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7

8  
9 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

10  
11 GABRIELA ZARAGOZA and JOSEPH COYLE,  
individually and on behalf of all others similarly  
12 situated,

13 Plaintiffs,

14  
15 v.

16 APPLE INC.,

17 Defendant.  
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Case No.:

**CLASS ACTION COMPLAINT**

1. **Violation of California Civil Code §1750, et seq.**
2. **Violation of California Business and Professions Code § 17200, et seq.**
3. **Violation of California Business and Professions Code § 17500, et seq.**
4. **Breach of Express Warranty**
5. **Breach of Implied Warranty**
6. **Common Law Fraud**
7. **Quasi-Contract/Restitution**
8. **Violation of New York General Business Law § 349**
9. **Violation of New York General Business Law § 350**

**JURY TRIAL DEMANDED**

1 Plaintiffs Gabriela Zaragoza (“Plaintiff Zaragoza”) and Joseph Coyle (“Plaintiff Coyle”)  
2 (collectively, “Plaintiffs”), by and through their counsel, bring this Class Action Complaint against  
3 Defendant Apple Inc. (“Apple” or “Defendant”), on behalf of themselves and all others similarly  
4 situated, and allege upon personal knowledge as to their own actions, and upon information and belief  
5 as to counsel’s investigations and all other matters, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this consumer protection and false advertising class action lawsuit  
8 against Apple, based on its false and misleading business practices with respect to the marketing and  
9 sale of television show (“TV show(s)”) season bundles offered on Apple’s iTunes store on the Apple  
10 TV 4 and 4k devices (“Apple TVs”).<sup>1</sup>

11 2. Through Apple’s iTunes store, consumers can browse a variety of TV shows on their  
12 Apple TVs. Each TV show offered on Apple’s iTunes store has its own home page, providing  
13 consumers with general information regarding their selected TV show.

14 3. On the home page for each TV show on iTunes, Apple offers consumers three  
15 purchasing options<sup>2</sup> at set prices. First, consumers may purchase episodes individually. Second,  
16 consumers can purchase completed seasons (“Buy Season”). Third, if the TV show’s season has  
17 remaining episodes, a season pass can be purchased, offering all current and future episodes for the  
18 season (“Season Pass”) (collectively, with “Buy Season”, the “Season Features”).

19 4. On each home page, Apple conspicuously represents the number of episodes available  
20 in the season. However, unbeknownst to consumers, many of the “episodes” offered by Apple are not  
21 standard, plot-based episodes of the TV show, but promotional clips.<sup>3</sup>

22 5. Consumers purchase the Season Features, reasonably believing that each episode is a  
23 standard, plot-based episode and that, by purchasing the Season Features, they are receiving a  
24 significant discount over purchasing each episode individually. However, because many of the  
25 episodes in the Season Features are promotional clips, consumers are not receiving the number of

26 \_\_\_\_\_  
27 <sup>1</sup> This action only concerns TV shows sold on Apple TV 4 and 4k.

28 <sup>2</sup> Depicted *infra* in paragraphs 20, 24, and 28.

<sup>3</sup> *Id.*



1 Apple's iTunes store. Prior to purchasing the Season Pass, Mrs. Zaragoza saw the home screen for  
2 "Genius: Einstein", which represented that Mrs. Zaragoza could purchase a Season Pass for the first  
3 season for a total price of \$24.99. According to the home screen for the TV show, the price for a  
4 single episode of "Genius: Einstein" was \$2.99. Furthermore, at the time of Mrs. Zaragoza's purchase,  
5 Apple represented that Season 1 had 13 episodes so far. For this reason, Mrs. Zaragoza believed that  
6 she would receive 13 standard, plot-based episodes, and that purchasing the Season Pass would result  
7 in a significant discount over purchasing each episode separately. However, only 6 out of 13  
8 "episodes" were standard plot-based episodes. The remaining 7 "episodes" were promotional clips.  
9 Mrs. Zaragoza would not have purchased the Season Pass, or would have significantly less for it, had  
10 she known that 6 out of 13 "episodes" represented on the "Genius: Einstein" home screen were  
11 promotional clips. Mrs. Zaragoza therefore suffered injury in fact and lost money as a result of  
12 Defendant's misleading, false, unfair, and fraudulent practices, as described herein.

13 13. Plaintiff Joseph Coyle is a citizen of New York, residing in New York City. On May  
14 20, 2018, Mr. Coyle purchased a Season Pass for Season 1 of the TV show "Killing Eve" from  
15 Apple's iTunes store. Prior to purchasing the Season Pass, Mr. Coyle saw the home screen for "Killing  
16 Eve", which represented that Mr. Coyle could purchase a Season Pass for the season for a total price  
17 of \$19.99. According to the home screen for the TV show, the price for a single episode of "Killing  
18 Eve" was \$2.99. Furthermore, at the time of Mr. Coyle's purchase, Apple represented that Season 1  
19 had 11 episodes so far. For this reason, Mr. Coyle believed that he would receive 11 standard, plot-  
20 based episodes, and that purchasing the Season Pass would result in a significant discount over  
21 purchasing each episode separately. However, only 5 out of 11 "episodes" were standard plot-based  
22 episodes. The remaining 6 "episodes" were promotional clips. Mr. Coyle would not have purchased  
23 the Season Pass, or would have significantly less for it, had he known that 6 out of 11 "episodes"  
24 represented on the "Killing Eve" home screen were promotional clips. Mr. Coyle therefore suffered  
25 injury in fact and lost money as a result of Defendant's misleading, false, unfair, and fraudulent  
26 practices, as described herein.

