12 without consent, and subsequently disclosed to third parties and used those communications in
13 violation of the Wiretap Act, 28 U.S.C. §2511(1)(a), (c), (d); (2) intentionally made unauthorized
14 connections with Plaintiffs' and Class Members' Siri Devices and transmitted to Apple's servers
15 recordings of Plaintiffs' and Class Members' communications and then knowingly divulged those
16 communications to third parties in violation of the SCA, 18 U.S.C. §2701(a) and §2702(a)(1); (3)
17 intentionally made unauthorized connections with Plaintiffs' and Class Members' Siri Devices and
18 willfully learned the contents of Plaintiffs' and Class Members' communications without consent
19 and used that information for its own business purposes in violation of CIPA, Cal. Penal Code
20 §631(a); (4) intentionally recorded Plaintiffs' and Class Members' confidential communications
21 without consent in violation of CIPA, Cal. Penal Code §632; (5) intentionally intruded into
22 Plaintiffs' and Class Members' private conversations in violation of their privacy rights under
23 California common law and the California Constitution; (6) breached material terms of its contract
24 with Plaintiffs and Class Members; and (7) engaged in unfair and unlawful acts in violation of the
25 UCL.

26 42. Given the concealed and secretive nature of Apple's conduct, more evidence
27 supporting the allegations in this Complaint will be uncovered after a reasonable opportunity for
28 discovery.

1 **IV. Apple's Unlawful Actions Have Harmed Plaintiffs**

2 43. Plaintiffs here each either owned and/or interacted with a Siri Device during the Class
3 Period and their conversations were intercepted, recorded, disclosed, or otherwise misused by Apple
4 without their consent or authorization. Each Plaintiff continues to own and/or interact with a Siri
5 Device, and therefore, each remains at risk that their conversations continue to be intercepted,
6 recorded, disclosed, or otherwise misused by Apple without their consent or authorization.

7 44. Plaintiffs Lopez and A.L. own an iPhone XR and iPhone 6. Plaintiffs Lopez and
8 A.L. interacted with Siri on their iPhone XR and iPhone 6 devices repeatedly during the Class
9 Period. As described above, Apple and these Siri Devices intentionally accessed Plaintiffs'
10 communications without authorization and unlawfully recorded Plaintiffs Lopez and A.L. without
11 their consent on multiple occasions, including when they failed to utter a hot word.

12 45. Plaintiff Henry owns an iPhone 7 Plus. Plaintiff Henry interacted with Siri on his
13 iPhone 7 Plus repeatedly during the Class Period. As described above, Apple and this Siri Device
14 intentionally accessed Plaintiff's communications without authorization and unlawfully recorded
15 Plaintiff Henry without his consent on multiple occasions, including when he failed to utter a hot
16 word.

17 46. Plaintiff Harms owns an iPhone 7 and iPhone XR. Plaintiff Harms interacted with
18 Siri on his iPhone 7 and iPhone XR devices repeatedly during the Class Period. As described above,
19 Apple and these Siri Device intentionally accessed Plaintiff's communications without authorization
20 and unlawfully recorded Plaintiff Harms without his consent on multiple occasions, including when
21 he failed to utter a hot word.

22 47. At no point did Plaintiffs authorize Apple to intercept, record, and otherwise misuse
23 conversations that are not preceded by a hot word or in instances where the Siri Device was not
24 manually activated. Plaintiffs Lopez, A.L., Henry, and Harms, therefore, did not agree to having
25 Apple intercept, record, disclose, or otherwise misuse their conversations through their respective
26 Siri Devices. Moreover, Apple could not have obtained consent from Plaintiff A.L., a minor
27 without an Apple account, and who otherwise could not have provided valid consent as a minor.
28 Plaintiffs would not have purchased, or would have paid less for their Siri Devices had they known

1 that Apple engaged in the unlawful actions described herein.

2 48. Plaintiffs would like to continue to use Siri Devices in the future, but will be
3 uncertain as to whether Apple ceased its unlawful practices and violation of their privacy rights
4 without the equitable relief requested herein, specifically an injunction prohibiting Apple from
5 engaging in the unlawful practices alleged herein. Indeed, although Apple has temporarily
6 suspended the human review program, and has afforded users the ability to opt in or out of the
7 review program, Apple has not agreed to terminate the human review program nor has Apple agreed
8 to cease intercepting or recording consumers' conversations. Finally, Apple has not agreed to delete
9 all prior recorded and stored conversations. Thus, an injunction is required to prohibit Apple from
10 engaging in such practices.

11 **TOLLING OF THE STATUTE OF LIMITATIONS**

12 49. The applicable statutes of limitations have been tolled by Apple's knowing and active
13 concealment and denial of the facts alleged herein, namely its practice of intercepting, recording,
14 disclosing, and misusing users' private and confidential communications. Plaintiffs and Class
15 Members could not have reasonably discovered the truth about Apple's practices until shortly before
16 this class action litigation was commenced.

17 50. As alleged in detail herein, Apple expressly and impliedly assured consumers that
18 Siri Devices will *only* listen to and record their voice with the consumers' consent, by uttering a hot
19 word, by manually pressing a button on the device to enable "active listening," and in the case of
20 Apple Watch, by raising the Apple Watch to one's mouth and beginning to talk, and that it will not
21 share personal information with third parties without consent. Accordingly, Apple denies listening
22 to and recording users' conversations absent the utterance of a hot word, manual activation, or
23 otherwise triggering the "active listening" mode. Apple policies likewise deny that audio recordings
24 from Siri Devices will be shared with third parties.

25 51. Furthermore, Plaintiffs and Class Members also have a reasonable expectation of
26 privacy in oral and electronic communication regardless of Apple's express assurances. This
27 expectation is particularly heightened where, as here, such communication occurs within one's
28 home, which is a zone of privacy uniformly recognized by state and federal privacy laws.

1 through Defendant's records.

2 57. **Predominant Common Questions:** The Class's claims present common questions
3 of law and fact, and those questions predominate over any questions that may affect individual Class
4 members. Common questions for the Class include, but are not limited to, the following:

- 5 a. Whether Siri Devices intercept or record individuals' conversations absent
6 that user uttering a hot word or otherwise activating the device;
- 7 b. Whether Siri Devices record the conversations of minors who interact with
8 them;
- 9 c. Whether individuals who use Siri Devices have a reasonable expectation of
10 privacy under federal and California law;
- 11 d. Whether Apple's practices of intercepting, accessing, listening to, recording,
12 sharing, storing, and otherwise misusing users' private and confidential
13 information and other personal information violated state and federal privacy
14 laws;
- 15 e. Whether Apple's practices of intercepting, accessing, listening to, recording,
16 sharing, storing, and otherwise misusing users' private and confidential
17 information and other personal information constitute a breach of the contract
18 that exists with Plaintiffs and Class Members;
- 19 f. Whether Plaintiffs and Class Members are entitled to declaratory and/or
20 injunctive relief to enjoin the unlawful conduct alleged herein; and
- 21 g. Whether Plaintiffs and Class Members have sustained damages as a result of
22 Apple's conduct, and, if so, what is the appropriate measure of damages or
23 restitution.

