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14 Plaintiffs' Interim Class Counsel

15  
16 UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18 OAKLAND DIVISION  
19

20 In re Apple iPhone Antitrust Litigation ) Case No. C 11-06714-YGR  
21 )  
22 ) **SECOND AMENDED CONSOLIDATED**  
23 ) **CLASS ACTION COMPLAINT**  
24 )  
25 ) **DEMAND FOR JURY TRIAL**  
26  
27  
28

1 Plaintiffs Stephen H. Schwartz, Edward W. Hayter, Eric Terrell, and Robert Pepper  
2 (“Plaintiffs”), for their class action complaint, allege upon personal knowledge as to themselves  
3 and their own actions, and upon information and belief, including the investigation of counsel, as  
4 follows:

5 **NATURE OF ACTION**

6 1. This is an antitrust class action pursuant to Section 2 of the Sherman Antitrust Act  
7 of 1890, 15 U.S.C. § 2 (2004) (the “Sherman Act”), brought by Plaintiffs on their own behalf and  
8 on behalf of a class of persons similarly situated, those being persons who purchased software  
9 applications or licenses for software applications from the “iTunes” site or “App Store” owned and  
10 operated by Defendant Apple Inc. (“Apple”) for use on an Apple iPhone between December 29,  
11 2007 and the present (the “Class Period”).

12 **A. Summary Of Material Facts**

13 2. With great fanfare, Apple launched its first iPhone, called the iPhone 2G, on June  
14 29, 2007. Prior to and after its launch, Apple hailed the iPhone as a revolutionary, “breakthrough”  
15 “smartphone” that functioned like a mobile computer with desktop-class email and other Internet  
16 communications capability. Apple built the iPhone’s operating system, known as “iOS,” to enable  
17 iPhone users to download and run computer-like software programs (called “applications” or  
18 “apps”) to browse the Internet, transform music into cell phone ringtones, take photos, play games  
19 and engage in other functions typically performed on desktop or laptop computers.

20 3. Unbeknownst to iPhone consumers, however, from the time it launched the iPhone  
21 through the present date, Apple has engaged in an anticompetitive scheme to monopolize the  
22 aftermarket for iPhone applications in order to control and derive supracompetitive profits from  
23 the distribution of iPhone apps worldwide. As a result of its scheme, Apple has, from introduction  
24 of the iPhone 2G in 2007 through the present, cornered 100% of the worldwide distribution  
25 market for iPhone applications.

26 4. Apple has succeeded in totally eliminating any and all competition in that multi-  
27 billion dollar market. Apple’s App Store is the only store in the entire world – online or off-line –  
28 where the tens of millions of U.S.-based iPhone owners (and the many tens of millions of iPhone

1 owners worldwide) can buy an iPhone app, and Apple's unlawful monopolization of the apps  
2 market has enabled Apple to charge and collect a supracompetitive 30% fee from iPhone  
3 consumers for each and every one of the billions of iPhone apps they have bought since the  
4 iPhone's launch six years ago. Consequently, iPhone consumers nationwide have paid hundreds  
5 of millions of dollars more for iPhone apps than they would have paid in a competitive market.

6 5. Unlike traditional desktop or laptop computer manufacturers, whose computers'  
7 operating systems allow consumers to buy software applications from any and all competing  
8 software distributors, Apple's iOS system prohibits iPhone consumers from buying software  
9 applications from anyone other than Apple.

10 6. Even Apple's own iMac and MacBook desktop and laptop computers' operating  
11 systems – from which the iPhone's iOS operating system was derived – allow consumers to buy  
12 software from whatever source they like, and to pay the software manufacturer or distributor  
13 directly without having to pay an additional fee to Apple. There is no legitimate basis for Apple to  
14 treat its iPhone customers any differently than it treats its iMac or MacBook customers, or to  
15 charge its iPhone customers a 30% mark-up for any and all software they buy for their iPhones.

16 7. But when Apple developed its unique iPhone, Apple took advantage of the heavy  
17 demand for its novel product to equip it with an operating system that foreclosed iPhone  
18 consumers from buying software from any source other than Apple, and Apple then forced those  
19 foreclosed consumers to pay Apple a 30% fee for each and every iPhone app they buy. Stated in  
20 antitrust terminology, Apple improperly exploited its relationships with customers who purchased  
21 Apple's highly desirable and expensive iPhone by locking them in, without their knowledge or  
22 consent, into an aftermarket for iPhone apps that was monopolized by Apple.