27 14. Defendant Apple Inc. is incorporated in California with its principal place of business  
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1 in Cupertino, California. Defendant, directly and/or through its agents, markets, advertises, and sells  
2 the Season Features nationwide, including in California and New York, throughout the class period.  
3 Defendant has maintained substantial sales in this District. Based on information and belief,  
4 Defendant maintains a portion of its marketing, including senior marketing managers in addition to  
5 the design and marketing of the Season Features, in California.

## 6 FACTUAL ALLEGATIONS

### 7 **I. Defendant's False And Misleading Advertising Of The TV Shows**

8 15. The Apple TV 4 and 4K are multi-media, entertainment devices which offer a wide-  
9 range of media applications. The Apple TVs broadcast the media applications onto users' televisions.

10 16. Through the Apple TVs, consumers can browse through Apple's iTunes multi-media  
11 store ("iTunes"), which offers users the ability to purchase, *inter alia*, movies, music, and television  
12 shows.

13 17. Each TV show offered on iTunes has its own home page, providing consumers with  
14 general information regarding their selected TV show.

15 18. When browsing the home pages for TV shows available on the iTunes store,  
16 consumers are provided three purchasing options. First, consumers can purchase individual episodes  
17 at a certain set price per episode (e.g., \$2.99). Second, if a TV show offers a completed season with  
18 no episodes awaiting release, consumers may use the "Buy Season" feature and purchase the entire  
19 season for a set total price. Third, if the season has released some episodes but is incomplete,  
20 consumers may purchase a "Season Pass," giving them access to all current and future episodes for  
21 the season at a set total price.

22 19. At all relevant times, Apple conspicuously represents the number of total episodes  
23 included in the Season Features.

1           20.     For example, Apple represents that the completed first season of “Genius: Einstein”  
2 has 22 episodes:

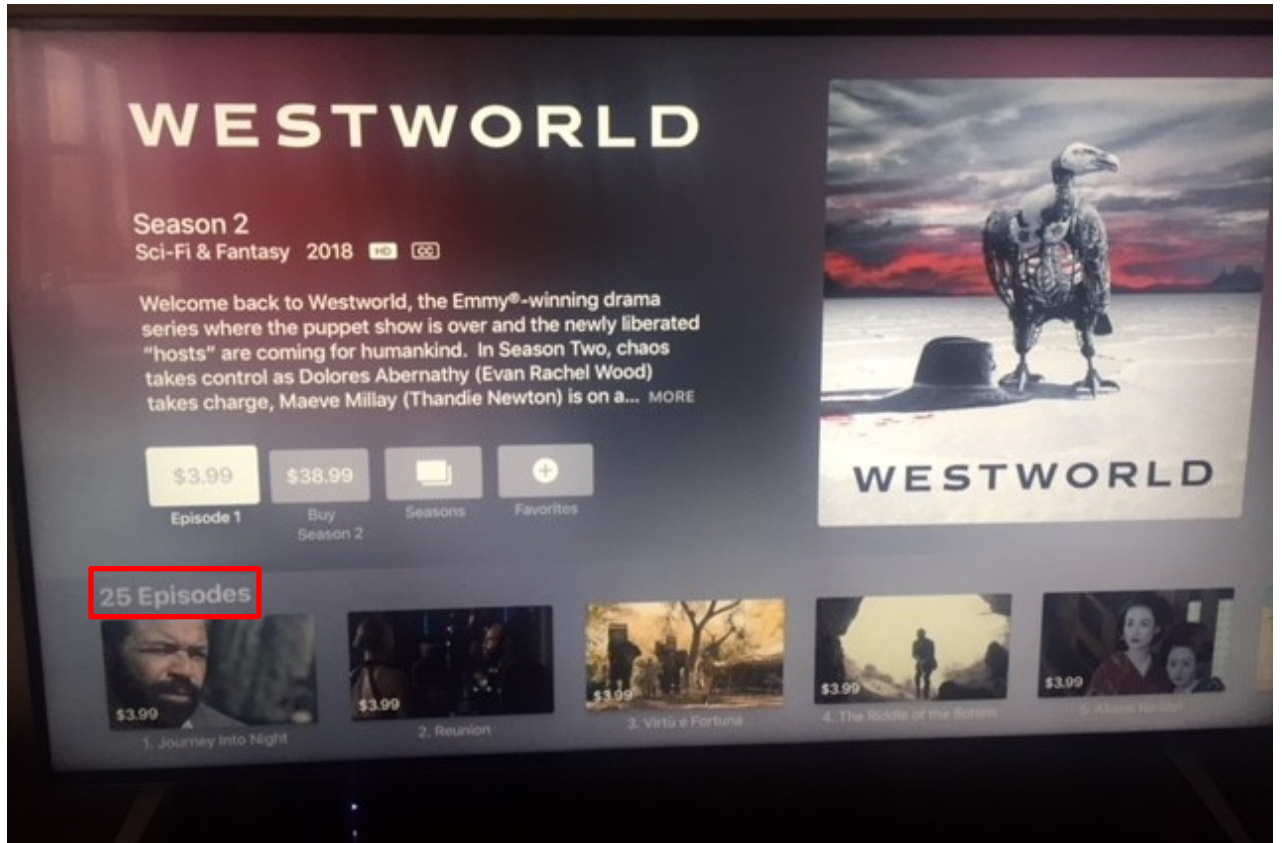


15  
16           21.     Therefore, the Buy Season feature allows consumers to purchase “22 episodes” of  
17 “Genius: Einstein” for a set total price: \$14.99.