24 58. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of the
25 proposed Class. Plaintiffs and Class members suffered an invasion of privacy as a result of
26 Defendant's wrongful conduct that is uniform across the Class.

27 59. **Adequate Representation:** Plaintiffs have and will continue to fairly and adequately
28 represent and protect the interests of the Class. They have retained counsel competent and

1 experienced in complex litigation and class actions, including privacy violations. Plaintiffs have no
2 interest that is antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.
3 Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the
4 members of the Class, and they have the resources to do so. Neither Plaintiffs nor their counsel
5 have any interest adverse to those of the other members of the Class.

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

12 61. Plaintiffs reserve the right to revise the foregoing class allegations and definitions
13 based on facts learned and legal developments following additional investigation, discovery, or
14 otherwise.

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

16 62. California’s substantive laws apply to every member of the Class, regardless of
17 where in the United States the Class Members reside. Defendant’s SLA states:

18 **12. Controlling Law and Severability.** This License will be governed by and
19 construed in accordance with the laws of the State of California, excluding its
20 conflict of law principles. This License shall not be governed by the United Nations
Convention on Contracts for the International Sale of Goods, the application of
which is expressly excluded.³⁴

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

23 64. Further, California’s substantive laws may be constitutionally applied to the claims
24 of Plaintiffs and the Class under the Due Process Clause, 14th Amend. §1, and the Full Faith and
25 Credit Clause, Art. IV §1 of the U.S. Constitution. California has significant contact, or significant
26 aggregation of contacts, to the claims asserted by Plaintiffs and all Class members, thereby creating
27

28 ³⁴ See APPLE, Software License Agreements, *supra* n.7.

1 state interests that ensure that the choice of California state law is not arbitrary or unfair.

2 65. Defendant's United States headquarters and principal place of business is located in
3 California. Defendant also owns property and conducts substantial business in California, and
4 therefore California has an interest in regulating Defendant's conduct under its laws. Defendant's
5 decision to reside in California and avail itself of California's laws, and to engage in the challenged
6 conduct from and emanating out of California, renders the application of California law to the claims
7 herein constitutionally permissible.

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

10 67. The application of California laws to the Class is also appropriate under California's
11 choice of law rules because California has significant contacts to the claims of Plaintiffs and the
12 proposed Class, and California has a greater interest in applying its laws here than any other
13 interested state.

14 **CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF**

16 **Violation of the Wiretap Act**

17 **Title 1 of the Electronic Communications Privacy Act ("ECPA") (18 U.S.C. §2510, *et seq.*)**
18 **(On Behalf of Plaintiffs and the Class)**

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

21 69. The Wiretap Act prohibits the intentional interception by any person of the content
22 of any wire, oral, or electronic communications without the consent of at least one authorized party
23 to the communication.

24 70. "Oral communication" is defined as "any oral communication uttered by a person
25 exhibiting an expectation that such communication is not subject to interception under
26 circumstances justifying such expectation, but such term does not include any electronic
27 communication[.]" 18 U.S.C. §2510(2).

28

1 71. “Intercept” is defined as “the aural or other acquisition of the contents of any wire,
2 electronic, or oral communication through the use of any electronic, mechanical, or other device.”
3 18 U.S.C. §2510(4).

4 72. “Contents” is defined as “includ[ing] any information concerning the substance,
5 purport, or meaning of that communication[.]” 18 U.S.C. §2510(8).

6 73. “Person” is defined as “any employee, or agent of the United States or any State or
7 political subdivision thereof, and any individual, partnership, association, joint stock company, trust,
8 or corporation[.]” 18 U.S.C. §2510(6).

9 74. Plaintiffs and Class Members, as individuals, are persons as defined under §2510(6).

10 75. Apple, as a corporation, is a person as defined under 18 U.S.C. §2510(6).

11 76. Plaintiffs and Class Members owned or interacted with Siri through Siri Devices
12 during the Class Period.

13 77. Siri is a device for purposes of the Wiretap Act because it is a software program used
14 to intercept oral communications.

15 78. Plaintiffs’ and Class Members’ private and confidential verbal communications that
16 were intercepted in real time by Siri when a hot word was not uttered or in instances when the Siri
17 Device was not manually activated are “oral communications” within the meaning of 18 U.S.C.
18 §2510(2).

19 79. Plaintiffs and Class Members reasonably expected, based on a general understanding
20 of how voice recognition software like Siri is supposed to function and based on Apple’s own
21 assurances, that Apple was not intercepting, recording, disclosing, or using their oral
22 communications unless they uttered a hot word or otherwise activated the Siri Device. Siri was not
23 an intended party to or recipient of Plaintiffs’ and Class Members’ private and confidential oral
24 communications.

25 80. Pursuant to 18 U.S.C. §2511(1)(a), Apple, through its design, authorship,
26 programming, knowing and intentional installation, activation, and/or other involvement with Siri
27 and Siri Devices, intentionally intercepted, intercepts, or endeavored to intercept, the content of oral
28

1 communications made by Plaintiffs and Class Members without obtaining actual consent from any
2 authorized party to the oral communication.

3 81. Interception of Plaintiffs' and Class Members' private and confidential oral
4 communications without their consent occurs when the Siri Device switches to active listening mode
5 without the utterance of a hot word or manual activation of the Siri Device. This interception
6 occurred during transmission, as Siri operates in real time to acquire the content of Plaintiffs' and
7 Class Members' oral communications. The contents of the oral communications intercepted are the
8 verbatim utterances of Plaintiffs and Class Members.

9 82. Plaintiffs and Class Members could not have provided consent to interception of their
10 oral communications because such consent could only apply to instances when a hot word was
11 uttered or the Siri Device was manually activated, and not otherwise.

12 83. Additionally, Plaintiffs and Class Members who are minors never consented to being
13 recorded or having their communications disclosed by Apple, nor did Apple even attempt to seek
14 such consent. The parents of Plaintiffs and Class Members who are minors likewise never consented
15 to Apple recording or disclosing their children's interactions with Siri.

16 84. Pursuant to 18 U.S.C. §2511(1)(c), Apple intentionally disclosed, discloses, or
17 endeavored to disclose to third parties the contents of Plaintiffs' and Class Members' oral
18 communications while knowing or having reason to know that the information was obtained through
19 the interception of the oral communications in violation of 18 U.S.C. §2511(1)(a).

