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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

STEVEN HILL, Derivatively on Behalf of Nominal Defendant APPLE INC., Plaintiff, v. TIMOTHY D. COOK, LUCA MAESTRI, CRAIG FEDERIGHI, ARTHUR D. LEVINSON, ALBERT GORE, JR., ANDREA JUNG, JAMES A. BELL, RONALD D. SUGAR, ROBERT A. IGER, and SUSAN L. WAGNER, Defendant, and APPLE INC., a California Corporation, Nominal Defendant.	Case No. **20CV369387** **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT** **PUBLIC-REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD**

Plaintiff Steven Hill ("Plaintiff"), by and through his undersigned attorneys, brings this derivative complaint for the benefit of nominal defendant, Apple, Inc. ("Apple" or the "Company"), against certain members of its Board of Directors (the "Board") and certain of its executive officers seeking to remedy defendants' breaches of fiduciary duties, unjust enrichment abuse of control, and waste of corporate assets. Plaintiff's allegations are based upon his personal knowledge as to himself and his own acts, and upon information and belief, developed from the investigation and analysis by Plaintiff's counsel, including a review of documents produced in response to a demand pursuant to California Corporation Code § 1601, as well as a review of publicly available information, including filings by Apple with the U.S. Securities and Exchange Commission ("SEC"), press releases, news reports, analyst reports, investor conference transcripts, publicly available filings in lawsuits, and matters of public record.

I. NATURE AND SUMMARY OF THE ACTION

1. Apple is a multinational technology company that designs, develops, and sells consumer electronics, computer software, and online services. Its most well-known products include its iPhone smartphones, the iPad tablet computer, the Mac personal computer, the iPod portable media player, the Apple Watch smartwatch, the Apple TV digital media player, and the HomePod smart speaker.

2. Apple's flagship product is its iPhone, which uses the Company's iOS operating system, powering applications including Siri, an intelligent assistant, and Apple Pay, Touch ID, and Face ID on qualifying devices. Sales of iPhones generated approximately two-thirds of the Company's 2018 revenue.[1] Since its original launch in 2007 through 2015, the Company released, on average, one new iPhone model per year. The Company also increased the pricing of its iPhones from the $99-$399 range maintained through 2013 to a top offering price of $1,449 for the Apple XS Max with 512 gigabytes in September 2018.

3. The Company sells its products worldwide, and the Greater China region, which encompasses China, Hong Kong, and Taiwan, is Apple's third-largest market after the United States

[1] The Company's fiscal year ends in September of each calendar year. The Company's 2018 fiscal year began on September 31, 2017 and ended on September 29, 2018.

and Europe, accounting for $52 billion in sales in Apple's fiscal year 2018 or nearly 20% of Apple's total FY18 annual sales. However, Apple faces competition from Chinese upstart brands such as Huawei, Xiaomi and Oppo that offer similar looking all-screen phones for much lower prices. While iPhone sales revenues increased in China due to outsized price increases, Chinese smartphone manufacturers launched competing products that were priced lower than Apple's phones, thereby decreasing the Company's market share in the region.

4. During fiscal 2018, Apple's sales were impacted by tariffs imposed by the U.S. during its ongoing trade dispute with China. Specifically, between April and September 2018, the Trump administration levied import tariffs between 10% and 25% on billions of dollars of Chinese products.

5. In the midst of the ongoing trade war between the United States and China, on September 12, 2018, Apple introduced three new phones: the iPhone XR, the iPhone XS, and the iPhone XS Max. Unlike the prior iPhone releases, the 2018 iPhones were not viewed as having significant technological advances beyond the iPhone X released in late 2017. The iPhone XS and XS Max that were launched and began shipping in September 2018 featured a Super Retina OLED display, an all-screen stainless steel and glass design, faster processors and enhanced cameras. The highest gigabyte version of the iPhone XS Max launched at a price of $1,449 – $300 more than the 2017 highest gigabyte version of the iPhone X.

6. At the same time, Chinese manufacturers like Huawei, Oppo, and Xiaomi, which have since commandeered 24.6%, 20.5%, and 13.6% of the Chinese market, respectively, were slashing Apple's Chinese market share to 7.5% by offering more innovative features for hundreds of dollars less per phone. For instance, Huawei's P20 Pro sells for approximately $800 in China and Xiaomi's MIX 2S sells for approximately $500 in China.

7. The strength of the U.S. dollar and the high price of iPhones, combined with a declining Chinese economy, placed the iPhone out of reach of many Chinese consumers who might otherwise have upgraded – at the same time that many less expensive Chinese smartphones were flooding the market.

8. Moreover, in December 2017, Apple admitted that it had been intentionally degrading, or "throttling," the performance of the batteries in older iPhones via software "updates," which created artificial demand for newer iPhones because consumers thought they needed to replace outdated, poorly performing devices. In response to the customer outrage, Apple slashed the price of its battery replacements from $79 to $29 in January 2018 "for anyone with an iPhone 6 or later whose battery need[ed] to be replaced, available worldwide through December 2018" – right as Apple would be debuting its three new iPhones.

9. To mask the declining sales caused the by slowing Chinese economy and the software upgrades, Defendants caused the Company to issue materially misleading statements regarding iPhone demand. For example, on November 1, 2018, one-third of the way through its first quarter 2019, Apple touted that "[o]ver the past two months, [it had] delivered huge advancements for [its] customers through new versions of iPhone, Apple Watch, iPad and Mac as well as [its] four operating systems," and that as a result, it had "enter[ed] the holiday season with [its] strongest lineup of products and services ever." As a result, Apple expected first quarter 2019 revenue between $89 billion and $93 billion and gross profit margins between 38% and 38.5%.

10. The same day, defendant Timothy D. Cook ("Cook") dismissed concerns that the U.S. tariffs had impacted iPhone demand in China, assuring that Apple was only "seeing pressure in markets like Turkey, India, Brazil, [and] Russia . . . where currencies ha[d] weakened." Defendant Cook reported, however, "[i]n relation to China specifically, I would not put China in that category. Our business in China was very strong last quarter. We grew 16%, which we're very happy with. iPhone, in particular, was very strong double-digit growth there."

11. At the same time, Apple announced that it would no longer disclose unit sales for iPhones and other hardware, claiming that these metrics were not relevant to assess the Company's performance and assuring that Apple would still experience strong performance. Specifically, defendant Luca Maestri ("Maestri") stated that, "[a]s demonstrated by our financial performance in recent years, the number of units sold in any 90-day period is not necessarily representative of the underlying strength of our business."

12. In reality, the decision not to report unit sales was merely an attempt to conceal that demand for iPhones was declining. Specifically, Defendants made materially misleading statements that failed to disclose: (a) that the U.S.-China trade war had negatively impacted demand for iPhones and Apple's pricing power in greater China, one of Apple's most important growth markets; (b) that the rate at which Apple customers were replacing their batteries in older iPhones rather than purchasing new iPhones was negatively impacting Apple's iPhone sales growth; (c) that, as a result of slowing demand, Apple had slashed production orders from suppliers for the new 2018 iPhone models and cut prices to reduce inventory; (d) that unit sales for iPhone and other hardware was relevant to investors and the Company's financial performance, and the decision to withhold such unit sales was designed to and would mask declines in unit sales of the Company's flagship product; and (e) that, as a result of the foregoing, Defendants lacked a reasonable basis in fact when issuing the Company's revenue outlook for 1Q19 and/or making the related statements concerning demand for its products, as Apple's business metrics and financial prospects were not as strong as Defendants had led the market to believe.

13. On January 2, 2019, Apple revealed that its iPhone sales had declined, especially in China, and that the Company missed revenue projections for first quarter 2019 by a whopping $9 billion. In addition to the U.S.-China trade tensions, the iPhone sales had been impacted by the price cuts to battery replacements. Among other things, the Company stated that "100 percent of [its] year-over-year worldwide revenue decline, occurred in Greater China across iPhone, Mac, and iPad" and that iPhone performance had been impacted by "some customers taking advantage of significantly reduced pricing for iPhone battery replacements."

14. On this news, the Company's share price fell $15.73, or approximately 10%, to close at $142.19 per share on January 3, 2019, on unusually heavy trading volume.

II. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to the California Constitution, Art. VI, § 10, as this derivative action is brought pursuant to § 800 of the California Corporation's Code to remedy Defendants' breaches of fiduciary duties.

16. The amount in controversy, exclusive of interests and costs, exceeds the jurisdictional minimum of this Court.

17. This Court has general jurisdiction over each Defendant who is a resident of California. Additionally, this Court has specific jurisdiction over each non-resident Defendant because these Defendants maintain sufficient minimum contacts with California, as directors or officers of Apple, to render jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. Because the claims asserted in this Complaint are brought derivatively on behalf of a California-headquartered corporation, Defendants' conduct was purposefully directed at California. Finally, exercising jurisdiction over any non-resident Defendant is reasonable under these circumstances.

18. Venue is proper in this Court because the Company maintains its primary headquarters in Santa Clara County, where many of the wrongs described herein took place.

19. In connection with the acts and conduct alleged herein, Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities exchanges and markets.

III. PARTIES

Plaintiff

20. ***Plaintiff Steven Hill*** purchased his Apple stock on December 29, 2006 and still retains his Apple shares. Plaintiff will continue to hold Apple shares throughout the pendency of this action.

Nominal Defendant

21. Nominal Defendant Apple is a California corporation with principal executive offices located at One Apple Park Way, Cupertino, California. Apple designs, manufactures, and markets mobile communication and media devices and personal computers, and sells a variety of related software, services, accessories, and third-party digital content and applications.

Director Defendants

22. ***Defendant Timothy D. Cook*** ("Cook") is, and was at all relevant times, CEO of the Company and a member of its Board of Directors (the "Board").

23. ***Defendant Arthur D. Levinson*** ("Levinson") is the Company's Chairman of the Board and has been since November 2011 and has been a director since August 2000. Defendant Levinson was also the Company's co-lead director from 2005 to November 2011. Defendant Levinson is a member of the Company's Audit and Finance Committee and has been since at least January 2017.

