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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 KPAW, LLC, a California limited liability
12 company,

13 Plaintiff,

14 v.

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

17 Defendants.

CASE NO.

COMPLAINT

1 **INTRODUCTION**

2 Plaintiff KPAW, LLC brings this action against Defendant Apple, Inc., because Apple has
3 exploited its monopoly power over applications compatible with its devices to make billions of
4 dollars in profits at the expense of small application developers and consumers. Plaintiff spent
5 countless hours developing a revolutionary texting technology to sell in Apple’s App Store based
6 on Apple’s promise that the App Store is a safe and fair environment. As summarized below,
7 after Apple failed to acquire Plaintiff’s application for Apple’s own exploitation, Plaintiff
8 struggled to bring its revolutionary texting technology to market on Apple’s App Store because
9 Apple threw up roadblock after roadblock that made no sense. Evidently, Apple thought Plaintiff
10 would simply give up and sell its application to Apple at a discount. Instead, Plaintiff drove on.

11 Once Plaintiff finally got its application to market, Plaintiff’s application vaulted to the
12 top of the App Store’s sales worldwide. Then, copycat and scam applications surfaced driving
13 down Plaintiff’s sales. What’s worse, these scammers vaulted to the top of sales in the App Store
14 by submitting fake reviews to elevate themselves in Apple’s system. Plaintiff complained to
15 Apple and, in response, Apple did next to nothing, despite its stated policies forbidding this
16 precise type of unfair competition. While Apple enticed Plaintiff to develop and publish
17 applications for sale in the App Store based on Apple’s promise of a “safe” environment, Apple
18 does not in fact police its App Store, undoubtedly because it profits massively from rampant
19 developer misconduct and consumer fraud. By this lawsuit, Plaintiff seeks to recover its losses as
20 result of, and bring to an end to, Apple’s fraudulent and unfair practices.

21 **PARTIES**

22 1. KPAW, LLC, owned and operated by Kosta Eleftheriou and Ashley Eleftheriou, is
23 a California limited liability company with its principal place of business in San Francisco
24 County, California.

25 2. Apple is a California corporation registered and doing business in Santa Clara
26 County, California, with its principal address at One Apple Park Way in Cupertino, California.

27 3. Plaintiff is unaware of the true names or capacities, whether individual, corporate,
28 associate, or otherwise, of Defendants sued as Does 1 through 20, and therefore sues these

1 Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this pleading
2 to set forth the true names and capacities of the Doe Defendants when they are ascertained.
3 Plaintiff alleges that each of the fictitiously named Defendants is responsible in some manner for
4 the occurrences alleged or was acting in concert with, and with the permission, approval, and
5 authorization of, the named Defendant.

6 4. Each of the Defendants was the agent or employee of each of the remaining
7 Defendants, and in doing the things alleged, was acting within the scope of such agency.
8 Defendants were acting through duly authorized and empowered agents and representatives, who
9 were acting within the course and scope of their authority at the time of their action or whose
10 actions were later ratified and approved.

11 **VENUE**

12 5. Venue is proper in this Judicial District under Code of Civil Procedure sections
13 395 and 395.5 because Defendant now and during all the events covered by this Complaint did
14 reside or transact business in Santa Clara County; the contract that is the subject of this dispute
15 was negotiated, entered, and performed, at least partly, in Santa Clara County; and the conduct
16 giving rise to Plaintiff's claims arose in Santa Clara County.

17 6. This action is not subject to the provisions of sections 1812.10 or 2984.4 of the
18 California Civil Code.

19 **FACTS**

20 7. The Apple App Store is the only place where application developers can sell and
21 consumers can buy applications compatible with Apple devices, like the ultra-popular iPhone and
22 Apple Watch. Apple entices software application developers like Plaintiff to develop innovative
23 applications with the promise of a fair and secure App Store in which to sell them. In truth, Apple
24 systematically flexes its monopoly muscle against potential competition through the App Store
25 and profits from rampant fraudulent practices. If Apple cannot buy a desired application from a
26 developer on the cheap, Apple attempts to crush that developer through exploitive fees and
27 selective application of opaque and unreasonable constraints against the developer. At the same
28 time, Apple permits other developers that Apple does not view as real competition, including

1 scam competitors, to peddle similar, inferior products because Apple profits from their sales.
2 Scammers oftentimes use screenshots and videos taken from legitimate developer’s applications
3 and manipulate their ratings. Apple does little to police these practices because it profits from
4 them. Apple then lies to its regulators by asserting that it must maintain its monopoly power over
5 the sale of Apple-related applications to protect consumers, when, in fact, Apple lets them get
6 ripped off and exploits the developers trying to deliver innovation to consumers.