23 8. Apple's motive for its anticompetitive conduct was simple: Apple did not want its  
24 iPhone-related revenue stream to end when a consumer bought an iPhone, like it generally does  
25 when consumers purchase iMac and MacBook computers. So Apple concocted and maintained a  
26 plan to continue generating additional revenues over the entire useful life of every iPhone it sold  
27 by cornering the distribution market for iPhone applications and charging consumers an extra 30%  
28 for every app. Through this scheme Apple would profit not only from the sales of tens of millions

1 of iPhones, it would also profit from each and every one of the billions of future apps sales made  
2 to Apple's iPhone customers.

3 9. Apple's anticompetitive scheme has generated enormous supracompetitive profits  
4 for Apple. Apple now offers more than 850,000 apps, and iPhone consumers worldwide have  
5 downloaded apps more than 50 billion times since July 2008. While the majority of iPhone apps  
6 are now free, United States iPhone consumers have been overcharged hundreds of millions of  
7 dollars for paid apps during the Class Period as a result of Apple's anticompetitive conduct.

8 10. That Apple has engaged in unlawful monopolistic behavior with respect to iPhone  
9 apps is perfectly consistent with Apple's attitude towards antitrust compliance generally. A  
10 federal district court judge who observed Apple's attitude towards antitrust compliance during a  
11 recent trial found that Apple had unlawfully fixed e-book prices and concluded that Apple as an  
12 institution simply "does not want to engage in retail price competition" – indeed, "one of its  
13 principal goals was the elimination of all retail price competition," and "it was happy if a result of  
14 that ... was an increases in prices" that "the consumer had to pay."<sup>1</sup>

15 11. That district court further stated that "[t]he record at trial demonstrated a blatant  
16 and aggressive disregard at Apple for the requirements of the law," (Hr'g Tr. 17:1-2) even among  
17 "Apple lawyers and its highest executives," (*id.* at 17:5-6) and concluded that an injunction was  
18 needed to ensure that a "comprehensive and effective" (*id.* at 19:18) antitrust compliance training  
19 program would be undertaken by "each of Apple's officers and directors engaged in whole or in  
20 part in activities relating to the supply of content," including "apps" (*id.* at 13:18-20). "Neither  
21 Mr. [Eddy] Cue," the Apple executive responsible for Apple's App Store, nor "his assigned in-  
22 house counsel, could remember [having] any training on antitrust issues," and "[t]hey and those on  
23 their teams need to understand what the law requires and how to conform their business practices  
24 to the law."<sup>2</sup>

25  
26 <sup>1</sup> Hearing Transcript ("Hr'g Tr.") at 11:4-5, 33:10-13, *U. S. v. Apple Inc.*, No. 12 Civ. 2826  
27 (S.D.N.Y. Aug. 27, 2013).

28 <sup>2</sup> Hr'g Tr. at 18:11-13.

1           12.     Apple’s unlawful monopolization of the iPhone applications aftermarket from July  
2 2007 through the present is a direct reflection of Apple’s goal of “eliminating all retail price  
3 competition” and its culture of disdaining antitrust compliance in order to increase the prices its  
4 customers pay. Through its actions, Apple has unlawfully stifled competition by erecting  
5 impenetrable barriers to entry to would-be distributors of iPhone apps, reduced consumer choice in  
6 what would otherwise be a robust and competitive iPhone software applications marketplace, and  
7 artificially increased prices for iPhone software applications to supracompetitive levels.

8           13.     Apple’s illegal iPhone apps monopoly should be enjoined and dismantled, and  
9 Plaintiffs and the tens of millions of nationwide iPhone consumers they seek to represent should  
10 be reimbursed by Apple for the hundreds of millions of dollars they have been overcharged.