24. ***Defendant Albert Gore, Jr.*** ("Gore") is a director of the Company and has been since March 2003. Defendant Gore is also a member of the Company's Nominating and Corporate Governance ("N&CG Committee") and has been since at least January 2017.

25. ***Defendant Andrea Jung*** ("Jung") is a director of the Company and has been since January 2008. Defendant Jung is also a member of the Company's N&CG Committee and has been since at least January 2017.

26. ***Defendant James A. Bell*** ("Bell") is a director of the Company and has been since October 2015. Defendant Bell is a member of the Company's Audit and Finance Committee and has been since at least January 2017.

27. ***Defendant Ronald D. Sugar*** ("Sugar") is a director of the Company and has been since November 2010. Defendant Sugar is the Chair of the Company's Audit and Finance Committee and has been since at least January 2017.

28. ***Defendant Robert A. Iger*** ("Iger") was a director of the Company from November 2011 to September 2019.

29. ***Defendant Susan L. Wagner*** ("Wagner") is a director of the Company and has been since July 2014. Defendant Wagner is a member of the Company's Audit and Finance Committee and has been since at least January 2017.

30. Defendants Cook, Levinson, Gore, Jung, Bell, Sugar, Iger and Wagner are collectively referred to herein as "Director Defendants."

Officer Defendants

31. ***Defendant Luca Maestri*** ("Maestri") is the Company's Senior Vice President and Chief Financial Officer ("CFO") and has been since May 2014. Defendant Maestri was also the Company's Vice President and Corporate Controller from March 2013 to May 2014.

32. ***Defendant Craig Federighi*** ("Federighi") is the Company's Senior Vice President, Software Engineering and has been since August 2012. Defendant Federighi was also the Company's Vice President, Mac OS Engineering from April 2009 to August 2012, and Director of Engineering from 1997 to February 1999.

33. Defendants Maestri and Federighi are herein referred to as the "Officer Defendants."

34. The Director Defendants and Officer Defendants are collectively referred to herein as the "Defendants."

IV. DUTIES OF THE DEFENDANTS

A. Fiduciary Duties

35. By reason of their positions as officers, directors, and/or fiduciaries of Apple and because of their ability to control the business and corporate affairs of Apple, Defendants owed the Company and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage Apple in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of Apple and its shareholders so as to benefit all shareholders equally, and not in furtherance of their personal interest or benefit.

36. Each director and officer of the Company owes to Apple and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, as well as the highest obligations of fair dealing. In addition, as officers and/or directors of a publicly held company, Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company's operations, finances, financial condition, and present and future business prospects so that the market price of the Company's stock would be based on truthful and accurate information.

37. Defendants, because of their positions of control and authority as directors and/or officers of Apple, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company. Because of their advisory, executive, managerial and directorial positions with Apple, each of the Defendants had access to adverse non-public information about the financial condition, operations, sales and marketing practices, and improper representations of Apple.

38. To discharge their duties, the officers and directors of Apple were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Apple were required to, among other things:

(a) Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

(b) Exercise good faith to ensure that the Company was operated in a diligent, honest, and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;

(c) Exercise good faith to ensure that the Company's communications with the public and with shareholders are made with due candor in a timely and complete fashion; and

(d) When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

B. Audit Committee Charter

39. The Company's Audit Committee charter provides that the Committee shall assist the Board with oversight of the Company's accounting and financial reporting processes and the audit of the Company's financial statements.

40. Specifically, the Audit Committee Charter states in relevant part:

E. Duties and Responsibilities

The Committee shall:

* * *

Financial Reporting

9. Review with management and the independent auditor:

- the Corporation's annual audited financial statements, and related footnotes, and quarterly unaudited financial statements, including the disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," prior to filing the Corporation's Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, respectively, with the SEC;
- the independent auditors' audit of the annual financial statements and their report thereon;
- the accompanying management letter and any reports with respect to interim periods;
- any material changes to the Corporation's accounting principles and practices used in preparing financial statements to be filed with the SEC;
- any significant changes required in the independent auditors' audit plan;
- any difficulties or disputes with management encountered during the course of the audit; and
- other matters related to the conduct of the audit that are to be communicated to the Committee under the auditing standards of the Public Company Accounting Oversight Board.

10. Review with management, the independent auditors, and the Corporation's counsel, as appropriate, any legal and regulatory matters that may have a material impact on the financial statements, related compliance policies, and programs and reports received from regulators.

11. Review and discuss earnings press releases, including the use of non-GAAP financial measures, prior to public disclosure.

12. Provide a report for inclusion in the Corporation's proxy statement in accordance with the rules and regulations of the SEC.

13. Oversee compliance with the requirements of the SEC for disclosure of auditors' services and audit committee member qualifications and activities.

14. Discuss with the independent auditors the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies and disagreements with management and any other matters required to be discussed by Public Company Accounting Oversight

Board Auditing Standard No. 1301 ("Communications with Audit Committees") and Rule 2-07 of SEC Regulation S-X ("Communication with audit committees"), as in effect at the time in the case of annual statements, and Statement on Auditing Standards No. 100, as in effect at the time in the case of quarterly statements.

Internal Control Over Financial Reporting and Disclosure Controls and Procedures

15. Review the adequacy of the Corporation's internal control over financial reporting and the disclosure controls and procedures designed to ensure compliance with applicable laws and regulations.

16. Consider and review with the independent auditor and the head of Internal Audit the adequacy of the Corporation's internal controls and any related significant findings and recommendations of the independent auditor and internal auditors together with management's responses thereto.

17. Periodically review with management any significant deficiencies or material weaknesses in the design or operation of internal controls over financial reporting, any fraud involving any employees who have a significant role in the Corporation's internal control over financial reporting, and any significant changes in internal controls over financial reporting or in other factors that could significantly affect internal controls over financial reporting, including management's responses thereto.

18. Establish procedures for receiving, retaining and treating complaints received by the Corporation regarding accounting, internal accounting controls, or auditing matters and procedures for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

C. Nominating and Corporate Governance Committee Charter

41. Pursuant to the Company's Nominating and Corporate Governance Committee ("N&CG") Charter, the purpose of the N&CG Committee is to: "1. Consider and report periodically to the Board on matters relating to the identification, selection and qualification of Board members and candidates nominated to the Board; and 2. Advise and make recommendations to the Board of Directors with respect to corporate governance matters."

42. The duties of the N&CG Committee are, in relevant part:

8. Monitor compliance with the Guidelines Regarding Director Conflicts of Interest and, as it relates to individual directors, the Corporation's Business Conduct Policy.

9. Consider matters of corporate governance and periodically review the Corporation's corporate governance policies and recommend to the Board modifications to the policies as appropriate.

10. Review the Committee's charter, structure, processes, and membership requirements and submit any recommended changes to the Board at least once a year.

11. Review the Corporate Governance Guidelines annually and submit any recommended changes to the Board.

12. Report to the Board concerning the Committee's activities with such recommendations as the Committee deems appropriate at least once a year.

13. Perform such other functions as assigned by law, the Corporation's charter or bylaws, or the Board.

V. SUBSTANTIVE ALLEGATIONS

A. Batteries and Processor Chips Were Defective

43. Apple's iOS operating software is crucial to its sales. As the Company's Form 10-K for fiscal 2016 acknowledges, Apple's "financial condition and operating results depend substantially on the Company's ability to continually improve iOS and iOS devices in order to maintain their functional and design advantages." Indeed, the Company has issued many updates to iOS since the initial sale of each version of the device to date.

44. The batteries and processor chips that supported Apple's devices suffered from defects that shortened the life of the device, and the Company's constant updates to iOS exacerbated those defects.

1. Key Power Components of the Devices

45. With each hardware update, Apple has prioritized designing "thinner" devices that perform "faster" and "stronger" with "long" battery life, compared to prior versions. However, this design model places critical limitations on battery size.

46. The major components are integrated into the device in iPhone 7. The main printed circuit board ("PCB"), also called the main logic board, is nestled against the battery. The integrated circuits and other small components comprising the main logic board are the "brain" of the mobile device and are responsible substantial power usage.[2]

47. The back side of the logic board houses, among other things, two power management integrated circuits ("PMICs"), a primary and a secondary one. The primary PMIC provides a

[2] Q Novo, The Anatomy of an iPhone 6, https://qnovo.com/anatomy-of-an-iphone/.

number of critical functions such as providing voltage rails to the logic board as well as battery charging. This is also where the primary battery management functions tend to reside.[3]

48. Apple was among the first companies to sell a smartphone with non-user replaceable lithium-ion batteries. Indeed, "before the iPhone, cell phones without user-replaceable batteries were almost unheard of."[4] Special skills and tools, including a pentalobe screwdriver, are required to replace the lithium-ion batteries in the devices; replacement batteries are not sold directly to consumers, who pay for the battery and battery installation by a Company representative.

49. Critically, the batteries used in the devices require careful handling and packaging, and while rechargeable, there are limits to how often they can be recharged. Lithium-ion batteries work on ion and electron movement between the positive and negative electrodes. The primary measure of battery performance is capacity. A lithium-ion battery's capacity is degraded over time by discharge/recharge cycles, elevated temperatures, and aging.

50. The Company represents that its battery is "designed to retain up to 80% of its original capacity at 500 complete charge cycles," but this does not convey the rate at which batteries are able to deliver power after 500 charge cycles. In truth, the Company's batteries (as designed) degraded quickly, such that they were incapable of delivering the power required to run the devices during the normal life of a lithium-ion battery.

2. Apple Compounded the Defects by Stressing Device Batteries with Power-Hungry Software: iOS Updates

51. The Company's battery could not meet the demands of iOS over the life of the device. Updates to the iOS are pushed directly to customers' devices through a red signal with a number in it that notifies users of the existence of an available "software update." Users can click the prompt and download the operating system.

52. It is very difficult, if not impossible, for typical Apple owners to avoid downloading an iOS update. As one site explains:

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[3] *Id.*

[4] Kyle Wiens, "Apple's Latest 'Innovation' is Turning Planned Obsolescence into Planned Failure," IFixit (Jan. 20, 2011) (available at https://www.ifixit.com/blog/ 2011/01/20/ appleslatestinnovation-is-turning-planned-obsolescence-into-planned-failure).

