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9 Julio Ceja

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13  
14 JULIO CEJA, an individual,

15  
16 Plaintiff,

17 v.

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

19  
20 Defendants.

Case No.:

**BC 6 47 0 57**

**CLASS ACTION COMPLAINT FOR  
EQUITABLE RELIEF**

21  
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24  
25 **- JURY TRIAL DEMANDED -**  
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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.*<sup>1</sup>

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

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<sup>1</sup> <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.”<sup>2</sup>  
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

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<sup>2</sup> [http://about.att.com/content/csr/home/blog/2014/11/are\\_you\\_compulsivea.html](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.*"<sup>3</sup> (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 <sup>3</sup> <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi%2FPTO%2Fsearch-bool.html&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.<sup>4</sup> 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           22.     Sadly, there is nothing consumers can do to protect themselves from the danger  
2 created by Apple’s iPhones. The public is a risk – and will remain at risk – until Apple is  
3 forced to employ the very technology it possesses to prevent drivers from using its iPhones  
4 while driving. This lawsuit seeks to accomplish that task.

5  
6   **V.**

7   **CLASS ALLEGATIONS**  
8

9           23.     Plaintiff brings this class action under California Code of Civil Procedure § 382  
10 and seeks certification of the claims and issues in this action pursuant to the applicable  
11 provisions of California Code of Civil Procedure § 382. The proposed Class is all California  
12 residents whose safety has been put at risk as a result of Apple’s failure to install “lock-out  
13 devices” on their iPhones. The Class Period is from the time Apple began selling iPhones in  
14 California (2007) to the present date.

15  
16           24.     Apple’s conduct of giving advanced smartphone technology to driving  
17 consumers, without providing a lock-out device for the product when being used by engaged  
18 motorists, was applied uniformly to all Members of the Class during the Class Period, so that  
19 the questions of law and fact are common to all Members of the Class. All Members of the  
20 Class were and are similarly affected by having been exposed to the dangers presented by  
21 drivers using their Apple iPhone while driving on California highways, streets and roads. The  
22 relief sought is for the benefit of Plaintiff and Members of the Class.

23  
24           25.     The Class is so numerous that joinder of all Members would be impractical. As  
25 of July 1, 2016, the United States Census Bureau estimates that California has 39,250,017  
26 residents. Each of these residents’ lives are placed in danger every single day as a result of  
27 Apple’s failure to install “lock-out devises” on their iPhones.  
28



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.

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.

1  
2 39. Under California Business & Professions Code § 17203, Julio Ceja and all Class  
3 Members are entitled to injunctive relief to prevent Apple's continued unfair business acts and  
4 practices. Julio Ceja and the Class Members request that this Court enter injunction against  
5 Apple: i) halting the sale of all iPhones in California without a lock-out device that will disable  
6 the iPhone while being driven by an engaged motorist; and ii) requiring that it update all  
7 currently held iPhones to install a lock-out device thereon.

8  
9 40. As a private individual seeking to confer a significant and substantial benefit on  
10 the general public, the Plaintiff is entitled to an award of attorneys' fees pursuant to Cal. Code  
11 Civ. Pro. § 1021.5.

12  
13 **PRAYER FOR RELIEF**

14  
15 **WHEREFORE**, Plaintiff, for himself and all others similarly situated, prays for relief  
16 against Defendant under each Count in this Complaint as follows:

- 17  
18 1. An order certifying the Class and appointing MLG Automotive Law as Class  
19 Counsel.
- 20 2. An injunction against Apple, halting the sale of all iPhones in California without  
21 a lock-out device that will disable the iPhone while being driven by an engaged motorist.
- 22 3. An injunction against Apple, requiring that it update all currently held iPhones to  
23 install a lock-out device thereon.
- 24 4. An award of attorneys' fees under, *inter alia*, Cal. Code Civ. Proc. § 1021.5.
- 25 5. An award of costs.
- 26 6. An Order providing such further relief as may be found just and proper.

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**MLG Automotive Law, APLC**



Dated: January 17, 2017

By:

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

**JURY DEMAND**

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

**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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