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*Apple Inc.*

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

CHRISTINA GRACE and KEN POTTER, )  
Individually and on Behalf of All Others )  
Similarly Situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
APPLE INC., )  
 )  
Defendant. )

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CASE NO. 5:17-CV-00551-LHK  
**DEFENDANT APPLE INC.’S  
ANSWER TO PLAINTIFFS’ FIRST  
AMENDED COMPLAINT**

1 Defendant Apple Inc. (hereinafter “Apple”), by and through its attorneys, Kirkland & Ellis  
2 LLP, answers the First Amended Complaint (the “Complaint”) of plaintiffs Christina Grace and Ken  
3 Potter in this action as follows:

4 Except as otherwise expressly recognized herein, Apple denies each and every allegation  
5 contained in the Complaint. Apple states that the headings, sub-headings, photographs, and footnotes  
6 throughout the Complaint do not constitute well-pleaded allegations of fact and therefore require no  
7 response. To the extent a response is required, Apple states that cited articles and documents speak  
8 for themselves, and Apple otherwise denies the allegations in the headings, sub-headings,  
9 photographs, and footnotes in the Complaint. Apple expressly reserves the right to seek to amend or  
10 supplement or both its Answer as may be necessary.

11 **NATURE OF THE ACTION**

12 1. Responding to the introductory paragraph and paragraph 1 of the Complaint, Apple  
13 admits that Christina Grace and Ken Potter (collectively, “Plaintiffs”) are the only named plaintiffs in  
14 this case and that they filed this lawsuit as a putative class action. Except as expressly stated, Apple  
15 denies each and every allegation in this paragraph and in the introductory paragraph.

16 2. Responding to paragraph 2 of the Complaint, Apple states that Plaintiffs have quoted a  
17 portion of a statement by Tim Cook, which statement speaks for itself. Except as expressly stated,  
18 Apple denies each and every allegation in this paragraph.

19 3. Responding to paragraph 3 of the Complaint, Apple denies each and every allegation  
20 in this paragraph.

21 4. Responding to paragraph 4 of the Complaint, Apple admits that FaceTime is a  
22 proprietary calling feature of the iOS Software first released in 2010. In 2010, iOS 4 supported the  
23 use of FaceTime to make video calls. Except as expressly stated, Apple denies each and every  
24 allegation in this paragraph.

25 5. Responding to paragraph 5 of the Complaint, Apple admits that some versions of  
26 FaceTime could exchange audio and video data that would result in Apple making payments to  
27 Akamai. Except as expressly stated, Apple denies each and every allegation in this paragraph.  
28

1           6.        Responding to paragraph 6 of the Complaint, Apple denies each and every allegation  
2 in this paragraph.

3           7.        Responding to paragraph 7 of the Complaint, Apple states that the referenced jury  
4 verdict speaks for itself. Except as expressly stated, Apple denies each and every allegation in this  
5 paragraph.

6           8.        Responding to paragraph 8 of the Complaint, Apple states that Plaintiffs have  
7 selectively quoted only a portion of the referenced document, which speaks for itself. Except as  
8 expressly stated, Apple denies each and every allegation in this paragraph.

9           9.        Responding to paragraph 9 of the Complaint, Apple admits that it made iOS 7 available  
10 to users in September 2013. Except as expressly stated, Apple denies each and every allegation in this  
11 paragraph.

12          10.       Responding to paragraph 10 of the Complaint, Apple denies each and every allegation  
13 in this paragraph.

14          11.       Responding to paragraph 11 of the Complaint, Apples denies each and every allegation  
15 in this paragraph.

16          12.       Responding to paragraph 12 of the Complaint, Apple is without knowledge or  
17 information sufficient to form a belief as to the truth of the selectively quoted portions of the referenced  
18 media report or the media report as a whole. Except as expressly stated, Apple denies each and every  
19 allegation in this paragraph.

20          13.       Responding to paragraph 13 of the Complaint, Apple states that Plaintiffs selectively  
21 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
22 Apple denies each and every allegation in this paragraph.

23          14.       Responding to paragraph 14 of the Complaint, Apple denies each and every allegation  
24 in this paragraph.

25          15.       Responding to paragraph 15 of the Complaint, Apple denies each and every allegation  
26 in this paragraph.

1           16. Responding to paragraph 16 of the Complaint, Apple is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations of the referenced media reports.  
3 Except as expressly stated, Apple denies each and every allegation in this paragraph

4           17. Responding to paragraph 17 of the Complaint, Apple states that Plaintiffs selectively  
5 quoted a portion of the referenced document, which speaks for itself. Except as expressly stated,  
6 Apple denies each and every allegation in this paragraph.