20 85. After Apple intentionally intercepts the contents of Plaintiffs' and Class Members'
21 oral communications without their consent, Siri records and transmits the intercepted
22 communications over the internet to Apple's servers for analysis and storage. Apple then
23 intentionally discloses these recordings of the contents of Plaintiffs' and Class Members' intercepted
24 communications or transcripts of these recordings to third parties in order to improve the
25 functionality of Siri for Apple's own financial and commercial benefit, to develop a virtual assistant
26 superior to Apple's competitors, and to generate substantial profit.

27 86. Pursuant to 18 U.S.C. §2511(1)(d), Apple intentionally used, uses, or endeavors to
28 use the contents of Plaintiffs' and Class Members' oral communications knowing or having reason

1 to know that the oral communication was obtained through interception in violation of 18 U.S.C.
2 §2511(1)(a).

3 87. Apple intentionally uses the contents of Plaintiffs' and Class Members' intercepted
4 communications to improve the functionality of Siri for Apple's own financial and commercial
5 benefit, to develop a virtual assistant superior to Apple's competitors, and to generate substantial
6 profit.

7 88. The practices complained of in this Count fall outside of the scope of Apple's
8 ordinary course of business because they violate Apple's own policies and are in contradiction to
9 the generally understood manner in which voice recognition software like Siri is supposed to
10 function.

11 89. Apple's actions were at all relevant times knowing, willful, and intentional as
12 evidenced by Apple's admission that a portion of the recordings it shares with its contractors are
13 made without use of a hot word and its use of the information to, among other things, improve the
14 functionality of Siri for Apple's own financial and commercial benefit, to develop a virtual assistant
15 superior to Apple's competitors, and to generate substantial profit.

16 90. Apple intercepted, disclosed, and used the contents of Plaintiffs' and Class Members'
17 oral communications in reckless disregard for Plaintiffs' and Class Members' privacy rights and for
18 its own financial benefit to profit from the improved functionality of Siri and to generate substantial
19 profit.

20 91. As a result, Plaintiffs and Class Members have suffered harm and injury due to the
21 interception, disclosure, and/or use of private and personal, confidential, and sensitive
22 communications.

23 92. Pursuant to 18 U.S.C. §2520, Plaintiffs and Class Members have been damaged by
24 the interception, disclosure, and/or use of their communications in violation of the Wiretap Act and
25 are entitled to: (1) appropriate equitable or declaratory relief; (2) damages, in an amount to be
26 determined at trial, assessed as the greater of (a) the sum of the actual damages suffered by Plaintiffs
27 and the Class and any profits made by Apple as a result of the violation or (b) statutory damages of
28

1 whichever is the greater of \$100 per day per violation or \$10,000; and (3) reasonable attorneys' fees
2 and other litigation costs reasonably incurred.

3 **SECOND CLAIM FOR RELIEF**

4 **Violation of the SCA**
5 **Title II of the ECPA (18 U.S.C. §2701, *et seq.*)**
6 **(On Behalf of Plaintiffs and the Class)**

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

9 94. Although Plaintiffs believe that they have independent claims under both the Wiretap
10 Act and the SCA, in the event that the Court determines any of the allegations are contradictory,
11 Plaintiffs plead in the alternative.

12 95. The SCA prohibits a person from intentionally accessing without authorization, or
13 exceeding authorization to access, a facility through which an “electronic communication service”
14 is provided, and thereby obtains an “electronic communication” while it is in “electronic storage.”
15 18 U.S.C. §2701(a).

16 96. The SCA provides that a person “providing an electronic communication service to
17 the public shall not knowingly divulge to any person or entity the contents of a communication while
18 in electronic storage by that service[.]” 18 U.S.C. §2702(a)(1).

19 97. “Electronic communication” is defined as “any transfer of signs, signals, writing,
20 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
21 electromagnetic, photoelectronic or photooptical system that affects interstate or foreign
22 commerce[.]” 18 U.S.C. §2510(12).

23 98. “Electronic storage” is defined as “any temporary, intermediate storage of a wire or
24 electronic communication incidental to the electronic transmission thereof; and any storage of such
25 communication by an electronic communication service for purposes of backup protection of such
26 communication[.]” 18 U.S.C. §2510(17)(A)-(B).

27 99. “Electronic communication service” is defined as “any service which provides to
28 users thereof the ability to send or receive wire or electronic communications[.]” 18 U.S.C.
§2510(15).

1 100. “Person” is defined as “any employee, or agent of the United States or any State or
2 political subdivision thereof, and any individual, partnership, association, joint stock company, trust,
3 or corporation.” 18 U.S.C. §2510(6).

4 101. Plaintiffs and Class Members, as individuals, are persons as defined under 18 U.S.C.
5 §2510(6).

6 102. Apple, as a corporation, is a person as defined under 18 U.S.C. §2510(6).

7 103. Plaintiffs and Class Members owned or interacted with Siri through Siri Devices
8 during the Class Period.

9 104. Siri is a service that provides Plaintiffs and Class Members the ability to send and
10 receive electronic communications to and from Apple’s servers over the internet and thus, is an
11 “electronic communication service” within the meaning of the SCA. Apple provides an electronic
12 communication service “to the public” because the Siri is a software program that anyone within a
13 certain proximity to a Siri Device can use and because Siri Devices are available for purchase and
14 use by anyone.

15 105. Plaintiffs and Class Members reasonably expected, based on a general understanding
16 of how voice recognition software like Siri is supposed to function and based on Apple’s own
17 assurances, that Apple was not accessing, recording, or disclosing their communications unless they
18 uttered a hot word or manually activated the Siri Device. Apple was not an intended party to or
19 recipient of Plaintiffs’ and Class Members’ private and confidential communications.

20 106. Apple made unauthorized connections with Plaintiffs’ and Class Members’ Siri
21 Devices and transmitted to Apple’s servers recordings of communications not preceded by the
22 utterance of a hot word or where the Siri Device was not otherwise activated.

23 107. Siri is required for the transmission of an electronic communication to Apple and is
24 the facility through which Apple provides an electronic communication service (receiving and
25 responding to Plaintiffs’ and Class Members’ queries).

26 108. Once Siri switches into active listening mode, it records “sounds, data, or
27 intelligence” that is then transmitted over the internet to Apple’s servers, which are located all over
28

1 the world, for analysis and storage. Thus, Plaintiffs’ and Class Members’ interactions with Siri
2 constitute “electronic communications” for purposes of 18 U.S.C. §2701(a).