7 8. For his part, Mr. Eleftheriou’s relationship with Apple began shortly after March
8 2008, when Apple announced the release of its iPhone Software Development Kit to developers
9 for the purpose of “creating a vibrant third party developer community.” Shortly afterwards, Mr.
10 Eleftheriou began developing for Apple’s App Store and quickly became one of the first
11 successful application developers creating numerous smartphone applications. For example, in
12 2009, Mr. Eleftheriou developed iSteam, a top application worldwide with over a million
13 downloads in the first week and generating more than \$100,000 in three months. Mr. Eleftheriou
14 later developed a revolutionary smartphone typing technology called “BlindType,” which enabled
15 users to type on touchscreens without even looking. This was an incredible technological
16 advancement, as this had never been done before with such speed and accuracy. Instead of typing
17 over a virtual keyboard, like most smartphones, BlindType analyzed the position of the finger
18 taps relative to each other to determine which characters the user is typing. While Apple sought to
19 acquire BlindType, Mr. Eleftheriou never released that application in the App Store because
20 Google acquired it.

21 9. From 2011 to 2016, Mr. Eleftheriou created and led the development of the next
22 generation of typing technology called “Fleksy.” Fleksy is an alternative text input system
23 initially developed for the visually impaired on iPhones using predictive technology to determine
24 what the user wanted to type even if they do not enter a single correct letter. Since its release in
25 2012, Fleksy generated millions of downloads and received numerous awards, including from the
26 Royal National Institute of Blind People in 2012 and Apple’s Best of App Store in 2012. Later in
27 2012, Fleksy became the 19th inductee into AppleVis iOS App Hall of Fame. In 2014, Fleksy
28

1 officially broke the Guinness World Record for the fastest touch-screen text message. Two years
2 later, Pinterest acquired the Fleksy development team for an undisclosed amount.

3 10. As the App Store’s success grew, Apple marketed it as a safe and trusted source
4 for hundreds of thousands of applications designed specifically for the iPhone. Indeed, Apple
5 continues to advertise the App Store as “a safe and trusted place to discover and download apps”
6 because Apple “ensur[es] that the apps we offer are held to the highest standards for privacy,
7 security, and content.”

8 **The apps you love.**
9 **From a place you can trust.**

10 **For over a decade, the App Store has proved to be a safe
11 and trusted place to discover and download apps. But the
12 App Store is more than just a storefront — it’s an innovative
13 destination focused on bringing you amazing experiences.
14 And a big part of those experiences is ensuring that the apps
15 we offer are held to the highest standards for privacy, security,
16 and content. Because we offer nearly two million apps — and
17 we want you to feel good about using every single one of them.**

18 11. In targeting developers, Apple touted that its platforms would provide them
19 “Infinite Opportunities” by enabling them to “create the next generation of apps” for the over a
20 “billion active devices worldwide.” “The Apple Developer Program provides all the resources to
21 distribute on the App Store” offering developers an “incredibly rapid adoption rate of new
22 software.” Through this program, developers could also “discover best practices for implementing
23 the latest technologies and get guidance on design and app review criteria so [developers] can
24 build the polished and intuitive apps that Apple customers expect.” In 2016, Apple boasted that,
25 “with over 100 billion apps downloaded from the App Store and \$40B paid to developers, it’s an
26 incredible time to develop and distribute on Apple platforms.” In 2018, Apple doubled down by
27 announcing that, “with over \$86 billion paid to developers, it’s an incredible time to develop and
28 distribute on Apple platforms.”

1 12. To this day, Apple maintains that it “is committed to helping developers turn their
2 brightest ideas into apps that change the world” by helping developers “build, test, market, and
3 distribute [their] products and grow [their] business” through a “secure, trusted, and accessible”
4 marketplace.

