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27
 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

CHRISTINA GRACE, Individually and on
 Behalf of All Others Similarly Situated,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No.

CLASS ACTION

1. Trespass to Chattels
2. Violations of the Unfair Competition Law, California Business and Professions Code §17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Christina Grace (“Plaintiff”), individually and on behalf of all others
2 similarly situated, brings this Class Action Complaint against defendant Apple Inc. (“Apple” or
3 “Defendant”), and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is a consumer class action brought by Plaintiff on behalf of herself and all
6 others similarly situated who owned an Apple iPhone 4 or iPhone 4S that was operating on iOS
7 6 or an earlier operating system, and therefore lost the ability to use Apple’s “FaceTime” video
8 conferencing feature when Apple intentionally broke FaceTime for iOS 6 and earlier operating
9 systems on April 16, 2014.

10 2. Apple Chief Executive Officer (“CEO”) Tim Cook (“Cook”) has described the
11 iPhone as “one of the most important, world-changing and successful products in history.” Since
12 introducing the iPhone in 2007, Apple has sold more than one billion units.

13 3. All iPhones operate through Apple’s proprietary “iOS” operating system, which
14 is the software that controls the device’s functions and operations.

15 4. FaceTime is Apple’s immensely popular real-time video messaging and chat
16 feature that enables FaceTime users to engage in real-time video (and audio) communications.
17 FaceTime is proprietary to Apple products and therefore users can only communicate via
18 FaceTime with Apple products. Since first releasing FaceTime in 2010, Apple has heavily
19 marketed the feature’s ability to close the gap between friends and loved ones separated by great
20 distances, particularly at life’s most meaningful milestones. Apple heavily touted FaceTime as a
21 centerpiece in the company’s advertisements for the iPhone 4 and iPhone 4S. In the years
22 following its release, FaceTime became one of the most popular and valued iPhone features.
23 Indeed, at Apple’s 2013 annual stockholders’ meeting, CEO Cook revealed that fifteen to twenty
24 million FaceTime calls were made on a *daily* basis.

25 5. There are two types of ways that participants in a FaceTime call can exchange
26 audio/video media: (1) the so-called “peer-to-peer method,” where a direct connection is formed
27 between the caller and the callee; and (2) the so-called “relay method,” where the caller and the

1 callee connect to a relay server that relays the data on behalf of the devices. During the period
2 relevant to this action, the servers used by Apple for relaying FaceTime calls were owned by a
3 company called Akamai Technologies, Inc. (“Akamai”). Unlike peer-to-peer FaceTime calls,
4 Apple made significant payments to Akamai for “relay usage” (i.e., bandwidth) on Akamai’s
5 servers.

6 6. Prior to November 7, 2012, approximately 90-95% of FaceTime calls were
7 connected through the peer-to-peer method, and only 5-10% through the relay method. Thus,
8 Apple’s relay usage—and the expense to Apple arising therefrom—were relatively low.

9 7. On November 7, 2012, however, a jury found that Apple’s peer-to-peer method of
10 connecting FaceTime calls infringed on patents held by VirnetX, Inc. (“VirnetX”). The only way
11 for Apple to avoid knowingly and intentionally continuing its infringement on VirnetX’s patents
12 was to shift 100% of FaceTime call volume to the relay method.

13 8. Upon shifting 100% of FaceTime call volume to the relay method, Apple’s relay
14 usage soared. As a result, Apple began to incur multi-million dollar *monthly* charges for its use
15 of Akamai’s servers. Therefore, as internal Apple emails reveal, Apple undertook a concerted
16 effort to find a way to reduce its relay usage by reducing the volume of FaceTime calls connected
17 through the relay method. Indeed, an internal Apple email chain circulated during this time period
18 bore the subject “Ways to Reduce Relay Usage,” and explored potential strategies for doing so.

19 9. On September 13, 2013, potential relief from Apple’s high relay usage fees
20 arrived. On that day, Apple introduced iOS 7, a next generation operating system that could
21 connect FaceTime calls through the peer-to-peer connection method in a way that had not yet
22 been found to infringe on VirnetX’s patents. The introduction of iOS 7 therefore helped Apple
23 reduce its relay usage and the resultant payments from Apple to Akamai.

24 10. More than seven months after the introduction of iOS 7, however, millions of
25 Apple users’ devices still operated on iOS 6 or earlier operating systems and thus could only be
26 connected via FaceTime through the relay method. Because of this, Apple was still amassing
27 significant relay usage and, therefore, facing substantial payment obligations to Akamai.