> The bad news is there's no easy way to stop iOS from repeatedly throwing this alert at you . . . .
>
> To encourage people to get on the latest version of iOS, Apple implemented a feature called Automatic Downloads. This download updates in the background, and once it is downloaded, you are pushed to install it. Apple typically installs the software update at night when the iPhone, or iPad, is plugged in and charging.[5]

53. Turning off the updates and the daily push notifications requires users to delve deep into their settings or to forgo WiFi, which ordinary customers would not do.[6]

3. The iOS Historical Updates

54. As to the relevant devices, the earliest operating system is iOS 6, which was released in Fall 2012 and introduced 200 new features.

55. On January 28, 2013, Defendants caused the Company to issue a press release, reporting "Apple Updates iOS to 6.1." and promising that users could experience "ultrafast wireless performance to browse, download and stream content at blazing fast speeds." Further, the press release represented that:

> iOS 6 is the world's most advanced mobile operating system, and with nearly 300 million iPhone, iPad and iPod touch devices on iOS 6 in just five months, it may be the most popular new version of an OS in history," said Philip Schiller, Apple's senior vice president of Worldwide Marketing. "iOS 6.1 brings LTE support to even more markets around the world, so even more users can enjoy ultrafast Safari browsing . . .
>
> * * *
>
> **Availability**
>
> iOS 6.1 is available as a free software update today. iOS 6.1 is compatible with iPhone 5, iPhone 4S, iPhone 4, iPhone 3GS, iPad (third and fourth generation), iPad mini, iPad 2 and iPod touch (fourth and fifth generation).

56. On June 10, 2013, the Company unveiled iOS 7, which was purportedly "the most significant iOS update since the original iPhone, featuring a stunning new user interface." Further, according to Jony Ive, the Company's senior vice president of Design, iOS 7 has "a profound and

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[5] Lucy Hattersley, "How to Stop iOS Nagging You to Update to the Latest Version," MacWorld (July 6, 2016) (available at https://www.macworld.co.uk/how-to/iphone/how-stop-ios-nagging-youupdate-latest-version-3641478).

[6] Hattersly, How to Stop iOS Nagging You, *supra*.

enduring beauty in simplicity, in clarity, in efficiency."

57. On September 10, 2013, Defendants caused the Company to issue a press release, reporting that iOS 7 would be available for the public to download on September 18, 2013 for "iPhone, iPad and iPod touch users as a free software update." The release represented that "iOS 7 has been engineered with deep technical and design integration with both the iPhone 5s and iPhone 5C" as:

> Apple engineered iOS 7 to take full advantage of the advanced 64-bit technologies in iPhone 5s, including the native 64-bit kernel, libraries and drivers. Al the built-in apps have been re-engineered for 64-bit, and iOS 7 provides a seamless developer transition with Xcode support and the ability to run both 32-bit and 64-bit apps.

58. On June 2, 2014, Defendants caused the Company to issue a press release, "unveiling" of iOS 8, stating, in pertinent part, that it provided a "simpler, faster and more intuitive user experience." Another press release on iOS 8 was released on September 9, 2014 reiterating this same statement.

59. The Company also featured iOS 8 during a June 15, 2015 Apple Special Event it hosted in San Francisco, California, where Defendant Federighi, SVP, Software Engineering stated:

> Next, you guessed it, iOS. Now our current big release of iOS is iOS 8 and iOS 8 was a huge release with tons of new features for users and a phenomenal set of technologies . . . . So, we're now looking forward to iOS 9 and as we can see of what we wanted to accomplish, first and foremost, we wanted to elevate the foundations of the platform. Things like extending your battery life, improving performance and enhancing security to protect customer data.[7]

60. On June 8, 2015, Defendants caused the Company to issue a press release, reporting the "preview" of iOS 9. The release stated in pertinent part:

> iOS 9 makes the foundation of iOS even stronger with refinements including battery optimization that provides a typical user with an additional hour of battery life, and a low-power mode to help further extend battery life.

61. On the same day, at the Apple WWDC 2015 Keynote, Defendant Federighi stated the following about iOS 9:

> Now with battery life, we focused on real-world use cases and optimized them, and we're seeing an addition of one hour of typical use on a full charge on iPhone. Now we know that for a lot if you're running low on power, you start searching all over for switches and turning off features in the hope of extending your battery life, a little

[7] C. Federighi, SVP, Software Engineering, Apple Special Event (June 15, 2015).

> bit further. Well now in iOS 9 we give you a single switch in what we call low-power mode. It pulls levers that you didn't even know existed and is able to extend battery life for additional three hours of typical use on top of that additional hour. It's really great.[8]

62. On September 9, 2016, Defendants caused the Company to issue a press release, reporting that iOS 9 was available for download starting September 16, 2016. Apple also represented iOS 9 as:

> [T]he world's most advanced mobile operating system, will be available on Wednesday, September 16 as a free update for iPhone, iPad and iPod touch users. iOS 9 makes iOS devices more intelligent and proactive with powerful search and improved Siri features, all while protecting users' privacy.
>
> The way you interact with iPad gets even better with iOS 9, thanks to new multitasking features . . . Built-in apps become more powerful . . .
>
> 'iOS 9 is packed with intelligence that makes every experience with iPhone and iPad even more powerful — Siri can do more than ever and new proactive assistance helps you get more done before you ask, all while protecting users' privacy," said Craig Federighi, Apple's senior vice president of Software Engineering. "With iOS 9 we focused on strengthening the foundation of iOS with a deep focus on quality, and with the help of more than one million users who participated in our first ever public beta program, we're excited to release the best version of iOS yet.'
>
> * * *
>
> **iPad Experience**
>
> iOS 9 delivers new multitasking features designed specifically for iPad that allow you to do even more . . . .
>
> * * *
>
> This latest release makes the foundation of iOS even stronger with refinements including battery optimization that provides a typical user with an additional hour of battery life, and a low-power mode to further extend battery life.

63. Notably, the Company developed it A9 chip and iOS 9 together "for optimal performance where it matters most, in real world usage."[9]

64. On June 13, 2016, Defendants caused the Company to issue a press release, previewing iOS 10, "the biggest iOS release ever." In iOS 10, the Company purported to make

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[8] C. Federighi, SVP, Software Engineering, Apple, Apple WWDC 2015 Keynote.
[9] Apple iPhone 6 Press Release (Sept. 9, 2015).

"accessing the information you need is easier and quicker than ever." The release also featured "'beautifully redesigned apps for Music, Maps, and News that are more intuitive and more powerful, making everything you love about your iPhone and iPad even better,' said Craig Federighi, Apple's senior vice president of Software Engineering." iOS 10 also "increase[ed] security and privacy with powerful technologies like Differential Privacy."

65. On January 23, 2017, Defendants caused the Company to issue a press release announcing the release of iOS 10.2.1. Shortly thereafter, Defendants caused the issuance of a notification to appear on the devices advising that iOS 10.2.1 was available for installation. As alleged herein, iOS 10.2.1 was designed by Apple to throttle the devices, contrary to what Apple stated about the update.

66. On September 18, 2017, Defendants caused the Company to issue a press release reporting the availability of iOS 11. As stated in the release:

> Starting Tuesday, iPhone and iPad customers around the world will be able to update their devices to iOS 11, a major update to the world's most advanced mobile operating system and the biggest software release ever for iPad.

67. According to later reports by the Company at the 2018 WWDC: "iOS 11 supports devices that were introduced as far back as 2013, like the iPhone 5S. And we just love the way customers race to update to our newest releases. In fact, half of our customers upgraded to iOS 11 in just seven weeks. It's incredible. Now as we stand here today, 81 percent of our over a billion active iOS devices are running our latest release."

68. On December 2, 2017, the Company announced the release of iOS 11.2.0. Shortly thereafter, the Company caused the issuance of a notification to appear on the devices advising that IOS 11.2.0 was available for installation.

69. As alleged herein, iOS 11.2.0 was another update designed to throttle the devices and exacerbate the defects.

70. Just weeks after the issuance of iOS 11.2.0, the Company was forced to issue the December 20 admission, followed eight days later by an apology. In a series of the updates issues after 11.2.0 (including, but not limited to, 11.2.1, and the 11.3 and 11.4 series), the Company

proceeded to attempt to cover its tracks, though failing to admit the defects. The Company's latest software machination is iOS 12.

71. On June 4, 2018, Defendants caused the Company to issue a press release, reporting iOS12, which stated that the update:

> [I]s designed to make everyday tasks on iPhone and iPad faster and more responsive with performance improvements across the system. Camera launches up to 70 percent faster, the keyboard appears up to 50 percent faster and typing is more responsive. Even when there is a lot going on across the system, apps can launch up to twice as fast. From iPhone 5s, introduced in 2013, to the most advanced iPhone ever, iPhone X, iOS 12 brings performance improvements to more devices than any previous version.

72. The Company also announced iOS 12 at the 2018 WWDC Keynote held at the San Jose McEnery Convention Center with the Company's Senior Vice President of Software Engineering, Defendant Federighi, stating in pertinent part:

> Well now on IOS 12, we're much smarter. When we detect that you need a burst of performance, like when you begin scrolling or launching an app, we ramp up processor performance instantly to its highest states, delivering high performance and to ramp it down just as fast to preserve battery life. Now, these are just some of the improvements that are coming to not just our older devices, but the full range of devices, and that's a quick update on performance.[10]

73. Similarly, at the 2018 WWDC, Defendant Federighi represented that iOS 12 was intended to:

> [D]eliver[] all of these features across such a wide range of devices while maintaining high performance is a challenge we take really seriously, and so for iOS 12, we are doubling down on performance. We're working top to bottom making improvements, to make your device faster and more responsive, and because we want these changes to be available to the full range of our customers, iOS12 will be available on all the same devices as iOS 11. This is the largest base ever supported by an Apple release. And we're focusing our efforts especially on the oldest devices."[11]

74. At all material times, the Company developed and sold devices that contained an inherent mismatch between battery performance and the operational needs of the devices. Although it is foreseeable that lithium-ion batteries degrade over time, the Company knowingly failed to plan for the power requirements of its devices during the normal life of the battery.