18           22.     A reasonable consumer purchasing the Buy Season feature for the first season of  
19 “Genius: Einstein” would believe he or she is receiving 22 standard, plot-based episodes of the show.

20           23.     However, contrary to the representations made to Plaintiffs and other consumers, the  
21 first season of “Genius: Einstein” only contains 10 standard, plot-based episodes. The remaining 12  
22 episodes are promotional clips.

23           24.     As with “Genius: Einstein”, the same false and deceptive practice occurs with Apple’s  
24 representation that season two of “Westworld” has 25 episodes:



25. As shown above, Apple represents that consumers may use the Buy Season feature to purchase the entire 25-episode season of “Westworld” for a set total price: \$38.99.

26. A reasonable consumer purchasing the Buy Season feature for the second season of “Westworld” would believe he or she is receiving 25 standard, plot-based episodes of the show.

27. However, the second season of “Westworld” only has 10 standard, plot-based episodes. The remaining 15 “episodes” are promotional clips.

28. These misrepresentations are consistent with Apple’s Season Pass feature. For example, Apple represents the Season Pass for Season 6 of “The Americans” will provide consumers with 11 episodes:





29. As shown above, the Season Pass feature allows consumers to purchase 11 episodes of season six of “The Americans” for a set total price: \$24.99.

30. However, the Season Pass only provides consumers with 10 standard, plot-based episodes.

31. Apple is thereby deceiving consumers who use the Season Features by providing them with fewer standard, plot-based episodes than promised.

32. Consequently, consumers who utilize the Season Features are not receiving the benefit of the bargain and have been injured as a result of Apple’s false and misleading practices.

## II. Plaintiffs And Other Consumers Have Been Deceived And Harmed

33. Plaintiffs and other consumers purchased Season Features from the iTunes store, reasonably relying on Apple’s representations that Plaintiffs and other consumers will receive a certain number of “episodes.”



1           34.     Plaintiffs and other consumers reasonably interpret “episodes” to mean standard, plot-  
2 based episodes of a show.

3           35.     Therefore, when Apple represents that a consumer will receive a certain number of  
4 episodes, Plaintiffs and other consumers reasonably believe they will receive that many standard,  
5 plot-based episodes of a show.

6           36.     Because the TV show seasons do not contain the full number of episodes as  
7 represented on the iTunes home screens for the respective shows, as reasonably expected by Plaintiffs  
8 and other consumers, Apple’s uniform practice regarding the marketing and sale of the Season  
9 Features was and continues to be misleading and deceptive.

10          37.     Had Plaintiffs and other consumers known that they would receive fewer standard,  
11 plot-based episodes than Apple represented they would receive in purchasing the Season Features,  
12 they would not have paid for the Season Features, or would have paid significantly less for them.

13          38.     Therefore, Plaintiffs and members of the Classes have been deceived by Apple’s  
14 representations and have suffered injury in fact as a result of Apple’s improper and deceptive  
15 practices.

16          39.     Because Apple and/or its agents marketed and designed the iTunes store, the Season  
17 Features, and the information regarding the episodes, Apple knew or should have known that the  
18 representations regarding the number of episodes in a season were false and misleading.

19          40.     Apple knew or should have known that Plaintiffs and other members of the Classes,  
20 in purchasing the Season Features, would rely on Apple’s representation regarding the number of  
21 episodes in a season to mean that each episode was a standard, plot-based episode, not a promotional  
22 clip.

23          41.     Each class member has been exposed to the same or substantially similar deceptive  
24 practice, as at all relevant times (1) Apple uniformly represents that its Season Features offer a certain  
25 number of episodes; and (2) subsequent to class members’ purchases, Apple provides the class  
26 members with fewer episodes than previously represented.

27          42.     Despite being deceived by Apple, Plaintiffs wish and are likely to continue purchasing  
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1 Apple's iTunes Season Features, but only if Apple accurately represents the number of episodes to  
2 be included by the Season Features. Although Plaintiffs regularly visit Apple's iTunes store, where  
3 Apple's Season Features are sold, because Plaintiffs were deceived in the past by Apple, absent an  
4 injunction, they will be unable to rely with confidence on Apple's representations in the future and  
5 will therefore abstain from purchasing Season Features, even though they would like to purchase  
6 them. In addition, members of the proposed classes run the risk of continuing to purchase the Season  
7 Features under the assumption that the number of episodes promised by the Season Features would  
8 actually be supplied subsequent to purchase. Until Apple redesigns its iTunes store, or Apple is  
9 enjoined from making further false and misleading representations, Plaintiffs and other consumers  
10 will continue to bear this ongoing injury.