5
6 Apple is committed to helping developers turn their brightest
7 ideas into apps that change the world. That’s why the
8 App Store helps you from start to finish — to build, test,
9 market, and distribute your products and grow your business.
10 Our marketplace is secure, trusted, and accessible —
11 connecting you to over 1.5 billion devices in 175 regions.
12 The App Store and you. Together every step of the way.

13 13. In reaffirming its assurances to developers and users, Apple recently stated: “We
14 created the App Store to be a safe and trusted place for customers to download the apps they love
15 and a great business opportunity for developers everywhere. ... We believe in thriving and
16 competitive markets where any great idea can flourish. The App Store has been an engine of
17 success for app developers, in part because of the rigorous standards we have in place – applied
18 fairly and equally to all developers.”

19 14. Based largely on Apple’s representations and continuing assurances, Mr.
20 Eleftheriou decided to leave Pinterest in the summer of 2017, leaving millions in compensation
21 behind, so he could pursue an opportunity to develop the first-ever keyboard application for the
22 newly released Apple Watch. Shortly thereafter, he began developing the technology, expending
23 considerable effort, resources, and time needed to overcome the difficult challenges with getting
24 the autocorrection and other predictive keyboard algorithms to work correctly, predictably, and
25 reliably, something never accomplished on an Apple Watch before. He also began planning the
26 timing to release the application so that he could utilize the larger and more powerful watch
27 models that would be coming out. However, as Mr. Eleftheriou completed initial development, he
28 did not experience the “incredibly rapid adoption” of his app or get the guidance and app review
that Apple promised.

1 15. In 2018, Mr. Eleftheriou first submitted his new application, “FlickType,” to
2 Apple’s App Store as an accessible iPhone keyboard for the blind and visually impaired. In
3 September 2018, Mr. Eleftheriou submitted FlickType for the new version of the Apple Watch,
4 which was then just released. Apple rejected the submission because of its subscription model
5 (which Apple permitted on other applications), even though Mr. Eleftheriou just got that same
6 rejection overturned a month earlier. In November, Plaintiff announced to its users that it was
7 considering dropping the subscription business model to avoid any further delays caused by
8 Apple’s improper rejections.

9 16. Later in November, Apple’s Developer Relations emailed Plaintiff stating the
10 accessibility department was receiving complaints from users because of the delays Apple’s
11 improper rejections caused in the release of FlickType application, stating “that App Review does
12 not understand the value of the FlickType app.” Developer Relations asserted that this was
13 “unfortunate and definitely not the case!” The email went on to state: “I know that your app is
14 very valuable in that sense, as does App Review.” In another email, Apple’s Developer Relations
15 praised Plaintiff’s FlickType app stating: “That’s a great watch keyboard! I will put in a good
16 word to my colleagues in App Store editorial.” Numerous journalists echoed these sentiments in
17 their reviews of FlickType. For example, AppAdvice referred to FlickType as “a truly easy to use
18 keyboard” in November 2018. Similarly, iDownloadBlog called FlickType “an easy way to type
19 messages” in its review that same month.

20 17. Recognizing the massive leap forward that FlickType represented in text entry
21 applications, Apple began to take notice. In January 2019, Randy Marsden, Apple’s former head
22 of keyboard technology and then Text Input Special Projects Manager, invited Mr. Eleftheriou to
23 meet and discuss FlickType. By way of background, Mr. Marsden founded successful keyboard
24 companies like Swype (acquired by Nuance in 2011) and Dryft (acquired by Apple in 2014) and
25 the industry recognized him as a leader in touchscreen keyboard technology. Apple brought in
26 Mr. Marsden to focus on improving Apple’s text input functionality on its platforms. On January
27 17, 2019, Mr. Marsden met with Mr. Eleftheriou and discussed Apple’s interest in possibly
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1 purchasing FlickType. During this meeting, Mr. Marsden had nothing but praise stating that
2 FlickType was the “best one that I have seen” and “could be a key feature for the watch.”

