

EXHIBIT 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
DARREN EASTMAN
21446 ONEDA CT,
LOS GATOS, CA 95033

TELEPHONE NO: 650-215-3313 FAX NO. (Optional):
E-MAIL ADDRESS (Optional): DARREN@EASTMANTECHNOLOGIES.COM
ATTORNEY FOR (Name):

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County of Santa Clara,
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Case #18CV333181
Envelope: 1862777

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS:
MAILING ADDRESS: 191 N. FIRST STREET
CITY AND ZIP CODE: SAN JOSE 95113
BRANCH NAME: DTS - CIVIL

PLAINTIFF: DARREN EASTMAN

DEFENDANT: APPLE, INC.

DOES 1 TO _____

CONTRACT

COMPLAINT AMENDED COMPLAINT (Number):
1
 CROSS-COMPLAINT AMENDED CROSS-COMPLAINT (Number):

Jurisdiction (check all that apply):

ACTION IS A LIMITED CIVIL CASE
Amount demanded does not exceed \$10,000
 exceeds \$10,000 but does not exceed \$25,000
 ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)
 ACTION IS RECLASSIFIED by this amended complaint or cross-complaint
 from limited to unlimited
 from unlimited to limited

CASE NUMBER:
18CV333181

1: Plaintiff* (name or names):
DARREN EASTMAN

alleges causes of action against defendant* (name or names):
APPLE, INC.

2. This pleading, including attachments and exhibits, consists of the following number of pages: 43

3: a. Each plaintiff named above is a competent adult

except plaintiff (name):
(1) a corporation qualified to do business in California
(2) an unincorporated entity (describe):
(3) other (specify):

b. Plaintiff (name):

a. has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. has complied with all licensing requirements as a licensed (specify):

c. Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4: a. Each defendant named above is a natural person

except defendant (name): except defendant (name):
(1) a business organization, form unknown (1) a business organization, form unknown
(2) a corporation (2) a corporation
(3) an unincorporated entity (describe): (3) an unincorporated entity (describe):
(4) a public entity (describe): (4) a public entity (describe):
(5) other (specify): (5) other (specify):

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

SHORT TITLE: EASTMAN v. APPLE, INC.	CASE NUMBER: 18CV333181
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4. (Continued)
- b. The true names of defendants sued as Does are unknown to plaintiff.
- (1) Doe defendants (specify Doe numbers): _____ were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.
- c. Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. Defendants who are joined under Code of Civil Procedure section 382 are (names):

5. Plaintiff is required to comply with a claims statute, and
- a. has complied with applicable claims statutes, or
- b. is excused from complying because (specify):

6. This action is subject to Civil Code section 1812.10 Civil Code section 2984.4.

7. This court is the proper court because
- a. a defendant entered into the contract here.
- b. a defendant lived here when the contract was entered into.
- c. a defendant lives here now.
- d. the contract was to be performed here.
- e. a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. real property that is the subject of this action is located here.
- g. other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- Breach of Contract
- Common Counts
- Other (specify):
 §98.6, §98.7, §201, §1102.5, §3294, §3355, §3336, §11065, §11068, §12940

9. Other allegations:
 35 USC §256, 125 Stat.284

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for


- a. damages of: \$ 326,400
- b. interest on the damages
- (1) according to proof
- (2) at the rate of (specify): 10 percent per year from (date): October 1, 2014
- c. attorney's fees
- (1) of: \$ 5,000
- (2) according to proof.
- d. other (specify):
 See complaint for additional remedies

11. The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: 20 AUG 2018

DARREN EASTMAN

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

Darren Eastman
21446 Oneda Ct.
Los Gatos, CA 95033

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

DARREN EASTMAN,

Plaintiff,

vs.

APPLE, INC.,

Defendant

Case Number **18CV333181**

Date Action Filed: 8/13/2018

FIRST AMENDED COMPLAINT

Demand's unlimited, exceeding \$25,000 per *CCP* §85-86.1. Per Rule 8.204,
this complaint's 10,313 eligible words.

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1 **INTRODUCTION**

2 Plaintiff's counsel (Ivan Halperin, 52450) submitted a 5-page demand letter
3 (with a 26-page summary of facts) to Bruce Sewell, General Counsel and
4 SVP of Apple, on November 2, 2016. The letter detailed defendant's
5 nonjoinder of Mr. Eastman's critical innovation and responsibility in the
6 creation of six US utility patents. It discussed discrimination, his unlawful
7 September 23, 2014 termination (not subject to at-will employment in
8 California) and covered the intentional conversion of plaintiff's personal
9 property and common stock after termination.

10 The defendant assigned Deborah Rice (Director of HR Legal) to investigate
11 these claims. Neither Ms. Rice or Mr. Sewell acknowledged counsels'
12 periodic requests for updates for over one year and have yet to report any
13 findings. During this time, both plaintiff and his counsel experienced
14 significant medical events requiring hospitalization and temporary assisted
15 living, yet still attempted to cause Apple to respond in good faith. Within
16 one week of the demand letters submission to Mr. Sewell, electronic read
17 receipts (disclosed in the email submission by counsel) showed 11
18 individual devices had examined the demand letter and the extensive
19 supplemental material contained in the *Points & Authorities*. On February
20 27, 2018 plaintiff attempted to reach Mr. Sewell by email and it bounced—
21 Mr. Sewell ignored the case for so long he no longer worked for Apple.
22 Plaintiff emailed Mr. Sewell's manager (Tim Cook) asking for clarification;
23 whether Apple would continue ignoring plaintiff's generous latitude to
24 settle. On February 27, Diego Acevedo (Apple counsel) contacted plaintiff's
25 counsel. Mr. Acevedo stated he wished to confer (per Mr. Cook) but never
26 contacted counsel again. Plaintiff emailed Mr. Cook again on July 25,

1 attaching the same documents which had been sent over a year earlier to Mr.
2 Sewell and comprise some of the *Points and Authorities*. Defendant has still
3 not contacted counsel or the plaintiff, as of the time of filing. In keeping the
4 plaintiff waiting in good faith for over one year before filing, defendant has
5 exploited California's statute of limitations—purporting to “investigate” the
6 matter without ever intending to do so. *Minor v. FedEx Office & Print*
7 *Services, Inc.* (2016) 182 F.Supp.3d 966, 988. Intentionally ignoring counsel
8 before litigations occurred unabated for almost two decades, as evidenced in
9 *Grant v. Apple Computer, Inc.* (2001) 1-CV-802679. The guilty manager in
10 this 2001 case was promoted to Senior Vice President in 2012.

11 Lastly, Apple ensured plaintiff had depleted available funds for legal
12 representation from continued unemployment; forcing him to act *pro se*—
13 causing his sole writing of this complaint. Six causes of action are presented
14 after four sections in the statement of facts—one for intellectual property
15 nonjoinder, one for unlawful termination, one containing background how
16 Apple evolved from an honest company into a rampant and regular abuser of
17 contract, discrimination and employment law; in addition to regularly acting
18 without good faith in business dealings. This includes a disturbing practice
19 of unlawfully terminating employees in the final days before Apple's
20 October 1 fiscal calendar ends; who've made sizable contributions towards
21 Apple's success, and/or, identified key quality problems before product
22 shipment and subsequently were due favorable performance review
23 compensation and/or vested granting of common stock previously awarded.
24 Fourth, summarizes how Apple's unlawful actions have affected every
25 aspect of plaintiff's life and continue today.

STATEMENT OF FACTS

1 Plaintiff was awarded a utility patent for firmware signaling technology
2 invented during development of the original MacBook Air computer. This
3 allowed the practical sustainability of a product design where the laptop
4 battery is permanently attached and not user serviceable. This increased
5 plaintiff's credibility and value within Apple, empowering him to create
6 innovations critical to Apple's continued success. After plaintiff temporarily
7 losing his original iPhone in Milwaukee, Wisconsin, he invented a novel
8 method and apparatus for locating a lost smartphone or computing device.
9 After detailing the invention in a Radar application ticket (which is date/time
10 stamped and unchangeable) plaintiff began shopping the new feature to
11 members of engineering and ultimately the Director of iTunes marketing;
12 who decried customers, "would hate such a feature and feel Apple was
13 spying on them." The market advantage predicated Apple should allow
14 users to locate their lost devices, which're more expensive than competitors.
15 Realizing the feature would require the use of Apple's iCloud infrastructure
16 to work correctly for Mac and iOS users, plaintiff contacted Eddy Cue (VP
17 of iCloud) January 27, 2009. Mr. Cue replied that it was a good idea and
18 now, "something we have on our list to consider." Plaintiff then reached out
19 to Scott Forstall (VP of iOS) February 18, 2009 and explained his new
20 feature, and, his exchange with Mr. Cue—who responded that, "it was a
21 good suggestion."