11 43. As a result of its misleading business practice, and the harm caused to Plaintiffs and  
12 other consumers, Apple should be required to pay for all damages caused to consumers, including  
13 Plaintiffs. Furthermore, Apple should be enjoined from engaging in these deceptive practices.

14 **CLASS ACTION ALLEGATIONS**

15 44. Plaintiffs bring this case as a class action that may be properly maintained under  
16 Federal Rule of Civil Procedure 23 on behalf of themselves and all persons in the United States who,  
17 within the relevant statute of limitations periods, purchased for personal, family, or household,  
18 purposes any of the Season Features on Apple TV 4 or 4k, for TV shows containing fewer episodes  
19 than represented at the time of purchase ("Nationwide Class").

20 45. Plaintiff Zaragoza also seeks to represent a subclass defined as all California citizens  
21 who, within the relevant statute of limitations periods, purchased any of the Season Features on Apple  
22 TV 4 or 4k, for TV shows containing fewer episodes than represented at the time of purchase  
23 ("California Subclass").

24 46. Plaintiff Zaragoza also seeks to represent a subclass defined as all California citizens  
25 who, within the relevant statute of limitations periods, purchased, for personal, family, or household,  
26 purposes any of the Season Features on Apple TV 4 or 4k, for TV shows containing fewer episodes  
27 than represented at the time of purchase ("California Consumer Subclass").

1           47. Plaintiff Coyle also seeks to represent a subclass defined as all New York citizens who,  
2 within the relevant statute of limitations periods, purchased any of the Season Features on Apple TV  
3 4 or 4k, for TV shows containing fewer episodes than represented at the time of purchase (“New York  
4 Subclass”).

5           48. Excluded from the Classes are Defendant, the officers and directors of the Defendant  
6 at all relevant times, members of its immediate families and its legal representatives, heirs, successors  
7 or assigns and any entity in which Defendant has or had a controlling interest. Any judge and/or  
8 magistrate judge to whom this action is assigned, and any members of such judges’ staffs and  
9 immediate families are also excluded from the Classes. Also excluded from the Classes are persons  
10 or entities that purchased the Season Features for sole purposes of resale.

11           49. Plaintiffs hereby reserve the right to amend or modify the class definitions with greater  
12 specificity or division after having had an opportunity to conduct discovery.

13           50. Plaintiff Zaragoza is a member of the Nationwide Class, California Subclass, and  
14 California Consumer Subclass.

15           51. Plaintiff Coyle is a member of the Nationwide Class and the New York Subclass.

16           52. Numerosity: According to information and belief, Defendant has sold tens of  
17 thousands of Season Features. The Season Features are sold online via Apple’s iTunes store. Further,  
18 members of the Classes are so numerous that their individual joinder herein is impractical. While the  
19 precise number of class members and their identities are unknown to Plaintiffs at this time, the number  
20 may be determined through discovery.

21           53. Common Questions Predominate: Common questions of law and fact exist as to all  
22 members of the Classes and predominate over questions affecting only individual class members.  
23 Common legal and factual questions include, but are not limited to, whether Apple’s representations  
24 regarding the number of episodes included in its Season Features are false and misleading, and  
25 therefore violate various consumer protection statutes and common laws.

26           54. Typicality: Plaintiffs’ claims are typical of the claims of the Classes they seek to  
27 represent in that Plaintiffs and members of the Classes were all exposed to the same or substantially  
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1 similar false and misleading representations, purchased the Season Features relying on the uniform  
2 false and misleading representations, and suffered losses as a result of such purchases.

3         55.     Adequacy: Plaintiffs are adequate representatives of the Classes because their  
4 interests do not conflict with the interests of the members of the Classes they seek to represent, they  
5 have retained competent counsel experienced in prosecuting class actions, and they intend to  
6 prosecute this action vigorously. The interests of the members of the Classes will be fairly and  
7 adequately protected by the Plaintiffs and their counsel.

8         56.     Superiority: A class action is superior to other available means for the fair and efficient  
9 adjudication of the claims of the members of the Classes. The size of each claim is too small to pursue  
10 individually, and each individual Class member will lack the resources to undergo the burden and  
11 expense of individual prosecution of the complex and extensive litigation necessary to establish  
12 Defendant's liability. Individualized litigation increases the delay and expense to all parties and  
13 multiplies the burden on the judicial system presented by the complex legal and factual issues of this  
14 case. Individualized litigation also presents a potential for inconsistent or contradictory judgments.  
15 The class action mechanism is designed to remedy harms like this one that are too small in value,  
16 although not insignificant, to file individual lawsuits for.

17         57.     This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure  
18 23(b)(2) because Defendant has acted or refused to act on grounds that are generally applicable to the  
19 class members, thereby making final injunctive relief appropriate with respect to all Classes.

20         58.     This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure  
21 23(b)(3) because the questions of law and fact common to the members of the Classes predominate  
22 over any questions that affect only individual members, and because the class action mechanism is  
23 superior to other available methods for the fair and efficient adjudication of the controversy.

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**FIRST CLAIM FOR RELIEF**  
**Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
**California Civil Code §§ 1750, et seq.**  
***(for the Nationwide Class; in the alternative, for the California Consumer Subclass)***

59. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth herein.