11 **B.     Summary Of Claims**

12           14.     In pursuit and furtherance of its unlawful anticompetitive activities, Apple:  
13 (a) failed to obtain iPhone consumers’ contractual consent to Apple’s monopolization of the  
14 iPhone applications aftermarket, the effect of which was to lock consumers into buying apps only  
15 from Apple and paying Apple’s 30% fee, even if they wished to buy apps elsewhere or pay less;  
16 and (b) failed to obtain iPhone consumers’ contractual consent to having their iPhones “locked” to  
17 prohibit them from using any app that was not approved or sold by Apple, thereby preventing  
18 iPhone purchasers from downloading and using other apps, called “Third Party Apps.”

19           15.     Apple violated Section 2 of the Sherman Act by monopolizing or attempting to  
20 monopolize the software applications aftermarket for iPhones in a manner that harmed  
21 competition and injured iPhone apps consumers by reducing output and consumer choice, and by  
22 increasing prices for iPhone apps to supracompetitive levels.

23           16.     Plaintiffs seek declaratory and injunctive relief, treble and exemplary damages,  
24 costs and attorneys’ fees. As for equitable relief, Plaintiffs seek an order restraining Apple from  
25 selling iPhones that are programmed in any way to prevent or hinder consumers from  
26 downloading Third Party Apps, or minimally, restraining Apple from selling or distributing  
27 iPhones without first obtaining the consumers’ express contractual consent to (a) buying apps only  
28 from Apple and (b) having their iPhones locked to accept only apps purchased from Apple.

1 **THE PARTIES**

2 17. Plaintiff Stephen H. Schwartz is an individual residing in Ardsley, New York who,  
3 in October 2010, purchased an iPhone and paid Apple for iPhone apps during the Class Period.

4 18. Plaintiff Edward W. Hayter is an individual residing in Brooklyn, New York who,  
5 in March 2008, purchased an iPhone and paid Apple for iPhone apps during the Class Period.

6 19. Plaintiff Eric Terrell is an individual residing in Oakland, California who, on or  
7 about June 29, 2007, purchased an iPhone and paid Apple for iPhone apps during the Class Period.

8 20. Plaintiff Robert Pepper is an individual residing in Chicago, Illinois who, on or  
9 about June 29, 2007, purchased an iPhone and paid Apple for iPhone apps during the Class Period.

10 21. Defendant Apple is a California corporation with its principal place of business  
11 located at 1 Infinite Loop, Cupertino, California 95014. Apple regularly conducts and transacts  
12 business in this District, as well as throughout Illinois, New York and elsewhere in the United  
13 States. Apple manufactures, markets, and sells the iPhone, among other electronic devices.

14 **JURISDICTION AND VENUE**

15 22. This Court has federal question jurisdiction pursuant to the Sherman Act, the  
16 Clayton Antitrust Act of 1914, 15 U.S.C. § 15, and pursuant to 28 U.S.C. §§ 1331 and 1337.

17 23. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because  
18 sufficient diversity of citizenship exists between parties in this action, the aggregate amount in  
19 controversy exceeds \$5,000,000, and there are 100 or more members of the proposed class.

20 24. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because some  
21 Plaintiffs purchased iPhones in this District, Apple has its principal place of business in this  
22 District, a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred here,  
23 and Apple is a corporation subject to personal jurisdiction in this District and, therefore, resides  
24 here for venue purposes.

25 25. Each Plaintiff and member of the Class, in order to activate their iPhone, was  
26 required to accept Apple's "iPhone Terms and Conditions" (the "Terms"). The Terms state, in  
27 pertinent part, that "You expressly agree that exclusive jurisdiction for any claim or dispute with  
28 Apple ... resides in the courts in the State of California."

1 **FACTUAL ALLEGATIONS**

2 **A. Apple’s Anticompetitive Conduct**

3 26. In Spring 2007, Apple began a massive advertising campaign to market its new  
4 wireless communication device, the iPhone. The iPhone was advertised as a combined mobile  
5 phone, iPod and “breakthrough” Internet communications device with desktop-class email, an  
6 “industry first” “visual voicemail,” web browsing, maps and searching capability. The iPhone  
7 was, in effect, the world’s first mobile computer. The iPhone shifted the paradigm for  
8 smartphones, and it changed the entire cell phone manufacturing industry.