22 After the initial June 15, 2010 release of the "Find my iPhone" feature,
23 plaintiff emailed Mr. Forstall on March 8, 2009, asking if patent protection
24 should be sought, but never heard from Mr. Forstall; he was then
25 unsuccessful soliciting Apple's patent counsel. Plaintiff emailed Rick von

1 Wohld on March 24, 2009. Rick responded less than an hour later, stating,
2 "Got it. Thanks Darren. I'll get back to you on this..." Mr. von Wohld never
3 responded further. Despite being the sole inventor of the process and
4 technology to locate a lost computer or device, plaintiff was nonjoinder from
5 four US utility patent applications later filed in 2012 and 2013—
6 subsequently granted by the USPTO.

7 Plaintiff also declared a process for selling mobile tickets using an Apple
8 operating system on his 2006 Intellectual Property Agreement (IPA) that
9 closely resembles claims in a utility patent defendant was granted for the
10 "Passbook" application for event ticketing. Plaintiff only discovered being
11 nonjoinder *in re* the Passbook patent after his unlawful termination, while
12 researching the previous four nonjoinder patents for potential others—which
13 followed a demonstrated and repeated pattern of discrimination by Apple,
14 including, but not limited to its executives and legal group. While clearly not
15 occurring in this matter, when there's no apparent disagreement, "[a]s
16 between inventors their word is normally taken as to who are the actual
17 inventors." See *Brader v. Schaeffer* (1976) 193 USPQ 627, 631.

18 A coinventor need not contribute to every claim of a patent; contribution to
19 one claim's enough. "The contributor of any disclosed means of a means-
20 plus-function claim element is a joint inventor as to that claim, unless one
21 asserting sole inventorship can show that the contribution of that means was
22 simply a reduction to practice of the sole inventor's broader concept." See
23 *Ethicon Inc. v. United States Surgical Corp.* (1998) 135 F.3d 1456, 1460-63,
24 45 USPQ2d 1545, 1548-1551. The electronics technician in *Ethicon*, who
25 contributed to one of the two alternative structures to define "the means for

1 detaining" in a claim limitation was held to be a joint inventor. Plaintiff
2 contributed to at least one (or more) of the claims for all the patents in
3 question, with none of the claims existing without plaintiff. Apple had no
4 previous art or plans for such claims before he created Radar 6262545, and,
5 his disclosures made in a 2006 IPA. Lastly, in *Tucker v. Naito* (1975) 188
6 USPQ 260, 263 it was found inventors need not "personally construct and
7 test their invention." Further, "it is not essential for the inventor to be
8 personally involved in carrying out process steps...where implementation of
9 those steps does not require the exercise of inventive skill." See *In re*
10 *DeBaun* (1982) 687 F.2d 459, 463, 214 USPQ 933, 936.

11 12 II.

13 Plaintiff began working as an engineer for Apple in 2006, in large part from
14 the efforts of CEO Steve Jobs—who was motivated by plaintiff's idea to
15 build a low-cost Mac capable of running the OS X operation system for the
16 education market; with all the ports streamlined in one place for easy,
17 securable access in academia. Plaintiff designed a computer which would
18 attain these goals while concluding graduate school; convincing Mr. Jobs to
19 implement what became the eMac computer—inspiring a future generation
20 to embrace technology. Plaintiff wasn't yet an Apple employee and
21 nonjoinder for associated design patents. GC Nancy Heinen contacted
22 plaintiff, stating she revised Apple's unsolicited idea submission policy [to
23 what it remains today] based on plaintiff's role in the eMac, and, presenting
24 the idea to Mr. Jobs of using Dave Matthews' "Everyday" for an iMac
25 commercial. For eight years after joining Apple, plaintiff earned extremely
26 positive performance reviews, a US utility patent for firmware technology,
27 and, discretionary bonuses for his work on Apple products— including a

1 small restricted stock grant. In 2009, Mr. Jobs made the plaintiff promise
2 that he'd always work for Apple and indicated that a job would always be
3 available for him—honesty and loyalty were most important; he appreciated
4 plaintiffs' commitment to Apple. Mr. Jobs further instructed him to *always*
5 report anything he felt wasn't correct via email; if the proper channels and
6 points were first exhausted. As part of his position description, plaintiff was
7 responsible for exception processes from the executive team *in re* software
8 and Mac quality issues. This caused plaintiff to give periodic updates to Mr.
9 Jobs at his request, which ceased with his 2011 death. Plaintiff occasionally
10 presented ideas for new Apple technologies, or, solutions to longstanding
11 problems. Locating a lost device using another connected to the Internet
12 became "Find my iPhone" and saw executives feel confident it was brilliant;
13 while everybody else in the company felt it was very foolish. Such
14 frustrations are commonplace at Apple and offer a clue why Mr. Jobs was
15 passionate about having employees who'd done good work for him promise
16 to remain working for him for the balance of their career. Many talented
17 employees who've given part of their life for Apple were now regularly
18 being disciplined and terminated for reporting issues they were expected to
19 during Mr. Jobs tenure. Cronyism and a dedicated effort to ignore quality
20 issues in current and future products became the most important projects to
21 perpetuate the goal of ignoring the law and minimizing tax. This meant an
22 end to communicating anything to customers. which encouraged a justifiable
23 influx of litigation for anticompetition, quality and safety. Notifying Mr.
24 Cook about issues (previously welcomed by Mr. Jobs) produces either no
25 response, or, a threatening one later by your direct manager. A portion of
26 nearly every day became tasked with dealing with customers, issues or
27 otherwise projects related to product litigation, often for embarrassing and

1 simple causes which never had previously happened at Apple. Updates for
2 every product are often untested, causing more significant issues than those
3 they resolved—sometimes rendering applications or basic functionality to be
4 completely unusable until another update fixes the regression in the previous
5 update; which never (or rarely) exist in comparable products worldwide.

6 Document retention notices sometimes were sent by legal multiple times per
7 week—the fire drill approach of interrupting everything to stop and fix an
8 issue which never would have existed previously began to cause undue
9 strain, spawning itself yet more quality bugs; as a result of limited resources
10 and a management focus on eliminating quality assurance and engineering
11 positions in a zeal to acquire retail and treasury employees. This destroyed
12 morale and caused many of the remaining engineers who made a difference
13 to leave after 2011. This sparked a contentious and toxic environment; hiring
14 managers with little technical experience to oversee the remaining engineers,
15 who started to disappear suddenly without warning—because a stock option
16 was due, or, a performance review which'd necessitate a large bonus and/or
17 raise. The executive teams main focus is eliminating tax liability and bad PR
18 being disseminated about Apple. No corporate responsibility exists at Apple
19 since Mr. Jobs' death. There's no accountability, with attempts at doing the
20 right thing met with swift retaliation. The continual pattern of Apple's
21 already troubled HR and legal teams affecting the company began
22 inadvertently driving Apples engineering focus, just as the elimination of
23 institutional memory becoming a strong policy of middle management.

24 Attempts to explain past failures to management in plaintiff's workgroup are
25 akin to contentious and improper communication, irrespective of role.

26 Employees who can remember when a proposed outcome has cost Apple
27 dearly, or caused significant harm are always disregarded, discredited and

1 often terminated. In 2014, plaintiff's previous manager appeared to be
2 unlawfully fired by his Director (William Heilman) for suggesting in a large
3 meeting that a proposed project would cost millions of dollars and hundreds
4 of thousands of hours of labor without any success, and, that it'd been
5 attempted twice in the last 15 years. He was terminated; then, his daughter
6 was terminated shortly thereafter; in a completely different division—for
7 reporting issues with toxic mold in her building, which caused her and other
8 employees to work-from-home. Despite contractors confirming the building
9 could never be rid of mold, Apple signed a new multiyear lease, and,
10 encouraged staff to return to the office after simply repainting. Plaintiff's
11 former manager was recruited by Steve Jobs and managed both Developer
12 Relations and the Developer Technical Support organizations previously. It
13 was only a matter of time before any ethical employee, or, anyone who did
14 work respected by Mr. Jobs was unlawfully terminated since Mr. Cooks
15 tenure as CEO.