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[10] 2018 WWDC Keynote.
[11] 2018 WWDC Keynote.

75. On information and belief, this inadequate planning was the product of the improper design of the batteries (such as their designed margin for degradation), the rated power that the Company's iOS software demanded from the batteries, and/or a combination thereof. As a result of the defects, the devices were inadequate to meet the power needs of the iOS system for the normal lifetime of a battery. And because the Company hermetically sealed the defective batteries within the devices, preventing consumers from easily replacing the batteries, the Defects caused even greater harm.

4. The Release of iOS 10 Was Secretly Designed to Camouflage the Defects

76. In Fall 2016, iPhone users began reporting sudden shutdowns of iPhones 5 and 6 that used iOS 10, even when their devices indicated that battery life was still at or above 30%.[12] Even the inventor of the iPod, Tony Fadell, noted: "It's happening to me every other day-especially while using the mapping app. Have to always carry an external battery to revive it . . . . Issue with battery/shutdown algorithms?!"[13]

77. Diagnostic information confirmed to Apple that this problem was the result of the poor design of the iPhone: as the processing units for newer models of the device were developed, each performing calculations and rendering graphics at faster speeds than its predecessor model, the device required increasing power from the battery. Moreover, the problem is exacerbated as the lithium-ion batteries age, resulting in both a reduction in overall battery capacity and a reduction in the battery's ability to produce peak power output.[14]

78. The result was that iPhones worked as expected when new, but even after a few months or years, began to cease functioning, *i.e.*, switching off at random intervals, when the iPhone processor required too much power of its flagging iPhone battery.

5. Apple Released iOS 10.2.1 to Further Conceal the Defects

79. To address this defect, Defendants caused Apple to release iOS 10.2.1 on January 23, 2017 as a seemingly routine update of its operating system. The alert to download iOS 10.2.1

[12] Apple Discussion Thread, https://discussions.apple.com/ message/30989226? start= 165& tstart=0.
[13] Tony Fadell Twitter Comment, Dec. 1, 2016, https://twitter.com/tfadell/ status/ 804232051595640833.
[14] Apple, iPhone Battery and Performance, https://support.apple.com/en-us/HT208387.

initially stated that the update included "bug fixes" and improvements in device security. Then, sometime in February 2017, the "Read Me" notes were updated to add that iOS 10.2.1 "also improves power management during peak workloads to avoid unexpected shutdowns on iPhone."

80. On or about February 23, 2017, the Company issued a statement that "[w]ith iOS 10.2.1, Apple made improvements to reduce occurrences of unexpected shutdowns that a small number of users were experiencing with their iPhone."

81. However, unbeknownst to consumers, the update artificially slowed down the processors in Apple's devices. iOS 10.2.1, via the "powerd" system or "power daemon system," which controls CPU and GPU speed and power, introduced secret command that "underclocked" the processors, thereby resulting in slower calculations than the hardware could support. As a result, devices demanded less power during peak operation, which drastically reduced the instances in which the process would outpace the batter. That is, the older batteries could supply enough peak power to meet the now reduced demands of the processors. This superficial "fix" to the shutdown would continue to slow devices as the batteries grew weaker. Users of Apple devices immediately began reporting reduced functionality, but there was no way for ordinary consumers to quantify these inklings or give them credence.

82. Future versions of iOS continued this "throttling" software. On September 19, 2017, the Company released iOS 11. Immediately upon downloading iOS 11, existing Apple iPhone and iPad users began to experience a marked decrease in battery life on their devices.

83. One study of thousands of iPhone users within a monitored network compared the relative battery life of existing iPhones operating on iOS 10 versus iOS 11, showing that iOS 11 reduced the average battery life by more than 60%. It revealed that existing iPhones operating on the iOS 10 software on average drained to 0% battery after 240 minutes (4 hours), whereas those operating on iOS 11 on average drained to 0% battery after only 96 minutes (just over 1½ hours).

6. The Defects in Apple's Devices, and the Impact of Throttling, is Evidenced by Independent Analysis

84. On December 9, 2017, a Reddit user by the handle "TeckFire" posted online benchmarks (measurements of the speed with which a phone's processor performs its computations)

of his iPhone 6 operating on its old battery, and again after he had replaced it with a new battery. The iPhone's processor's speed had remarkably increased over 50%. This was incongruous: a new battery alone should not have had any impact on the processor speed.

85. On December 18, 2017, spurred by the ensuing discussion from TeckFire's post, John Poole, a software engineer at Primate Labs, published a report based on an analysis of 100,000 iPhones and concluded that the decrease in performance of the affected iPhones was caused by the iOS 10.2.1 and iOS 11.2 updates, and not the normal decreased function that would be caused by an aging battery.[15] Poole's analysis, which measures computer processing benchmarks, showed that after updating an iPhone 6s to an iOS 11, there were more "cluster points" where performance would slow down. As Poole explained, "where the peaks happen represents the cluster of phones running at that particular performance level. And the height of the peaks (in blue) represents the relative frequency of benchmarks being performed at that performance level." This translates to a real loss of performance. For example, "the iPhone 6s is slowed down by nearly 60%." This "effectively turns the device's performance into that of a device 1-2 generations older."[16]

86. A processor's speed is set, in part, by its clock speed which is measured in Hertz (Hz); the faster a processor is clocked, the faster a processor will normally perform tasks. For example, the Company advertises the iPhone 6 as having a processor speed of 1.4 GHz. But benchmark tests run by iPhone 6 users following the iOS 10.2.1 update revealed a processor speed of 600MHz—less than half as fast as Apple advertises.

87. On December 20, 2017, Defendants caused Apple to admit that the iOS 10.2.1 and iOS 11 software updates included a throttling "feature" to slow down older iPhone models.[17] At the same time, Defendants caused Apple to assert that "another contributor to these user experiences is

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[15] John Poole, "iPhone Performance and Battery Age," *Primate Labs* (Dec. 18, 2017) (available at https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/).

[16] Paulo Santos, "Apple: All You Wanted to Know on the iPhone Throttling Scandal," *Seeking Alpha* (Dec. 26, 2017), (available at https://seekingalpha.com/article/4133931-apple-wanted-knowiphone-throttling-scandal).

[17] Tom Warren and Nick Statt, "Apple confirms iPhones with older batteries will take hits in performance," *The Verge* (Dec. 20, 2017) (available at https://www.theverge.com/ 2017/ 12/20/16800058/apple-iphone-slow-fix-battery-life-capacity).

the continued chemical aging of the batteries in older iPhone 6 and iPhone 6s devices, many of which are still running on their original batteries."[18]

88. Yet other smart phone manufacturers use similar lithium-ion batteries and have not experienced the same problems or resorted to throttling their phones' performance. For example, Samsung guarantees its Galaxy S7 and Note & lithium-ion batteries will retain 95% of their capacity for at least two years; likewise, LG and Google warranty their smart phones' batteries for two years. Apple's warranty is shorter:

> Your battery is designed to retain up to 80% of its original capacity at 500 complete charge cycles. The one-year warranty includes service coverage for a defective battery. If it is out of warranty, Apple offers a battery service for $79, plus $6.95 shipping, subject to local tax.[19]

B. Apple Is Subject To Legal And Regulatory Proceedings Related To The Defects And Updates

89. The foregoing problems have subjected the Company to numerous legal and regulatory proceedings throughout the world regarding the defects themselves and the misleading disclosures thereto.

90. In California state courts, there are currently four (4) related class actions: *Rosalia v. Apple, Inc.*, CGC-18-564832 (San Francisco), *Tandel v. Apple, Inc.*, 17CIV05874 (San Mateo), *Santino v. Apple, Inc.*, BC690396 (Los Angeles) and *Krueger v. Apple Inc.*, 18CV329447 (Santa Clara).

91. Three federal cases have not yet been consolidated with a related MDL. Two are *pro se* cases, one pending in New York and one recently transferred to the Northern District of California by the JPML and related to the MDL, but not yet consolidated. *See Oliver v. Apple Inc.*, 5:18-MD-3638-EJD (N.D. Cal.); *see also* JMPL Conditional Transfer Order No. 4 [*Oliver* ECF No. 11]. The

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[18] Apple website, "A Message to Our Customers about iPhone Batteries and Performance," dated December 28, 2017, available at: https://www.apple.com/iphone-battery-and-performance/.

[19] Apple, Battery Service and Recycling, https://www.apple.com/batteries/service-and-recycling/. The iPad battery warranty is also one year, Apple warrants that "Your battery is designed to retain up to 80% of its original capacity at 1000 complete charge cycles."

third case *(Donahoe v. Apple, Inc.*, 1:18-cv-0763 (N.D. Ohio)) is a class action asserted on behalf of Ohio residents.

92. On January 12, 2018, the United States House of Representatives Committee on Energy and Commerce wrote a letter to Apple CEO Tim Cook requesting responses to 13 questions. On February 2, 2018, Apple responded by letter. Similarly, on January 10, 2018, the United States Senate Committee on Commerce, Science & Transportation launched an investigation of the defect and the update. Chairman Sen. John Thune sent a letter to Apple CEO Tim Cook posing eight (8) questions, and during an interview with *CNBC* said:

> They [Apple] just acknowledged after the holidays that this is actually happening, which is an admission that we think is long overdue but that being the case, we at least now want to find out what they are doing to inform consumers. The fact remains there are a lot of unanswered questions about this practice and obviously I think consumers have a right to know and so we're going to make sure that Apple is forthcoming and responsive and we'll take additional steps as necessary.

93. On January 30, 2018, *Bloomberg News* reported that both the SEC and the U.S. Department of Justice were independently investigating Apple for how it disclosed information related to the updates. Apple confirmed both investigations, stating "we have received questions from some government agencies and we are responding to them."