60. Plaintiffs bring this claim individually and on behalf of the Nationwide Class, or in the alternative, for the California Consumer Subclass, against Defendant.

61. The Season Features are “services” pursuant to California Civil Code (“Cal. Civ. Code”) § 1761(b), and the purchases of the Season Features by Plaintiffs and members of the Nationwide and California Consumer Subclass constitute “transactions” pursuant to Cal. Civ. Code § 1761(e). Further, Plaintiffs and members of the proposed Nationwide and California Consumer Subclass are consumers within the meaning of Cal. Civ. Code § 1761(d).

62. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . .” By representing that the Season Features offer a specific number of episodes with consumers’ purchase, Apple represents that the Season Features have a specific characteristic or quantity of episodes. However, the Season Features provide fewer episodes than represented. Apple also represents that the episodes included in the Season Features are standard, plot-based episodes and thereby are of a particular characteristic. However, many of the episodes included in the Season Features are not standard, plot-based episodes but promotional clips. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

63. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” By representing that the Season Features offer a specific number of episodes with consumers’ purchase, Apple represents that its services of are a particular standard or quality. Specifically, Apple represents that the Season Features have the standard or quality of containing the same number of episodes as represented to consumers prior to purchase. However, the Season Features provide fewer episodes than represented. Apple also represents that the episodes included in the Season Features are standard, plot-based episodes and thereby are of a particular standard, quality, and grade. However, many of the episodes included in

1 the Season Features are not standard, plot-based episodes but promotional clips. Therefore, Defendant has  
2 violated section 1770(a)(7) of the CLRA.

3 64. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not  
4 to sell them as advertised.” Apple represents that the Season Features offer a specific number of episodes  
5 with consumers’ purchase. However, the Season Features provide fewer episodes than represented. By  
6 intentionally providing fewer episodes than represented to consumers, Apple has violated section  
7 1770(a)(9) of the CLRA.

8 65. At all relevant times, Apple knew or reasonably should have known that the Season  
9 Features did not supply all the episodes originally promised, and that Plaintiffs and other members of  
10 the Nationwide and California Consumer Subclass would reasonably and justifiably rely on the  
11 Season Features’ representations as to the number of episodes in purchasing the Season Features.

12 66. Plaintiffs and members of the Nationwide and California Consumer Subclass  
13 reasonably and justifiably relied on Apple’s misleading and fraudulent representations about the  
14 Season Features when purchasing them. Moreover, based on the very materiality of Apple’s  
15 fraudulent and misleading conduct, reliance on such conduct as a material reason for the decision to  
16 purchase the Season Features may be presumed or inferred for Plaintiffs and members of the  
17 Nationwide and California Consumer Subclass.

18 67. Plaintiffs and members of the Nationwide and California Consumer Subclass suffered  
19 injuries caused by Apple because they would not have purchased the Season Features, or would have  
20 paid significantly less for the Season Features, had they known that Apple’s conduct was misleading  
21 and fraudulent.

22 68. Under Cal. Civ. Code § 1780(a), Plaintiffs and members of the Nationwide and  
23 California Consumer Subclass seek damages, restitution, declaratory and injunctive relief, and all  
24 other remedies the Court deems appropriate for Apple’s violations of the CLRA.

25 69. Pursuant to Cal. Civ. Code § 1782, on July 31, 2018, counsel for Plaintiffs mailed a  
26 notice and demand letter by certified mail, with return receipt requested, to Defendant.<sup>4</sup> Defendant

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27 <sup>4</sup> See **Exhibit “A”**.

1 received the notice and demand letter on August 2, 2018.<sup>5</sup> Because Defendant has failed to fully  
2 rectify or remedy the damages caused within 30 days after receipt of the notice and demand letter,  
3 Plaintiffs timely filed the Class Action Complaint for a claim for damages under the CLRA.

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5 **SECOND CLAIM FOR RELIEF**  
6 **Violation of California’s Unfair Competition Law (“UCL”),**  
7 **California Business & Professions Code §§ 17200, et seq.**  
8 ***(for the Nationwide Class; in the alternative, for the California Subclass)***

9 70. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth  
10 herein.

11 71. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
12 Nationwide Class, or in the alternative, the California Subclass against Defendant.

13 72. UCL § 17200 provides, in pertinent part, that “unfair competition shall mean and  
14 include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
15 misleading advertising . . . .” California Business and Professional Code (“Cal. Bus. & Prof. Code”)  
16 §§ 17200.

17 73. Under the UCL, a business act or practice is “unlawful” if it violates any established  
18 state or federal law.

19 74. Apple’s false and misleading representations surrounding the number of episodes  
20 offered by the Season Features therefore was and continues to be “unlawful” because it violates the  
21 CLRA, California’s False Advertising Law (“FAL”), and other applicable laws as described herein.

22 75. As a result of Apple’s unlawful business acts and practices, Apple has and continues  
23 to unlawfully obtain money from Plaintiffs and members of both the Nationwide Class and California  
24 Subclass.

25 76. Under the UCL, a business act or practice is “unfair” if the defendant’s conduct is  
26 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,  
27 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity  
28 of the harm to the alleged victims.