3 18. A couple days after this meeting, Mr. Marsden contacted Mr. Eleftheriou again
4 expressing how impressed he was with FlickType stating: “I’ve been playing with it for the past
5 10 minutes. It seriously hasn’t made a mistake yet. Nice job, Kosta.” During a subsequent call,
6 Mr. Marsden told Mr. Eleftheriou that “this [FlickType] is really valuable.” He then stated that
7 “Apple should buy this from you” and “hope it’s not going to be *too* expensive, Kosta.” On
8 January 24, Mr. Marsden informed Mr. Eleftheriou that he presented FlickType to the Apple
9 Watch Team, including a senior engineering manager on the product side. Mr. Marsden explained
10 that the demonstration went well, getting the senior engineer excited (who downloaded it for
11 himself to use). Mr. Marsden stated that he would discuss the application with his boss and let
12 Mr. Eleftheriou know.

13 19. Notwithstanding the foregoing, later that evening, Apple suddenly removed the
14 FlickType application from the App Store stating: “Upon re-evaluation, we found that your app is
15 not in compliance with the App Store Review Guidelines ... Specifically, the app is a keyboard
16 for Apple Watch. For this reason, your app will be removed from sale on the App Store at this
17 time.” Yet during this time frame, Apple’s App Review department permitted a competitor watch
18 keyboard application, “Shift Keyboard,” to launch on the App Store. Plaintiff had to appeal the
19 rejection through Developer Relations before getting FlickType returned for sale on the App
20 Store. Plaintiff asked why this happened and if Developer Relations had any suggestions on how
21 to prevent this from reoccurring in the future. Apple never provided a response.

22 20. Plaintiff launched an integrable version of FlickType in February 2019, which
23 enabled other third-party developers to incorporate FlickType’s streamlined gesture typing
24 system for the Apple Watch into their own applications. While Apple kept rejecting the
25 FlickType watch keyboard for Plaintiff, third-party applications incorporating the same FlickType
26 watch keyboard were regularly updated, approved, and available on the App Store.

27 21. During this same time frame, Plaintiff developed FlickType Notes, a separate
28 application, increasing the functionality of FlickType by including a note-taking function with the

1 watch keyboard to reduce the chances of being rejected upon submission to the App Store.
2 However, despite allowing competitor watch keyboard applications and third-party applications
3 that integrated FlickType’s watch keyboard, Apple again rejected Plaintiff’s application in early-
4 March stating: “Your Apple Watch app is only a keyboard and did not have pre-loaded content.”
5 Plaintiff resubmitted the application after adding some sample notes content. Again, App Review
6 rejected it stating: “your app uses Apple Watch as a keyboard which is not an intended use of
7 Apple Watch.” Yet Apple permitted competitor watch keyboard applications to remain on the
8 App Store. Again, Plaintiff was forced to go through another extensive review process going into
9 April 2019, with App Review dragging its feet the entire time, reluctant to provide any written
10 responses.

11 22. After reaching out to Developer Relations, Apple informed Plaintiff that the App
12 Review’s rejection was “just a mistake” and that there is “not a problem with what you’re doing.”
13 Despite this, App Review continued to reject Plaintiff’s application. Plaintiff asked Apple why
14 the same Apple Watch keyboard that has been permitted in his FlickType Keyboard application
15 for texting but rejected in the FlickType Notes application for note taking on the Apple Watch.

16 23. In May 2019, App Review attempted to justify its rejection of the FlickType Notes
17 by stating that “full keyboard apps are not appropriate for Apple Watch” because “its display is
18 not optimized or intended for full keyboard-type apps – such apps create a poor user experience
19 and are not ‘easy to use.’” App Review’s comment that it “create[s] a poor user experience and
20 are not easy to use” flew in the face of the numerous reviews to the contrary, such as AppAdvice
21 and iDownloadBlog, both of which praised FlickType Notes’s ease of use. In March 2019, Forbes
22 stated in its review that the “FlickType gesture keyboard app makes typing a breeze,” describing
23 it as “simple, enjoyable and highly effective.” A review by iMore in July 2019 stated that it
24 “works flawlessly” and is “seamless.” Inside Apple characterized it as “astonishingly accurate”
25 and WatchAppList stated the application was “a fundamentally better keyboard.” And while
26 Apple claimed that “full keyboard apps are not appropriate for Apple Watch” when it came to
27 Plaintiff’s watch keyboard application, Apple continued to allow competitors’ watch keyboard
28 applications and third-party applications integrating FlickType’s watch keyboard on the App

1 Store. Notwithstanding these indisputable facts, in response to Plaintiff’s appeal, App Review
2 states its “original rejection feedback is valid” and “that all appeal results are final.”