16 A regular practice among Apple management is to terminate employees in
17 September, as Apple's fiscal calendar begins in October; this means that
18 compensation due for the current years' work (including stock which may
19 have taken multiple years to vest) is not granted. The stock can then be re-
20 allocated to other employees and becomes an added bonus for managers to
21 terminate experienced staff—this keeps both salary and tax costs minimized
22 following the retirement of illegal anti-poaching activity at Apple after
23 losing *High-Tech Employee Antitrust Litigation* in 2015. Complying with
24 the law and paying what's honestly required is taboo at Apple, with judicial
25 orders and paying tax (of any kind) representing the principal frustration of
26 Apple's executives. Apple steadfastly believes in ignoring it's ethical and

1 business responsibilities; with the caveat it's always cheaper to settle a
2 lawsuit, which takes effort, money and time to prepare. Even when Apple is
3 presented with litigation, it files ridiculous motions which regularly
4 challenge the rule of law and disrespect both the judiciary and due process,
5 which also unnecessarily slows the judicial process. Apple tries to discredit
6 and attack the character of customers and employees who've suffered
7 wrongdoing and file a claim or complaint. At no point during plaintiff's
8 tenure after Mr. Jobs' death has Apple done what was right and actually
9 mitigated a legal issue without being ordered to do so by a court—often, a
10 few years later, when the public's memory has faded. The renewed
11 discussion *in re* eliminating the demurrer in California by the legislatures no
12 doubt been fueled by Apple. Plaintiff was regularly assigned to help
13 customers who wrote to executives after being ignored by Apple for
14 reporting a problem; who, subsequently filed litigation—with the issue never
15 being resolved, assuring them a nonmerchantable product. This is despite
16 being well understood by engineering after plaintiff's diagnosis—often with
17 a fix identified, but never released as an update. These customers' names
18 would appear in document retention notices plaintiff received from legal.

19 In another of plaintiff's companion workgroups (all sharing one female
20 administrative assistant, over age 40) Director Dan Lohr would regularly
21 instruct her to do inappropriate things for him; both during work hours and
22 off time—despite being nonexempt and not compensated for such actions.
23 Regularly visiting Mr. Lohr's residence to retrieve personal belongings for
24 him was commonplace. One occurrence saw her being asked to retrieve
25 Euro currency secured in his personal safe at his residence and FedEx them
26 to him while on holiday in Europe. Organizing his vacations was also

1 common; the distinction between personal servant and Apple employee
2 wasn't understood by Mr. Lohr, causing the workgroups AA to be off-
3 campus doing personal errands for him when needed at Apple, including
4 plaintiff. Missing meal breaks commonly resulted—Mr. Lohr would never
5 explain that she had a choice and could say no to such ridiculous
6 discrimination without fear of being terminated as a member of a protected
7 class for age discrimination. Mr. Lohr also was her direct manager,
8 exercising a conflict of interest. When plaintiff would visit her cubical in
9 need of sending urgent items to somebody, she'd sometimes be performing
10 inappropriate tasks for Mr. Lohr, such as getting his home mail. After
11 repeated occurrence since Mr. Lohr joined Apple, it became clear why she
12 was suddenly unavailable so often—after years of always being more
13 available than everybody else.

14 III.

15 During his tenure at Apple from 2006 until 2014, plaintiff acquired 7
16 disabilities and became a member of a protected class in California. After
17 having life-saving neurosurgery in 2013 and returning to work four months
18 earlier than his recommended twelve-month recovery, plaintiff began
19 experiencing discrimination, retaliation, reputational damage, favoritism,
20 unfair business practices and ultimately unlawful termination—before the
21 unlawful conversion of his personal property, and finally, breach of contract
22 and good faith in business dealings. Such occurred on September 23, 2014,
23 via personal email, as all his Apple access had been disabled without his
24 knowledge, while at home on a sick day, and further, occurring minutes after
25 the Office of the CEO had contacted plaintiff at home; for assistance
26 investigating a software problem reported to Mr. Cook. Apple business is

1 forbidden using personal email and plaintiff's manager (Eric Barkve) had
2 refused previous scheduled 1:1 meetings. Plaintiff still hasn't received a
3 written warning (as of the time of filing) and it was explained via personal
4 email that his fixing a critical quality bug in the Disk Utility application (in
5 the then pending Mac OS update known as Yosemite) and attempting to
6 solicit Mr. Barkve to do his job in ensuring the fix was integrated before
7 customer shipment was improper communication—despite Mr. Barkve and
8 his manager (Mr. Heilman) repeatedly refusing to perform their job
9 positions, which ensure critical customer-facing issues are resolved in a
10 timely manner with software updates. Plaintiff received several awards and
11 was well-respected during his joint tenure as an Apple engineer and
12 supervisory employee; having never being given a poor performance review,
13 although management frequently omitted his IP achievements, or, key work
14 with cross-functional teams such as legal and product marketing. After
15 counsel asked plaintiff to obtain a copy of his employment file in June of
16 2015, it was found that it contained only his 2006 IPA, his termination letter
17 sent via personal email, and, a single (highly negative) performance review
18 for 2014—which Mr. Barkve submitted to HR over 3 months after
19 unlawfully terminating plaintiff. The absence of an Apple employee
20 handbook, as well as any explanation of Apple's disciplinary process for
21 either current or new employees made plaintiff's counsel realize Mr. Barkve
22 was unlawfully trying to conceal his wrongful termination of plaintiff *ex*
23 *post facto*. Why waste time in fabricating a yearly performance review for an
24 employee who hasn't worked for Apple since the previous year? An
25 uneducated, unethical and unqualified Mr. Barkve; who has no college
26 degree, no programming experience and little technical background for such
27 a demanding position as plaintiff was qualified. Plaintiff was discharged

1 unlawfully one day before his compensation and stock were due on 1
2 October—as is SOP with Apple’s key employees. Plaintiff unified Apple’s
3 graphics drivers (from the three companies used in Mac graphics cards,
4 AMD, Intel and Nvidia) so that common functionality with external displays
5 (such as remembering which of multiple, connected displays is primary,
6 secondary or tertiary across computer restarts and sleep) and took three years
7 to achieve. Some engineers theorized it could not be achieved, however,
8 plaintiff saw results via diligent effort. Mr. Barkve was well-aware of the
9 compensation such an achievement spanning three performance reviews
10 would entail, enthusiastically discussing how this would reduce Mac support
11 cost during a 1:1 meeting two months before his unlawful termination. It’s
12 no surprise *ex post facto* Mr. Barkve cancelled meeting requests with
13 plaintiff in September; citing the need to leave Apple on two occasions in to
14 reclaim children from school during normal business hours. Everyone on
15 plaintiff’s team indicated they’d had their performance review for 2014
16 *before* the second week of September. Since plaintiff had previously
17 received extremely rare and superior past reviews (which required executive
18 approval before they could be granted by his manager) plaintiff expected
19 repeat occurrence; especially given his recent projects’ completion after
20 three years. Finally, plaintiff’s termination letter stated he was, “providing a
21 contentious atmosphere which made employees feel uncomfortable.” This
22 was instead what Mr. Barkve did regularly; both to plaintiff, his workgroup
23 and others in engineering at Apple. If plaintiff could instead conduct a
24 performance review of Mr. Barkve, it would include this *exact* phrase.
25 Plaintiff’s termination letters not signed, has a grammatical mistake and
26 appears to have been originally written by somebody else; it’s obvious Mr.
27 Barkve intended to unlawfully terminate plaintiff—with the expectation

1 having HR deactivate his online and physical Apple access would magically
2 communicate his premeditated malice, without him doing so. Plaintiff asked
3 Mr. Barkve on September 13, 2014 and on September 26, 2014 for all
4 documentation relating to his discharge and received nothing; making him
5 unable to initiate Apple's Decision Review Process to appeal his discharge
6 within two months, as only his termination notice and 2006 IPA are in his
7 HR file—with nothing reviewable by a legal standard. The two-month limit
8 always expires before terminated employees can get anything from HR, but,
9 plaintiff couldn't, because his fabricated review wouldn't be created until
10 March—a full 6 months after his termination.