3 109. Siri listens for hot words by recording and analyzing short snippets of audio, which
4 is stored locally in the Siri Device. Audio stored in a Siri Device is continuously overwritten until
5 a hot word is detected or the device is manually activated. Pursuant to 18 U.S.C. §2701(a)(1), Apple
6 accesses this temporary, intermediate storage without authorization when Siri sends the electronic
7 communication to its servers without a hot word being uttered or without the Siri Device being
8 manually activated.

9 110. Plaintiffs and Class Members could not have provided consent or authorization to
10 Apple to access their electronic communications because such consent or authorization could only
11 apply to instances when a hot word was uttered or the Siri Device was manually activated, and not
12 otherwise.

13 111. Additionally, Plaintiffs and Class Members who are minors never consented to being
14 recorded or having their communications disclosed by Apple, nor did Apple even attempt to seek
15 such consent. The parents of Plaintiffs and Class Members who are minors likewise never consented
16 to Apple recording or disclosing their children’s interactions with Siri.

17 112. Apple intentionally accessed without authorization Plaintiffs’ and Class Members’
18 Siri Devices and obtained Plaintiffs’ and Class Members’ electronic communications in reckless
19 disregard for Plaintiffs’ and Class Members’ privacy rights and for its own financial benefit to profit
20 from the improved functionality of Siri and to generate substantial profit.

21 113. Apple’s servers also store Plaintiffs’ and Class Members’ recorded audio for
22 purposes of back-up. According to Apple, Plaintiffs and Class Members can access this back-up
23 audio to view it or delete it.

24 114. Pursuant to 18 U.S.C. §2702(a)(1), Apple knowingly divulged the contents of
25 Plaintiffs’ and Class Members’ communications while they were in electronic storage when it
26 transmitted the recorded audio and/or transcripts to third parties for analysis or other purposes,
27 including improving the functionality of Siri for Apple’s own financial benefit and to generate
28 substantial profit.

1 115. Apple knowingly divulged Plaintiffs’ and Class Members’ communications in
2 reckless disregard for Plaintiffs’ and Class Members’ privacy rights and for its financial and
3 commercial benefit, to profit from the improved functionality of Siri and to generate substantial
4 profit.

5 116. Apple’s actions were at all relevant times knowing, willful, and intentional as
6 evidenced by Apple’s admission that a portion of the recordings it shares with its contractors are
7 made without use of a hot word and its use of the information to, among other things, improve the
8 functionality of Siri for Apple’s own financial benefit, to generate substantial profit.

9 117. As a result of Apple’s violations of the SCA, Plaintiffs and Class Members have
10 suffered harm and injury, including but not limited to the invasion of their privacy rights, due to the
11 unauthorized access and disclosure of private and personal, confidential, and sensitive
12 communications.

13 118. Pursuant to 18 U.S.C. §2707, Plaintiffs and Class Members are entitled to: (1)
14 appropriate equitable or declaratory relief; (2) damages, in an amount to be determined at trial,
15 assessed as the sum of the actual damages suffered by Plaintiffs and the Class and any profits made
16 by Apple as a result of the violation, but in no case less than the minimum statutory damages of
17 \$1,000 per person; and (3) reasonable attorneys’ fees and other litigation costs reasonably incurred.

18 **THIRD CLAIM FOR RELIEF**

19 **Violation of the CIPA**
20 **Cal. Penal Code §631(a)**
(On Behalf of Plaintiffs and the Class)

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

23 120. Cal. Penal Code §630 provides that “[t]he Legislature hereby declares that advances
24 in science and technology have led to the development of new devices and techniques for the
25 purpose of eavesdropping upon private communications and that the invasion of privacy resulting
26 from the continual and increasing use of such devices and techniques has created a serious threat to
27 the free exercise of personal liberties and cannot be tolerated in a free and civilized society.”

28

1 221. Cal. Penal Code §631(a) prohibits the use of “any machine, instrument, or
2 contrivance, or . . . any other manner” to “intentionally tap[], or make[] unauthorized connection,
3 whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or
4 telephone wire, line, cable, or instrument” *or* to “willfully and without the consent of all parties to
5 the communication, or in any unauthorized manner, read[], or attempt[] to read, or to learn the
6 contents or meaning of any message, report, or communication while the same is in transit or passing
7 over any wire, line, or cable, or is being sent from, or received at any place within this state.”

8 222. Cal. Penal Code §631(a) further prohibits the “use[], or attempt[] to use, in any
9 manner, or for any purpose, or to communicate in any way, any information so obtained.”

10 223. Pursuant to Cal. Penal Code §7, Apple, as a corporation, is a “person.”

11 224. Plaintiffs and Class Members owned or interacted with Siri through Siri Devices
12 during the Class Period.

13 225. Plaintiffs and Class Members reasonably expected, based on a general understanding
14 of how voice recognition software like Siri is supposed to function and based on Apple’s own
15 assurances, that Apple was not accessing, recording, or learning the contents of their
16 communications unless they uttered a hot word or manually activated the Siri Device. Apple was
17 not an intended party to or recipient of Plaintiffs’ and Class Members’ confidential communications.
18 Apple’s actions would be highly offensive to a reasonable person.

19 226. Apple made unauthorized connections with Plaintiffs’ and Class Members’ Siri and
20 Siri Devices and transmitted to Apple’s servers Plaintiffs’ and Class Members’ communications not
21 preceded by the utterance of a hot word or where the Siri Device was not manually activated.

22 227. Apple, and those who aided or were employed by Apple, willfully and without the
23 consent of all parties read, attempted to read, or learned the content of, Plaintiffs’ and Class
24 Members’ communications without the consent of all parties to the communication while the same
25 was in transit or being sent from or received at any place within the state. Apple recorded and
26 transmitted to Apple, Plaintiffs’ and Class Members’ communications not preceded by the utterance
27 of a hot word or where the Siri Device was not manually activated and then transferred those
28 communications to third parties for analysis for the purpose of reading or learning the content of

1 Plaintiffs' and Class Members' communications to improve the functionality of Siri, and to generate
2 significant profit.

3 128. After Apple obtained Plaintiffs' and Class Members' communications by
4 unauthorized means in violation of CIPA, Apple used the contents of those communications by
5 transferring them to third parties in order to improve the functionality of Siri and to generate
6 significant profit.

7 129. Plaintiffs and Class Members could not have provided consent or authorization
8 because such consent or authorization could only apply to instances when a hot word was uttered or
9 the Siri Device was manually activated, and not otherwise.

10 130. Additionally, Plaintiffs and Class Members who are minors never consented to being
11 recorded by Apple, nor did Apple even attempt to seek such consent. The parents of Plaintiffs and
12 Class Members who are minors likewise never consented to Apple recording their children's
13 interactions with Siri.

14 131. Each of the actions taken by Apple and complained of herein extends beyond the
15 normal occurrences, requirements, and expectations regarding the facilitation and transmission of
16 queries via Siri and Siri Devices.