3 24. These wrongful rejection issues continued to plague Plaintiff through December
4 2019. While Apple permitted Plaintiff’s many third-party partner applications to be sold in the
5 App Store (such as “Chirp for Twitter,” “Nano for Reddit,” “WatchChat for WhatsApp,” and
6 “Lens for Instagram,” all containing the latest version of Plaintiff’s integrable version of the
7 FlickType keyboard application for the Apple Watch), Apple refused to permit the FlickType app
8 to be separately sold as an independent application, each time reciting that “full keyboard apps
9 are not appropriate for Apple Watch.”

10 25. In January 2020, Plaintiff noticed that Apple approved an update for a
11 competitor’s keyboard application for the Apple Watch. Plaintiff resubmitted the same version of
12 FlickType Notes that Apple had rejected several times. This time, now that competitive
13 applications had been in place for as much as a year, Apple issued its approval within a couple of
14 hours. Plaintiff also resubmitted the main FlickType Keyboard application, which Apple also
15 approved. However, by this time, Apple’s wrongful rejections had already cost Plaintiff over a
16 year of revenue.

17 26. Once allowed on the App Store, FlickType quickly vaulted into the top ten paid
18 applications on the App Store. In less than a month, FlickType became the ***number one paid***
19 ***application*** across the entire App Store, generating \$130,000 of revenue for the month. In late
20 May, Plaintiff released a faster swipe version of his keyboard, which generated another \$72,000
21 of revenue in June. At the end of the year, FlickType was named one of the “Top Apps of 2020”
22 on the App Store.

23 27. As it turns out, however, Apple’s promise to help developers build, test, market,
24 and distribute their products and grow their business through a secure, trusted, and accessible
25 marketplace is just a façade designed to wrongfully entice developers to the App Store. The truth
26 is the App Store is a hotbed of scams, which Apple insufficiently polices because it directly
27 profits from them. Specifically, Apple takes 30 percent of all the revenue generated by
28 developers, including those by the scam competitors, generating billions of dollars in profits for

1 the App Store. In fact, Apple has long known about fraudulent developers using loopholes in
2 Apple’s platform to create copycat applications and fake reviews used to prioritize those
3 applications on the App Store but does nothing to curb the problem. Rather, Apple enables these
4 fake ratings by intentionally displaying them next to each application. Apple knows that if it hid
5 these ratings, people would use external sources to discover and vet applications, resulting in
6 Apple having less control over its users’ application discovery phase and, thus, over developers.

7 28. Plaintiff fell victim to the rampant scams that Apple knowingly ignores and
8 perpetuates on the App Store. Within a month of FlickType’s release, scam competitors appeared
9 with barely usable applications. These bogus applications have glowing false ratings, which
10 vaulted them ahead of FlickType on the App Store and stole Plaintiff’s potential customers. Scam
11 applications reduced Plaintiff’s revenue from well-over \$100,000 per month to just \$20,000 per
12 month. Despite Plaintiff’s repeated efforts to inform Apple about this problem, Apple has done
13 little to nothing to ensure fair competition on its App Store. The problem is widespread.

14 29. As one example, scam competitor “KeyWatch” launched in February 2020 with
15 numerous fake ratings. The App Store guidelines explicitly provide that ratings manipulation is
16 forbidden and that violations will result in termination of the offender’s Development Program.
17 However, despite repeated complaints from legitimate developers and others, Apple did not
18 remove the KeyWatch app from the App Store until February 2021, after Mr. Eleftheriou’s first
19 report documenting KeyWatch’s scams attracted a lot of social media attention. Even then, Apple
20 left its developer account in place, permitting it to run scams totaling over \$3,000,000. While
21 Apple ultimately removed the KeyWatch developer from the Developer Program, it was only
22 after Mr. Eleftheriou’s second report documenting KeyWatch’s scams and Apple’s response to it
23 received widespread notoriety on social media.