94. On December 29, 2017, Plaintiff Raphael Badaoui filed a class action in Quebec Superior Court (District of Montreal) against Apple Canada Inc. and Apple Inc., Case No. 500-06-000897-179. The plaintiff is seeking class action status on behalf of all consumers in Quebec who purchased certain Apple devices and were injured as a result of the defect and the updates.

95. On January 15, 2018, the Xinhua state news agency reported that the Shanghai Consumer Council wrote to Apple asking it to explain the reports of the device defects and slowing caused by the updates. The Council said it received almost three (3) times as many complaints about Apple products in 2017 compared to just two years prior. The investigation is continuing.

96. On January 18, 2018, Italy's antitrust enforcer (the Autorit Garante della Concorrenza e del Mercato) ("AGCM") announced that it launched an investigation into consumer complaints that Apple was purposefully slowing certain devices after software updates in order to

force Italian citizens to buy news ones, based on faked obsolescence. The AGCM claims that if the behavior were proven, it would violate Articles 20, 21, 22 and 24 of the consumer code.

97. Starting in January 2018, individual lawsuits were filed against Apple in the Tverskoy (Moscow district) court, led by legal services firm Lex Borealis in Moscow. Legal funding is reportedly being provided by NLF Group. Attorneys at Lex Borealis said in a joint statement with NLF Group that in addition to the early suits filed, they were handling "at least several hundred" claims running into "several tens of millions of rubles." Although the actions started in Moscow, counsel for the early claimants said they would consider similar litigation in the provinces.

98. On February 23, 2018, plaintiff Cherif Saleh filed a statement of claim in the Ontario Superior Court of Justice against Apple Inc. and Apple Canada Inc. alleging eight common law and statutory counts and seeking damages and punitive damages on behalf of a class of Canadian citizens, excluding Quebec, related to the defect and the software updates. On March 2, 2018, plaintiff Antonio Gaudio filed a similar statement of claim against Apple, Inc. and Apple Canada, Inc. in the Ontario Superior Court on behalf of a class that includes all persons, corporations, and other entities in Canada, excluding residents of Quebec, who purchased a device. The plaintiffs in both cases have agreed to cooperate with each other and have temporarily agreed to hold the action in abeyance in favor of MDL 2827 and are willing to discuss having the Canadian court officially stay the actions in favor of MDL 2827 if the stay would comport with the principles of the cross-border notice protocols set forth by the American Bar Association in August 2011.On March 1, 2018, the Standing Committee on Industry, Science and Technology in the Canadian House of Commons held hearings on the defect and updates, and a representative of the Canadian Competition Bureau confirmed that that office is investigating Apple related to the defect and the update.

99. Importantly, when Nathaniel Erskine-Smith (Member of Parliament for Beaches-East York) asked Apple to disclose internal communications, opinions or advice given to Apple Canada or Apple Inc. regarding whether the defect should be made public, Apple's representative refused: "I'm not going to make that undertaking . . . If the committee wants to make a direction about things, we'll reconsider. But the fact is, as people here know, Apple is exposed to a number

of class actions in the United States." Member of Parliament Brian Masse, who pushed for the committee to study the issue, said the reason for his push "was about Canada responding to a problem that is obviously international."

100. In March 2018, an opt-in class action suit on behalf of more than 60,000 named plaintiffs was filed in Seoul against Apple Inc. and its Korean subsidiary in the Seoul Central District Court, alleging purposeful device degradation. It set a record for the most number of plaintiffs in a single lawsuit. It followed two earlier suits by a consumer advocacy group called Citizens United for Consumer Sovereignty brought on behalf of 401 plaintiffs and 122 plaintiffs, respectively. The plaintiffs are seeking compensation damages on behalf of those customers who opt in (out of approximately 10 million Korean buyers of certain Apple devices).

101. Following a complaint made by Seoul-based Citizens United for Consumer Sovereignty (the same group discussed above) against Apple CEO Tim Cook and the head of Apple's Korean subsidiary, the Seoul Central District Prosecutors Office opened a formal probe with its intellectual property crime unit. The CUCS claimed that Apple deliberately slowed older model iPhones in order to push Apple customers towards newer, more expensive modes of the company's phones as part of a planned obsolescence strategy.

102. On April 9, 2018, the Israeli Consumer Protection and Fair Trade Authority (part of the Economy Ministry) announced that it launched an investigation into Apple for possible breaches of duty to users to disclose that the Updates would slow the performance of certain model iPhones. Rony Friedman, CEO of Apple Israel, was questioned in a private session about whether Apple provided "essential" information on the true purpose and effect of the Software Updates. The investigation continues.

103. Five class actions have been filed against Apple in Israel, which have since been consolidated.

104. On December 27, 2018, an environmental group called HOP ("Halte à l'Obsolescence Programmée" or "Stop the Programmed Obsolescence") filed a complaint with the Prosecutor of the French Republic asserting counts under Article L. 441-2 of the French Consumer Code (planned obsolescence) and Article L. 441-1 of the Consumer Code (deception) against Apple

France. Article L. 441-2 prohibits "the practice of planned obsolescence that is defined by the use of techniques by which the head of the marketing of a product is to deliberately reduce the life span to increase the replacement rate." HOP alleged that Apple's purposefully slowdown of iPhones via the updates was done deliberately in violation of the Consumer Code, which is a criminal offense. According to French media, prosecutors accepted the complaint and opened a formal probe on January 5, 2018.

C. [redacted]

105. [redacted]

106. [redacted]

107. [redacted]

[redacted]

108. [redacted]

D. Defendants Cause the Company to Issue Materially Misleading Statements

109. On August 1, 2017, Defendants caused the Company to issue a press release reporting strong financial results for its third fiscal quarter ended July 1, 2017 ("Q3 2017") exceeding analyst estimates. In this press release, the Company provided revenue guidance for the upcoming quarter of between $49 billion and $52 billion.

110. On the same day, the Company held an earnings conference call to discuss its Q3 2017 results. During the call, defendant Cook touted that the iPhone 7 had the "highest ever" upgrade rates, which he attributed to "many, many different things," none of which included the intentional throttling of older iPhones. When asked whether the upgrade rate was sustainable, Defendant Cook stated that "there's a lot of factors that are very positive for [Apple]" and that Apple has "a lot of opportunity." Defendant Cook stated:

> iPhone results were impressive with especially strong demand at the high end of our lineup. ***iPhone 7 was our most popular iPhone and sales of iPhone 7 Plus were up dramatically compared to 6s Plus in the June quarter last year.*** The combined iPhone 7 and 7 Plus family was up strong double digits year-over-year. One decade after the initial iPhone launch, we have now surpassed 1.2 billion cumulative iPhones sold.
>
> * * *

It's interesting to note that ***upgraders through -- both for the quarter and actually for the full fiscal year to date was our highest ever. And so that we felt very good about.***

* * *

The -- from an absolute quantity point of view, ***the upgrades for this fiscal year are the highest that we've seen and so we feel good about that***. However, if you look at it from an upgrade rate point of view instead of the absolute number, the rate is similar to what we saw with the previous iPhones, except for iPhone 6, which as we've called out in the past, had an abnormally high upgrade rate.

* * *

I think the ***upgrade rate is a function of many, many different things***, from the size of the installed base, the age of the installed base, the product that is new at the time, the regional distribution, the upgrade plans that are in various markets around the world. […] And – but I think in general, because our installed base is -- was up strong double digit once again, ***there's a lot of factors that are very positive for us.*** And between the upgraders and the switchers that we see and still -- the first-time buyer category is still out here, too, in several countries, including some that you may not think there is, there is still sizable base in some. Between those 3 areas, ***I think we have a lot of opportunity***.

111. Defendant Maestri repeated these same statements on iPhone's demand and sales growth during the earnings call:

During the quarter, we sold 41 million iPhones and reduced iPhone channel inventory by 3.3 million units, leaving us with our lowest level of channel inventory in 2.5 years and well within our 5- to 7-week target inventory range. ***iPhone sales were up year-over-year in most markets we track***, with many markets in Asia, Latin America and the Middle East growing unit sales by more than 25%. We are very pleased with these iPhone results, especially considering the tough comparison to the June quarter last year when we launched iPhone SE.

iPhone ASP was $606, up from $595 a year ago, thanks to strong demand for iPhone 7 Plus, which represented a higher percentage of the iPhone mix compared to the Plus model a year ago. The impact of the stronger mix on ASP was partially offset by negative foreign exchange year-over-year and the reduction in channel inventory, which took place entirely at the high end of the portfolio.

Customer interest and satisfaction with iPhone are very strong with both consumers and business users. In the U.S., the latest data from 451 Research on consumers indicates a 95% customer satisfaction rating for iPhone 7 and 99% for iPhone 7 Plus. ***Among consumers planning to buy a smartphone, purchase intention for iPhone was nearly 3x the rate of our closest competitor. Among corporate smartphone buyers, iOS customer satisfaction was 94%. And of those planning to purchase smartphones in the September quarter, 78% plan to purchase an iPhone.***

112. On November 2, 2017, Defendants caused the Company to issue a press release reporting earnings and revenue above analyst estimates for its fourth fiscal quarter ended September 30, 2017 ("Q4 2017"). For Q4 2017, the Company reported revenue of $52.6 billion, above previously-issued guidance, and sequential iPhone unit sales growth of 14%. Defendant Maestri stated in the press release: "Apple's year-over-year revenue growth rate accelerated for the fourth consecutive quarter and drove [earnings per share] growth of 24 percent in the September quarter." The press releases stated that for first quarter 2018, Apple expected revenue between $84 billion and $87 billion.

113. On the same day, the Company held an earnings conference call to discuss its Q4 2017 results. During the call, Defendant Cook praised the Company's "biggest year ever," "all-time record revenue," and "double-digit unit growth in iPhone." Defendant Cook stated:

> This was our biggest year ever in most parts of the world with all-time record revenue in the United States, Western Europe, Japan, Korea, the Middle East, Africa, Central and Eastern Europe and Asia.
>
> We had particularly strong finish this year, generating our highest September quarter revenue ever as year-over-year growth accelerated for the fourth consecutive quarter.
>
> Revenue was $52.6 billion, above the high end of our guidance range and up 12% over last year.
>
> * * *
>
> Let me talk a little bit about Q4 in China to give you a little bit of color on the results. The -- we increased market share for iPhone, Mac and iPad during the quarter. We hit all-time revenue records for services and for Mac in the -- for the PRC during the quarter. We had very strong iPad revenue growth. ***We had double-digit unit growth in iPhone, and both the upgraders and Android switchers were both up on a year-over-year basis during the quarter***. And so, the results were broad based. They were pretty much across the board, as I indicated.