17 132. Apple's acts in violation of CIPA occurred in the State of California because those
18 acts resulted from business decisions, practices, and operating policies that Apple developed,
19 implemented, and utilized in the State of California. Apple developed, designed, built, and
20 physically placed in California Siri used by Apple via Siri Devices that violate CIPA.

21 133. Apple has publicly acknowledged that such unauthorized actions occurred during the
22 Class Period.

23 134. Apple's acts and practices complained of herein, engaged in for purposes of
24 acquiring and using the content of Plaintiffs' and Class Members' communications to improve the
25 functionality of Siri for Apple's own financial benefit and to generate significant profits, violated
26 and violate Cal. Penal Code §631.

27 135. Apple's actions were at all relevant times knowing, willful, and intentional as
28 evidenced by Apple's admission that the recordings it shares with its contractors are intended to

1 determine whether the user intended to activate Siri’s listening mode, and thereby were made
2 without use of a hot word, and its use of the information to, among other things, improve the
3 functionality of Siri for Apple’s own financial benefit, to generate significant profits. Apple’s
4 actions were done in reckless disregard for Plaintiffs’ and Class Members’ privacy rights.

5 136. As a result of Apple’s violations of CIPA, Plaintiffs and Class Members have
6 suffered harm and injury, including but not limited to the invasion of their privacy rights.

7 137. Apple is able, and the Court should require it, to destroy the recordings of Plaintiffs’
8 and the Class Members’ interactions with Siri Devices, and to implement functionality sufficient to
9 prevent unauthorized recordings in the future.

10 138. Plaintiffs, individually and on behalf of the Class, seek: (1) an injunction enjoining
11 Apple from engaging in the unlawful conduct alleged in this claim and requiring Apple to delete all
12 recordings of Class Members, to cease further recording, and to implement functionality sufficient
13 to prevent unauthorized recordings in the future, and other appropriate equitable relief, including
14 but not limited to improving its privacy disclosures and obtaining adequately informed consent; (2)
15 damages of \$5,000 per violation under Cal. Penal Code §637.2; and (3) costs and reasonable
16 attorneys’ fees under Cal. Civ. Proc. Code §1021.5.

17 **FOURTH CLAIM FOR RELIEF**

18 **Violation of the CIPA**
19 **Cal. Penal Code §632**
(On Behalf of Plaintiffs and the Class)

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

22 140. Cal. Penal Code §632 prohibits eavesdropping upon or recording of any confidential
23 communication, including those occurring among the parties in the presence of one another or by
24 means of a telephone, telegraph or other device, through the use of an electronic amplifying or
25 recording device without the consent of all parties to the communication.

26 141. Pursuant to Cal. Penal Code §7 and §632(b), Apple, as a corporation, is a “person.”

27 142. Plaintiffs and Class Members owned or interacted with Siri through Siri Devices
28 during the Class Period.

1 143. Plaintiffs and Class Members reasonably expected, based on a general understanding
2 of how voice recognition software like Siri is supposed to function and based on Apple’s own
3 assurances, that Apple was not recording them unless they uttered a hot word or manually activated
4 the Siri Device. Apple was not an intended party to or recipient of Plaintiffs’ and Class Members’
5 confidential communications. Apple’s actions would be highly offensive to a reasonable person.

6 144. Siri and Siri Devices created recordings that were transmitted to Apple of Plaintiffs’
7 and Class Members’ confidential communications not preceded by the utterance of a hot word or
8 where the Siri Device was not manually activated during the Class Period. These recordings were
9 made without Plaintiffs’ consent.

10 145. Plaintiffs and Class Members could not have provided consent or authorization
11 because such consent or authorization could only apply to instances when a hot word was uttered or
12 the Siri Device was manually activated, and not otherwise.

13 146. Additionally, Plaintiffs and the Class Members who are minors never consented to
14 being recorded by Apple, nor did Apple even attempt to seek such consent. The parents of Plaintiffs
15 and Class Members who are minors likewise never consented to Apple recording their children’s
16 interactions with such Siri Devices.

17 147. Apple has publicly acknowledged that such unauthorized recording occurred during
18 the Class Period.

19 148. By recording Plaintiffs and Class Members without consent when a hot word was
20 not uttered or the Siri Device was not manually activated, Apple “intentionally and without the
21 consent of all parties to a confidential communication” used an “electronic amplifying or recording
22 device to . . . record the confidential communication” in violation of California law. Cal. Penal
23 Code §632.

24 149. Apple engaged in the acts and practices complained of herein for purposes of
25 acquiring and using the content of Plaintiffs’ and Class Members’ communications to improve the
26 functionality of Siri for Apple’s own financial benefit, to generate significant profits.

27 150. Apple’s actions were at all relevant times knowing, willful, and intentional as
28 evidenced by Apple’s admission that a significant portion of the recordings it shares with its

1 contractors are made without use of a hot word and its use of the information to, among other things,
2 improve the functionality of Siri for Apple's own financial benefit, to target personalized advertising
3 to users, and to generate significant profits. Apple's actions were done in reckless disregard for
4 Plaintiffs' and Class Members' privacy rights.

5 151. As a result of Apple's violations of CIPA, Plaintiffs and Class Members have
6 suffered harm and injury, including but not limited to the invasion of their privacy rights.

7 152. Apple is able, and the Court should require it, to destroy the unauthorized recordings
8 of Plaintiffs' and the Class Members' interactions with Siri Devices, and to implement functionality
9 sufficient to prevent unauthorized recordings in the future.

10 153. Plaintiffs, individually and on behalf of the Class, seek: (1) an injunction enjoining
11 Apple from engaging in the unlawful conduct alleged in this claim and requiring Apple to delete all
12 recordings of Class Members, to cease further recording, and to implement functionality sufficient
13 to prevent unauthorized recordings in the future, and other appropriate equitable relief, including
14 but not limited to improving its privacy disclosures and obtaining adequately informed consent; (2)
15 damages of \$5,000 per violation under Cal. Penal Code §637.2; and (3) costs and reasonable
16 attorneys' fees under Cal. Civ. Proc. Code §1021.5.

17 **FIFTH CLAIM FOR RELIEF**

18 **Intrusion Upon Seclusion**
19 **(on Behalf of Plaintiffs and the Class)**

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

22 155. Plaintiffs asserting claims for intrusion upon seclusion must plead (1) that the
23 defendant intentionally intruded into a place, conversation, or matter as to which plaintiff had a
24 reasonable expectation of privacy; and (2) that the intrusion was highly offensive to a reasonable
25 person.