11 IV.

12 Upon the both devastating and unlawful loss of his job, property and stock
13 through no fault of his own, plaintiff was diagnosed with post-traumatic
14 stress disorder (PTSD) and continues to suffer emotional distress—from
15 such events, reputational damage, and finally, not having been employed
16 since. The *American Psychiatric Association, Diagnostic and Statistical*
17 *Manual of Mental Disorders, 5th Edition* manual describes the “*essential*
18 *feature*” of PTSD (at 274) as, “the development of characteristic symptoms
19 following exposure to one or more traumatic events.” Such events (as
20 described throughout the complaint) constitute traumatic events. Plaintiff has
21 difficulty sleeping, with a recurring theme in regular nightmares indicative
22 of Apple punishing him-*ex-post facto* for reporting said events to legal—the
23 plaintiff's forced to continue working for Apple, but, without compensation,
24 a desk, or, access to the internal applications or tools necessary to perform
25 his job. As additional punishment for having a reasonable accommodation to
26 work-from-home, plaintiff's manager makes him travel frequently; including

1 for meetings which're subsequently cancelled after his departure. Another
2 event which caused emotional distress for plaintiff was that Apple didn't
3 communicate his departure internally, which caused him to continue to
4 receive work-related calls on his mobile phone into the next year,
5 particularly from international locations. Apple also didn't communicate his
6 departure to the IRS for the following tax year, causing a dreaded IRS audit
7 for 2015; which didn't help plaintiffs PTSD, or, nightmares affecting his
8 ability to sleep, and, affected his ability to timely file for unemployment
9 (and later) disability insurance, causing him financial loss. Plaintiffs dubbed
10 Apple, "*the gift which keeps on giving*" as it helps frame the unlawful
11 employment practices Apple's legendary for—but only known about by a
12 handful of people; a result of the defendant's rich abuse of demurrers and
13 motions to seal. Being the most valuable company in the world gave Apple
14 free license to break the law and then use unethical legal attempts to dismiss
15 (or hide) the evidence from the public. While any other company faces
16 sanctions, Apple's (apparently) been rewarded for its deceit and disrespect
17 for the rule of law, explaining why it continues unabated. Apple will pay any
18 price to contain public disclosure of its liabilities and the Court's gladly
19 acquiesced in the past—perpetuating each of the continual offenses
20 described herein. Due process and the rule of law will be restored to Apple
21 employees by this complaint—even if appellate court and sanctions are
22 necessary. A trillion-dollar worth doesn't preclude any entity from
23 intentionally and repeatedly violating the law, without impunity.

CAUSES OF ACTION

24 1. Plaintiffs suffered financial and reputational damage as the original and
25 putative inventor of the "Find my iPhone" feature, which later was the sole

1 basis for the “Find my iPad” and “Find my Mac” features. Apple committed
2 nonjoinder of plaintiff in USPTO filings for utility patent applications
3 **20130326643, 20130326642, 20140364099 and 20140199966**. Apple must
4 amend these patents via **37 CFR 1.41(c)** as a violation of **35 U.S.C. §256**.

5 (A) Reputational damage qualifies for nonjoinder relief; for affecting one’s
6 employment via **§256**, see *Chou v. Univ. of Chi.* (2001) 254 F.3d 1347,
7 1357. In *Shukh v. Seagate Technology, LLC* (2012) 873 F. Supp. 2d 1087,
8 the opinion states, “we hold that concrete and particularized reputational
9 injury can give rise to *Article III* standing. As we noted in *Chou*, “being
10 considered an inventor of important subject matter is a mark of success in
11 one’s field, comparable to being an author of an important scientific paper.
12 We reasoned that pecuniary consequences may well flow from being
13 designated as an inventor.” Plaintiff hasn’t been employed since his
14 unlawful termination in September of 2015. The rehabilitation of plaintiff’s
15 professional reputation by joinder and recognition of said utility patents
16 would improve his employment and financial prospects. Additionally, “the
17 true inventor was left off the application as a result of a mistake and not as a
18 result of deception, on the part of either the named inventor or the actual
19 inventor.” *Stark v. Advanced Magnetics, Inc.* (1995) 894 F. Supp. 555, 560.
20 Plaintiff doesn’t know (or recognize) any of the names listed as inventors for
21 the patents in question. Any deception committed by the non-inclusion of
22 plaintiff may have only occurred at an executive level (such as Mr. Forstall)
23 or, by Apple counsel; none of which had any claim, or, could otherwise
24 demonstrate participation in the development of claims in said patents. The
25 consent of others named on said patents isn’t necessary for a correction to be
26 filed by Apple with the USPTO, as in *Iowa State Univ. Research*

1 *Foundation v. Honeywell Inc., Sperry Rand Corp.* (1971) 444 F.2d 406, 170,
2 374. Finally, none of the claims made in said patents could exist without
3 plaintiff's innovation, as shown in multiple emails with Apple executives
4 before the features in-question began research or development. Plaintiff
5 easily passes the "rule of reason" test as defined in *Price v. Symysk* (1993)
6 988 F.2d 1187, 1195. Plaintiff seeks relief per 35 U.S.C. §256 and the
7 *Leahy-Smith America Invents Act*, codified as 125 Stat. 284.

8 2. Plaintiff additionally suffered financial and reputational damage as a joint
9 inventor of the "Passbook" electronic ticketing solution. Plaintiff's IPA had
10 specific declarations for said art and was nonjoinder from Apple's filing of
11 20140364148 with the USPTO. Plaintiff (again) seeks relief per 35 U.S.C.
12 §256 and the *Leahy-Smith America Invents Act*, codified as 125 Stat. 284.

13 3. Plaintiff was unlawfully terminated, despite at-will employment, which
14 violated the *Fair Employment and Housing Act, California Labor Code*
15 §98.6, §98.7 and §1102.5, *California Code of Regulations* §11065 and
16 §11068, and, breach of contract.

17 (A) Plaintiff won a small-claims action against Apple for concealing a
18 memory defect he exposed in a personally purchased iPad Retina. Mr.
19 Barkve was aware of the resulting memory corruption bug plaintiff filed and
20 didn't assist in escalating to engineering management), so, §98.6 also
21 applies. This occurred in the months before plaintiff's unlawful termination,
22 as plaintiff communicated the case and outcome to his manager—retaliation
23 from Apple wasn't coincidental. §12940(h) includes protection, "from any
24 employer, labor organization, employment agency, or person to discharge,

1 expel, or otherwise discriminate against any person because the person has
2 opposed any practices forbidden under this part or because the person has
3 filed a complaint, testified, or assisted in any proceeding under this part.”

4 (B) Defendant committed “public policy” wrongful termination for fixing a
5 quality bug in the Mac Disk Utility application, which would erroneously
6 indicate to most users their computers hard drive was damaged when it
7 wasn’t, as in *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238. No
8 software engineer had been assigned to Disk Utility for three years, despite
9 being identified as mission critical, for obvious reasons in diagnosing and
10 fixing hard drive problems. No fix was scheduled for the bug in question,
11 however, great concern had been escalated to plaintiff about this bug from
12 support readiness employees—in *re* customers mistakenly becoming certain
13 their Macs hard drive needed replacement after checking it for errors, when
14 it did not. Such a contravening public policy affected millions of free
15 product users; meeting both constitutional and state provisions, as in *Gantt v.*
16 *Sentry Insurance* (1992) 1 Cal.4th 1083, 1094-1095 and *Green v. Ralee*
17 *Engineering Co.* (1998) 19 Cal.4th 66, 79-80. This subjects Apple to tort
18 liability, as in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178,
19 *Foley v. Interactive Data Corporation* (1988) 47 Cal.3d 654, 675-682 and
20 *Collier v. Superior Court* (1991) 228 Cal.App.3d 1117, 1121. As in
21 *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 887 “An employer may
22 not discharge an at will employee for a reason that violates fundamental
23 public policy.” As in *Jersey v. John Muir Medical Center* (2002) 97
24 Cal.App.4th 814, 821 it’s noted that, “a discharge for the exercise of a
25 constitutionally conferred right, no less than the exercise of a statutory right,
26 may support a wrongful termination action in violation of public policy.”

1 The plaintiff never willfully breached any employment duties, was never
2 habitually neglectful, or, unable to perform them. A reasonable
3 accommodation doesn't constitute breaching these said three characteristics
4 identified by *California Labor Code §2924* as being valid reasons for
5 dismissal.