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<sup>5</sup> *Id.*



1           77.     Apple’s conduct was and continues to be of no benefit to purchasers of the Season  
2 Features, as it is misleading, unfair, unlawful, and is injurious to consumers who rely on the  
3 representations about the Season Features but do not get what they were expecting. Deceiving  
4 consumers about the contents of the Season Features is of no benefit to the consumers. Therefore,  
5 Defendant’s conduct was and continues to be “unfair.”

6           78.     As a result of Apple’s unfair business acts and practices, Apple has and continues to  
7 unfairly obtain money from Plaintiff, and members of both the Nationwide Class and California  
8 Subclass.

9           79.     Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is  
10 likely to deceive members of the consuming public.

11           80.     Apple’s conduct here was and continues to be fraudulent because it has and will  
12 continue to likely deceive consumers into believing that the Season Features would provide the same  
13 number of episodes as represented prior to purchase, when they do not. Because Apple misled and  
14 will likely continue to mislead Plaintiffs and members of both the Nationwide Class and California  
15 Subclass, Apple’s conduct was “fraudulent.”

16           81.     As a result of Apple’s fraudulent business acts and practices, Apple has and continues  
17 to fraudulently obtain money from Plaintiffs, and members of both the Nationwide Class and  
18 California Subclass.

19           82.     Plaintiffs request that this Court cause Apple to restore this unlawfully, unfairly, and  
20 fraudulently obtained money to Plaintiffs, and members of both the Nationwide Class and California  
21 Subclass, to disgorge the profits Apple made on these transactions, and to enjoin Apple from violating  
22 the UCL or violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff,  
23 and members of both the Nationwide Class and California Subclass may be irreparably harmed and/or  
24 denied an effective and complete remedy if such an order is not granted.

25           83.     Monetary damages are an inadequate remedy at law because injunctive relief is  
26 necessary to deter Defendant from continuing its false and deceptive conduct regarding the Season  
27 Features.

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**THIRD CLAIM FOR RELIEF**  
**Violation of California’s False Advertising Law (“FAL”),**  
**California Business & Professions Code §§ 17500, et seq.**  
*(for the Nationwide Class; in the alternative, for the California Subclass)*

84. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth herein.

85. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class, or in the alternative, for the California Subclass against Apple.

86. California’s FAL makes it “unlawful for any person . . . to make or disseminate or cause to be made or disseminated before the public in . . . any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or . . . services, professional or otherwise . . . or performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code §§ 17500.

87. Apple has represented and continues to represent to the public, including Plaintiffs and members of both the Nationwide Class and California Subclass, that the Season Features contain a specific number of standard episodes. Apple’s representations are false and misleading because the Season Features do not provide consumers with the full number of episodes represented prior to purchase. Because Apple has disseminated false and misleading information regarding their Season Features, and Apple knew or should have known, through the exercise of reasonable care, that the information was and continues to be false and misleading, Apple has violated the FAL and continues to do so.

88. As a result of Apple’s false advertising, Apple has and continues to fraudulently obtain money from Plaintiffs and members of both the Nationwide Class and California Subclass.

89. Plaintiffs request that this Court cause Apple to restore this fraudulently obtained money to Plaintiffs and members of both the Nationwide Class and California Subclass, to disgorge the profits Apple made on these transactions, and to enjoin Apple from violating the FAL or violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiffs and members of both the Nationwide Class and California Subclass may be irreparably harmed and/or denied an effective

1 and complete remedy if such an order is not granted.

2 90. Monetary damages are an inadequate remedy at law because injunctive relief is  
3 necessary to deter Apple from continuing its false and deceptive conduct regarding the Season  
4 Features.

5 **FOURTH CLAIM FOR RELIEF**  
6 **Breach of Express Warranty**  
7 ***(for the Nationwide Class; in the alternative, for the California Subclass***  
8 ***and New York Subclass)***

9 91. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth  
10 herein.

11 92. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
12 Nationwide Class. In the alternative, Plaintiffs bring this claim individually and on behalf of the  
13 proposed California Subclass and New York Subclass.

14 93. California Commercial Code (“Cal. Comm. Code”) § 2313 provides that “(a) Any  
15 affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes  
16 part of the basis of the bargain creates an express warranty that the goods shall conform to the  
17 affirmation or promise,” and “(b) Any description of the goods which is made part of the basis of the  
18 bargain creates an express warranty that the goods shall conform to the description.” Cal. Comm.  
19 Code § 2313. New York’s express warranty law is identical. *See* New York Uniform Commercial  
20 Code (“N.Y. U.C.C.”) § 2-313.

21 94. Defendant has expressly warranted that the Season Features contain a specific number  
22 of episodes, which consumers understand to mean standard, plot-based episodes. These  
23 representations about the Season Features: (1) are affirmations of fact or promises made by Apple, to  
24 consumers, that the Season Features will provide a specific number of standard, content-based  
25 episodes; (2) became part of the basis of the bargain to purchase the Season Features; and (3) created  
26 an express warranty that the Season Features would conform to the affirmation of fact or promise. In  
27 the alternative, the representations are descriptions of goods, which were made as part of the basis of  
28 the bargain to purchase the Season Features, and which created an express warranty that the Season  
Features would conform to the Season Features’ description.



1 identical in this respect. *See* N.Y. U.C.C. § 2-314(2)(f).