7           18. Responding to paragraph 18 of the Complaint, Apple states that Plaintiffs selectively  
8 quoted a portion of the referenced document, which speaks for itself. Except as expressly stated,  
9 Apple denies each and every allegation in this paragraph.

10           19. Responding to paragraph 19 of the Complaint, this paragraph states a legal conclusion  
11 to which no response is required. To the extent a response is required, Apple denies each and every  
12 allegation in this paragraph.

13   **JURISDICTION AND VENUE**

14           20. Responding to paragraph 20 of the Complaint, this paragraph states a legal conclusion  
15 to which no response is required. To the extent a response is required, Apple is without information  
16 sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis denies  
17 each and every allegation therein.

18           21. Responding to paragraph 21 of the Complaint, this paragraph states a legal conclusion  
19 to which no response is required. To the extent a response is required, Apple is without information  
20 sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis denies  
21 each and every allegation therein.

22   **INTRADISTRICT ASSIGNMENT**

23           22. Responding to paragraph 22 of the Complaint, this paragraph states a legal conclusion  
24 to which no response is required. To the extent a response is required, Apple is without information  
25 sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis denies  
26 each and every allegation therein.

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**THE PARTIES**

1  
2           23.     Responding to paragraph 23 of the Complaint, Apple denies that Plaintiff Grace  
3 suffered injury or damage of any kind. Apple is without knowledge or information sufficient to form  
4 a belief as to the truth of the allegations that Plaintiff Christina Grace is a citizen of California who  
5 resides in Marin County, California, currently owns an iPhone device, and was operating an iPhone 4  
6 running iOS 6 or an earlier operating system on April 16, 2014, and on that basis denies those  
7 allegations. Except as expressly stated, Apple denies each and every allegation in this paragraph.

8           24.     Responding to paragraph 24 of the Complaint, Apple is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations that Plaintiff Grace used the  
10 FaceTime feature on an iPhone 4 to communicate with her family or that FaceTime stopped working  
11 on an iPhone 4 owned by Plaintiff Grace on April 16, 2014, and on that basis, denies those allegations.  
12 Except as expressly stated, Apple denies each and every allegation in this paragraph.

13           25.     Responding to paragraph 25 of the Complaint, Apple denies that Plaintiff Potter  
14 suffered injury or damage of any kind. Apple is without knowledge or information sufficient to form  
15 a belief as to the truth of the allegations that Plaintiff Ken Potter is a citizen of California who resides  
16 in San Diego County, California, currently owns two iPhone devices, and was operating two iPhone  
17 4 devices running iOS 6 or an earlier operating system on April 16, 2014, and on that basis, denies  
18 those allegations. Except as expressly stated, Apple denies each and every allegation in this paragraph.

19           26.     Responding to paragraph 26 of the Complaint, Apple is without knowledge or  
20 information sufficient to form a belief as to the truth of the allegations in this paragraph and on that  
21 basis denies each and every allegation.

22           27.     Responding to paragraph 27 of the Complaint, Apple is without knowledge or  
23 information sufficient to form a belief as to the truth of the allegations that Plaintiff Potter tried to use  
24 FaceTime to communicate with his family or that FaceTime stopped working on iPhone 4 devices  
25 owned by Plaintiff Potter on April 16, 2014, and on that basis, denies those allegations. Except as  
26 expressly stated, Apple denies each and every allegation in this paragraph.

27           28.     Responding to paragraph 28 of the Complaint, Apple is without knowledge or  
28 information sufficient to form a belief as to the truth of the allegations that Plaintiff Potter took an

1 iPhone 4 for his own use and purchased an iPad (4th generation) for his family and on that basis denies  
2 those allegations. Except as expressly stated, Apple denies each and every allegation in this paragraph.

3 29. Responding to paragraph 29 of the Complaint, Apple admits that its headquarters and  
4 principal place of business is in Cupertino, California and that it designs, manufactures, and sells  
5 various consumer electronics, computer software, and online services, and at one time designed,  
6 manufactured, and sold the iPhone 4 and iPhone 4S. Apple further admits that it operates retail stores  
7 throughout California. Except as expressly stated, Apple denies each and every allegation in this  
8 paragraph.

9 **SUBSTANTIVE ALLEGATIONS**

10 30. Responding to paragraph 30 of the Complaint, Apple admits it released the original  
11 version of the iPhone in the United States on June 29, 2007 and that it has since released successive  
12 versions of the iPhone. Except as expressly stated, Apple denies each and every allegation in this  
13 paragraph.

14 31. Responding to paragraph 31 of the Complaint, Apple states that the cited document  
15 speaks for itself. Except as expressly stated, Apple denies each and every allegation in this paragraph.