6 (C) Defendant breached the express (or implied) agreement of an employer
7 not to terminate, except in accordance with specified procedures or without
8 good cause, as in *Soules v. Cadam, Inc.* (1991) 2 Cal.App.4th 390, 399.
9 Given the lack of an employee handbook and no posted disciplinary
10 procedures at Apple, plaintiffs termination was a breach of contract. Plaintiff
11 never received a written warning and wasn't issued a second warning before
12 being abruptly terminated. The policy plaintiff was alleged to violate isn't
13 documented or disseminated anywhere at Apple and was protected speech,
14 by a disabled person in a protected class. A wrongful termination claim
15 arises out of "the employer's improper discharge of an employee" in an
16 "employer-employee relationship" as in *Weinbaum v. Goldfarb* (1996) 46
17 Cal.App.4th 1310, 1315. To prevail on a cause of action for breach of
18 contract, the plaintiff must prove (1) the contract, (2) the plaintiff's
19 performance of the contract or excuse for nonperformance, (3) the
20 defendant's breach, and (4) the resulting damage to the plaintiff. See
21 *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186. All four elements
22 for breach of plaintiff's employment contract are clearly met, with further
23 proof to be shown in the *Points and Authorities*. It's well known from
24 *Robinson v. Magee* (1858) 9 Cal.81, 83. that, "a contract is a voluntary and
25 lawful agreement, by competent parties, for a good consideration, to do or
26 not to do a specified thing." Apple was founded 118 years later.

1 (D) Likewise, an employer cannot harass a member of a protected class for
2 being part of that class. See *California Government Code §12940*. Apple
3 breached contract in terminating employment of a disabled employee with a
4 reasonable accommodation on-file without good cause, see *California Labor*
5 *Code §1041*. Plaintiff was an exemplary employee and never received a poor
6 performance review, or, negative feedback concerning his communication
7 (or any) ability. Plaintiff had been working from home part-time under
8 written guidance from his neurosurgeon, who then approved plaintiff to
9 work from home full-time one month before his termination, as a result of
10 his unsatisfactory work conditions. Despite producing a high volume of
11 quality work from home which exceeded teammates at the office, plaintiff's
12 manager and Director expressed disdain and uncertainty about whether
13 they'd comply, but, didn't object.

14 (E) Plaintiff remains under continuing supervision and treatment for 7
15 disabilities which all began during his tenure with Apple, as defined in
16 *California Government Code §12945.2*, subd. (C)(8). Its evident
17 discrimination was a "substantial motivating factor" in plaintiffs'
18 termination, as in *Davis v. Farmers Insurance Exchange* (2016) 245
19 Cal.App.4th 1302, 1320. *California Code of Regulations §11009*, subd. (c)
20 states, "Discrimination is established if a preponderance of the evidence
21 demonstrates that an enumerated basis was a substantial motivating factor in
22 the denial of an employment benefit to that individual by the employer or
23 other covered entity, and the denial is not justified by a permissible defense.
24 A substantial factor motivating the denial of the employment benefit is a
25 factor that a reasonable person would consider having contributed to the

1 denial. It does not have to be the only cause of the denial.” This standard
2 illustrates a reasonable person would conclude plaintiff was discriminated
3 against in attempting to move into different positions to escape his growing
4 uncomfortableness with his managers repeated careless and unethical
5 decisions, attempting to claim recognition for his continued innovations,
6 and, in his unlawful termination; which precluded the unlawful conversion
7 of his personal belongings and vested common stock. While an employee
8 isn’t required to prove that the discriminatory motivation was the sole
9 motivation behind a negative employment action and instead prove only a
10 causal connection between the employee’s disability and the termination, the
11 plaintiff exceeds this threshold well beyond doubt, as in *Mixon v. Fair*
12 *Employment & Housing Comm.* (1987) 192 Cal.App.3d 1306, 1319. Nobody
13 else in plaintiff’s workgroup appears to have been disabled, or, had a
14 reasonable accommodation. As with everything Apple does unlawfully, past
15 and recent precedents can be found before Apple moves to “*seal and*
16 *conceal*” them from the public. In *Lynn Levitan v. Apple, Inc* (2016)
17 BC622413, one of defendant’s product safety counsel was wrongfully
18 terminated after complaining of illegal and unethical issues, as well as a
19 hostile and disparate work environment. When Ms. Levitan requested to
20 work remotely, she was both criticized and denied the opportunity; even
21 though her male counterparts were able to work remotely. Ms. Levitan's
22 treatment by Apple worsened after raising questions about her work
23 environment and Apple’s conduct. While Ms. Levitan was discriminated
24 against and refused the chance to work-from-home when male counterparts
25 did, plaintiff was discriminated against working-from-home when other non-
26 disabled counterparts (without reasonable accommodations on-file with HR)
27 regularly did so, without impunity. This was also the case with plaintiff.

1 (F) *California Code* §11065, subd. (p)(2)(M), §11068, subd. (c) even
2 provide for time off completely, however, plaintiff didn't need (or request)
3 leave and was performing his job at the same exemplary level he previously
4 did in the office. Note §11065, subd. (p)(2)(L), specifically allows an
5 employee to work-from-home. Given §11065, subd. (p)(2)(C), states an
6 employee may be, "transferred to a more accessible worksite," and this was
7 never performed by defendant. On June 23, 2014 plaintiff's workgroup
8 moved to a new building, which didn't have enough capacity for everyone—
9 permission was granted from facilities to shorten all cubicles from the
10 minimum requirement. Only two cubicles on the floor had giant concrete
11 support pillars inside them, rendering it difficult to rotate in an office chair.
12 With 7 others on plaintiffs' team in good health, Mr. Barkve approved
13 plaintiff's assignment to one of two such cubicles.

14 (G) *California Code* §11068 provides priority for disabled employees to
15 attain suitable alternate or vacant positions, which the plaintiff's Director
16 refused to do on multiple times when plaintiff applied and made such
17 requests when positions in his workgroup were posted publicly. Managing
18 the analysis group (known as Carpe Facto) and an equivalent engineering
19 position focused on cellular carrier updates were the two most recent
20 examples. In each instance, internal employees were moved into such roles,
21 without public applicants appearing to have been considered. As in *Caldwell*
22 *v. Paramount Unified School District* (1995) 41 Cal.App.4th 189, 195 "an
23 employee must show the employer harbored a discriminatory intent" and the
24 plurality of evidence affirms this. Plaintiff was well-qualified to manage his
25 team and wasn't interviewed by Mr. Heilman when the position became

1 available after he unlawfully terminated the current manager. Mr. Heilman
2 charged Mr. Barkve in team meetings with finding a replacement, despite
3 already working on the team, like the plaintiff. No opportunity ever existed
4 for a qualified applicant to be considered for the position.

5 (H) *California Government Code §12940* provides that disabled employees
6 have a right to work under different conditions than other employees, which
7 never occurred without duress for the plaintiff from his manager and
8 Director. “Working from home is not how we do business at Apple,” was
9 spoken to plaintiff on multiple occasions by Mr. Heilman. See *Gelfo v.*
10 *Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54. Like Gelfo, plaintiff
11 injured his lower back at some point at Apple, but, unrelated from his other
12 disabilities. In plaintiff's companion workgroup, a female program manager
13 appeared to be unlawfully terminated by Alan Coulson for working-from-
14 home while disabled. Mr. Coulson seemed to dismiss her for dialing into a
15 meeting he felt she should've attended in-person, despite being effective
16 leading the meeting in plaintiff's opinion, and, despite many other
17 employees also participating by telephone. The PM had a temporary medical
18 condition precluding any prolonged position other than lying down without
19 pain; which made sitting in a conference room impossible.