2 103. Apple is a merchant with respect to the sale of TV shows and TV show season bundles,  
3 such as the Season Features in this action. Therefore, a warranty of merchantability is implied in  
4 every contract for sale of the Season Features to consumers.

5 104. In representing on the home page of the TV shows that the Season Features contain a  
6 specific number of episodes, Apple has provided a promise or affirmation of fact to consumers that  
7 the Season Features would provide consumers with the same number of episodes.

8 105. However, many of these “episodes” are not true episodes, but rather promotional clips  
9 which consumers do not interpret as episodes.

10 106. Therefore, Apple has breached its implied warranty of merchantability regarding the  
11 Products.

12 107. If Plaintiffs and members of both the Classes had known that the Season Features did  
13 not conform to Apple’s promise or affirmation of fact, they would not have purchased the Season  
14 Features or would have paid less for them. Therefore, as a direct and/or indirect result of Defendant’s  
15 breach, Plaintiffs and members of the Classes have suffered injury and deserve to recover all damages  
16 afforded under the law.

17 **SIXTH CLAIM FOR RELIEF**  
18 **Common Law Fraud**  
*(for the Nationwide Class; in the alternative, for the California Subclass*  
*and New York Subclass)*

19 108. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth  
20 herein.

21 109. Plaintiffs bring this claim individually and on behalf of the members of the Classes  
22 against Defendant.

23 110. Apple has willfully, falsely, and knowingly over-represented the number of episodes  
24 included in the sale of its Season Features. Therefore, Apple has made knowing misrepresentations  
25 as to the Season Features.

26 111. Apple’s misrepresentations were material (i.e., the type of misrepresentations to which  
27 a reasonable person would attach importance and would be induced to act thereon in making purchase  
28

1 decisions), because they relate to the composition of the Season Features, the number of episodes  
2 included in the purchase.

3 112. Apple knew or recklessly disregarded the fact that the Season Features would provide  
4 consumers with fewer episodes than what was represented to consumers before their purchase.

5 113. Apple intended that Plaintiffs and other consumers rely on these representations, as  
6 the representations are made prominently on the home screen of TV shows sold on Apple's iTunes  
7 store.

8 114. Plaintiffs and members of the Classes have reasonably and justifiably relied on  
9 Defendant's misrepresentations when purchasing the Season Features and had the correct facts been  
10 known, would not have purchased the Season Features or would not have purchased them at the prices  
11 at which they were offered.

12 115. Therefore, as a direct and proximate result of Apple's fraud, Plaintiffs and members  
13 of the Classes have suffered economic losses and other general and specific damages, including but  
14 not limited to the amounts paid for the Products, and any interest that would have accrued on those  
15 monies, all in an amount to be proven at trial.

16  
17 **SEVENTH CLAIM FOR RELIEF**  
**Quasi-Contract/Restitution**  
18 ***(for the Nationwide Class; in the alternative, for the California Subclass***  
***and New York Subclass)***

19 116. Plaintiffs repeat the allegations contained in paragraphs 1-58 above as if fully set forth  
20 herein.

21 117. Plaintiffs bring this claim individually and on behalf of the members of the Classes  
22 against Defendant.

23 118. As alleged herein, Apple intentionally, recklessly, and/or negligently made a  
24 misleading representation about the Season Features to Plaintiffs and members of the Classes to  
25 induce them to purchase the Products. Plaintiffs and members of the Classes have reasonably relied  
26 on the misleading representation and have not received all of the benefits promised by Apple.  
27 Plaintiffs and members of the Classes therefore have been induced by Apple's misleading and false  
28

1 representations about the Season Features, and paid for them when they would and/or should not  
2 have, or paid more money to Apple for the Season Features than they otherwise would and/or should  
3 have paid.

4 119. Plaintiffs and members of the Classes have conferred a benefit upon Apple as Apple  
5 have retained monies paid to them by Plaintiffs and members of the Classes.

6 120. The monies received were obtained under circumstances that were at the expense of  
7 Plaintiffs and members of the Classes – i.e., Plaintiffs and members of the Classes did not receive the  
8 full value of the benefit conferred upon Apple because Apple did not provide the same number of  
9 episodes as originally represented to consumers.

10 121. Therefore, it is inequitable and unjust for Apple to retain the profit, benefit, or  
11 compensation conferred upon them without paying Plaintiffs and the members of the Classes back  
12 for the difference of the full value of the benefit compared to the value actually received.

13 122. As a direct and proximate result of Apple’s unjust enrichment, Plaintiffs and members  
14 of the Classes are entitled to restitution, disgorgement, and/or the imposition of a constructive trust  
15 upon all profits, benefits, and other compensation obtained by Apple from its deceptive, misleading,  
16 and unlawful conduct as alleged herein.

17 123. Monetary damages are an inadequate remedy at law because injunctive relief is  
18 necessary to deter Apple from continuing its false and deceptive conduct regarding the Products.

19 **EIGHTH CLAIM FOR RELIEF**  
20 **Violation of New York’s General Business Law (“GBL”),**  
21 **New York Gen. Bus. Law § 349**  
***(for the New York Subclass)***

22 124. Plaintiff Coyle repeats the allegations contained in paragraphs 1-58 above as if fully  
23 set forth herein.

24 125. Plaintiff Coyle brings this claim individually and on behalf of the members of the  
25 proposed New York Subclass against Defendant.

