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9	UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION	
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13	JOHN VOTTO, Derivatively on Behalf of APPLE INC.,) Case No.:
14	Plaintiff,)
15	V.) VERIFIED STOCKHOLDER) DERIVATIVE COMPLAINT FOR
16 17	TIMOTHY D. COOK, ARTHUR D. LEVINSON, JAMES A. BELL, ALBERT	 BREACH OF FIDUCIARY DUTY AND VIOLATION OF THE FEDERAL SECURITIES LAWS
18	GORE, JR., ANDREA JUNG, RONALD D. SUGAR, SUSAN L. WAGNER, ROBERT)
19	A. IGER, and LUCA MAESTRI,) JURY TRIAL DEMANDED
20	Defendants,))
21	-and-))
22)
23	APPLE INC.,)
24	Nominal Defendant.	
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Plaintiff John Votto ("Plaintiff"), by and through his undersigned counsel, derivatively on behalf of Nominal Defendant Apple Inc. ("Apple" or the "Company"), submits this Verified Shareholder Derivative Complaint (the "Complaint"). Plaintiff's allegations are based upon his personal knowledge as to himself and his own acts, and upon information and belief, developed from the investigation and analysis by Plaintiff's counsel, including a review of publicly available information, including filings by Apple with the U.S. Securities and Exchange Commission ("SEC"), press releases, news reports, analyst reports, investor conference transcripts, publicly available filings in lawsuits, and matters of public record.

NATURE OF THE ACTION

- 1. This is a shareholder derivative action brought in the right, and for the benefit, of Apple against certain of its officers and directors seeking to remedy Defendants' violations of state and federal law that have occurred from August 1, 2017 through January 2, 2019 (the "Relevant Period") and have caused, and continue to cause, substantial harm to Apple, including monetary losses and damages to Apple's reputation and goodwill.
- 2. Apple is a multinational technology company that designs, develops, and sells consumer electronics and software in the U.S. and abroad. Apple's flagship product is its iPhone, accounting for nearly two-thirds of the Company's revenues since 2007. Apple sells the iPhone throughout the world, including in Greater China, its third-largest market segment behind the Americas and Europe.¹
- 3. During the Relevant Period, the Defendants (defined below) misrepresented and/or failed to disclose multiple material factors that negatively impacted Apple's iPhone sales and revenues, including that, *inter alia*: (a) consumer demand for new iPhone models was negatively impacted by Apple's sales of heavily discounted battery replacement program for older iPhone models, as customers chose not to upgrade or to delay same; (b) macroeconomic factors, including an escalating trade war with the United States, increased competition from cheaper smartphones,

¹ The Greater China segment includes China, Hong Kong and Taiwan. The Americas segment includes both North and South America. The Europe segment includes European countries, as well as India, the Middle East and Africa.



and a sluggish economy, were likely to negatively affect, and were doing so, Apple's iPhone sales in China; and (c) that as a result of the foregoing, the Defendants lacked a reasonable basis when issuing positive iPhone sales and revenue guidance for the first quarter of 2019, and when publicly denying the existence and negative impact of the foregoing.

- 4. Apple's wrongful conduct came to light on January 2, 2019, when the Company disclosed declining iPhone sales and was forced to reveal to investors that it would not meet the first quarter 2019 revenue guidance it had issued only two months earlier, the first instance of Apple having to reduce its revenue expectations in the past 16 years. Apple's Chief Executive Officer ("CEO"), Tim Cook, conceded that the declining sales were the result of users' decisions not to upgrade after receiving discount battery replacements, as well as economic issues in China, both issues of which Apple and the Defendants herein repeatedly denied to analysts and investors existed and/or would have a negative impact on sales.
- 5. On this news, the Company's share price fell approximately 9%, from \$157.92 on January 2, 2019 to \$142.19 on January 3, 2019, the first trading day after the disclosure, on exceedingly high trading volume of over 91 million shares.
- 6. In addition, based on the wrongful conduct discussed herein, numerous lawsuits were filed against Apple and certain of the Defendants and regulatory and governmental investigations were started in the United States and abroad.

JURISDICTION AND VENUE

- 7. This Court has jurisdiction over federal claims/questions asserted in this action pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the remaining state law claims under 28 U.S.C. § 1367.
- 8. This Court has jurisdiction over each defendant named herein because each is either a corporation that conducts business in and maintains operations in this District, is an individual residing in this District, and/or is an individual non-resident who has sufficient minimum contacts with this District to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

- 9. Venue is proper in this Court in accordance with 28 U.S.C. §1391 because: (i) Apple maintains its principal place of business in this District; (ii) one or more of the Defendants either resides in or maintains offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including Defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iv) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.
- 10. Moreover, a substantial portion of the transactions and wrongdoings that give rise to the claims asserted herein occurred in the County of Santa Clara, such that this action is properly assigned to the San Jose division of this Court.

PARTIES

Plaintiff

11. Plaintiff is a current owner of Apple stock and has held the stock during the time of Defendants' continuous wrongful course of conduct alleged herein. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the Company.

Nominal Defendant

12. Nominal Defendant Apple is a multinational technology company that designs, develops, and sells consumer electronics and software in the U.S. and abroad. Apple is incorporated in California with its principal offices located at One Apple Park Way, Cupertino, C.A. 95014. Apple's common stock trades on the NASDAQ under the ticker symbol "AAPL."

Director Defendants

- 13. **Defendant Timothy D. Cook** ("Cook") is, and was at all relevant times, CEO of the Company and a member of its Board of Directors (the "Board").
- 14. According to the Company's latest Form DEF 14A filed with the SEC on January 8, 2019 (the "2019 DEF 14A"), in fiscal year 2017, Defendant Cook received \$12,825,066 in total compensation from the Company, which included \$3,057,692 in salary, \$9,327,000 in non-equity incentive plan compensation, and \$440,374 in all other compensation. In fiscal year 2018, Cook received \$15,682,219 in total compensation from the Company, which included \$3,000,000 in



salary, \$12,000,000 in non-equity incentive plan compensation, and \$682,219 in all other compensation.

- 15. **Defendant Arthur D. Levinson** ("Levinson") is and has been the Company's Chairman of the Board since November 2011, has been a director since August 2000, and was the Company's co-lead director from 2005 to November 2011. Defendant Levinson is a member of the Company's Audit and Finance Committee.
- 16. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Levinson received \$567,188 in total compensation from the Company, which included \$300,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$17,227 in all other compensation.
- 17. **Defendant James A. Bell** ("Bell") has been a director of the Company since October 2015 and is a member of the Audit and Finance Committee.
- 18. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Bell received \$362,665 in total compensation from the Company, which included \$100,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$12,704 in all other compensation.
- 19. **Defendant Albert Gore, Jr.** ("Gore") has been a director of the Company since March 2003 and is a member of the Nominating and Corporate Governance Committee and its Compensation Committee.
- 20. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Gore received \$358,543 in total compensation from the Company, which included \$100,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$8,582 in all other compensation.
- 21. **Defendant Andrea Jung** ("Jung") has been a director of the Company since January 2008 and is a member of the Nominating and Corporate Governance Committee and the Chair of its Compensation Committee.
- 22. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Jung received \$403,106 in total compensation from the Company, which included \$130,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$23,145 in all other compensation.
- 23. **Defendant Ronald D. Sugar** ("Sugar") has been a director of the Company since November 2010 and is the Chair of the Audit and Finance Committee.



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