20 (I) Both business and contractual variants of interference occurred by the
21 defendant's actions. The business interference, “was wrongful by some
22 measure beyond the fact of the interference itself” as in *Della Penna v.*
23 *Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392. Plaintiff was
24 directly harmed by independently wrongful acts, such as retaliation against
25 fixing a major quality bug and reporting numerous quality issues in products

1 before shipment, disastrous conduct in destroying his professional reputation
2 by not including him in patents for his inventions, terminating him days
3 before a 4-year RSU grant vested, refusing to interview him to manage his
4 team despite being more qualified than every applicant, and, as Apple
5 directly conspired with other companies in Silicon Valley (such as *Adobe*,
6 *Google*, *Intel*, *Intuit*, *Pixar* and *Lucasfilm*) to not allow plaintiff to be
7 considered for jobs with other companies he was qualified for as part of
8 *High-Tech Employee Antitrust Litigation* No. 11-CV-2509-LHK (N.D. Cal.
9 Jan. 30, 2015). Plaintiff was unable to secure positions at Google and Pixar
10 he was qualified and even interviewed for; in an attempt to escape the toxic,
11 unaccommodating and unethical working conditions at Apple, where they
12 acted as judge, jury and executioner; influencing plaintiffs' career and ability
13 to leave Apple. The nonjoinder patents would've caused plaintiff to be
14 awarded Apple's most prestigious (and hardest to achieve) award, the *Apple*
15 *Innovators Award*. This award would have increased plaintiff's income and
16 stature considerably—both inside and outside of Apple. Plaintiff was, "a
17 *stellar and highly valued employee*" like the employee at a partner company
18 Apple arranged to be unlawfully fired in *Popescu v. Apple Inc.* (2016)
19 H040508 Cal.App.4th. Pressuring a third-party company to unlawfully
20 terminate an employee shows the regular disregard Apple has for ethics, or,
21 the rule of law. Defendant has a long history of abusing disabled employees;
22 just before plaintiffs' tenure began with Apple in 2005, the well-liked vice
23 president of Mac hardware engineering was fired as a result of a "perception
24 that he suffers from a disability." Bucher's manager said he was "sometimes
25 manic depressive," and that his coworkers didn't "know how to handle that."
26 He then added, "I'm not sure what I'm going to do, but I think I'm going to
27 have to ask you to leave the Company," See *Tim Bucher v. Apple Computer*,

1 *Inc.* (2005) 1-CV-035201. Despite negative publicity, Apple continued its
2 unethical and unlawful termination practices, often with its best
3 employees—who’s diligence has exposed terrible quality issues with
4 products causing delay in shipment, as plaintiff often did.

5 (J) Five elements must be alleged to support a claim for intentional
6 contractual interference, all of which were met, or exceeded. They are “(1) a
7 valid contract between plaintiff and a third-party; (2) defendant's knowledge
8 of this contract; (3) defendant's intentional acts designed to induce a breach
9 or disruption of the contractual relationship; (4) actual breach or disruption
10 of the contractual relationship; and (5) resulting damage.” *Pacific Gas &*
11 *Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126. It isn’t a
12 requirement that “the defendant's conduct be wrongful apart from the
13 interference with the contract itself, as in *Quelimane Co. v. Stewart Title*
14 *Guaranty Co.* (1998) 19 Cal.4th 26, 55. Further, a plaintiff need not establish
15 that the primary purpose of the defendant's actions was to disrupt the
16 contract, despite being obvious here. The tort’s shown even where, “the
17 actor does not act for the purpose of interfering with the contract or desire it
18 but knows that the interference is certain or substantially certain to occur as
19 a result of his [or her] action.” (*Rest.2d Torts*, §766, j, p. 12) Moreover, the
20 notion a noncontracting defendants’ interest in an “interfered-with contract”
21 doesn’t provide immunity from tort liability, as in *Powerhouse Motorsports*
22 *Group, Inc. v. Yamaha Motor Corp., U.S.A.* (2013) 221 Cal.App.4th 867,
23 883–884. Under at-will employment, contractual interference may be
24 pursued if, “the defendant engaged in an independently wrongful act.” See
25 *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1152.

1 (K) The five necessary elements of an intentional interference tort with
2 prospective economic advantage (business interference) are “(1) an
3 economic relationship between the plaintiff and some third-party, with the
4 probability of future economic benefit to the plaintiff; (2) the defendant's
5 knowledge of that relationship; (3) intentional acts on the part of the
6 defendant designed to disrupt the relationship; (4) actual disruption of the
7 relationship; and (5) economic harm to the plaintiff proximately caused by
8 the acts of the defendant. See *Youst v. Longo* (1987) 43 Cal.3d 64, 71, fn. 6.
9 The business interference tort “is considerably more inclusive than actions
10 based on contract or interference with contract and is thus not dependent on
11 the existence of a valid contract.” See *Buckaloo v. Johnson* (1975) 14 Cal.3d
12 815, 826–827. Plaintiff had a valid employment contract and IPA with
13 Apple and was a member of the core team first making Apple the world's
14 most valuable company. The five elements necessary for an intentional
15 interference tort have been met or exceeded—along with the five elements
16 of an intentional contractual interference tort.

17
18 4. Plaintiff's fully-vested Restricted Stock Units (RSU's) for 105 shares
19 (currently 735 shares after a 7-1 split on June 9, 2014; before being
20 awarded) were converted by defendant and removed from his E*TRADE
21 brokerage account after their scheduled deposit occurred on October 1,
22 2015. Plaintiff's manager ensured his termination guaranteed his last day was
23 only 15 days before the shares vested and 1 day before defendant's fiscal
24 year ended, constituting fraud, malice and oppression, see *Haines v. Parra*
25 (1987) 193 Cal.App.3d 1553. *California Civil Code* §3294, subdivision (a)
26 provides that exemplary damages may be recovered "in an action for the
27 breach of an obligation not arising from contract, where the defendant has

1 been guilty of oppression, fraud, or malice..." Pursuant to subdivision (c) of
2 that section, fraud means an intentional misrepresentation, deceit, or
3 concealment of a material fact known to the defendant with the intention on
4 the part of the defendant of thereby depriving a person of property or legal
5 rights or otherwise causing injury. Exemplary damages are properly
6 awardable in an action for conversion, given the required showing of malice,
7 fraud or oppression, as in *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681 and
8 *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316-317.

9 (B) In *Tim Bucher v. Apple Computer, Inc.*, defendant also terminated the
10 plaintiff just before his RSU grant was due to vest—even with an
11 employment contract which stated, "all unvested units of restricted stock
12 granted to the plaintiff shall vest fully on the date the plaintiff's employment
13 terminates, if employment terminates for reasons other than 'cause' as
14 defined." Breaching contract with executives isn't a concern, so, handling
15 individual contributors in the same manner has been SOP. In *Wayne*
16 *Goodrich v. Apple Inc.* (2012) 1-CV-230651, Apple unlawfully terminated a
17 trusted, well-liked employee because his RSU grant was about to fully vest.
18 Apple has never stopped this predatory, vindictive and unlawful practice—
19 which tends to happen to the best employees; who've contributed the most
20 to Apple's phenomenal success, often at great personal cost.

21
22 Whenever an unlawful termination case with merits filed against Apple, they
23 immediately move to have the proceedings sealed—typically only done with
24 cases *in re* minor children and national security exceptions. Per guidance in
25 *Sealing Court Records and Proceedings* (2010) is states, "courts will keep
26 confidential classified information, ongoing investigations, trade secrets, and

1 the identity of minors, for example.” Clearly, none of these very specialized
2 conditions appear in this case; it’s doubtful *every* Apple employment case
3 involves classified information. Apple attempts to have every case sealed
4 which can be publicly found, demonstrating both disregard of the *First*
5 *Amendment* and incorrect understanding of the *Sixth*—wrongful termination
6 cases are civil and not criminal—civil cases still must be impartial, Apple’s
7 best employees aren’t guilty of national security or terrorist acts, they aren’t
8 minors, haven’t performed a criminal act against Apple and finally, the
9 existence of a plaintiff as a former employee’s not confidential, or, a trade
10 secret. Apple’s “*motion to seal*” SOP has successfully insulated Apple from
11 bad PR and caused affected employees (and survivors) to be unable to find
12 information about the plurality of identical cases, even with retained
13 counsel; let alone the general public—who have a right to know by law. The
14 general public and news media have a qualified right of success to court
15 proceedings and records, as in *Nixon v. Warner Communications, Inc.*
16 (1978) 435 US 589, 596-97. Coupled with ignoring all demand letters sent to
17 their legal group, this has allowed a discriminatory and unlawful practice to
18 continue, unabated for over a decade, perhaps longer. The apparent absence
19 of admonishment and sanctions is disturbing—the Court rewarding Apple’s
20 continued unethical motives has given HR the confidence to continue
21 unlawful employment practices; while reinforcing counsel’s tactic of
22 ignoring all legal communications outside litigation, and, attempts to deceive
23 the public by wrongfully sealing cases rife with continued wrongdoing. It’s
24 lawful for other business entities to operate on a common, fair and
25 transparent basis when summoned to Court, however, Apple enjoys special
26 privilege only reserved for suspected terrorists under the *FISA Act* and the
27 federal government—when Area 51 employees sue for injury damages. The

1 continued abuse and misinterpretation of California law by Apple to seal
2 wrongful termination cases has caused a clear and present danger to others
3 affected—the concept of *stare decisis* is preempted for Apple, as well as
4 flawing the discovery process for others, ensuring the intentional lack of
5 mitigation is never understood, and finally, raising the cost of actions against
6 Apple to be unnecessarily high. In each instance, Apple almost always
7 settles after an unnecessarily protracted amount of time, and, causes the
8 plaintiff to sign a non-disclosure agreement. This strategy has continued
9 unabated for over a decade; instilling no regard for law in HR, explaining
10 why no mitigation ever happens. Apple steadfastly wants to continue its
11 routine practice of discrimination and unlawful termination, and, no
12 evidence to the contrary exists, else it'd be a matter of public record. The
13 Courts encouraged Apple's greed, otherwise, plaintiffs' case would never
14 have occurred, as such behavior's been commonplace at Apple before 2006.

