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Attorneys for Plaintiff,
Julio Ceja

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JULIO CEJA, an individual,

Plaintiff,

v.

APPLE INC., a California corporation; and
DOES 1 through 20, inclusive,

Defendants.

Case No.: **BC 6 47 0 57**

**CLASS ACTION COMPLAINT FOR
EQUITABLE RELIEF**

- JURY TRIAL DEMANDED -

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JAN 17 2017

Sheri R. Carter, Executive Officer/Clerk
By: Cristina Grijalva, Deputy

1 Plaintiff Julio Ceja, individually and on behalf of all others similarly situated, alleges
2 against Defendant Apple Inc. as follows:

3
4 **I.**

5 **INTRODUCTION**

6
7 1. This case is brought to address an extremely serious social problem impacting all
8 California citizens: motorists within the state are engaged in the prolific practice of texting and
9 driving, causing the loss of life, limb and property at an astonishing rate. At the center of the
10 epidemic is Apple's immensely popular iPhone, a product that has generated hundreds of
11 billions of dollars of profit for the company.

12
13 2. Apple has the ability to outfit its iPhones with a lock-out device that would
14 disable the smartphone while being used by motorists. In fact, it has had this technology since
15 2008, and was granted a patent on it by the U.S. Patent and Trademark Office in 2014. Yet,
16 fearful that such a device would cause it to lose valuable market share, Apple refuses to employ
17 the technology, choosing instead to allow the massive carnage to occur.

18
19 3. This class action complaint seeks an injunction against Apple, halting the sale of
20 all iPhones in California without a lock-out device that will disable the iPhone while being
21 driven by an engaged motorist, as well as an order requiring that the company update all
22 currently held iPhones to install a lock-out device thereon.

23
24 **II.**

25 **THE PARTIES**

26
27 4. At all times mentioned in this Complaint, Plaintiff Julio Ceja was and is an
28 individual consumer over the age of 18. At all relevant times, Plaintiff resided in Costa Mesa,

1 which is located in the County of Orange, California. While driving, Julio Ceja was stopped at
2 a stoplight when his vehicle was hit from the rear by a distracted driver using her iPhone at the
3 time of the accident.

4
5 5. Plaintiff has standing to assert all the claims set forth herein, as he suffered an
6 injury in fact and a loss of money or property as a result of Defendant's conduct.

7
8 6. Defendant Apple Inc. is a California corporation with its primary place of
9 business in Cupertino, California. At all times mentioned here, Defendant was engaged in the
10 business of manufacturing and selling computers, iPhones throughout California.

11
12 7. Defendant and its subsidiaries, affiliates, and other related entities, and its
13 respective employees were the agents, servants and employees of Defendant, and each was
14 acting within the purpose and scope of that agency and employment.

15
16 8. Whenever reference is made to any act by Defendant or its subsidiaries,
17 affiliates, and other related entities, such allegation shall be deemed to mean that the principals,
18 officers, directors, employees, agents, and/or representatives of Defendant committed, knew of,
19 performed, authorized, ratified and/or directed that act or transaction for Defendant while
20 engaged in the scope of their duties.

21
22 9. Plaintiff is unaware of the true names of Does 1 through 20 and therefore sues
23 them by such fictitious names, and will ask for leave of court to insert their true names when
24 such have been ascertained.

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III.

JURISDICTION AND VENUE

10. This is the proper judicial district for venue of this action because one or more of the tortious acts, omissions, and injuries causing damage to Plaintiff occurred within this County and judicial district.

IV.

FACTUAL ALLEGATIONS

11. It has migrated from a menacing problem to a full-blown epidemic of national importance: texting and driving is the single most deadly thing one can do behind the wheel of an automobile. The National Highway Traffic Safety Administration classifies texting and driving is *six times* more dangerous than drinking and driving. In a recent study conducted by the NHTSA, it was concluded that drivers take their eyes off the road for an average of 4.6 seconds when sending or receiving a text. At 80 miles per hour that is the equivalent of driving 539 feet — or nearly two football fields — blindfolded. The National Safety Counsel’s 2014 injury and fatality report found that *cell phone usage causes 26% of all car accidents in United States*.¹

12. The danger presented by texting and driving is certainly comprehensible, but the physics alone do not begin to reveal the magnitude of the problem. Society’s relationship with the smartphone has far exceeded convenient connectivity. Users are increasingly developing a genuine compulsion for their smartphones, texting, Facebooking and gaming at every idle opportunity. To illustrate the point, in 2014 AT&T commissioned research by an addiction expert who found that a physical reaction in our bodies causes us to compulsively check our

¹ <http://www.nsc.org/NewsDocuments/2014-Press-Release-Archive/3-25-2014-Injury-Facts-release.pdf>