16 32. Responding to paragraph 32 of the Complaint, Apple admits that it released the iPhone  
17 4S on October 14, 2011 and that more than four million iPhone 4S devices were sold in its first  
18 weekend. Apple further states that the cited document speaks for itself. Except as expressly stated,  
19 Apple denies each and every allegation in this paragraph.

20 33. Responding to paragraph 33 of the Complaint, Apple states that the quoted document  
21 speaks for itself. Except as expressly stated, Apple denies each and every allegation in this paragraph.

22 34. Responding to paragraph 34 of the Complaint, Apple admits that the iPhone 4 and 4S  
23 devices operate through a proprietary iPhone operating system called iOS. The quoted documents  
24 speak for themselves. Except as expressly stated, Apple denies each and every allegation in this  
25 paragraph.

26 35. Responding to paragraph 35 of the Complaint, Apple admits that FaceTime is a  
27 proprietary calling feature of the iOS Software first released in 2010. In 2010, iOS 4 supported the  
28

1 use of FaceTime to make video calls. Apple further states that the referenced document speaks for  
2 itself. Except as expressly stated, Apple denies each and every allegation in this paragraph.

3 36. Responding to paragraph 36 of the Complaint, Apple states that Plaintiffs selectively  
4 quoted a portion of the referenced document, which speaks for itself. Apple is otherwise without  
5 knowledge or information sufficient to form a belief as to the truth of the other allegations in this  
6 paragraph and denies them on that basis.

7 37. Responding to paragraph 37 of the Complaint, Apple admits that FaceTime was first  
8 released with the iPhone in 2010. Apple further states that the cited documents speak for themselves.  
9 Apple further admits Apple's former CEO Steve Jobs spoke at the 2010 Worldwide Developer's  
10 conference and that the video of his publically-available comments speak for themselves. Except as  
11 expressly stated, Apple denies each and every allegation in this paragraph.

12 38. Responding to paragraph 38 of the Complaint, Apple admits that there were  
13 advertisements that referenced FaceTime and that those advertisements speak for themselves. Except  
14 as expressly stated, Apple denies each and every allegation in this paragraph.

15 39. Responding to paragraph 39 of the Complaint, Apple states that the referenced  
16 advertisement speaks for itself. Except as expressly stated, Apple denies each and every allegation in  
17 this paragraph.

18 40. Responding to paragraph 40 of the Complaint, Apple states that the referenced  
19 advertisement speaks for itself. Except as expressly stated, Apple denies each and every allegation in  
20 this paragraph.

21 41. Responding to paragraph 41 of the Complaint, Apple states that the referenced  
22 advertisement speaks for itself. Except as expressly stated, Apple denies each and every allegation in  
23 this paragraph.

24 42. Responding to paragraph 42 of the Complaint, Apple states that the referenced  
25 advertisement speaks for itself. Except as expressly stated, Apple denies each and every allegation in  
26 this paragraph.

27 43. Responding to paragraph 43 of the Complaint, Apple denies each and every allegation  
28 in this paragraph.

1           44.     Responding to paragraph 44 of the Complaint, Apple states this paragraph states a legal  
2 conclusion to which no response is required. Apple is otherwise without knowledge or information  
3 sufficient to form a belief as to the truth of the allegations in paragraph 44 and on that basis denies  
4 each and every allegation.

5           45.     Responding to paragraph 45 of the Complaint, Apple is without knowledge or  
6 information sufficient to form a belief as to the truth of the allegations in paragraph 45 and on that  
7 basis denies each and every allegation.

8           46.     Responding to paragraph 46 of the Complaint, Apple is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations in paragraph 46 and on that  
10 basis denies each and every allegation.

11          47.     Responding to paragraph 47 of the Complaint, Apple is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations in paragraph 47 and on that  
13 basis denies each and every allegation.

14          48.     Responding to paragraph 48 of the Complaint, Apple is without knowledge or  
15 information sufficient to form a belief as to the truth of the allegations in paragraph 48 and on that  
16 basis denies each and every allegation.

17          49.     Responding to paragraph 49 of the Complaint, Apple denies each and every allegation  
18 in this paragraph.

19          50.     Responding to paragraph 50 of the Complaint, Apple denies each and every allegation  
20 in this paragraph.

21          51.     Responding to paragraph 51 of the Complaint, Apple admits that on August 11, 2010,  
22 VirnetX filed a lawsuit against Apple in the United States District Court of the Eastern District of  
23 Texas, captioned *VirnetX Inc. v. Apple Inc., et al.*, 6:10-cv-00417 (the “VirnetX Action”). The  
24 complaint alleged that Apple infringed two patents, specifically U.S. Patent Nos. 6,502,135 and  
25 7,418,504. Except as expressly stated, Apple denies each and every allegation in this paragraph.