24 30. Similarly, another scam competitor, “WatchKey,” launched in March 2020 with
25 manipulated ratings. Apple has yet to remove that application from the App Store despite
26 complaints. In effect, Apple has enabled the WatchKey developer to continue running its fake
27 rating scams to the tune of \$300,000 per month, effectively pushing FlickType farther down on
28 the order of search results.

1 31. Because Apple fails to properly police the App Store, scam competitors get away
2 with stealing over a \$100,000 a month from Plaintiff’s monthly FlickType revenue by utilizing
3 dysfunctional copycat applications and manipulated ratings schemes to promote their products. At
4 least one scam competitor, “KeyWatch,” used Plaintiff’s FlickType demonstration video in its
5 fraudulent advertising. Apple stands by, safe in its monopoly position, and counts its cash.

6 32. Indeed, despite this pervasive abuse, Apple knowingly continues its ineffective
7 policing practice to the detriment of users and developers, all while advertising the App Store as
8 “a place you can trust” and taking 30 percent of developer’s revenue. Following on the heels of
9 terminating KeyWatch from the Developer Program, a “new” scam developer, “WatchBoard” has
10 emerged following the same methodology employed by KeyWatch – i.e., using fake ratings to
11 buoy those applications to the top of the App Store, driving legitimate applications down on the
12 list and effectively stealing customers away from legitimate developers like Plaintiff. In fact,
13 WatchBoard is using KeyWatch’s video inside its application. Another scam developer for the
14 “Star Gazer+” application has been allowed to exist for years, generating over \$5 million. To
15 date, notwithstanding numerous complaints and reports, Apple has done absolutely nothing about
16 either of them, even though its Director of App Review acknowledged knowing about the
17 WatchKey and Star Gazer+ applications.

18 33. Despite possessing massive resources and technological savvy, Apple intentionally
19 fails to police these fraudsters, costing honest developers millions, and perhaps billions, while
20 Apple continues to amass huge profits for itself. Apple’s App Store does not just dominate the
21 app space. Rather, Apple has effectively created a monopoly by preventing the users of its
22 devices from being able to obtain applications from any source other than the App Store. Apple
23 holds both its device users and developers hostage. Yet each time it faces antitrust claims, Apple
24 justifies its monopoly by claiming it is necessary to protect its users and developers from
25 unscrupulous conduct and ensure a fair competitive marketplace for the benefit of both. In truth,
26 Apple turns a blind eye to rampant fraud and exploitation to make an easy profit.

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FIRST CAUSE OF ACTION

(False Advertising – B&P Code § 17500)

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3 34. Plaintiff incorporates the allegations set forth in paragraphs 1 through 33.

4 35. Business & Professions Code § 17500 provides that “[i]t is unlawful for any
5 person, firm, corporation or association, or any employee thereof with intent directly or indirectly
6 to dispose of real or personal property or to perform services, professional or otherwise, or
7 anything of any nature whatsoever or to induce the public to enter into any obligation relating
8 thereto, to make or disseminate or cause to be made or disseminated before the public in this state
9 ... in any manner or means whatsoever, including over the Internet, any statement, concerning
10 that real or personal property or those services, professional or otherwise, or concerning any
11 circumstance or matter of fact connected with the proposed performance or disposition thereof,
12 which is untrue or misleading, and which is known, or which by the exercise of reasonable care
13 should be known, to be untrue or misleading”

14 36. Developers and other members of the public are likely to be deceived by Apple’s
15 advertising stating that the App Store is “a safe and trusted place to discover and download apps;”
16 that the App Store ensures that the applications on the App Store “are held to the highest
17 standards for privacy, security, and content;” that the guidelines are “applied fairly and equally to
18 all developers;” and that the App Store “is committed to helping developers turn their brightest
19 ideas into apps that change the world” by helping developers “build, test, market, and distribute
20 [their] products and grow [their] business” through a “secure, trusted, and accessible”
21 marketplace. However, as alleged above, none of Apple’s statements are true.

22 37. As a result of Apple’s false and misleading statements and advertisements,
23 Plaintiff has suffered injury in fact, including without limitation the loss of money and expending
24 enormous amounts of time and other resources into developing the FlickType series of
25 applications on the Apple platforms, which could be marketed only on the App Store.