114. During the call, Defendant Maestri reiterated the Company's iPhone sales growth, adding further that "[c]ustomer interest and satisfaction with iPhone are very strong." Defendant Maestri stated:

> ***During the quarter, we sold 46.7 million iPhones, up 3% over last year***. We were very pleased to see double-digit iPhone growth in many emerging markets, including mainland China, the Middle East, Central and Eastern Europe, India and Mexico. We gained share, not only in those markets, but also in Canada, Germany, France, Italy, Spain, Sweden and Singapore, based on the latest estimates from IDC.

> iPhone channel inventory increased by 1.3 million units sequentially to support the launch of iPhone 8 and 8 Plus, significantly less than the increase in the September quarter a year ago. ***Customer interest and satisfaction with iPhone are very strong with both consumers and business users***.
>
> In the U.S., the latest data from 451 Research on consumers indicates a customer satisfaction rating of 97% or higher across all iPhone models. ***Among consumers planning to buy a smartphone in the next 90 days, purchase intention for iPhone was 69%, more than 5x the rate of the closest competitor with a loyalty rate for current iPhone owners of 95% compared to 53% for the next highest brand***.

115. On February 1, 2018, Defendants caused the Company to issue a press release reporting its financial results for its first quarter 2018 ended December 30, 2017 ("Q1 2018"), the last period before the battery replacement program would go into full effect. For Q1 2018, the Company reported "all-time record" revenue and sequential iPhone unit sales growth of 66%, but expected flat year-over-year revenue, expecting between $60 billion and $62 billion for second quarter 2018.

116. In the press release, defendant Cook recognized Q1 2018 as the "biggest quarter in Apple's history, with broad-based growth that included the highest revenue ever from a new iPhone lineup." Moreover, he stated that "iPhone X [sales] surpassed our expectations and has been our top-selling iPhone every week since it shipped in November."

117. In the same press release, defendant Cook also praised the Company's growth in updated devices in the press release. He stated:

> We've also achieved a significant milestone with our active installed base of devices reaching 1.3 billion in January. That's an increase of 30 percent in just two years, which is a testament to the popularity of our products and the loyalty and satisfaction of our customers.

118. Further, in the press release, Defendant Maestri reiterated the Company's "all-time record profitability." Defendant Maestri falsely claimed Apple's record performance during Q1 2018 was "[t]hanks to great operational and business performance."

119. On the same day, the Company held an earnings conference call to discuss the Company's Q1 2018 results. During the call, defendant Cook reiterated that the growth in Apple's active installed base "speaks to the strength and reliability of our products and our ecosystem as well as the loyalty, satisfaction and engagement of our customers." He also stated that Q1 2018 was

the Company's "fifth consecutive quarter of accelerating revenue growth." While the Company's growth was "broad-based," Defendant Cook suggested that "a key driver was iPhone, which generated its highest revenue ever," due to iPhone X's "innovative" "new features."

120. However, analysts were concerned that the battery replacement program would enlarge iPhone upgrade cycles. But defendant Cook dismissed these concerns, instead highlighting the expansion in the secondary iPhone market as well as growth in active install base, stating "[the] more people on iPhones, the better." Finally, Defendant Cook stated that Apple "did not consider in any way, shape or form what [the battery replace program] would do to upgrade rates." Specifically, during the call:

> **[Analyst:]** I have a question and a follow-up. You commented on how your installed base over the last couple of years has grown 30%. And iPhone is clearly the largest component of that. And so iPhone installed base is probably growing close to that number, perhaps less, call it 20% or 25%. Yet if we look at iPhone unit growth for fiscal '18, sort of what's implied with your guidance, fiscal '17 and fiscal '16, ***it's been relatively flat***. So you have an installed base that's 20-plus percent higher and a unit growth that's relatively flat, which would suggest that your upgrade rate is going down or your replacement cycle is elongating. And I'm wondering whether you agree with that and whether investors should be worried about that. And maybe if I could just add one other wrinkle to potentially get your response on is ***given consumers' heightened awareness of their ability to replace batteries going forward as opposed to upgrade, isn't that also something that investors should potentially be concerned about in terms of its impact on upgrade rate going forward? And then, believe it or not, I have a follow-up.***
>
> **[Defendant Cook]** I think it's up to investors as to what things they would like to focus on, so I don't want to put myself in a position of that. The way that I look at this, and I -- the numbers you quoted, I have a different view of them. ***But generally, what we see with iPhone is the reliability of iPhone is fantastic***. The second -- or the previously owned market has expanded in units over the years. And you see, in many cases, carriers and retailers having very vibrant programs around trading an iPhone in. And because iPhone has the largest residual rate on it. It acts as a buffer for the customer to buy a new one, and it winds up with another customer somewhere else that is perfectly fine with having a previously owned iPhone. And so I view all of that to be incredibly positive. It's more people on iPhones, the better.

121. On May 1, 2018, Defendants caused the Company to issue a press release reporting its financial results for its second quarter 2018 ended March 31, 2018 ("Q2 2018"), reporting "quarterly revenue of $61.1 billion, an increase of 16 percent from the year-ago quarter." Defendant Cook remarked that this is the Company's "best March quarter ever," while emphasizing "strong

revenue growth in iPhone." Defendant Cook further remarked that "[c]ustomers chose iPhone X more than any other iPhone each week in the March quarter, just as they did following its launch in the December quarter."

122. On the same day, the Company held an earnings conference call to discuss the Company's Q2 2018 results. During the call, Defendant Maestri praised consumer demand and satisfaction for iPhones:

> iPhone revenue grew 14% year-over-year with iPhone ASP increasing to $728 from $655 a year ago, driven primarily by the performance of iPhone X, iPhone 8 and iPhone 8 Plus. During the quarter, we sold 52.2 million iPhones, up 3% over last year, and we grew iPhone units by double digits in several markets, including Japan, Canada, Switzerland, Turkey, Central and Eastern Europe, Mexico and Vietnam.
>
> ***Our performance from a customer demand standpoint was even stronger than our reported results as we reduced iPhone channel inventory by 1.8 million units***, 600,000 units more than the March quarter reduction last year. We exited the March quarter within our target range of 5 to 7 weeks of iPhone channel inventory.
>
> ***Our customers are extremely happy with their iPhones***. The latest survey of U.S. consumers from 451 Research indicates that across all iPhone models, the customer satisfaction rating was 95%, and combining iPhone 8, 8 Plus and iPhone X, customer satisfaction was even higher at 99%. And among business buyers who plan to purchase smartphones in the June quarter, 78% plan to purchase iPhones.

123. Regarding the U.S.-China trade war, defendant Cook assured that he was "very optimistic" about the two countries futures, stating further that he is "a big believer that the 2 countries together can both win and grow the pie, not just allocate it differently."

124. On July 31, 2018, Defendants caused the Company to issue a press release reporting its financial results for its third quarter 2018 ended June 30, 2018 ("Q3 2018"), reporting "quarterly revenue of $53.3 billion, an increase of 17 percent from the year-ago quarter." Defendant Cook stated that this quarter was the Company's "best June quarter ever, and [Apple's] fourth consecutive quarter of double-digit revenue growth." He also stated that the Company's strong Q3 2018 results "were driven by continued strong sales of iPhone."

125. On the same day, the Company held an earnings conference call to discuss its Q3 2018 results. During the call, analysts again doubted whether the battery replacement program was negatively impacting iPhone replacement sales. Specifically, during the call, an analyst asked

defendant Cook to comment on "replacement cycles and specifically also what impact, if any, you've seen from wider availability and less expensive replacement batteries for iPhones." Defendant Cook responded:

> ***I think the smartphone market is very healthy***. I think it's actually the best market in the world to be in for someone that is in the business that we're in. ***So it's an enormous-sized market*** and whether it grows -- from our point of view, whether it grows 1% or 2% or 5% or 6% or 10% or shrinks 1% or 2%, it's a great market because it's just huge. And so that's kind of the way that I view that. iPhone revenues are up 20% for the quarter over last year. We're really pleased with that. And if you look at the sort of this cycle, which I'll define as Q1, Q2, Q3 for ease, you'll see that we've grown like mid-single digits and -- on an average weekly sales point of view and, of course, double-digit on ASP. And so I think it's really healthy. In terms of replacement cycles, as I've mentioned I think on a previous call, some replacement cycles are lengthening. I think that the major catalyst for that was probably the subsidy plans becoming a much smaller percentage of total sales around the world than they were at one time. And so I think that some are lengthening and -- but I think for us, the thing that we always have to do is come out with a really great innovative product. And I think that iPhone X shows that when you deliver great innovative product, there's enough people there that would like that, and it can be a really good business. And so that's how I look at that. In terms of the -- our installed base, which is something very important for us as it is one of the key drivers of Services, our active installed base on iPhone grew double digits over last year during the quarter. And so we're thrilled with that. And you can see that carrying through to the Services line, in the -- and the growth that we have there. In terms of batteries, we have never done an analysis internally about how many people decided to get a lower-priced battery than buy another phone because it was never about that for us. It was always about doing something great for the user. And I think if you treat the users and customers well, then you have a good business over time, and so that's how we look at that.

126. Regarding the U.S.-China trade war, defendant Cook highlighted "double-digit growth in Greater China" and stated that "none of [Apple's] products were directly affected by the tariffs."

127. On November 1, 2018, Defendants caused the Company to issue a press release reporting its financial results for its fourth fiscal quarter and year ended September 29, 2018 ("Q4 2018"). In the press release, Defendant Cook praised the Company's "tremendous fiscal 2018" noting that the Company "achieved the strongest revenue and earnings in Apple's history." He touted: "Over the past two months, [Apple] delivered huge advancements for [its] customers through

new versions of iPhone, Apple Watch, iPad, and Mac as well as [its] four operating systems, and [the Company] enter[s] the holiday season with [its] strongest lineup of products and services ever."