9 27. Having designed and manufactured a highly advanced and desirable new product,  
10 Apple profited handsomely from selling its revolutionary new handset. The iPhone debuted on  
11 June 29, 2007, and despite its hefty \$499 or \$599 price tag, consumers waited in line to get their  
12 hands on one.<sup>3</sup> Apple has rightfully earned billions of dollars in revenue from selling its iPhones.

13 28. But Apple wanted more. It did not want to limit its revenues to what consumers  
14 were willing to pay for the iPhone itself. Apple wanted a substantial piece of every dollar that  
15 would ever be paid to buy any kind of software for the iPhone at any time anywhere in the world.

16 29. To achieve that end, Apple embarked on a scheme to monopolize the aftermarket  
17 for iPhone applications and to foreclose and protect Apple against any and all competition it might  
18 face in the distribution of iPhone applications. In contrast to the robust competition Apple faces in  
19 the software aftermarket for its desktop and laptop computers, Apple wanted the entire iPhone  
20 software aftermarket for itself. Apple achieved its unlawful goal, through a series of actions.

21 30. Apple at all times retained exclusive control over the design, features and operating  
22 software for the iPhone, known as iOS, which is based on the same technologies that are used in  
23 Apple’s desktop and laptop computers’ operating systems, known as OS X. Although Apple has  
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25 <sup>3</sup> Initially, the 4GB iPhone 2G retailed for \$499 and the 8GB iPhone 2G retailed for \$599.  
26 Apple has since released five other iPhone models, the iPhone 3G, iPhone 3GS, iPhone 4, iPhone  
27 4S and iPhone 5, and it is expected shortly to release its new iPhone 5S. Currently, Apple sells  
28 16GB, 32GB and 64GB versions of the iPhone 5, which range in price from \$199 to \$849, unless  
they are purchased as part of a handset-subsidized voice and data service plan offered by a cell  
phone service provider such as Verizon, Sprint, T-Mobile or AT&T Mobility.

1 always maintained OS X as an “open” system that allows iMac and MacBook consumers to run  
2 software manufactured or sold by any distributor, Apple modified its iOS version to be a “closed”  
3 system by installing “security measures” or “program locks” designed to prevent iPhone  
4 consumers from installing and running apps that were not sold or approved by Apple.

5 31. Apple did not close the iOS system for the purpose of protecting its proprietary  
6 right to own, sell or license iOS. Apple closed the iOS system for the specific purpose, and with  
7 the specific intent, of foreclosing competition from other potential iPhone software manufacturers  
8 and distributors so that Apple could monopolize and derive monopoly profits from the iPhone  
9 apps aftermarket.

10 32. After Apple launched its iPhone 2G in June 2007, Apple enhanced its iPhone-  
11 related revenues either by developing its own apps for ringtones, instant messaging, Internet  
12 access, gaming, entertainment, video and photography or by enabling “approved” third party  
13 manufacturers to develop iPhone apps. Apple always conditioned its “approval” of such apps on  
14 the third party’s agreement to give Apple a share of the third party’s sales proceeds.

15 33. However, because Apple’s OS X and iOS operating systems were based on the  
16 widely available Unix platform and included technologies and services that were based on other  
17 open software systems, Apple’s initial program locks designed to eliminate Third Party Apps  
18 proved ineffective, as clever third party programmers quickly circumvented Apple’s security  
19 measures and made non-Apple approved iPhone apps available for sale on the Internet.

20 34. Almost immediately after the iPhone’s launch unapproved Third Party Apps started  
21 to appear and threatened to compete with Apple in the iPhone apps aftermarket. For example,  
22 Mobile Chat and FlickIM gave iPhone users access to instant messaging programs from which  
23 Apple derived no revenues. Apple responded to these threats by updating its iOS to eliminate  
24 iPhone consumers’ ability to use these Third Party Apps and by warning its iPhone customers that  
25 using Third Party Apps would nullify Apple’s iPhone warranty.

26 35. Apple also faced threatened competition for iPhone ringtones. When a customer  
27 purchased a song for \$1 from the Apple iTunes store, Apple charged the customer an additional 99  
28 cents to convert any portion of that song into a ringtone. A number of competing programmers



1 promptly offered a variety of ringtone programs that enabled iPhone consumers to download both  
2 songs and ringtones for free. Some of these programs allowed customers to use samples of  
3 popular songs lawfully downloaded from Apple's iTunes store as a ringtone. Other programs,  
4 such as I-Toner from Ambrosia Software and iPhone RingToneMaker from Efiko software,  
5 allowed customers to "clip" portions of songs purchased by them from iTunes for use as ringtones.