15 (C) Given the necessary time had elapsed for plaintiff's restricted stock units
16 to vest, defendant's in violation of *California Labor Code §201 (a)*, which
17 states that, "If an employer discharges an employee, the wages earned and
18 unpaid at the time of discharge are due and payable immediately."

19 Withdrawing plaintiffs RSU's after they were properly granted violates not
20 just breach of contract and §201, but also, a breach of good faith and fair
21 dealing.

22 5. The implied covenant of good faith and fair dealing is a general
23 presumption that the parties to a contract will deal with each other honestly,
24 fairly, and in good faith, so as to not destroy the right of the other party or
25 parties to receive the benefits of the contract. **CACI No. 303**, *Breach of*

1 *Contract—Essential Factual Elements*, as approved at the December 2016
2 Judicial Council Meeting of the *Judicial Council of California* defines four
3 different conditions where a breach can seek remedy—two of which apply in
4 this case. First, a contract must be entered into and the significant things
5 required must be met, which occurred. Secondly, the defendant may do
6 something the contract prohibited them from doing, which harms the
7 plaintiff and was a substantial factor. In both elements, the causes for action
8 are met, although only one is necessary. Implicit in the element of damage is
9 that the defendant’s breach caused the plaintiff’s damage, which is clearly
10 obvious in this matter. See *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.
11 App.4th 1305, 1352.

12 (B) In each related past case, Apple argues its duty to perform was
13 conditioned on an event which never occurred (obviously abusing
14 precedents like *Consolidated World Investments, Inc., v. Lido Preferred Ltd.*
15 (1992) 9 Cal.App.4th 373, 380, even when the plaintiff proves they honored
16 the conditions on their part, and further, didn’t excuse Apple from its
17 contractual obligation to grant them stock owed. The discriminatory and
18 unlawful employment practices continue at Apple—all of which constitute a
19 clear breach of good faith and constitute unfair dealing, and finally, are
20 committed against their most loyal employees. *California Causes of Actions*
21 §4:10 states that, “in every contract there is an implied covenant of good
22 faith and fair dealing by each party not to do anything which will deprive the
23 other parties of the benefits of the contract, and a breach of this covenant by
24 failure to deal fairly or in good faith gives rise to an action for damages.”
25 See *Sutherland v. Barclays American Mortgage Corp.* (1997) 53
26 Cal.App.4th 299, 314, *Harm v. Frasher* (1960) 181 Cal.App.2d 405, 415,

1 *Seaman's Direct Buying Service Inc. v. Standard Oil Co.* (1984) 36 Cal.3d
2 752, 206 (overruled on other grounds) and *Freeman & Mills, Inc. v. Belcher*
3 *Oil Co.* (1995) 11 Cal.4th 85, as well as *Witkin, Summary of California Law,*
4 *Contracts §743.*

5 (C) It's hard to find instances where Apple does *anything* in good faith, or,
6 in fair dealing, especially since Mr. Cook's ascension. Nothing's unlawful to
7 Apple until it's caught and well-documented; that's when intimidation,
8 retaliation and unlawful termination occur—nearly always before review or
9 stock vesting time. For any employee who dares file litigation, their integrity
10 and credentials are questioned, and, they're usually silenced by having the
11 case sealed and/or completing a non-disclosure agreement—after being
12 compelled to settle by the judge. Apple regularly and wrongfully takes
13 advantage of its customers and employees by artificially controlling the truth
14 from public disclosure and disregarding the rule of law. The federal
15 government will have revealed its illegal cover-up *in re* what it knows about
16 the existence of extraterrestrial life before Apple's routine history of abuse,
17 discrimination and unlawful termination of its best employees has any
18 chance of being disseminated to customers and shareholders, let alone the
19 general public—until now. Each time Apple succeeds in unethical acts, due
20 process is further eroded; with the public trust trampled without its
21 knowledge. Courts are fair and open matters of public record, unless Apple's
22 participating. The public knows more about alien spacecraft than Apple's
23 continued conspiracy to discriminate against employees working-from-home
24 with reasonable accommodations, for example.

1 6. Plaintiffs personal property (including irreplaceable awards and
2 engineering equipment) were converted, with no means made available to
3 recover them after his unlawful termination. *California Civil Code* §3355
4 and §3336 apply. Mr. Barkve approved a two-week November vacation for
5 plaintiff in June, so he could be married in Orange County. Mr. Barkve
6 waited a month after plaintiffs "final day" at Apple in September to send his
7 belongings and never once communicated with plaintiff, despite repeated
8 attempts via telephone and text message. When plaintiff complained to
9 Apple HR in mid-November, Nicole Atkinson (HR Legal) told plaintiff his
10 possessions had been sent to his home address during the first week of
11 November, and, that the required signature was not his, or, anyone else he
12 recognized. She made no further effort to locate said belongings and
13 wouldn't file a police report. Follow-up attempts via email and telephone
14 with Ms. Atkinson were ignored. Given the irreplaceable nature, or "peculiar
15 value" of the property converted by a "willful wrong-doer" §3335 applies,
16 see *Artists Embassy v. Hunt* (1958) 157 Cal.App.2d 371, 320. Further,
17 plaintiff's unanswered communications indicated his possessions weren't
18 abandoned or being donated to other employees. See *United States v.*
19 *Crawford* (2001) 239 F.3d 1086, *Bruner v. Geneva County Forestry Dept.*
20 (2003) 865 So.2d 1167, *Bobo v. Vanguard Bank & Trust Co. Inc.* (1987) 512
21 So.2d 246, *Right Reason Publications v. Silva* (1998) 691 N.E.2d 1347,
22 *Allamakee County v. Collins Trust* (1999) 599 N.W.2d 448, *Riverside*
23 *Drainage Dist. of Sedgwick County v. Hunt* (2004) 99 P.3d 1135, *Walker-*
24 *Rogers Post No. 662, Veterans of Foreign Wars of U. S., Inc. v. Vigeant*
25 (1980) 407 N.E.2d 1316 and *Van Slooten v. Larsen* (1980) 299 N.W.2d 704.

1 Plaintiff demonstrated not “renouncing utterly” his property by asking for it
2 again in writing when mailing his Apple-owned devices to Mr. Barkve in
3 October via FedEx, as in *United States v. Real Property at 2659 Roundhill,*
4 *Alamo, California* (1999) 194 F.3d 1020, 1026. Further, plaintiff established
5 no desire to abandon his belongings, as in *Zych v. Unidentified, Wrecked &*
6 *Abandoned Vessel, believed to be SB "Lady Elgin"* (1990) 755 F.Supp. 213,
7 214 and *City of Houston v. Van De Mark* (2002) 83 S.W.3d 864.

8 7. Plaintiff suffered emotional distress from Apple’s unlawful termination,
9 and, reputational damage from not being properly recognized for his
10 important innovations used worldwide daily on electronic consumer devices.
11 The modern rule (*in re* emotional distress) states, “there is liability for
12 conduct exceeding all bounds usually tolerated by a decent society, of a
13 nature which is especially calculated to cause, and does cause, mental
14 distress.” See *Prosser, Law of Torts* (4th ed. 1971) 54. Plaintiffs continued,
15 and, novel innovations have benefitted all of society worldwide, but not him;
16 either professionally or personally from his utility patent nonjoinder. Clear
17 economic, social and legal hinderances have been a direct result—it’s
18 unknown if plaintiff will ever regain employment again, which can only be
19 the product of outrageous conduct performed against his person. Prosser
20 further states that behavior may be considered outrageous if a defendant (1)
21 abuses a relation or position which gives him power to damage the plaintiff’s
22 interest; (2) knows the plaintiff is susceptible to injuries through mental
23 distress; or (3) acts intentionally or unreasonably with the recognition that
24 the acts are likely to result in illness through mental distress. This is cited on
25 57 and in *Fletcher v. Western National Life Insurance Co.* (1970) 10 Cal.