128. On the same day, the Company held an earnings conference call to discuss its Q4 2018 results. Defendant Maestri again emphasized that the Company had "the strongest lineup ever as [it] enter[ed] the holiday season," justifying "a new all-time record" of "expect[ed] revenue [of] between $89 billion and $93 billion." Defendant Maestri assured the market that this all-time record range accurately "reflect[ed] a number of factors considered," including: (i) reverse launch timing of new top end iPhone model, *i.e.*, releasing the more expensive iPhone XS in Q4 2018 and the more affordable iPhone XR in the following quarter; (ii) the impact of foreign exchange due to the strength of the U.S. dollar; (iii) supply and demand uncertainty relating to new products ramping; and (iv) "macroeconomic uncertainty, particularly in emerging markets."

129. During the call, Defendant Cook reassured the market that the Company's growth in Greater China was strong:

> To give you a perspective in -- at some detail, our business at India in Q4 was flat. Obviously, we would like to see that be a huge growth. Brazil was down somewhat compared to the previous year. And so I think -- or at least the way that I see these is each one of the emerging markets has a bit of a different story. And I don't see it as some sort of issue that is common between those for the most part. In relation to China specifically, I would not put China in that category. Our business in China was very strong last quarter. We grew 16%, which we're very happy with. iPhone, in particular, was very strong double-digit growth there. Our other products category was also stronger, in fact, a bit stronger than even the company -- overall company number.

130. Moreover, defendant Maestri stated that the strong product lineup for the holiday season provided a strong basis for the "record" guidance issued that day:

> …[A]t the revenue level, we started from the fact that we are very, very excited about the lineup of products and services that we have getting into the holiday season. It's the strongest lineup that we've ever had. And our guidance range, by the way, represents a new all-time quarterly revenue record….

131. Analysts asked about demand for iPhone XS and XS Max, the most expensive models yet which began shipping in September 2018, and whether buyers were holding off until the cheaper XR iPhone rolled out in October. Defendant Cook responded:

> The Xs and Xs Max got off to a really great start, and we've only been selling for a few weeks. The XR, we've only got out there for, I guess, 5 -- 5 days or so at this point and so that it's -- we have very, very little data there. Usually, there is some amount of wait until a product shows -- another product shows up in look, but in -- that -- in looking at the data, on the sales data for Xs and Xs Max, there's not obvious evidence of that in the data as I see it.

132. However, defendant Maestri unexpectedly revealed that Apple would no longer disclose unit sales numbers, stating:

> ***…[S]tarting with the December quarter, we will no longer be providing unit sales data for iPhone, iPad and Mac.*** As we have stated many times, our objective is to make great products and services that enrich people's lives and to provide an unparalleled customer experience so that our users are highly satisfied, loyal and engaged. As we accomplish these objectives, strong financial results follow.
>
> ***As demonstrated by our financial performance in recent years, the number of units sold in any 90-day period is not necessarily representative of the underlying strength of our business. Furthermore, our unit of sale is less relevant for us today than it was in the past*** given the breadth of our portfolio and the wider sales price dispersion within any given product line.

133. Defendants rejected the suggestion raised by at least one analyst that the reason for concealing unit data was because "iPhone units are going to start going negative." Defendants Maestri and Cook insisted that revenue and active install base metrics were the more significant metrics and assured that demand was still strong for the Company's more expensive iPhone offerings. Defendants Cook and Maestri stated:

> **[Maestri:]** ***Given the rationale on why we do not believe that providing unit sales is particularly relevant for our company at this point, I can reassure you that it is our objective to grow unit sales for every product category that we have. But as I said earlier, a unit of sale is less relevant today than it was in the past. To give you an example, the unit sales of iPhone at the top end of the line have been very strong during the September quarter. And that's very important because we are attracting customers to the most recent technologies and features and innovation that we bring into the lineup, but you don't necessarily see that in the number that is reported.*** And so therefore, we will -- as I said, we'll provide the qualitative commentary when it is important and relevant, but at the end of the day, we make our decisions to -- from a financial standpoint, to try and optimize our revenue and our gross margin dollars. And that, we think, is the focus that is in the best interest of our investors.
>
> [Cook:] Jim, let me just add a couple things to that for color. Our installed base is growing at double digit, and so there's no -- and ***that's probably a much more significant metric for us from an ecosystem point of view and customer loyalty, et***

> ***cetera.*** The second thing is this is a little bit like if you go to the market and you push your cart up to the cashier and she says or he says, "How many units you have in there?", it sort of -- it doesn't matter a lot how many units there are in there in terms of the overall value of what's in the cart.

134. The above statements were materially misleading because they failed to disclose: (a) that the U.S.-China trade war had negatively impacted demand for iPhones and Apple's pricing power in greater China; (b) that the rate at which Apple customers were replacing their batteries in older iPhones rather than purchasing new iPhones was negatively impacting Apple's iPhone sales growth; (c) that, as a result of slowing demand, Apple had slashed production orders from suppliers for the new 2018 iPhone models and cut prices to reduce inventory; (d) that unit sales for iPhone and other hardware was relevant to investors and the Company's financial performance, and the decision to withhold such unit sales was designed to and would mask declines in unit sales of the Company's flagship product; and (e) that, as a result of the foregoing, Defendants lacked a reasonable basis in fact when issuing the Company's revenue outlook for 1Q19 and/or making the related statements concerning demand for its products, as Apple's business metrics and financial prospects were not as strong as defendants had led the market to believe.

135. Analysts accepted at face value the decision to withhold unit sales and expected Apple to meet or beat the 1Q19 financial guidance provided that day:

> **Canaccord Genuity LLC:**
>
> We believe Apple continues to grow its leading market share of the premium-tier smartphone market with double-digit growth of its installed base and believe the iPhone installed base of new iPhone consumers will exceed 700M exiting C2018.
>
> This impressive installed base should drive strong iPhone replacement sales and earnings, as well as cash flow generation to fund strong long-term capital returns.
>
> We maintain our BUY rating and $250 price target.
>
> . . . We believe demand trends are solid for the three new iPhone models and anticipate strong ASPs and margin trends for the iPhone franchise going forward.
>
> **Piper Jaffray:**
>
> Apple reported Sept. quarter revenue and EPS ahead of the Street (2% and 5%, respectively) . . . . Revenue guidance for the Dec. quarter is 2% below consensus at the mid-point, with the gross margin outlook at 38.25% (Street at 38.5%). With slightly weaker guidance for the Dec. quarter and the company's indication that it will provide less product level disclosure (no units or ASP), some investors will

assume iPhone units are trending poorly. With increasing disclosure coming for services (gross margin), we believe Apple is simply trying to change the focus towards the overall installed base and services revenue per user. Maintain OW, PT remains $250.

Wedbush:

Last night Apple delivered FY4Q (Sept.) results which beat the Street from a headline number but slightly missed iPhone unit shipments which was the focus of investors. However the quarter itself took a back seat to the modestly softer December guidance that Cook & Co. gave on the heels of its much anticipated XS/XR iPhone product cycle which remains the linchpin of the Apple story for FY19. That said, the "jaw dropper" last night was when Apple announced it will stop providing units/ASPs for iPhones, Macs and its other product lines. The Street will find this a tough pill to swallow this morning as the transparency of the Cupertino story takes a major dent given that tracking iPhone units has become habitual to any investor that has closely followed the Apple story for the last decade+ and is critical to the thesis. As explained on the conference call we understand the logic of not providing these metrics anymore given that ASPs are all over the map and a slew of new smartphone releases has catalyzed Apple to focus more on overall segment revenue rather than myopic quarterly unit sales. However, the skeptics will point to Apple doing this right at the critical juncture where higher ASPs are making up for slower unit sales which remains the worry and the stock will get hit accordingly this morning. That said, while it's frustrating how Apple (with no warning) decided to pull the plug on unit metrics, our core bull thesis does not change on the story and to some extent is emboldened by the ~$800 ASP story and a robust services business poised to hit $50 billion+ in FY20. . . . While last night's "Houdini-like metrics move" was a stunner, our core bullish thesis on Apple remains unchanged despite the noise this morning. We maintain our OUTPERFORM rating and $310 price target.

E. The Truth Begins to Emerge

136. On January 2, 2019, for the first time in 15 years, the Company slashed its prior quarterly revenue forecast for first quarter 2019 due to declining iPhone sales in China, its third-largest market after the United States and Europe.

137. In a "Letter from Tim Cook to Apple Investors," the Company reported that its Q1 2019 revenues were only $84 billion, far below previously-issued guidance of $89 billion to $93 billion. The letter attributed the shortfall to fewer iPhone upgrades as consumers opted for battery replacements. Specifically, the letter stated:

Emerging Market Challenges

While we anticipated some challenges in key emerging markets, we did not foresee the magnitude of the economic deceleration, particularly in Greater China. ***In fact,***

> ***most of our revenue shortfall to our guidance, and over 100 percent of our year-over-year worldwide revenue decline, occurred in Greater China across iPhone, Mac and iPad.***
>
> China's economy began to slow in the second half of 2018. . . . And market data has shown that the contraction in Greater China's smartphone market has been particularly sharp.
>
> * * *
>
> iPhone
>
> Lower than anticipated iPhone revenue, primarily in Greater China, accounts for all of our revenue shortfall to our guidance and for much more than our entire year-over-year revenue decline. In fact, categories outside of iPhone (Services, Mac, iPad, Wearables/Home/Accessories) combined to grow almost 19 percent year-over-year.
>
> While Greater China and other emerging markets accounted for the vast majority of the year-over-year iPhone revenue decline, in some developed markets, ***iPhone upgrades also were not as strong as we thought they would be.*** While macroeconomic challenges in some markets were a key contributor to this trend, we believe ***there are other factors broadly impacting our iPhone performance, including consumers adapting to a world with fewer carrier subsidies, US dollar strength-related price increases, and some customers taking advantage of significantly reduced pricing for iPhone battery replacements.***

138. During an appearance on *CNBC*, defendant Cook elaborated on the "rising trade tensions" referenced in the letter:

> [A]s we look at what's going on in China – it's clear that the economy begins to slow there for the second half. And what I believe to be the case is the trade tensions between the United States and China put additional pressure on their economy. And so we saw, as the quarter went on, things like traffic in our retail stores, traffic in our channel partner's stores, the reports of the smartphone industry contracting, particularly bad in November – I haven't seen the December number yet, but I would guess that would[n't] be good either. And so that's what we seen.
>
> * * *
>
> [M]y sense is the much larger issue is the slowing of the economy and then this – the trade tension that's further pressured.

