

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

JOHN FARLEY, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

APPLE INC.,

Defendant.

**COMPLAINT – CLASS ACTION**

DEMAND FOR JURY TRIAL

Case No. 23-cv-254

Plaintiff John Farley (“Plaintiff”), on behalf of himself and all others similarly situated, brings this class action suit for damages and equitable relief against Defendant Apple Inc. (“Defendant” or “Apple”) and alleges the following based upon personal information and investigation, the investigation of his counsel, and on information and belief:

**NATURE OF THE ACTION**

1. This case relates to a flagrant violation of consumer privacy. Quite simply, Apple records consumers’ personal information and activity on its consumer mobile devices and applications (“apps”), even after consumers explicitly indicate through Apple’s mobile device settings that they do not want their data and information shared. This activity amounts to an enormous wealth of data that Apple collects and uses for its financial gain.

2. Consumers care about keeping their data private and are demanding more control over their data. Consumers are also becoming increasingly concerned that their private information is being used without their knowledge or permission.

3. As privacy concerns have grown, Apple has sought to position itself as a leader by touting how its mobile devices allow users to control the information they share.

For example, the “Apple Privacy Policy” states:

At Apple, we respect your ability to know, access, correct, transfer, ***restrict the processing of***, and delete your personal data.<sup>1</sup>

(emphasis added).

4. The Apple App Store “User Privacy and Data Use” page similarly declares:

The App Store is designed to be a safe and trusted place for users to discover apps created by talented developers around the world. Apps on the App Store are held to ***a high standard for privacy***, security, and content because ***nothing is more important than maintaining users’ trust***.<sup>2</sup>

(emphasis added).

5. Apple even provides specific instructions to users to explain how to control what data Apple collects. Apple tells users to turn off “Allow Apps to Request to Track” if settings if they so wish.

6. In addition, Apple makes an outright promise in its mobile devices’ settings: Apple states that it will “disable [the sharing of] Device Analytics altogether” if a consumer toggles or turns off “Share iPad Analytics” on an iPad, or similar settings on other Apple mobile devices, like the iPhone.<sup>3</sup>

7. Yet, Apple does not honor users’ requests to restrict data sharing.

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<sup>1</sup> <https://www.apple.com/legal/privacy/pdfs/apple-privacy-policy-en-ww.pdf> (last updated December 22, 2022)

<sup>2</sup> <https://developer.apple.com/app-store/user-privacy-and-data-use/>

<sup>3</sup> If a consumer has an Apple Watch paired to their iPhone, they must instead turn off the setting for “Share iPhone and Watch analytics” for the same effect. Hereinafter, this setting, across devices, will be referred to as “Share [Device] Analytics.”

8. A recent test performed by two independent app developers at the software company Mysk revealed that even when consumers actively change their “privacy settings” and take Apple’s instructions to protect their privacy, Apple still records, tracks, collects, and monetizes consumers’ analytics data, including browsing history and activity information. These experts and their testing further showed that Apple continues to access consumers’ app usage, app browsing communications, and personal information in its proprietary apps, including the App Store, Apple Music, Apple TV, Books, and Stocks, even when consumers have affirmatively turned off “Allow Apps to Request to Track” and/or “Share [Device] Analytics” on their privacy controls.

9. *Gizmodo* broke the story on the issue on November 8, 2022.<sup>4</sup> The issue has been reported in multiple news outlets since *Gizmodo*’s report, including *The Verge*, *Engadget*, and *Fox News*.<sup>5</sup> As of the date of this filing, Apple still has not responded to or publicly refuted the reports.

10. Apple’s practices deceive consumers. Its practice of collecting the data of users who have specifically followed Apple’s instructions to disable data sharing violates, *inter alia*, New York General Business Law §§ 349 and 350.

11. Plaintiff is an individual whose mobile app usage was tracked by Apple after he had affirmatively elected to turn off the “Allow Apps to Request to Track” and/or “Share [Device] Analytics” options.