1 App.3d 376. It's clear in this matter that (1) and (2) apply; the Court should
2 respectfully decide (3), albeit moot, as only one of three's necessary.

3 (B) Tortious conduct in this case has resulted (and could be expected to
4 result) in both economic loss and emotional distress. Emotional distress
5 resulted (and could be expected to result) from both the conduct of Apple
6 and the economic losses caused. In a case such as this, the invasion of
7 economic interests might well outweigh the direct invasion of emotional
8 tranquility, as in *Fletcher*. The tort of intentional infliction of emotional
9 distress is designed to redress primarily invasions of the personal interest in
10 emotional tranquility, not economic losses; unless, of course, the economic
11 losses result from the intentionally caused emotional distress. *Restatement*
12 *(Second) of Torts*, §46 and Prosser, *Law of Torts*, 43 *Fletcher* also found, "a
13 rule placing the emphasis where it belongs and permitting recovery of all
14 proximately caused detriment in a single cause of action is more likely to
15 engender public respect for and confidence in the judicial process than a rule
16 which would require attorneys, litigants and judges to force square pegs into
17 round holes." Further, "if an action is one in tort, punitive damages may be
18 recovered upon a proper showing of malice, fraud or oppression even though
19 the conduct constituting the tort also involves a breach of contract." See
20 *Acadia, California, Ltd. v. Herbert* 54 Cal.2d 328, 336-337, *Chelini v. Nieri*
21 (supra), *Haigler* (supra), *Wetherbee v. United Insurance Co. of America*
22 (1968) 265 Cal.App.2d 921, 928-929 and *Sharp v. Automobile Club of S.*
23 *California* (1964) 225 Cal.App.2d 648, 653. Likewise, if the conduct is
24 tortious, damages for emotional distress may be recovered despite the fact
25 that the conduct also involves a breach of contract, as in *Crisci v. Security*
26 *Ins. Co.* (1967) 66 Cal.2d 425, 432-434, *Acadia, California, Ltd. v. Herbert*

1 (supra) and *Taylor v. Marine Cooks & Stewards Assn.* (1954) 117
2 Cal.App.2d 556, 562-563.

3 (C) The defendants continued *recalcitrance*—ignoring this claim while
4 stating its counsel was investigating it for over one year without responding
5 easily meets the “continuing conduct” standard for distress in *Parrott v.*
6 *Bank of America* (1950) 97 Cal.App.2d 14, 24. Plaintiff’s worry and anxiety
7 are inferably substantial and continued, especially given his disabled and
8 impecunious condition—which was infallibly known to Apple when they
9 acted. Susceptibility of the plaintiff to emotional distress and a defendant’s
10 awareness thereof, are significant in determining liability, as in *Alcorn v.*
11 *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 498, fn. 3. The plaintiff’s
12 economic distress is decidedly severe, being unemployed since 2014. In
13 defining severity of distress, *Fletcher* found the term “severe emotional
14 distress” is discussed in comment j to §46 of the *Restatement (Second) of*
15 *Torts*, noting that, “complete emotional tranquility is seldom attainable in
16 this world, and some degree of transient and trivial emotional distress is a
17 part of the price of living among people. The law intervenes only where the
18 distress inflicted is so severe that no reasonable man could be expected to
19 endure it. The intensity and duration of the distress are factors to be
20 considered in determining its severity. It appears, therefore, that in this
21 context, “severe” means substantial or enduring as distinguished from trivial
22 or transitory. Severe emotional distress means, then, emotional distress of
23 such substantial quantity or enduring quality that no reasonable man in a
24 civilized society should be expected to endure it.” It’s beyond reasonable
25 doubt that the plaintiff shouldn’t be expected to endure the continued
26 distress inflicted by Apple. *Fletcher* also notes how, “it’s well established

1 that one who, in exercising the privilege of asserting his own economic
2 interests, acts in an outrageous manner may be held liable for intentional
3 infliction of emotional distress.” This was found in *Vargas v. Ruggiero*
4 (1961) 197 Cal.App.2d 709, *Bowden v. Spiegel, Inc.* (1950) 96 Cal.App.2d
5 793, *State Rubbish Collectors Assn. v. Siliznoff* (1952) 38 Cal.2d 330,
6 *Emden v. Vitz* (1948) 88 10 Cal.App.3d 396, *National Life & Acc. Insurance*
7 *Co. v. Anderson* (1985) 187 Okla. 180 and *Continental Casualty Co. v.*
8 *Garrett* (1935) 173. In each of the six cases, the “severe inflicted distress”
9 doesn’t appear as severe as in this case.

10 (D) Elements of a tort case for intentional infliction of emotional distress
11 are: (1) outrageous conduct by the defendant; (2) the defendant's intention of
12 causing or reckless disregard of the probability of causing emotional
13 distress; (3) the plaintiff's suffering severe or extreme emotional distress;
14 and (4) actual and proximate causation of the emotional distress by the
15 defendant's outrageous conduct, as in *Spackman v. Good* (1966) 245
16 Cal.App.2d 518, 528-534, *Alcorn v. Anbro Engineering, Inc., supra* and
17 *State Rubbish Collectors Assn. v. Siliznoff, supra*. It’s obvious these four
18 thresholds have been met, and further, that Apple’s conduct causing distress
19 was unprivileged, as in *Agostini v. Strycula* (1965) 231 Cal.App.2d 804, 808.
20 In *Golden v. Dungan* (1971) 20 Cal.App.3d 295, the Court found the simple
21 allegation a process server was banging on someone’s door in the middle of
22 night constituted a valid cause of action for mental distress. Nobody in
23 “civilized society” could dispute plaintiff has endured significantly more
24 unpleasant (and continued) mental distress than a process server visiting a
25 home in the evening.

1 (E) Finally, *Carr v. Wm. C. Cromwell Co.* (1946) 28 Cal.2s 652, 654
2 explains that companies cannot claim immunity from tortious conduct of
3 their employees. The employer's responsibility for the tortious conduct of his
4 employee, "extends far beyond his actual or possible control over the
5 conduct of the servant. It rests on the broader ground that every man who
6 prefers to manage his affairs through others, remains bound to so manage
7 them that 3rd persons are not injured by any breach of legal duty on the part
8 of such others while acting in the scope of their employment." See *Alvarez v.*
9 *New Haven Waste Material Corp.* (1999) 111 Conn. 377, 379- 381 and *Wolf*
10 *v. Sulik* (1919) 93 Conn. 431, 436. Such injuries are one of the risks of the
11 enterprise, as explained in *Hiroshima v. Pacific Gas & Electric Co.* (1936)
12 18 Cal.App.2d 24, 28, *Stansell v. Safeway Stores, Inc.* (1941) 44 Cal.App.2d
13 822, 824, *Johnson v. Monson* (1920) 183 Cal.149, 151, *Martin v. Leatham*
14 (1937) 22 Cal.App.2d 442, 445, *Yates v. Taft Elks Lodge #1527* (1935) 6
15 Cal.App.2d 389, 390, *Rounds v. Delaware* (1876) 64 N.Y. 129, 134, *Doyle*
16 *v. Scott's Cleaning Co.* (1930) 31 S.W.2d 242, *Alvarez v. New Haven Waste*
17 *Material Corp.* (supra), *Higgins v. Watervliet Turnpike Co.* (1871) 46 N.Y.
18 23, 26, *Schubert v. Schubert Wagon Co.* (1928) 249 N.Y. 253, 256 and *Stone*
19 *v. William M. Eisen Co.* (1916) 219 N.Y. 205.

DEMAND FOR RELIEF

1 Plaintiff prays for judgment against the defendant, APPLE, INC., for
2 correction of ownership (with the USPTO) for US Utility Patents
3 20130326643, 20130326642, 20140364099, 20140199966 and
4 20140364148, the regrant of 735 shares of Apple common stock, damages in
5 the sum of \$326,400 dollars, interest in the sum of \$32,640 dollars, costs of
6 this action, attorney fees of \$5,000 and for such further relief as this Court
7 may deem proper.

8 I declare under penalty of perjury under the laws of the State of California that
9 the foregoing is true and correct.

Dated: 8/22/2018



DARREN EASTMAN