139. Defendant Cook also emphasized the negative impact the battery replacement program had had on the pace of phone replacements during 1Q19:

> [S]ort of in addition to those two things, we've started a program worldwide where we dramatically lowered the battery replacement price. And so we have sort of a collection of items going on, some that are macroeconomic and some that are Apple specific . . . .

140. On this news, the Company's share price fell $15.73, or approximately 10%, to close at $142.19 per share on January 3, 2019, on unusually heavy trading volume.

141. On January 3, 2019, *Yahoo Finance* published an article, entitled "Apple's mindblowing warning means CEO Tim Cook now has a major credibility problem," reporting that "Apple CEO Tim Cook and his management team should read the coverage of their mind-blowing warning to every investor on the planet on Apple News and then ask: 'Should investors trust us right now? And, how can we regain that trust.'" The article stated in pertinent part as follows:

> They failed to keep it real with investors on what they were seeing in iPhone demand data late in 2018. Simply no longer providing unit sales data wasn't enough of a signal to investors that something was wrong, bottom line.
>
> As a result, Apple's stock could be "broken" until credibility is restored. "Apple's stock is now at a crossroads. Some investors will consider the stock broken and never reward it with a "proper" multiple, but we've followed the company long enough to know there is cyclicality in the market's relationship with Apple," cautions long-time Apple analyst Gene Munster of Loup Ventures.
>
> **A poor job done with guidance**.
>
> Apple said in a filing released after market close Wednesday that it now sees first quarter revenue of about $84 billion. It previously anticipated $89 billion to $91 billion. In the filing, Cook attributed the reduced guidance to weakness in emerging markets and in Greater China as well as supply constraints on new products. Cook also hinted strongly that Apple felt resistance from consumers to the new $1,000 plus iPhone XS line.

VI. DAMAGES TO THE COMPANY

142. As a direct and proximate result of the Defendants' conduct, Apple has been seriously harmed and will continue to be. Such harm includes, but is not limited to:

(a) Legal fees incurred in connection with the various legal and regulatory proceedings stemming from the misleading disclosures;

(b) Any funds paid to settle the legal and regulatory proceeds; and

(c) Costs incurred from compensation and benefits paid to the defendants who have breached their fiduciary duties to Apple.

143. In addition, Apple's business, goodwill, and reputation with its business partners, regulators, and shareholders have been gravely impaired. The Company still has not admitted the

nature of its false statements and the true condition of its business. The credibility and motives of management are now in serious doubt.

144. The actions complained of herein have irreparably damaged Apple's corporate image and goodwill. For at least the foreseeable future, Apple will suffer from what is known as the "liar's discount," a term applied to the stocks of companies who have been implicated in illegal behavior and have misled the investing public, such that Apple's ability to raise equity capital or debt on favorable terms in the future is now impaired.

VII. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

145. Plaintiff will adequately and fairly represent the interests of Apple and its shareholders in enforcing and prosecuting its rights.

146. Plaintiff brings this action derivatively in the right and for the benefit of Apple to redress injuries suffered and to be suffered by Apple because of the breaches of fiduciary duty by Defendants.

147. Plaintiff has continuously been a shareholder of Apple at times relevant to the wrongdoing complained of and is a current Apple shareholder.

148. When this action was filed, Apple's Board consisted of defendants Cook, Levinson, Gore, Jung, Bell, Sugar, and Wagner. Plaintiff did not make any demand on the Board to institute this action because such a demand would be a futile, wasteful, and useless act, for the reasons set forth below.

Defendant Cook

149. At all relevant times, Cook was the Company's CEO, and therefore was not independent under NASDAQ listing rules. As an employee, Cook derives substantially all of his income from his employment with Apple, thus could not disinterestedly consider a demand for action that might require him to sue the directors that control his continued employment and/or fellow members of management with whom he works on a day-to-day basis. Moreover, as CEO, Cook knew that demand for the Company's products in China was deteriorating and that Apple's flagship product had been propped up by software updates to mask declining battery life. Cook personally issued the misleading statements alleged herein, and as such is named as a defendant in

the related securities class action, captioned *In re Apple Inc. Securities Litigation*, Case No. 4:19-cv-02033-YGR (N.D. Cal.). As a result, Cook would be interested in a demand regarding his own wrongdoing, and demand is futile as to him.

Defendants Gore and Jung

150. Defendants Gore and Jung served as the members of the N&CG Committee at all relevant times. As such, they are responsible for monitoring compliance with the Company's Code, which includes ensuring Apple acts with honesty, integrity, and courtesy in every interaction with the Company's consumers. As alleged herein, Gore and Jung failed to ensure the integrity of the Company's disclosures, allowing materially misleading statements to be disseminated in Apple's SEC filings and other disclosures. Thus, Gore and Jung breached their fiduciary duties and are not disinterested, and demand is excused as to them.

Defendants Levinson, Bell, Sugar, and Wagner

151. Levinson, Bell, Sugar, and Wagner served as members of the Audit and Finance Committee at all relevant times. As such, they are responsible for the effectiveness of the Company's internal controls, the integrity of its financial statements, and its compliance with laws and regulations. In their capacities as Audit Committee members, Levinson, Bell, Sugar, and Wagner reviewed and approved the disclosures throughout the relevant period. As alleged herein, Levinson, Bell, Sugar, and Wagner failed to ensure the integrity of the Company's internal controls, allowing the materially misleading statements to be disseminated in Apple's SEC filings and other disclosures. Thus, Levinson, Bell, Sugar, and Wagner breached their fiduciary duties and are not disinterested, and demand is excused as to them.

FIRST CAUSE OF ACTION

(Against Defendants for Breach of Fiduciary Duty)

152. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

153. Defendants owed and owe Apple fiduciary obligations. By reason of their fiduciary relationships, Defendants owed and owe Apple the highest obligation of good faith, fair dealing, loyalty and due care.

154. Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

155. Defendants had actual or constructive knowledge that they had caused the Company to improperly misrepresent the business prospects of the Company. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

156. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, Apple has sustained significant and actual damages. As a result of the misconduct alleged herein, Defendants are liable to the Company.

157. Plaintiff, on behalf of Apple, has no adequate remedy at law.

SECOND CAUSE OF ACTION

(Against Defendants for Unjust Enrichment)

158. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

159. By their wrongful acts and omissions, Defendants were unjustly enriched at the expense of and to the detriment of Apple in the form of salaries, bonuses, and other forms of compensation.

160. Plaintiff, as a shareholder and representatives of Apple, seeks restitution from Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

THIRD CAUSE OF ACTION

(Against Defendants for Abuse of Control)

161. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

162. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence the Company, for which they are legally responsible.

163. As a direct and proximate result of Defendants' abuse of control, the Company has sustained significant damages. As a direct and proximate result of Defendants' breaches of their fiduciary obligations of candor, good faith, and loyalty, the Company has sustained and continues to sustain significant damages.

164. As a result of the misconduct alleged herein, Defendants are liable to the Company. Plaintiff, on behalf of the Company, has no adequate remedy at law.

FOURTH CAUSE OF ACTION

(Against Defendants for Waste of Corporate Assets)

165. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

166. As a result of the foregoing, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused the Company to waste valuable corporate assets by failing to disclose (i) the Company had a material weakness in its internal control over financial reporting; (ii) the Company's disclosure controls and procedures were not effective; and (iii) as a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.

167. Further, during the Relevant Period, the Director Defendants disseminated or approved public statements that failed to disclose or deliberately disregarded: (a) that the U.S.-China trade war had negatively impacted demand for iPhones and Apple's pricing power in greater China, one of Apple's most important growth markets; (b) that the rate at which Apple customers were replacing their batteries in older iPhones rather than purchasing new iPhones was negatively impacting Apple's iPhone sales growth; (c) that, as a result of slowing demand, Apple had slashed production orders from suppliers for the new 2018 iPhone models and cut prices to reduce inventory; (d) that unit sales for iPhone and other hardware was relevant to investors and the Company's financial performance, and the decision to withhold such unit sales was designed to and would mask declines in unit sales of the Company's flagship product; and (e) that, as a result of the foregoing, defendants lacked a reasonable basis in fact when issuing the Company's revenue outlook for 1Q19 and/or making the related statements concerning demand for its products, as Apple's business

metrics and financial prospects were not as strong as Defendants had led the market to believe. Thus, the price of the Company's shares was artificially inflated due to the deception of the Director Defendants. Despite this artificial inflation in the price of the Company's shares, the Director Defendants caused and/or allowed the Company to repurchase many millions of shares of Company stock, thereby causing financial harm to the Company.

168. As a result of the waste of corporate assets, Defendants are each liable to the Company.

169. Plaintiff, on behalf of the Company, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for relief and judgment as follows:

A. Against Defendants in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties, unjust enrichment, abuse of control, and waste of corporate assets;

B. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorney's fees, accountants' and experts' fees, costs, and expenses; and

C. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: August 12, 2020

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VERIFICATION

I, Steven Hill, do hereby verify that I am a holder of common stock of Apple Inc., and was a holder of such common stock at the time of the wrongs complained of in the foregoing Verified Shareholder Derivative Complaint ("Complaint"). I have authorized the filing of the Complaint. I have reviewed the Complaint. All of the averments contained in the Complaint regarding me are true and correct upon my personal knowledge and, with respect to the remainder of the averments, are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 8/12/20

Steven Hill