26          52.     Responding to paragraph 52 of the Complaint, Apple denies each and every allegation  
27 in this paragraph.



1           53.     Responding to paragraph 53 of the Complaint, Apple denies each and every allegation  
2 in this paragraph.

3           54.     Responding to paragraph 54 of the Complaint, Apple denies each and every allegation  
4 in this paragraph.

5           55.     Responding to paragraph 55 of the Complaint, Apple denies each and every allegation  
6 in this paragraph.

7           56.     Responding to paragraph 56 of the Complaint, Apple admits that it was sued by  
8 VirnetX and that the VirnetX complaint against Apple speaks for itself as to VirnetX's allegations.  
9 Apple further admits that the case went to trial. Except as expressly stated, Apple denies each and  
10 every allegation in this paragraph.

11           57.     Responding to paragraph 57 of the Complaint, Apple states that the docket in the  
12 referenced VirnetX action speaks for itself. Except as expressly stated, Apple denies each and every  
13 allegation in this paragraph.

14           58.     Responding to paragraph 58 of the Complaint, Apple denies each and every allegation  
15 in this paragraph.

16           59.     Responding to paragraph 59 of the Complaint, Apple admits that some versions of  
17 FaceTime could exchange audio and video data that would result in Apple making payments to  
18 Akamai. Except as expressly stated, Apple denies each and every allegation in this paragraph.

19           60.     Responding to paragraph 60 of the Complaint, Apple denies each and every allegation  
20 in this paragraph.

21           61.     Responding to paragraph 61 of the Complaint, Apple denies each and every allegation  
22 in this paragraph.

23           62.     Responding to paragraph 62 of the Complaint, Apple denies each and every allegation  
24 in this paragraph.

25           63.     Responding to paragraph 63 of the Complaint, Apple states that the cited documents  
26 speak for themselves. Except as expressly stated, Apple denies each and every allegation in this  
27 paragraph.

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1           64.     Responding to paragraph 64 of the Complaint, Apple denies each and every allegation  
2 in this paragraph.

3           65.     Responding to paragraph 65 of the Complaint, Apple states that Plaintiffs selectively  
4 referred to only a portion of the referenced documents, which speak for themselves. Except as  
5 expressly stated, Apple denies each and every allegation in this paragraph.

6           66.     Responding to paragraph 66 of the Complaint, Apple states that Plaintiffs selectively  
7 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
8 Apple denies each and every allegation in this paragraph.

9           67.     Responding to paragraph 67 of the Complaint, Apple admits that it made iOS 7  
10 available to users in September 2013. Except as expressly stated, Apple denies each and every  
11 allegation in this paragraph.

12          68.     Responding to paragraph 68 of the Complaint, Apple denies each and every allegation  
13 in this paragraph.

14          69.     Responding to paragraph 69 of the Complaint, Apple states that Plaintiffs selectively  
15 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
16 Apple denies each and every allegation in this paragraph.

17          70.     Responding to paragraph 70 of the Complaint, Apple is without knowledge or  
18 information sufficient to form a belief as to the truth of the allegations of the referenced media report.  
19 Except as expressly stated, Apple denies each and every allegation in this paragraph.

20          71.     Responding to paragraph 71 of the Complaint, Apple admits that the iPhone 5S  
21 included the A7 chip with 64-bit architecture. Except as expressly stated, Apple denies each and every  
22 allegation in this paragraph.

23          72.     Responding to paragraph 72 of the Complaint, Apple admits that the iPhone 5S and  
24 iPhone 5C contained one gigabyte of random access memory and that the iPhone 4 and iPhone 4S  
25 contained 512 megabytes of random access memory. Except as expressly stated, Apple denies each  
26 and every allegation in this paragraph.

1           73.     Responding to paragraph 73 of the Complaint, Apple is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations of the referenced media report.  
3 Except as expressly stated, Apple denies each and every allegation in this paragraph.

4           74.     Responding to paragraph 74 of the Complaint, Apple is without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations of the referenced media report.  
6 Except as expressly stated, Apple denies each and every allegation in this paragraph.

7           75.     Responding to paragraph 75 of the Complaint, Apple is without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations of the referenced media report.  
9 Except as expressly stated, Apple denies each and every allegation in this paragraph.

10          76.     Responding to paragraph 76 of the Complaint, Apple is without knowledge or  
11 information sufficient to form a belief as to the truth of the allegations of the referenced media report.  
12 Except as expressly stated, Apple denies each and every allegation in this paragraph.

13          77.     Responding to paragraph 77 of the Complaint, Apple is without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations of the referenced media report.  
15 Except as expressly stated, Apple denies each and every allegation in this paragraph.