26 156. Apple's business practice of intercepting, recording, transmitting, and disclosing
27 Plaintiffs' and Class Members' communications on the Siri Devices without their consent
28 constituted an intentional intrusion upon the Plaintiffs' and Class Members' solitude or seclusion in

1 that Apple effectively placed itself in the middle of a conversation to which it was not invited,
2 welcomed, or authorized.

3 157. Plaintiffs and Class Members did not consent to, authorize, or know about Apple's
4 intrusion at the time it occurred. Plaintiffs and Class Members never agreed that Siri would record
5 their conversations without the utterance of a hot word or it being manually activated, whether it be
6 via consent provided through Plaintiffs' and Class Members' Apple accounts, internet service
7 providers, or web-browsers, and never agreed that Apple would disclose those recorded
8 conversations to third parties. None of the Subclass Members consisting of minor children gave
9 consent or authorization to Apple to intrude upon, record, transmit, or disclose their conversations
10 and/or interactions with the Siri Devices.

11 158. Apple's intentional intrusion on Plaintiffs' and Class Members' solitude or seclusion
12 without consent would be highly offensive to a reasonable person. Plaintiffs and Class Members
13 reasonably expected, based on a general understanding of how voice recognition software like Siri
14 is supposed to function and based on Apple's own assurances, that Apple was not listening to,
15 recording, disclosing, or misusing their oral communications unless they uttered a hot word or
16 manually activated the Siri Device.

17 159. Apple's intentional intrusion into Plaintiffs' and Class Members' private
18 conversations was highly offensive to a reasonable person in that it violated federal and state
19 criminal and civil laws designed to protect individual privacy.

20 160. The surreptitious taking and disclosure of personal, confidential, and private
21 information from hundreds of thousands of individuals was highly offensive because it violated
22 expectations of privacy that have been established by general social norms. Privacy polls and
23 studies consistently show that the overwhelming majority of Americans believe one of the most
24 important privacy rights is the need for an individual's affirmative consent before personal data is
25 harvested or shared.

26 161. Apple intentionally engages in the misconduct alleged herein to improve the
27 functionality of Siri for Apple's own financial benefit, to develop a virtual assistant superior to
28 Apple's competitors, and to generate substantial profit.

1 162. As a result of Apple’s actions, Plaintiffs and Class Members have suffered harm and
2 injury, including but not limited to the invasion of their privacy rights.

3 163. Unwanted access to data by electronic or other covert means, in violation of the law
4 or social norms is actionable under California law.

5 164. Plaintiffs and Class Members have been damaged as a direct and proximate result of
6 Apple’s invasion of their privacy and are entitled to just compensation.

7 165. Plaintiffs and the Class seek appropriate relief for that injury, including but not
8 limited to damages that will reasonably compensate Plaintiffs and Class Members for the harm to
9 their privacy interests as well as disgorgement of profits made by Apple as a result of its intrusions
10 upon Plaintiffs’ and Class Members’ privacy.

11 **SIXTH CLAIM FOR RELIEF**

12 **Invasion of Privacy**
13 **Art. I, Sec. 1 of the California Constitution**
14 **(On Behalf of Plaintiffs and the Class)**

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

17 167. Article I, section 1 of the California Constitution provides: “All people are by nature
18 free and independent and have inalienable rights. Among these are enjoying and defending life and
19 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,
20 happiness, and privacy.” Art. I., Sec. 1, Cal. Const.

21 168. To state a claim for invasion of privacy under the California Constitution, a plaintiff
22 must establish (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; and
23 (3) an intrusion so serious in nature, scope, and actual or potential impact as to constitute an
egregious breach of the social norms.

24 169. The right to privacy in California’s constitution creates a right of action against
25 private and government entities.

26 170. Apple has intruded upon Plaintiffs’ and Class Members’ legally protected privacy
27 interests, including, *inter alia*: (i) interests in precluding the dissemination or misuse of sensitive
28 and confidential information (“informational privacy”); (ii) interests in making intimate personal

1 decisions or conducting personal activities without observation, intrusion, or interference
2 (“autonomy privacy”); (iii) the Wiretap Act as alleged herein; (iv) the SCA as alleged herein; (v)
3 CIPA; and (vi) the Apple SLA and Privacy Policy and other public assurances that Apple does not
4 intercept, record, disclose, and/or use people’s conversations without their consent and/or without
5 Plaintiffs’ and Class Members’ speaking the hot words that switch Siri Devices into active listening
6 mode.

7 171. The confidential and sensitive information, which Apple intercepted, recorded,
8 transmitted, and disclosed without Plaintiffs’ and Class Members’ authorization and/or consent
9 included, *inter alia*, Plaintiffs’ and Class Members’ private discussions with their doctors, business
10 deals, and sexual encounters. Plaintiffs and Class Members had a legally protected informational
11 privacy interest in the confidential and sensitive information as well as an autonomy privacy interest
12 in conducting their personal activities without observation, intrusion, or interference.

13 172. Plaintiffs and Class Members had a reasonable expectation of privacy in the
14 circumstances in that: (i) Defendant’s invasion of privacy occurred during private and confidential
15 conversations that Plaintiffs and Class Members had to the exclusion of everyone else; (ii) Plaintiffs
16 and Class Members did not consent or otherwise authorize Apple to intercept, record, disclose, or
17 use their private information; (iii) Plaintiffs and Class Members could not reasonably expect Apple
18 would commit acts in violation of federal and state civil and criminal laws protecting privacy; (iv)
19 Apple affirmatively assured Plaintiffs and Class Members it would not listen to, record, disclose,
20 and/or use their private communications without their consent or authorization by speaking a hot
21 word or manually activating the Siri Device into active listening mode.

22 173. Apple’s actions constituted a serious invasion of privacy that would be highly
23 offensive to a reasonable person in that: (i) the invasion occurred within a zone of privacy protected
24 by the California Constitution, namely the collection and stockpiling of unnecessary information by
25 businesses without consent, and the misuse of information gathered for one purpose in order to serve
26 other purposes; (ii) the invasion deprived Plaintiffs and Class Members of the ability to control
27 circulation of personal information, which is considered fundamental to the right to privacy; and
28

1 (iii) the invasion violated several federal and state criminal laws, including, *inter alia*, the Wiretap
2 Act, the SCA, and CIPA.

3 174. Apple's invasion violated the privacy rights of *at least* hundreds of thousands of
4 Class Members, including Plaintiffs, without their authorization or consent. Committing criminal
5 acts against *at least* hundreds of thousands of Class Members, including Plaintiffs, constituted an
6 egregious breach of social norms.

7 175. The surreptitious and unauthorized interception, recording, disclosure, and misuse of
8 hundreds of thousands of Class Members', including Plaintiffs', personal confidential information
9 constituted an egregious breach of social norms.