26 126. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts  
27 and practices by making the material misrepresentations regarding the number of episodes included  
28



1 in the sale of its Season Features.

2 127. The foregoing deceptive acts and practices were directed at consumers.

3 128. The foregoing deceptive acts and practices are misleading in a material way because  
4 they fundamentally misrepresent the number of episodes of the Season Features to induce consumers  
5 to purchase them.

6 129. Plaintiff Coyle and members of the New York Subclass were injured because they  
7 paid for the Season Features, which they would not have done, or they would have paid less for had  
8 they known that the Season Features carried fewer episodes than represented.

9 130. On behalf of himself and the members of the New York Subclass, Plaintiff Coyle seeks  
10 to enjoin the unlawful acts and practices described herein, to recover their actual damages or fifty  
11 dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

12 **NINTH CLAIM FOR RELIEF**  
13 **Violation of New York's GBL,**  
14 **New York Gen. Bus. Law § 350**  
***(for the New York Subclass)***

15 131. Plaintiff Coyle repeats the allegations contained in paragraphs 1-58 above as if fully  
16 set forth herein.

17 132. Plaintiff Coyle brings this claim individually and on behalf of the members of the  
18 proposed New York Subclass against Defendant.

19 133. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is  
20 deceptive and misleading in a material way and which constitutes false advertising in violation of  
21 Section 350 of the GBL.

22 134. Defendant's false, misleading, and deceptive representations of fact, including but not  
23 limited to the misrepresentations regarding the Season Features, were and are directed to consumers.

24 135. Defendant's false, misleading, and deceptive representations of fact, including but not  
25 limited to the misrepresentations regarding the Season Features, were and are likely to mislead a  
26 reasonable consumer acting reasonably under the circumstances.

27 136. Defendant's false, misleading, and deceptive representations of fact, including but not  
28

1 limited to the misrepresentations regarding the Season Features, have resulted in consumer injury or  
2 harm to the public interest.

3 137. As a result of Defendant's false, misleading, and deceptive representations of fact,  
4 including but not limited to the misrepresentation regarding the Season Features, Plaintiff Coyle and  
5 members of the New York Subclass have suffered and continue to suffer economic injury.

6 138. Plaintiff Coyle and members of the New York Subclass suffered an ascertainable loss  
7 caused by Defendant's misrepresentations because they paid for the Season Features when they would  
8 not have done so, or would have paid less for them, had they known the Season Features had fewer  
9 episodes than represented.

10 139. On behalf of himself and the members of the New York Subclass, Plaintiff Coyle seeks  
11 to enjoin the unlawful acts and practices described herein, to recover their actual damages or five  
12 hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek  
15 judgment against Defendant as follows:

16 a) For an order certifying the Nationwide Class, the New York Subclass, the  
17 California Subclass, and the California Consumer Subclass, under Rule 23 of the Federal Rules of  
18 Civil Procedure; naming Plaintiffs as representatives of all Classes, and; naming Plaintiffs'  
19 attorneys as Class Counsel to represent all Classes;

20 b) For an order declaring that Apple's conduct violates the statutes and laws  
21 referenced herein;

22 c) For an order finding in favor of Plaintiffs, and all Classes, on all counts asserted  
23 herein;

24 d) For an order awarding all damages in amounts to be determined by the Court and/or  
25 jury;

26 e) For prejudgment interest on all amounts awarded;

27 f) For interest on the amount of any and all economic losses, at the prevailing legal  
28

1 rate;

2 g) For an order of restitution and all other forms of equitable monetary relief;

3 h) For injunctive relief as pleaded or as the Court may deem proper;

4 i) For an order awarding Plaintiffs and all Classes their reasonable attorneys' fees,  
5 expenses and costs of suit, including as provided by statute such as under Fed. R. Civ. P. 23(h),  
6 New York Gen. Bus. Law §§ 349 and 350, and California Code of Civil Procedure section 1021.5;

7 and

8 j) For any other such relief as the Court deems just and proper.

9 **DEMAND FOR TRIAL BY JURY**

10 Plaintiffs demands a trial by jury on all issues so triable.

11

12 Dated: October 5, 2018

**FARUQI & FARUQI, LLP**

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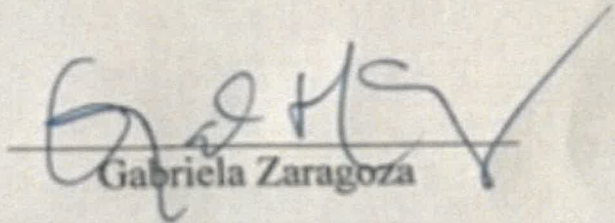
**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Gabriela Zaragoza, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because Defendant conducts a substantial amount of business in this District, Defendant is incorporated in California, and Defendant maintains its principal place of business in Cupertino, California, which is located in this District.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, executed on October 4, 2017 at Davis, California.

  
\_\_\_\_\_  
Gabriela Zaragoza

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Joseph Coyle, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of New York. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because Defendant conducts a substantial amount of business in this District, Defendant is incorporated in California, and Defendant maintains its principal place of business in Cupertino, California, which is located in this District.

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct, executed on October 4, 2017 at New York City, New York.

  
\_\_\_\_\_  
Joseph Coyle