26 38. Plaintiff requests that this Court order Apple to restore the money Plaintiff lost as a
27 result of its false and misleading statements and advertising, the amount of which will be proven
28 at trial.

1 **SECOND CAUSE OF ACTION**

2 **(Unfair Competition – B&P Code § 17200)**

3 39. Plaintiff incorporates the allegations set forth in paragraphs 1 through 38.

4 40. Business & Professions Code § 17200 defines “unfair business competition” to
5 include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
6 untrue or misleading” advertising.

7 41. A business act or practice is “unfair” if it offends an established public policy or is
8 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

9 42. “Fraudulent” business acts include any act or practice likely to deceive the public,
10 even if no one is actually deceived.

11 43. Apple has engaged in unlawful, unfair, and fraudulent business practices by virtue
12 of the acts and conduct identified above, including by falsely enticing developers like Plaintiff
13 through promises of committing to help them build, test, market, and distribute their products and
14 grow their business through a fair, secure, trusted, and accessible marketplace. In fact, contrary to
15 Apple’s assertion that the guidelines are “applied fairly and equally to all developers,” Apple
16 selectively enforces opaque and onerous standards against potential competitors while not
17 applying those same standards on other developers who are not viewed as potential competitors to
18 Apple. Apple knowingly hosts a hotbed of fraudulent scam activity on its App Store meant to
19 drive Apple’s competitors from the App Store, including by knowingly displaying fake ratings
20 next to each application. Indeed, the App Store remains the only marketplace available for Apple
21 mobile applications, enabling Apple to flex its monopoly muscle by arbitrarily determining what
22 applications it will allow developers to upload to the App Store and, consequently, what users of
23 its devices can have access to.

24 44. As a result of Apple’s unlawful, unfair, and fraudulent business practices, Plaintiff
25 has incurred actual financial losses and injuries, including in the form of expenditures of money
26 and resources in developing FlickType and at least two years of lost revenue.

1 offer are held to the highest standards for privacy, security, and content.” In targeting developers,
2 Apple announced that its Developer Program provides them with “Infinite Opportunities” by
3 enabling developers to “create the next generation of apps” for the over a “billion active devices
4 worldwide.” “The Apple Developer Program provides all the resources to distribute on the App
5 Store” offering an “incredibly rapid adoption rate of new software.” Through this program, Apple
6 would help developers “discover best practices for implementing the latest technologies” and
7 provide “guidance on design and app review criteria so [developers] can build the polished and
8 intuitive apps that Apple customers expect.” And “because of the rigorous standards we have in
9 place – applied fairly and equally to all developers,” Apple asserts the App Store presents “a great
10 business opportunity for developers everywhere.” To this day, Apple maintains that it “is
11 committed to helping developers turn their brightest ideas into apps that change the world” by
12 helping developers “to build, test, market, and distribute [their] products and grow [their]
13 business” through a “secure, trusted, and accessible” marketplace. Through the Developer
14 Program and established guidelines, Apple assured it would protect its users and developers from
15 unscrupulous conduct and ensure a fair competitive marketplace for the benefit of both users and
16 developers.

17 53. Apple either knew these representations were false when then made them or made
18 these representations recklessly and without regard for their truth. In either case, Apple made
19 these representations with the intent to induce developers like Plaintiff into developing and
20 submitting applications for distribution through the App Store.

21 54. Plaintiff reasonably relied on these representations by developing and submitting
22 the FlickType series of applications for the Apple Watch and reporting scam competitors engaged
23 in rating manipulation and copycat applications.

24 55. As a direct result of relying on Apple’s misrepresentations, Plaintiff has been
25 harmed by leaving Pinterest and millions of dollars in compensation, expending significant
26 resources in developing its FlickType series of applications to the App Store, and by losing at
27 least two years of revenue. The amount of Plaintiff’s damages will be proven at trial.

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1 56. Apple’s conduct as alleged herein constitutes fraudulent, oppressive, or malicious
2 conduct warranting the imposition of punitive damages in an amount sufficient to punish it and
3 deter others from similar wrongdoing.