6 36. Since many of these programs used songs downloaded from iTunes, Apple initially  
7 sought to block the use of those songs as ringtones by updating the iTunes software to install  
8 program locks that would interfere with such use. However, those efforts were all quickly  
9 defeated by third party programmers, sometimes within hours of the release of the update. So  
10 Apple again responded to these threats by updating its iOS to eliminate iPhone consumers' ability  
11 to use these Third Party Apps and by voiding the warranties of iPhone customers who used them.

12 37. Ultimately, Apple eliminated the threat of competition from unapproved apps  
13 developers by conceiving and implementing the App Store in order to become the exclusive  
14 distributor of iPhone apps, and by thereafter rigorously enforcing and maintaining its monopoly.

15 38. Apple laid the groundwork for its App Store in March 2008, when Apple released a  
16 "software development kit" ("SDK") for the stated purpose of enabling independent software  
17 developers to design applications for use on the iPhone. For an annual fee of \$99, the SDK allows  
18 developers to supply apps to Apple for distribution through Apple's App Store.

19 39. Apple opened its App Store in July 2008. Apple owns 100% of the App Store,  
20 staffs the App Store with Apple employees or agents, and controls all of the App Store sales,  
21 revenue collections and other business operations.

22 40. Apple informs its prospective apps developers (though not its iPhone consumers)  
23 that the developers' apps cannot be sold anywhere except in the App Store. Apple also informs its  
24 developers (but not its iPhone customers) that Apple will charge iPhone consumers a 30%  
25 commission for any non-free app sold in the App Store.

26 41. Consequently, the prices for apps available in Apple's App Store include the  
27 developers' price plus Apple's 30% mark-up. When an iPhone customer buys an app from Apple,  
28 it pays the full purchase price, including Apple's 30% commission, directly to Apple. Apple takes

1 its 30% commission off the top and then remits the balance, or 70% of the purchase price, to the  
2 developer. Apple sells the apps (or, more recently, licenses for the apps) directly to the customer,  
3 collects the entire purchase price, and pays the developers after the sale. The developers at no  
4 time directly sell the apps or licenses to iPhone customers or collect payments from the customers.

5 42. On information and belief, throughout the Class Period, Apple threatened to  
6 terminate any developer that made its apps available on its own website or through a distributor  
7 other than Apple, and Apple continued to discourage iPhone customers from downloading Third  
8 Party Apps by telling customers that Apple would void and refuse to honor the iPhone warranty of  
9 any customer who downloaded a Third Party App.

10 43. By designing the iPhone iOS as a closed system, installing security measures and  
11 program locks to prevent Third Party App downloads, establishing the App Store as the exclusive  
12 worldwide distributor of iPhone apps, and enforcing the App Store's exclusive distributor status  
13 by terminating apps developers who sold apps in competition with Apple and voiding the  
14 warranties of iPhone consumers who bought competing apps, Apple has since June 2007 willfully  
15 acquired and maintained a monopoly in the iPhone apps aftermarket and has positioned itself as  
16 the one and only distributor of iPhone apps on the entire planet. Apple has no competition in the  
17 multi-billion dollar iPhone apps aftermarket, domestically or abroad, whatsoever.

18 44. Prior to Plaintiffs' purchases of their iPhones, Apple had not even disclosed – much  
19 less obtained the Plaintiffs' contractual consent to – either (a) Apple's monopolization of and  
20 collection of monopoly profits from the iPhone applications aftermarket, or (b) having their  
21 iPhones locked to prohibit Plaintiffs from using any app that was not approved or sold by Apple.  
22 Absent obtaining Plaintiffs' contractual consent, Apple's monopolization of the iPhone  
23 applications aftermarket constitutes an antitrust violation under Section 2 of the Sherman Act.