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<sup>4</sup> <https://gizmodo.com/apple-iphone-analytics-tracking-even-when-off-app-store-1849757558>.

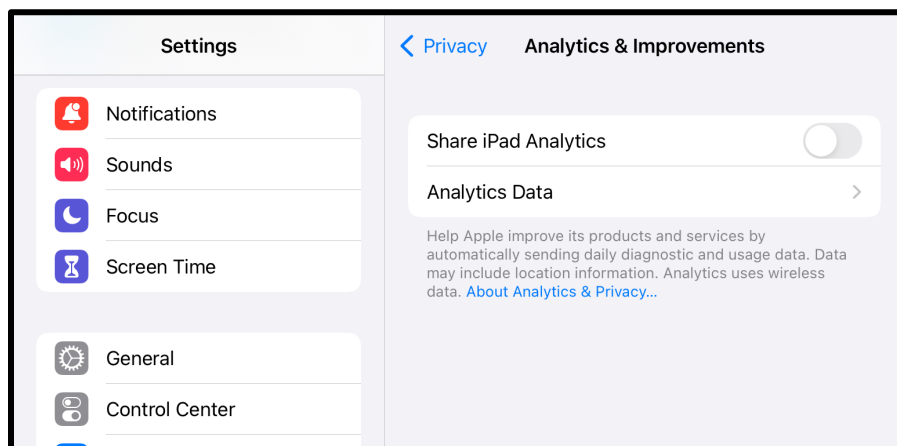
<sup>5</sup> <https://www.theverge.com/2022/11/21/23471827/apple-app-store-data-collection-analytics-personal-info-privacy>; <https://www.engadget.com/apple-phone-usage-data-not-anonymous-researchers-185334975.html>; <https://www.foxnews.com/tech/apple-iphone-data-not-as-anonymous-company-says-researchers>.

12. Apple, through its tracking and hoarding of data, collected and monetized consumer information without Plaintiff's and similarly situated consumers' consent.

13. Plaintiff seeks damages and equitable relief on behalf of himself and all other similarly situated Apple device users in New York (the "Class"), arising from Apple's knowing and unauthorized copying, taking, use, and tracking of consumers' communications and activity, and its knowing and unauthorized invasion of consumer privacy.

### **THE PARTIES**

14. Plaintiff John Farley is a resident of Shirley, New York. He owns an iPad. Previously, Mr. Farley owned an iPad Air and iPad Air 2. Plaintiff Farley regularly accesses Apple apps including the App Store, Apple Music, Maps, and Weather. Immediately after purchasing the iPad, during settings setup, Plaintiff turned off the "Allow Apps to Request to Track" and "Share iPad Analytics" options. Apple has nevertheless accessed his data while these features were turned off. An image of Plaintiff's iPad with these features turned off are below.



15. Defendant Apple Inc. is incorporated in California and maintains its principal place of business at One Apple Park Way, Cupertino, CA 95014.

### JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs; more than 100 class members are involved; and members of the proposed Class are citizens of a different state (New York) than the Defendant (California).

17. This Court has personal jurisdiction over Defendant Apple because Defendant committed the tortious acts alleged herein in New York, regularly conducts business in this District, has extensive contacts with this forum, and because a substantial part of the events or omissions giving rise to the claims asserted occurred in this District.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District, Defendant transacts substantial business in this District, and Plaintiff resides in this district.

19. This Court has supplemental jurisdiction over the state law claims, pursuant to 28 U.S.C. § 1367.

### FACTUAL ALLEGATIONS

#### **A. Consumers have a reasonable expectation of privacy on their mobile devices.**

20. More than 1 billion consumers currently use iPhones, and over 1.9 billion iPhones have been sold. Apple's iPhones make up over 23% of the global market share for smart phones. iPads make up an even larger share of their market. In the third quarter of 2022, Apple sold 142 million iPads, totaling 38% of the tablet market.

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