4 **FIFTH CAUSE OF ACTION**

5 **(Negligent Misrepresentation)**

6 57. Plaintiff incorporates the allegations set forth in paragraphs 1 through 56.

7 58. Apple advertises to the public at large and to developers that the App Store is “a
8 safe and trusted place to discover and download apps” because Apple “ensur[es] that the apps we
9 offer are held to the highest standards for privacy, security, and content.” In targeting developers,
10 Apple announced that its Developer Program provides them with “Infinite Opportunities” by
11 enabling developers to “create the next generation of apps” for the over a “billion active devices
12 worldwide.” “The Apple Developer Program provides all the resources to distribute on the App
13 Store” offering an “incredibly rapid adoption rate of new software.” Through this program, Apple
14 would help developers “discover best practices for implementing the latest technologies” and
15 provide “guidance on design and app review criteria so [developers] can build the polished and
16 intuitive apps that Apple customers expect.” And “because of the rigorous standards we have in
17 place – applied fairly and equally to all developers,” Apple asserts the App Store presents “a great
18 business opportunity for developers everywhere.” To this day, Apple maintains that it “is
19 committed to helping developers turn their brightest ideas into apps that change the world” by
20 helping developers “to build, test, market, and distribute [their] products and grow [their]
21 business” through a “secure, trusted, and accessible” marketplace. Through the Developer
22 Program and established guidelines, Apple assured it would protect its users and developers from
23 unscrupulous conduct and ensure a fair competitive marketplace for the benefit of both users and
24 developers.

25 59. Even if Apple believed their representations were true, it had no reasonable basis
26 for believing them to be true given the numerous complaints and reports it received. Yet Apple
27 made these representations anyway with the intent to induce developers like Plaintiff into
28 developing and submitting applications for distribution through the App Store.

1 60. Plaintiff reasonably relied on these representations by developing and submitting
2 the FlickType series of applications for the Apple Watch and reporting scam competitors engaged
3 in rating manipulation and copycat applications.

4 61. As a direct result or relying on Apple's misrepresentations, Plaintiff has been
5 harmed by leaving Pinterest and millions of dollars in compensation, expending significant
6 resources in developing its FlickType series of applications to the App Store, and by losing at
7 least two years of revenue. The amount of Plaintiff's damages will be proven at trial.

8 **SIXTH CAUSE OF ACTION**

9 **(Negligence)**

10 62. Plaintiff incorporates the allegations set forth in paragraphs 1 through 61.

11 63. Apple, as the provider and sole controller of the App Store, owed Plaintiff a duty
12 of care to properly operate and maintain the App Store, including preventing scam competitors
13 from manipulating ratings and reviews, properly policing fraudulent developers who are using
14 loopholes in Apple's platform to create copycat applications and fake reviews to the detriment of
15 Plaintiff, and fairly and evenly applying the developer guidelines.

16 64. Through the actions and conduct identified above, including engaging in a
17 prolonged campaign of arbitrarily applying opaque and unreasonable constraints against Plaintiff
18 while at the same time not applying those same restrictions on others, and by allowing fraudulent
19 developers to manipulate ratings and list copycat applications on the App Store, which remain
20 ongoing despite repeated complaints about these scams, Apple has breached the duty of care it
21 owed to Plaintiff.

22 65. As a direct result of Apple's negligence, Plaintiff has been harmed by expending
23 massive amounts of time and resources into developing the FlickType series of applications,
24 losing two years of revenue from improper rejections and scam competitors, and lost opportunity
25 damages. The amount of Plaintiff's damages will be proven at trial.

26 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as
27 follows:

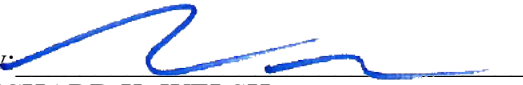
- 28 1. An award of damages in an amount according to proof;

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2. For interest on the judgment at the legal rate;
3. An award of punitive damages in an amount according to proof;
4. For costs of suit;
5. For attorneys' fees and costs pursuant to the Agreement; and
6. For any other relief the Court deems just and reasonable.

DATED: March 17, 2021

ALPHA TRIAL GROUP, LLP

By: 
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Counsel for Plaintiff KPAW, LLC