1 phones, even while driving. Dr. David Greenfield, founder of The Center for Internet and
2 Technology Addiction and Assistant Clinical Professor of Psychiatry at The University of
3 Connecticut School of Medicine, opines that “[w]e compulsively check our phones because
4 every time we get an update through text, email or social media, we experience an elevation of
5 dopamine, which is a neurochemical in the brain that makes us feel happy. If that desire for a
6 dopamine fix leads us to check our phones while we’re driving, a simple text can turn deadly.”²
7

8 13. Not only do our bodies physically react when we receive a text or other message
9 on our phones, but our rational ability to avoid the danger is biologically impaired. The
10 University of Kansas recently conducted a study on the subject, and found that drivers have
11 great difficulty resisting the cellphone temptation because the prefrontal cortex, the part of the
12 brain responsible for decision making, is fully engaged by the task of driving.
13

14 14. The problem of texting and driving is not small. In a 2011 study, the U.S.
15 Department of Transportation concluded that at any given moment 660,000 people — or nine
16 percent of all motorists — are texting and driving on public roads. These numbers continue to
17 grow exponentially, as the number of Americans with smartphones increases. In 2011, 93
18 million Americans owned smartphones; today that number has skyrocketed to 207 million,
19 meaning that nearly every driving citizen owns one. Using the Department of Transportation
20 statistics, *this puts 1.5 million drivers texting at any given time*. Apple’s enormous market
21 share means that it is the largest contributor to the problem.
22

23 15. Adding to the problem is the seemingly innocent nature of the practice. While
24 few would make the decision to booze it up and then take the keys to the car, quickly checking
25 or responding to a text seems hardly a sin at all. The net result of all this is that texting is not
26 only six times more deadly than drinking and driving, but occurring at a significantly greater
27 rate. It should be no surprise then that by the end of virtually every day, sixteen Americans die
28

² http://about.att.com/content/csr/home/blog/2014/11/are_you_compulsivea.html

1 at the hands of texting drivers. By the time the responsive pleading to this complaint is due,
2 another 480 Americans will have died from the practice.

3
4 16. Given its rank danger, it is downright shocking that smartphone companies like
5 Apple do *nothing* to help shield the public at large from the dangers associate with the use of
6 their phones. To be sure, this is not because Apple doesn't recognize the risks, or because the
7 technology to protect consumers does not exist. In fact, Apple has known of the dangers
8 associated with the use of their phones for nearly a decade. In 2008, Apple filed a patent
9 seeking to protect its design for a "lock-out mechanism" to disable the ability of its smartphone
10 to perform certain functions, like texting, while someone is driving.

11
12 17. In support of its patent application, Apple recognized the dangers of texting and
13 driving, and the important role they themselves should play in stopping it. Apple argued, "New
14 laws are being written to make texting illegal while driving. However, law enforcement
15 officials report that their ability to catch offenders is limited because the texting device can be
16 used out of sight (e.g., on the driver's lap), thus making texting while driving even more
17 dangerous. *Texting while driving has become so widespread it is doubtful that law
18 enforcement will have any significant effect on stopping the practice.*"³ (Emphasis added).
19 Apple's patent application was granted in 2014. Yet, despite having had the technology for
20 nearly a decade, and being the recipient of a valid patent, Apple refuses to employ the
21 technology, fearful that doing so will cause it to lose valuable market share to its competitors.

22
23 18. If texting and driving is a vessel of trouble, Apple is the captain of the ship. The
24 company enjoys 40 percent of the smartphone market share – far more than the nearest
25 competitor. And its profits are enormous. Fortune Magazine reports that in the third quarter of

26
27 ³ <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi/nph-Search&r=1&f=G&l=50&col=AND&d=PTXT&s1=8,706,143.PN.&OS=PN/8,706,143&RS=PN/8,706,143>

1 2016, Apple generated 91% of the smartphone market's profits, equating to a cool \$8.5 billion
2 in net profit – or about \$95 million in profit per day.⁴ At the end of its 2016 fiscal year, *Apple*
3 ***had \$238 billion of cash on hand.***

4
5 19. Plaintiff Julio Ceja is the victim of just such a distracted driver. While driving
6 on California's public roadways, Ceja was stopped at a stoplight. As he looked in his rearview
7 mirror, he saw that the driver behind him was looking to the right, engaged in using her phone
8 instead of paying attention to the road in front of her. With a mere moment to react, Ceja
9 braced himself for collision. The driver slammed into Julio's vehicle, causing damage to the
10 vehicle, and injuring Ceja's back. When the driver exited the vehicle after the accident, she still
11 had her iPhone in hand, startled that she had just caused an accident. As a result of the unfair
12 practice of allowing consumers use its products while driving, and not employing the lock-out
13 device, Ceja sustained an economic injury.

14
15 20. Julio's situation is not unique. According to the Federal Highway
16 Administration, each year California drivers are victim to approximately 500,000 automobile
17 accidents. Undoubtedly that number is significantly lower than the actual number of accidents
18 occurring, as many drivers fail to report their accidents. With 26 percent of these accidents
19 being caused by motorists using their cell phones, and Apple's 40 percent market share, this
20 translates into ***at least 52,000 automobile accidents*** in California being caused by Apple's
21 iPhones each year.