16          78.     Responding to paragraph 78 of the Complaint, Apple admits that it received a  
17 communication containing the text referenced in paragraphs 109 and 110. Except as expressly stated,  
18 Apple denies each and every allegation in this paragraph.

19          79.     Responding to paragraph 79 of the Complaint, Apple admits that users who transitioned  
20 to iOS 7 were unable to revert back to earlier versions of iOS. Except as expressly stated, Apple denies  
21 each and every allegation in this paragraph.

22          80.     Responding to paragraph 80 of the Complaint, Apple denies each and every allegation  
23 in this paragraph.

24          81.     Responding to paragraph 81 of the Complaint, Apple admits that an iPhone can connect  
25 to the internet via a cellular connection or a Wi-Fi connection. Apple is without knowledge or  
26 information sufficient to form a belief as to users' agreements with their cellular telephone service  
27 providers, including without limitation providers' coverage networks, users' data allotments, or any  
28 data charges. Except as expressly stated, Apple denies each and every allegation in this paragraph.

1           82.     Responding to paragraph 82 of the Complaint, Apple is without knowledge or  
2 information sufficient to form a belief as to what users consider to be the advantages or value of Wi-  
3 Fi as opposed to cellular connections, which connectivity options are faster and/or available to users  
4 depending on their location, or whether users believe Wi-Fi connections are superior. Except as  
5 expressly stated, Apple denies each and every allegation in this paragraph.

6           83.     Responding to paragraph 83 of the Complaint, Apple denies each and every allegation  
7 in this paragraph.

8           84.     Responding to paragraph 84 of the Complaint, Apple denies each and every allegation  
9 in this paragraph.

10          85.     Responding to paragraph 85 of the Complaint, Apple states that Plaintiffs have  
11 selectively quoted only a portion of the referenced document, which speaks for itself. Apple admits  
12 that an iOS device can pair with most Bluetooth accessories, including headsets, headphones,  
13 keyboards, speakers, and hands-free units. Apple further admits that the iPhone 4S utilized Bluetooth  
14 4.0 wireless technology. Except as expressly stated, Apple denies each and every allegation in this  
15 paragraph.

16          86.     Responding to paragraph 86 of the Complaint, Apple is without knowledge or  
17 information sufficient to form a belief as to the truth of the allegations in this paragraph and on that  
18 basis denies each and every allegation in this paragraph.

19          87.     Responding to paragraph 87 of the Complaint, Apple denies each and every allegation  
20 in this paragraph.

21          88.     Responding to paragraph 88 of the Complaint, Apple admits that in early 2014 some  
22 of its users were still using iOS 6 or earlier operating systems and states that the referenced document  
23 speaks for itself. Except as expressly stated, Apple denies each and every allegation in this paragraph.

24          89.     Responding to paragraph 89 of the Complaint, Apple denies each and every allegation  
25 in this paragraph.

26          90.     Responding to paragraph 90 of the Complaint, Apple denies each and every allegation  
27 in this paragraph.

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1           91.     Responding to paragraph 91 of the Complaint, Apple denies each and every allegation  
2 in this paragraph.

3           92.     Responding to paragraph 92 of the Complaint, Apple denies each and every allegation  
4 in this paragraph.

5           93.     Responding to paragraph 93 of the Complaint, Apple denies each and every allegation  
6 in this paragraph.

7           94.     Responding to paragraph 94 of the Complaint, Apple denies each and every allegation  
8 in this paragraph.

9           95.     Responding to paragraph 95 of the Complaint, Apple denies each and every allegation  
10 in this paragraph.

11          96.     Responding to paragraph 96 of the Complaint, Apple states that Plaintiffs selectively  
12 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
13 Apple denies each and every allegation in this paragraph.

14          97.     Responding to paragraph 97 of the Complaint, Apple denies each and every allegation  
15 in this paragraph.

16          98.     Responding to paragraph 98 of the Complaint, Apple states that Plaintiffs selectively  
17 quoted only portions of the referenced documents, which speak for themselves. Except as expressly  
18 stated, Apple denies each and every allegation in this paragraph.

19          99.     Responding to paragraph 99 of the Complaint, Apple denies each and every allegation  
20 in this paragraph.

21          100.    Responding to paragraph 100 of the Complaint, Apple states that Plaintiffs selectively  
22 quoted only portions of the referenced documents, which speak for themselves. Except as expressly  
23 stated, Apple denies each and every allegation in this paragraph.

24          101.    Responding to paragraph 101 of the Complaint, Apple states that Plaintiffs selectively  
25 quoted only a portion of the referenced testimony, which speaks for itself. Except as expressly stated,  
26 Apple denies each and every allegation in this paragraph.