24 **B. Plaintiffs' Injuries**

25 45. Plaintiffs have been injured by Apple's anticompetitive conduct because they paid  
26 more for their iPhone apps than they would have paid in a competitive market. Plaintiffs have  
27 also been injured because Apple's unlawful monopolization of the iPhone apps aftermarket has  
28 extinguished Plaintiffs' freedom of choosing between Apple's App Store and lower cost market

1 alternatives that would have been available had Apple not monopolized the market. Plaintiffs  
2 have also been injured because Apple's establishment and maintenance of monopoly pricing has  
3 caused a reduction in the output and supply of iPhone apps, which would have been more  
4 abundantly available in a competitive market.

5 46. That Plaintiffs have paid supracompetitive prices is obvious for several reasons.  
6 Under basic and fundamental economic principles, the absence of competition leads to increased  
7 prices, and increased competition leads to lower prices. In a competitive market, an economically  
8 rational manufacturer or distributor will sell its products at prices equal to their cost plus a  
9 reasonable marginal rate of return (profit) dictated by the market environment. But an  
10 economically rational monopolist that is unconstrained by the downward pricing pressures of a  
11 competitive market will charge the highest price it can in light of the demand for its products; the  
12 greater the demand, the higher the profits. Indeed, it is hornbook economics that commercial  
13 entities strive to acquire and maintain monopoly power precisely because they want to reap the  
14 monopoly profits that market domination typically generates.

15 47. Apple and the iPhone apps aftermarket are not immune from these presumptively  
16 valid economic principles. Indeed, as shown above, the generation of monopoly profits was  
17 exactly why Apple chose to monopolize the iPhone apps aftermarket.

18 48. That Apple's 30% fee is a monopoly price is also obvious from Apple's cost  
19 structure. Each developer's \$99 annual fee covers most or all of Apple's costs of reviewing that  
20 developer's apps and the related proportional costs of operating and maintaining the App Store,  
21 even if the developer submits several apps annually. As to successive sales of that developer's  
22 apps, therefore, Apple's 30% fee constitutes virtually pure profit for Apple. In a competitive  
23 environment, where developers could sell their apps on their own websites without charging  
24 Apple's 30% mark-up and discount retailers could obtain volume discounts and sell for far less  
25 than a 30% profit, Apple would be under considerable pressure to substantially lower its 30%  
26 profit margin because, otherwise, its App Store would be priced out of the market and lose  
27 substantial market share. In a truly competitive iPhone apps distribution environment, Apple's  
28 30% margin would be simply unsustainable.

1           49.     A truly competitive iPhone apps distribution market would also give Plaintiffs and  
2 other iPhone customers the freedom to choose between Apple's high-priced App Store and less  
3 costly alternatives, such as buying direct from apps developers or volume-driven and other  
4 software discounters. Plaintiffs' freedom to choose between these market alternatives has been  
5 eliminated by Apple's monopolistic conduct, and Plaintiffs have been forced to pay  
6 supracompetitive prices to Apple as a result.

7           50.     The lack of a truly competitive environment has also led to reduced output and  
8 supply of iPhone apps because developers are barred from selling apps at prices below Apple's  
9 inflated 30% marked-up price. Under basic economic principles, lower prices would generate  
10 both increased demand and increased supply to meet that demand in the iPhone apps aftermarket  
11 as a whole. Apple's unlawful monopoly naturally restricts both supply and demand.

12 **C.     Injury To Competition**

13           51.     The same conditions – the existence of supracompetitive pricing, reduced consumer  
14 choice among market alternatives, and reduced output and supply – demonstrate that Apple's  
15 monopolistic conduct has likewise injured competition generally in the iPhone apps aftermarket.

16           52.     The iPhone apps market is not remotely like the genuinely competitive personal  
17 computer software market, where computer hardware manufacturers – including Apple itself – do  
18 not control or have a financial stake in every sale of software that is downloaded on the computers  
19 they make. In the aftermarkets for desktop and laptop computer software, the software developers  
20 can offer products directly to consumers or through discounters without having to gain the  
21 computer manufacturer's approval and without the software customers paying the manufacturer a  
22 penny. Consequently, there is an abundant supply of competing software applications, and  
23 consumers can shop among multiple vendors without paying above market prices.