10 176. Apple lacked any compelling or legitimate business interest in listening to, recording,
11 disclosing, and misusing the personal private and confidential information of *at least* hundreds of
12 thousands of Class Members, including Plaintiffs, who did not consent or authorize Apple's
13 behavior.

14 177. Apple intentionally engages in the misconduct alleged herein to improve the
15 functionality of Siri for Apple's own financial benefit, to generate substantial profit.

16 178. As a result of Apple's actions, Plaintiffs and Class Members have been damaged as
17 a direct and proximate result of Apple's invasion of their privacy and are entitled to just
18 compensation.

19 179. Plaintiffs and the Class seek appropriate relief for that injury, including but not
20 limited to damages that will reasonably compensate Plaintiffs and Class Members for the harm to
21 their privacy interests as well as disgorgement of profits made by Apple as a result of its intrusions
22 upon Plaintiffs' and Class Members' privacy.

23 **SEVENTH CLAIM FOR RELIEF**

24 **Breach of Contract**
25 **(On Behalf of Plaintiffs and the Class)**

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

28 181. Plaintiffs purchased one or more Siri Devices.

1 182. Plaintiffs entered into a contract with Apple by purchasing the Siri Devices, which
2 are subject to Apple’s SLAs. Plaintiffs have fully complied with their obligations under the SLA
3 with regard to their use of Apple’s services.

4 183. The SLA expressly adopts and incorporates Apple’s Privacy Policies, which are thus
5 part of the contract between the parties. The SLA incorporates Apple’s representations regarding
6 Siri stating that:

7 Certain features like Analytics, Location Services, Siri and Dictation may require
8 information from your iOS Device to provide their respective functions. When you
9 turn on or use these features, details will be provided regarding what information
is sent to Apple and how the information may be used.

10 The SLA also promises that: “At all times your information will be treated in accordance with
11 Apple’s Privacy Policy.”³⁵

12 184. The Privacy Policy allows Apple to collect certain personal information from its
13 customers, but only upon request by Apple and consent of the customers. The Privacy Policy
14 provides that “You may be asked to provide your personal information anytime you are in contact
15 with Apple or an Apple affiliated company... You are not required to provide the personal
16 information that we have requested...”³⁶

17 185. As with the SLA, the Privacy Policy expressly integrates Apple’s other privacy
18 related representations as follows:

19 In addition to this Privacy Policy, we provide data and privacy information
20 imbedded in our products connected with our Data & Privacy Icon for certain
features that ask to use your personal information.³⁷

21 186. Apple’s Approach to Privacy policy is one such document. That policy provides that
22 “Your personal data should always be protected on your device and never shared without your
23 permission.”³⁸ The Approach to Privacy policy further provides that “Sometimes we use your data
24

25 ³⁵ Apple, Privacy, Privacy Policy, *supra* n.8.

26 ³⁶ *Id.*

27 ³⁷ *Id.*

28 ³⁸ APPLE, Privacy, This is how we protect your privacy, *supra* n.19.

1 to provide you with a more personalized experience. We're always up front about what we collect
2 from you, and we give you the controls to adjust these settings.”³⁹ The Approach to Privacy policy
3 also states that “Apps can use Siri to respond to your requests or send audio to Apple to transcribe
4 to text – but only if you give your permission first.”⁴⁰

5 187. Apple provides a privacy policy specific to the Siri Devices, “Ask Siri, Dictation &
6 Privacy.” The Siri Privacy Policy states that “Siri is designed to protect your information and enable
7 you to choose what you share.”⁴¹ It further provides that “When you make requests, Siri sends
8 certain data about you to Apple to help respond to your requests.”⁴²

9 188. As set forth above, one underlying premise of Apple’s privacy policies is that
10 customers’ data will not be shared with third parties without such customers’ express consent.
11 Under the Siri Privacy Policy, recordings of users’ interactions with Siri Devices may only be shared
12 with Apple when the user makes an explicit request of Siri, *i.e.*, uses the hot word “Siri.” In violation
13 of the SLA and Privacy Policies, Siri Devices experience “false accepts,” where the device
14 automatically begins recording conversations despite the user not using a hot word. As a result, Siri
15 Devices record users’ private conversations, including Plaintiffs’ private conversations. Worse,
16 Apple shared these recordings with third parties such as subcontractors.

17 189. At no point did Plaintiffs consent to these unlawful recordings. Nor did Apple inform
18 Plaintiffs that it was sharing their sensitive personal information with third parties.

19 190. By recording and disclosing to third parties Plaintiffs’ private conversations without
20 their consent, Apple has breached material terms of the SLA and Privacy Policies incorporated
21 thereunder.

22 191. As a result of Apple’s breach of the SLA and Privacy Policy, Plaintiffs’ have suffered
23 damages. Specifically, the services Plaintiffs received in exchange for the purchase price of Siri
24 Devices were worth less than the services they agreed to accept because Plaintiffs’ information was

25 _____
26 ³⁹ *Id.*

27 ⁴⁰ *Id.*

28 ⁴¹ APPLE, Ask Siri, Dictation & Privacy, *supra* n.16.

⁴² *Id.*

1 recorded without their consent and divulged to third parties. Plaintiffs would not have purchased,
2 or would not have paid as high a price, for the Siri Devices if they had known that Apple would
3 breach the SLA and Privacy Policy by intercepting, recording, disclosing, and misusing Plaintiffs
4 private conversations.

5 **EIGHTH CLAIM FOR RELIEF**

6 **Violation of the California Unfair Competition Law**
7 **Cal. Business & Professions Code §17200, *et seq.***
8 **(On Behalf of Plaintiffs and the Class)**

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

11 193. Apple engaged in business acts and practices deemed “unlawful” under the UCL,
12 because, as alleged above, Apple unlawfully intercepted, recorded, disclosed, and otherwise
13 misused Plaintiffs’ and Class Members’ interactions without consent in violation of the Wiretap
14 Act, SCA, California common law, California Constitution, CIPA, and Cal. Penal Code §§631 and
15 632. In addition, Apple’s breach of its privacy policy alleged above constitutes a violation of Cal.
16 Bus. & Prof. Code §22576.

17 194. Apple also engaged in business acts and practices deemed “unlawful” under the
18 UCL, because, Apple unlawfully intercepted, recorded, disclosed, and otherwise misused Plaintiff
19 A.L.’s and minor Class Members’ interactions without consent, which violates public policy as
20 declared by specific statutory provisions, including Cal. Fam. Code §6701 and §6710, which
21 prohibit Defendant from obtaining consent by minors.

22 195. Specifically, Cal. Fam. Code §6701 states that: “A minor cannot do any of the
23 following: (a) Give a delegation of power” Cal. Fam. Code §6710 states that: “Except as
24 otherwise provided by statute, a contract of a minor may be disaffirmed by the minor before majority
25 or within a reasonable time afterwards or, in case of the minor’s death within that period, by the
26 minor’s heirs or personal representative.”