1           102. Responding to paragraph 102 of the Complaint, Apple states that Plaintiffs selectively  
2 quoted only portions of the referenced testimony and document, which speak for themselves. Except  
3 as expressly stated, Apple denies each and every allegation in this paragraph.

4           103. Responding to paragraph 103 of the Complaint, Apple states that Plaintiffs selectively  
5 quoted only a portion of the referenced testimony, which speaks for itself. Except as expressly stated,  
6 Apple denies each and every allegation in this paragraph.

7           104. Responding to paragraph 104 of the Complaint, Apple denies each and every allegation  
8 in this paragraph.

9           105. Responding to paragraph 105 of the Complaint, Apple denies each and every allegation  
10 in this paragraph.

11           106. Responding to paragraph 106 of the Complaint, Apple denies each and every allegation  
12 in this paragraph.

13           107. Responding to paragraph 107 of the Complaint, Apple states that Plaintiffs selectively  
14 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
15 Apple denies each and every allegation in this paragraph.

16           108. Responding to paragraph 108 of the Complaint, Apple states that Plaintiffs selectively  
17 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
18 Apple denies each and every allegation in this paragraph.

19           109. Responding to paragraph 109 of the Complaint, Apple states that Plaintiffs selectively  
20 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
21 Apple denies each and every allegation in this paragraph.

22           110. Responding to paragraph 110 of the Complaint, Apple states that Plaintiffs selectively  
23 quoted only a portion of the referenced document, which speaks for itself. Except as expressly stated,  
24 Apple denies each and every allegation in this paragraph.

25           111. Responding to paragraph 111 of the Complaint, Apple denies each and every allegation  
26 in this paragraph.

**CLASS ACTION ALLEGATIONS**

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2           112. Responding to paragraph 112 of the Complaint, this paragraph states a legal conclusion  
3 to which no response is required. To the extent a response is required, Apple denies each and every  
4 allegation in this paragraph. Apple denies that class treatment is appropriate.

5           113. Responding to paragraph 113 of the Complaint, this paragraph states a legal conclusion  
6 to which no response is required. To the extent a response is required, Apple denies each and every  
7 allegation in this paragraph. Apple denies that class treatment is appropriate.

8           114. Responding to paragraph 114 of the Complaint, this paragraph states a legal conclusion  
9 to which no response is required. To the extent a response is required, Apple denies each and every  
10 allegation in this paragraph. Apple denies that class treatment is appropriate.

11           115. Responding to paragraph 115 of the Complaint and each of its subparts, this paragraph  
12 and its subparts state a legal conclusion to which no response is required. To the extent a response is  
13 required, Apple denies each and every allegation in this paragraph and its subparts. Apple denies that  
14 class treatment is appropriate.

15           116. Responding to paragraph 116 of the Complaint, this paragraph states a legal conclusion  
16 to which no response is required. To the extent a response is required, Apple denies each and every  
17 allegation in this paragraph. Apple denies that class treatment is appropriate.

18           117. Responding to paragraph 117 of the Complaint, this paragraph states a legal conclusion  
19 to which no response is required. To the extent a response is required, Apple denies each and every  
20 allegation in this paragraph. Apple denies that class treatment is appropriate.

21           118. Responding to paragraph 118 of the Complaint, this paragraph states a legal conclusion  
22 to which no response is required. To the extent a response is required, Apple denies each and every  
23 allegation in this paragraph. Apple denies that class treatment is appropriate.

24           119. Responding to paragraph 119 of the Complaint and each of its subparts, this paragraph  
25 and its subparts state a legal conclusion to which no response is required. To the extent a response is  
26 required, Apple denies each and every allegation in this paragraph and its subparts. Apple denies that  
27 class treatment is appropriate.

1           120. Responding to paragraph 120 of the Complaint, this paragraph states a legal conclusion  
2 to which no response is required. To the extent a response is required, Apple denies each and every  
3 allegation in this paragraph. Apple denies that class treatment is appropriate.

4           121. Responding to paragraph 121 of the Complaint, this paragraph states a legal conclusion  
5 to which no response is required. To the extent a response is required, Apple denies each and every  
6 allegation in this paragraph. Apple denies that class treatment is appropriate

7           122. Responding to paragraph 122 of the Complaint, this paragraph states a legal conclusion  
8 to which no response is required. To the extent a response is required, Apple denies each and every  
9 allegation in this paragraph. Apple denies that class treatment is appropriate.

10   **CAUSES OF ACTION**

11   **FIRST CAUSE OF ACTION: TRESPASS TO CHATTELS**

12           123. Responding to paragraph 123 of the Complaint, Apple incorporates its responses to and  
13 denials of the foregoing allegations as if fully set forth herein.