1 11. Consequently, to further reduce its relay usage costs, Apple devised a scheme to
2 *force* millions of its users—*i.e.*, users running iOS version 6 and earlier—to stop using FaceTime
3 on their devices. As Apple’s internal emails and sworn testimony at the VirnetX trial revealed,
4 Apple formulated a plan by which its engineers caused a digital certificate necessary to the
5 operation of FaceTime on iOS 6 or an earlier operating system to prematurely expire. Upon the
6 expiration of that certificate, and as a direct result of Apple’s actions, the valuable FaceTime
7 feature immediately and abruptly stopped working for millions of users running iOS 6 or an
8 earlier operating system (the “FaceTime Break”). To regain FaceTime capability, those users had
9 to either transition to iOS 7, or buy an entirely new Apple device with iOS 7 preinstalled.

10 12. Apple did this knowing that for millions of users, moving to iOS 7 was highly
11 problematic because it was essentially incompatible with certain Apple devices. For iPhone 4
12 and iPhone 4S users, for example, the coerced move to iOS 7 subjected their devices to slowness,
13 system crashes, erratic behavior and/or the elimination of their ability to use critical functions on
14 their phone. As succinctly stated in one of the media reports that discussed these widespread
15 functionality problems, “[t]he older handsets buckle under the weight of the new software.” Thus,
16 for millions of Apple’s customers, a move to iOS 7 would significantly harm the functionality of
17 their device.

18 13. In addition to recognizing these perils of moving certain Apple devices to iOS 7,
19 Apple more generally recognized the gravity of its decision to implement the FaceTime Break.
20 Indeed, in the days leading up to the FaceTime Break, then-Apple Manager of Operating System
21 Security Jacques Vidrine (“Vidrine”) sent an email to other Apple personnel in which he
22 highlighted the significance of what the company planned to do, stating: “[L]et me just voice my
23 concern here. Maybe someone can talk me off the ledge by convincing me this is not as big a
24 deal as I think.”

25 14. Unfortunately, Vidrine’s appeal fell on deaf ears. In a disturbing juxtaposition to
26 Apple’s marketing campaigns that highlighted the life-changing importance of FaceTime to
27 separated families, deployed soldiers, hearing-impaired individuals and countless others, Apple

1 advanced its financial interests by intentionally breaking FaceTime for millions of its users.
2 Indeed, Apple employees mocked the situation—and the millions of users unwittingly marching
3 toward the FaceTime Break—with a cartoon that was circulated within Apple via email.

4 15. Apple selected April 16, 2014 as the day on which the FaceTime Break would
5 strike its customers. At the appointed time on that day and without warning, millions of Apple
6 users—every user who had not installed iOS 7—suddenly lost the ability to use FaceTime.

7 16. The public response to the unexpected and unexplained FaceTime Break was swift
8 and substantial, including numerous media reports and vast customer outcry. Rather than
9 revealing the truth about the cause and impetus of the FaceTime Break, Apple claimed that
10 FaceTime had suffered a “bug,” and that to regain the ability to use FaceTime, users needed to
11 transition their device to iOS 7.

12 17. Internal Apple emails eliminate any doubt that Apple intentionally broke
13 FaceTime, and did so in order to reduce relay usage and the high costs related thereto. For
14 example, weeks or months after the FaceTime break, Apple engineering manager Patrick Gates
15 (“Gates”) sent the following email to various Apple personnel: “Hey, guys. I’m looking at the
16 Akamai contract for next year. I understand we did something in April around iOS 6 to reduce
17 relay utilization.” Apple engineer Gokul Thirumalai responded to Gates, stating the following:
18 “It was a big user of relay bandwidth. *We broke iOS 6, and the only way to get FaceTime*
19 *working again is to upgrade to iOS 7.*” (Emphasis added.)

20 18. Following the FaceTime Break, millions of iPhone 4 and iPhone 4S users whose
21 devices were operating on iOS 6 or an earlier operating system faced two options for continuing
22 to use their device: (1) remain on a pre-iOS 7 operating system, but without the ability to use
23 FaceTime; or (2) transition to iOS 7, and accept the significant reduction in functionality that their
24 iPhone would suffer as a result. To quote the colorful language used by an Apple employee in an
25 internal Apple email sent within hours of the FaceTime Break, as a result of the break “*our users*
26 *on [iOS 6] and before are basically screwed[.]*” (Emphasis added.)

27

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