27 196. Apple did not obtain the minor Plaintiff A.L.’s consent to intercept, record, disclose,
28 or use their confidential communications. Apple could not obtain consent to intercept, record,
disclose or use the minor Plaintiff A.L.’s confidential communications. To the extent that Apple

1 attempts to claim that it obtained the minor Plaintiff A.L.’s consent, pursuant to Cal. Fam. Code
2 §6710, Plaintiff A.L. disaffirms such consent.

3 197. Apple also engaged in business acts or practices deemed “unfair” under the UCL
4 because, as alleged above, Apple failed to disclose during the Class Period that these Siri Devices
5 were intercepting, recording, disclosing and otherwise misusing Plaintiffs’ and Class Members’
6 speech without their consent. Unfair acts under the UCL have been interpreted using three different
7 tests: (1) whether the public policy which is a predicate to a consumer unfair competition action
8 under the unfair prong of the UCL is tethered to specific constitutional, statutory, or regulatory
9 provisions; (2) whether the gravity of the harm to the consumer caused by the challenged business
10 practice outweighs the utility of the defendant’s conduct; and (3) whether the consumer injury is
11 substantial, not outweighed by any countervailing benefits to consumers or competition, and is an
12 injury that consumers themselves could not reasonably have avoided. Defendant’s conduct is unfair
13 under each of these tests. Apple’s conduct alleged is unfair under all of these tests.

14 198. As described above, Apple’s conduct violates the policies of the statutes referenced
15 above. The gravity of the harm of Apple’s secret intercepting, recording, disclosure, and other
16 misuse of Plaintiffs’ and Class Members’ communications, including those by minors, is significant
17 and there is no corresponding benefit to consumers of such conduct. Finally, because Plaintiffs and
18 Class Members were completely unaware of Apple’s secret recordings and disclosure, they could
19 not have possibly avoided the harm.

20 199. Had Plaintiffs known that their communications would be intercepted, recorded,
21 disclosed, and misused, they would not have purchased a Siri Device, or would have paid less for
22 them. Plaintiffs and Class Members have a property interest in any recordings of their
23 communications. By surreptitiously intercepting, recording, disclosing, or otherwise misusing
24 Plaintiffs’ and Class Members’ communications, Apple has taken property from Plaintiffs and Class
25 Members without providing just or any compensation.

26 200. Plaintiffs, individually and on behalf of the Class, seek: (1) an injunction enjoining
27 Apple from engaging in the unlawful conduct alleged in this claim and requiring Apple to delete all
28 recordings of Class Members, to cease further recording, to implement functionality sufficient to

1 prevent unauthorized recordings in the future, to cease disclosing communications of the Class to
2 third parties without prior consent, and other appropriate equitable relief, including but not limited
3 to improving its privacy disclosures and obtaining adequately informed consent; and (2) restitution
4 of Plaintiffs' and Class Members' money and property lost as a result of Apple's acts in violation
5 of the UCL.

6 **NINTH CLAIM FOR RELIEF**

7 **Request for Relief under the Declaratory Judgment Act**
8 **28 U.S.C. §2201, *et seq.***
9 **(On Behalf of Plaintiffs and the Class)**

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

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

16 203. An actual controversy has arisen in the wake of Defendant's intercepting, recording,
17 disclosure, and misuse of Plaintiffs' and Class members' communications without their consent as
18 alleged herein in violation of Defendant's common law and statutory duties.

19 204. Plaintiffs continue to suffer injury and damages as described herein as Defendant
20 continues to record Plaintiffs' and Class members' communications, including communications by
21 minors whose consent to record Defendant cannot obtain. Moreover, although Apple has
22 temporarily suspended the human review program, Apple has not agreed to terminate the program
23 nor has Apple agreed to cease intercepting or recording consumers' conversations.

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

- 26 a. Defendant continues to owe a legal duty to not intercept, record, disclose, and
27 otherwise misuse Plaintiffs' and Class Members' confidential
28 communications under, *inter alia*, the common law, the Wiretap Act, the
SCA, CIPA, Cal. Penal Code §§631 and 632, Cal. Bus. & Prof. Code §22576,

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and Cal. Fam. Code §6710;

- b. Defendant continues to be in breach of its contract with Plaintiffs and members of the Class and Subclass;
- c. Defendant continues to breach its legal duties and be in breach of its contract with Plaintiff and Class Members by continuing to intercept, record, disclose and misuse Plaintiffs' and Class Members' confidential communications; and
- d. Defendant's ongoing breaches of its legal duty and breach of contract continue to cause Plaintiffs and the Class Members harm.

206. The Court should also issue corresponding injunctive relief, including but not limited to enjoining Apple from engaging in the unlawful conduct alleged in this claim and requiring Apple to delete all recordings of Plaintiffs and Class Members, to cease further recording, and to implement functionality sufficient to prevent unauthorized recordings in the future, and other appropriate equitable relief, including but not limited to improving its privacy disclosures and obtaining adequately informed consent.

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

208. Federal and state laws prohibit, among other things, interception, recording, disclosure, and other misuse of confidential communications without the consent, particularly those that take place in the sanctity of one's own home – a historically protected zone of privacy. California specifically recognizes privacy as a fundamental right. Given that Apple admits that it continues to intercept, record, disclose, and misuse confidential communications, including those of minors, the risk of continued violations of federal and California law is real, immediate, and substantial. Plaintiffs do not have an adequate remedy at law because many of the resulting injuries are reoccurring and Plaintiffs will be forced to bring multiple lawsuits to rectify the same conduct.

209. The hardship to Plaintiffs and the Class if an injunction is not issued exceeds the hardship to Defendant if an injunction is issued. On the other hand, the cost to Defendant of complying with an injunction by complying with federal and California law and by ceasing to engage in the misconduct alleged herein is relatively minimal, and Defendant has a pre-existing

1 J. Awarding Plaintiffs and the Class and Subclass their costs of suit, including
2 reasonable attorneys' and experts' fees and expenses;

3 K. Awarding Plaintiffs and the Class and Subclass pre-and post-judgment interest, to
4 the extent allowable;

5 L. Enjoining Apple from further engaging in the unlawful conduct alleged herein;

6 M. Awarding such other further injunctive and declaratory relief as is necessary to
7 protect the interests of Plaintiffs and the Class and Subclass; and

8 N. Awarding such other and further relief as the Court deems reasonable and just.

9 **DEMAND FOR JURY TRIAL**

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

11 Dated: November 7, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2019, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

Executed on November 7, 2019, at San Francisco, California.

/s/ Mark N. Todzo
Mark N. Todzo (Bar No. 168389)