14           124. Responding to paragraph 124 of the Complaint, Apple is without knowledge or  
15 information sufficient to form a belief as to the truth of the allegations in paragraph 124 and on that  
16 basis denies each and every allegation.

17           125. Responding to paragraph 125 of the Complaint, Apple denies each and every allegation  
18 in this paragraph.

19           126. Responding to paragraph 126 of the Complaint, Apple denies each and every allegation  
20 in this paragraph.

21           127. Responding to paragraph 127 of the Complaint, Apple denies each and every allegation  
22 in this paragraph.

23           128. Responding to paragraph 128 of the Complaint, Apple denies each and every allegation  
24 in this paragraph.

25           129. Responding to paragraph 129 of the Complaint, Apple denies each and every allegation  
26 in this paragraph.

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1 **SECOND CAUSE OF ACTION: VIOLATIONS OF THE UNFAIR COMPETITION LAW,**  
2 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.**

3 130. Responding to paragraph 130 of the Complaint, Apple incorporates its responses to and  
4 denials of the foregoing allegations as if fully set forth herein.

5 131. Responding to paragraph 131 of the Complaint, this paragraph states a legal conclusion  
6 to which no response is required. To the extent a response is required, Apple denies each and every  
7 allegation in this paragraph.

8 132. Responding to paragraph 132 of the Complaint, this paragraph states a legal conclusion  
9 to which no response is required. To the extent a response is required, Apple denies each and every  
10 allegation in this paragraph.

11 133. Responding to paragraph 133 of the Complaint, Apple denies each and every allegation  
12 in this paragraph.

13 134. Responding to paragraph 134 of the Complaint, this paragraph states a legal conclusion  
14 to which no response is required. To the extent a response is required, Apple denies each and every  
15 allegation in this paragraph.

16 135. Responding to paragraph 135 of the Complaint, this paragraph states a legal conclusion  
17 to which no response is required. To the extent a response is required, Apple denies each and every  
18 allegation in this paragraph.

19 **PRAYER FOR RELIEF**

20 Apple denies that Plaintiffs' purported class is certifiable or that Plaintiffs or the putative  
21 members of the purported class suffered injury or damage of any kind, and further denies that Plaintiffs  
22 or the putative members of the purported class are entitled to relief of any kind, including but not  
23 limited to any of the relief sought in paragraphs (a) through (l) of their demand for relief.

24 **AFFIRMATIVE DEFENSES**

25 Pursuant to Federal Rule of Civil Procedure 8(c), and without assuming any burdens of proof  
26 or persuasion that would otherwise rest on Plaintiffs, Apple asserts the following additional or  
27 affirmative defenses.

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**First Affirmative Defense**

**(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief may be granted and fails to state facts sufficient to constitute a cause of action against Apple.

**Second Affirmative Defense**

**(Lack of Standing)**

The claims of Plaintiffs and the purported class are barred in whole or in part because Plaintiffs and the putative members of the purported class lack standing to assert any or all of the causes of action alleged.

**Third Affirmative Defense**

**(Lack of Article III Standing)**

The claims of Plaintiffs and the purported class are barred in whole or in part because Plaintiffs and the putative members of the purported class lack standing under Article III of the United States Constitution.

**Fourth Affirmative Defense**

**(Contractual Defenses)**

The claims of Plaintiffs and the purported class are barred in whole or in part by contracts and/or agreements they entered into with Apple.

**Fifth Affirmative Defense**

**(No Injury in Fact or Lost Money or Property)**

The claims of Plaintiffs and the purported class are barred in whole or in part because Plaintiffs and the putative members of the purported class have not sustained the required injury in fact or lost money or property as is necessary to confer standing pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.*

**Sixth Affirmative Defense**

**(No Injury and No Damage)**

The claims of Plaintiffs and the purported class are barred in whole or in part because Plaintiffs and the putative members of the purported class have not suffered any damage or injury.

1 **Seventh Affirmative Defense**

2 **(Speculative Damages)**

3 Plaintiffs and the purported class are not entitled to any recovery from Apple because the  
4 alleged damages, if any, are speculative.

5 **Eighth Affirmative Defense**

6 **(Failure to Mitigate)**

7 Plaintiffs and the purported class failed to mitigate damages, if any.

8 **Ninth Affirmative Defense**

9 **(Improper Class Action)**

10 This action is not properly maintainable as a class action as alleged by Plaintiffs, because,  
11 without limitation, Plaintiffs are not proper class representatives, the class is not ascertainable,  
12 irresolvable conflicts exist within the class, a class action is not a superior means of adjudication,  
13 individual issues predominate, and Ninth Circuit precedent bars a nationwide class.