22
23 21. It gets worse. Data maintained by the California Highway Patrol reveals that
24 approximately 3,000 Californian's are killed in traffic accidents annually. Using the same
25 calculus as above, this means that, on average, Apple's refusal to install the lock-out device on
26 its phones is causing the ***death of approximately 312 Californians each year.***

27
28 _____
⁴ <http://fortune.com/2016/11/23/apple-iphone-profits/>

1 26. Questions of law and fact common to each Class Member exist that predominate
2 over questions affecting only individual Members, including, *inter alia*:

3
4 a. Whether Apple has the ability to modify their iPhones by installing a
5 “lock-out device” to address the dangers of drivers using their iPhones while driving;

6
7 b. Whether Apple’s failure to modify its iPhones to address the dangers of
8 customers using their iPhones while driving is fraudulent, unlawful or unfair, thereby violating
9 the Cal. Bus. & Prof. Code § 17200, *et seq.* and other state laws;

10
11 c. Whether Apple’s conduct injured consumers and, if so, the extent of the
12 injury.

13
14 27. The claims asserted by the Plaintiff are typical of the claims of the Class
15 Members, as his claims arise from the same course of conduct by Apple and the relief sought is
16 common. The Plaintiff, like all Class Members, was exposed to Apple’s unfair business
17 practices and suffered an economic injury.

18
19 28. The Plaintiff will fairly and adequately represent and protect the interests of the
20 Class Members. The Plaintiff has retained counsel competent and experienced in both
21 consumer protection and class action litigation.

22
23 29. Certification of this class action is appropriate under Cal. Civ. Pro. § 382 because
24 the above questions of law or fact common to the respective Members of the Class predominate
25 over questions of law or fact affecting only individual Members. This predominance makes
26 class litigation superior to any other method available for the fair and efficient adjudication of
27 these claims.

28

1 30. Absent a class action, it would be highly unlikely that the Plaintiff or any other
2 Class Members could protect their own interests because the cost of litigation through
3 individual lawsuits would exceed any expected recovery.

4
5 31. Certification is also appropriate because Apple has acted or refused to act on
6 grounds applicable to the Class, making appropriate final injunctive relief with respect to the
7 Class as a whole.

8
9 32. Given the large number of California residents affected by drivers using their
10 iPhones while driving, allowing individual actions to proceed in lieu of a class action would risk
11 yielding inconsistent and conflicting adjudications.

12
13 33. A class action is a fair and appropriate method for the adjudication of this
14 controversy, in that it will permit many claims to be resolved in a single forum simultaneously,
15 efficiently, and without the unnecessary hardship that would result from the prosecution of
16 numerous individual actions and the duplication of discovery, effort, expense and burden on the
17 courts that such individual actions would engender.

18
19 34. The benefits of proceeding as a class action, including providing a method for
20 obtaining redress for claims that would not be practical to pursue individually, outweigh any
21 difficulties that might be argued regarding the management of this class action.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful, Unfair, and Fraudulent Business Acts and Practices —**
3 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***
4 **(Julio Ceja, Individually and on behalf of the Class, Against Apple Inc.)**
5

6 35. The Plaintiff re-alleges every allegation contained in the paragraphs above and
7 incorporates such allegations by reference. The Plaintiff brings this cause of action on behalf of
8 himself and the Class.
9

10 36. This cause of action is brought under the California Unfair Competition Law
11 (“UCL”), California Business & Professions Code § 17200, *et seq.*, which provides that “unfair
12 competition shall mean and include any unlawful, unfair or fraudulent business act or practice
13 and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I
14 (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions
15 Code.”
16

17 37. Apple engaged in unfair business acts and practices when it provided advanced
18 smartphone technology to driving consumers, without providing a lock-out device for the
19 product when being used by engaged motorists, while knowing the extreme dangers caused its
20 product, and while having patented the technology for such a lock-out device. Apple had an
21 improper motive — profit before consumer safety — in its failure to install lock-out devices on
22 its iPhones. This unfair business practice serves as a predicate violation of the “unfair” prong of
23 the California Business & Professions Code § 17200, *et seq.*
24

25 38. As a consumer who was involved in an accident caused by a driver’s use of an
26 iPhone while driving – and thus as a result of Apple’s unfair business acts and practices – Julio
27 Ceja suffered an economic injury, including lost money and property, and thus has standing
28 under the UCL entitling him to all available remedies.

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MLG Automotive Law, APLC



Dated: January 17, 2017

By:

Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Kristen R. Rodriguez, Esq.
Attorneys for Plaintiff,
Julio Ceja


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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

MLG Automotive Law, APLC

Dated: January 17, 2017

By: 

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