24           53.     The iPhone apps market lacks all of these indicia of competitiveness. Because  
25 Apple has unlawfully cornered the nationwide (and, indeed, worldwide) distribution market for  
26 iPhone apps, the iPhone apps aftermarket has been harmed generally by Apple's anticompetitive  
27 conduct, which is precisely the type of harm the antitrust laws were enacted to remedy.

28

**CLASS ALLEGATIONS**

1  
2 54. Plaintiffs bring this action as a class action on behalf of themselves and all others  
3 similarly situated for the purpose of asserting claims alleged in this Complaint on a common basis.  
4 Plaintiffs' proposed class (the "Class") is defined under Federal Rules of Civil Procedure 23(b)(2)  
5 and (3), and Plaintiffs propose to act as representatives of the following Class comprised of:

6 **All persons in the United States, exclusive of Apple and its employees, agents**  
7 **and affiliates, and the Court and its employees, who purchased an iPhone**  
8 **application or application license from Apple for use on an iPhone at any time**  
9 **from December 29, 2007 through the present.**

10 55. The Class for whose benefit this action is brought is so numerous that joinder of all  
11 members is impractical.

12 56. Plaintiffs are unable to state the exact number of Class members without discovery  
13 of Apple's records but, on information and belief, state that billions of iPhone apps or licenses for  
14 apps were purchased during the Class Period.

15 57. There are questions of law and fact common to the Class which predominate over  
16 any questions affecting only individual members including, among others, (1) whether Apple  
17 violated Section 2 of the Sherman Act by monopolizing or attempting to monopolize the  
18 aftermarket for iPhone software applications; (2) whether Apple's violation caused harm to the  
19 relevant market generally and to Plaintiffs and the Class specifically; and (3) whether Apple  
20 should be enjoined from continuing its monopolistic practices and from continuing to monopolize  
21 and charge monopoly prices in the iPhone apps aftermarket without first obtaining iPhone  
22 consumers' contractual consent.

23 58. The common questions of law and fact are identical for each and every member of  
24 the Class.

25 59. Plaintiffs are members of the Class they seek to represent, and their claims arise  
26 from the same factual and legal bases as those of the Class; they assert the same legal theories as  
27 do all Class members.

28 60. Plaintiffs will thoroughly and adequately protect the interests of the Class, having  
obtained qualified and competent legal counsel to represent them and those similarly situated.



1 Apple for the same reasons and in the same manner that Apple has foreclosed such competition for  
2 iPhone Third Party Apps generally.

3 67. The geographic scope of the iPhone applications aftermarket is national.

4 68. The aftermarket for iPhone applications includes the market for distributing  
5 software applications that can be downloaded on the iPhone for managing such functions as  
6 ringtones, instant messaging, photographic and video capability, gaming and other entertainment,  
7 Internet applications, and any other downloadable software-driven functions.

8 69. The applications aftermarket came into existence immediately upon the sale of the  
9 first iPhones because: (a) the applications aftermarket is derivative of the iPhone; and (b) no  
10 Plaintiff or member of the Class agreed to any restrictions on their ability to access a competitive  
11 iPhone applications aftermarket.

12 **COUNT I**  
13 **Unlawful Monopolization Of The Applications Aftermarket**  
14 **In Violation Of Section 2 Of The Sherman Act**  
15 **(Seeking Damages And Equitable Relief)**

16 70. Plaintiffs reallege and incorporate paragraphs 1 through 69 above as if set forth  
17 fully herein.

18 71. Apple has acquired monopoly power in the iPhone applications aftermarket  
19 through unlawful, willful acquisition and maintenance of that power. Specifically, Apple has  
20 unlawfully acquired monopoly power by: (a) designing the iPhone iOS as a closed system and  
21 installing security measures and program locks for the specific purpose of preventing Third Party  
22 App downloads; (b) establishing the App Store as the exclusive worldwide distributor of iPhone  
23 apps; and (c) enforcing the App Store's monopoly status by terminating or threatening to  
24 terminate apps developers who sell apps in competition with Apple and by voiding the warranties  
25 of iPhone consumers who buy competing apps.

26 72. Apple's unlawful acquisition of monopoly power has reduced output and  
27 competition and resulted in increased, supracompetitive prices for products sold in the iPhone  
28 applications aftermarket and, thus, harms competition generally in that market.







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DATED: September 5, 2013

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