14 **Tenth Affirmative Defense**

15 **(Action Unconstitutional)**

16 The claims in the Complaint violate Apple's rights under the United States and California  
17 Constitutions, including without limitation the following provisions: (a) the claims constitute an  
18 impermissible burden on interstate commerce in contravention of Article 1, Section 8 of the United  
19 States Constitution; (b) the claims violate Apple's right to Due Process under the Fourteenth  
20 Amendment of the United States Constitution; (c) the claims contravene the constitutional prohibition  
21 against vague and overbroad laws; (d) the claims contravene freedom of speech rights under the  
22 California Constitution and the First and Fourteenth Amendments of the United States Constitution;  
23 and (e) the claims contravene the Due Process Clause of the California Constitution.

24 **Eleventh Affirmative Defense**

25 **(Consent and/or Ratification)**

26 The claims of Plaintiffs and the purported class are barred in whole or in part by the doctrine  
27 of ratification and because Plaintiffs and the putative members of the purported class consented and/or  
28 acquiesced to any conduct engaged in by Apple.

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**Twelfth Affirmative Defense**

**(Waiver and/or Release)**

The Complaint is barred in whole or in part by the doctrine of waiver and/or doctrine of release.

**Thirteenth Affirmative Defense**

**(Estoppel and/or Equitable Estoppel)**

The claims of Plaintiffs and the purported class are barred in whole or in part by their own conduct, actions, and inactions, which amount to and constitute an estoppel and/or equitable estoppel of all claims and relief sought.

**Fourteenth Affirmative Defense**

**(Unclean Hands)**

Plaintiffs and the purported class are barred by the doctrine of unclean hands from maintaining each and every purported claim against Apple and from recovering any damages thereunder from Apple.

**Fifteenth Affirmative Defense**

**(Proportional Fault)**

The alleged injuries of Plaintiffs and/or any putative member of the purported class are the result, in whole or in part, of the acts or omissions of entities or individuals other than Apple, including Plaintiffs and the putative members of the purported class, and Apple’s liability, if any, must be reduced by any percentage of fault attributable to those other entities and/or individuals.

**Sixteenth Affirmative Defense**

**(Statute of Limitations)**

Each of the causes of action in the Complaint is barred in whole or in part by the applicable statutes of limitation.

**Seventeenth Affirmative Defense**

**(Laches)**

The Complaint is barred in whole or in part by the doctrine of laches.

**Eighteenth Affirmative Defense**

**(Good Faith)**

The claims of Plaintiffs and the purported class are barred in whole or in part by Apple’s good faith and/or good faith legal defense.

**Nineteenth Affirmative Defense**

**(Necessity)**

Apple is not liable for any alleged harm to Plaintiffs and the purported class because the alleged trespass, if any, was lawful in that it was necessary to prevent serious harm to property.

**Twentieth Affirmative Defense**

**(Conduct not Unfair)**

Apple is not liable for any alleged harm to Plaintiffs and the purported class because Apple’s alleged conduct was not “unfair” pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.*

**Twenty-First Affirmative Defense**

**(No Punitive Damages or Attorneys’ Fees)**

To the extent that Plaintiffs or any putative members of the purported class seek recovery of punitive damages and/or attorneys’ fees, the UCL does not provide for them, and Plaintiffs have not made the requisite showing for either with respect to trespass to chattels.

**Twenty-Second Affirmative Defense**

**(Reservation of Rights and Additional Defenses)**

Apple reserves the right to amend its Answer to raise additional affirmative defenses as they are discovered and/or to amend these affirmative defenses. Additionally, Apple specifically reserves all affirmative or other defenses that it may have against Plaintiffs and the putative members of the purported class. It is not necessary at this time for Apple to delineate such defenses against the purported class because no class has been certified, and the putative members of the purported class are not parties to this litigation.

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**PRAYER FOR RELIEF**

WHEREFORE, Apple prays for the following relief:

- 1. That Plaintiffs and the putative members of the purported class take nothing by this action;
- 2. That judgment on the Complaint be entered in favor of Apple;
- 3. That the Court deny Plaintiffs’ request to certify this action as a class action;
- 4. That the request for injunctive relief be denied;
- 5. That Apple be awarded its costs incurred, including reasonable attorneys’ fees; and
- 6. That the Court award Apple such other and/or further relief as the Court may deem just and proper.

DATED: August 11, 2017

Respectfully submitted,  
KIRKLAND & ELLIS LLP

/s/ Elizabeth L. Deeley

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*Apple Inc.*

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**CERTIFICATE OF SERVICE**

On August 11, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) and L.R. 5-1 have been so served.

/s/ Elizabeth L. Deeley  
Elizabeth L. Deeley