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FILED
Superior Court of California
County of Los Angeles

MAY 28 2015 *me*

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By *[Signature]*, Deputy
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Attorneys for PLAINTIFF and the CLASS

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

RECEIVED
Central Civil West
MAY 27 2015
By: C. Rios

CAROLYN LEVIN, in Her Individual
and Representative Capacity on Behalf
of a Class of All Persons Similarly-
Situating,

Plaintiff,

v.

NIKE, INC.; an Oregon Corporation;
APPLE, INC., a California Corporation;
and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: BC 509 363

SECOND AMENDED COMPLAINT

1. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.*;
2. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *ET SEQ.*
3. BREACH OF WARRANTY
4. VIOLATION OF CALIFORNIA CIVIL CODE §§ 1750, *ET SEQ.*
5. COMMON COUNTS

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

COMES NOW PLAINTIFF Carolyn Levin, in her individual and representative capacities and on behalf of herself and all persons similarly-situating, by her undersigned

1 counsel, and alleges as follows:

2 **PARTIES**

3 1. Plaintiff Carolyn Levin ("Levin") is an individual residing in Los Angeles
4 County, California. Levin purchased several Nike+ FuelBands during the class period on or
5 about the dates set forth herein.

6 2. Defendant Nike, Inc. ("Nike") is and was at all times relevant herein an Oregon
7 corporation doing substantial business in the State of California, County of Los Angeles.

8 3. Defendant Apple, Inc. ("Apple") is and was at all times relevant herein a
9 California corporation, and therefore a citizen of California, operating out of and doing
10 substantial business in the State of California, County of Los Angeles.

11 4. Nike and Apple are referred to collectively herein as "Defendants." For at least
12 some portion of and during the class period described below, each of the Defendants
13 advertised, marketed and sold Nike's Nike+ FuelBand product to Plaintiff and others
14 similarly-situated.

15 5. The true names and capacities of Defendants DOES ONE through TEN are
16 unknown to Plaintiff, and Plaintiff will seek leave of court to amend this Complaint to
17 allege such names and capacities as soon as they are ascertained. Each of the Defendants
18 concerned herein was the agent, joint venturer or employee of each of the remaining
19 Defendants, and in doing the things hereinafter alleged, each was acting in the course and
20 scope of said agency, employment or joint venture with advance knowledge of,
21 acquiescence in or subsequent ratification of the acts of each and every other remaining
22 Defendant.

23 **CLASS ACTION ALLEGATIONS**

24 6. Plaintiff brings this action on behalf of herself and as a representative of all
25 others who are similarly-situated and who fall within the following class definition: All
26 individuals or entities who purchased a Nike+ FuelBand on or after January 19, 2012 (the
27 "Class Period").

28 7. Those individuals and entities are herein referred to as "Class Members" or

1 “the Class.” The proposed “Class Representative” is Levin, who falls within the definition
2 of a Class Member.

3 8. The Class Members are so numerous and geographically diverse that joinder is
4 impracticable. On information and belief there have been hundreds of thousands of Nike+
5 FuelBands sold throughout the world, and also on information and belief, there are hundreds
6 of thousands of Class Members spread throughout the United States including, without
7 limitation, throughout the State of California.

8 9. The Class Representative will fairly, adequately, and vigorously represent the
9 interests of the Class, and is highly motivated to prosecute the within action.

10 10. Questions of law and fact common to all potential Class Members predominate
11 over any questions affecting only individual Class Members. Among the questions of law
12 and fact common to the Class Members are:

- 13 • Whether Defendants misrepresented the ability of the Nike+ FuelBand to
14 accurately track every calorie burned and step taken by a FuelBand user
15 engaged in physical activity while wearing the FuelBand;
- 16 • Whether Defendants violated California *Business & Professions Code*
17 §§ 17200 *et seq.* by perpetrating unfair or fraudulent acts by means of
18 misrepresentations to the effect that the Nike+ FuelBand could
19 accurately track every calorie burned and step taken by a FuelBand user
20 engaged in physical activity while wearing the FuelBand;
- 21 • Whether Defendants violated California *Business & Professions Code*
22 §§ 17500 *et seq.* by affirmatively promulgating and implementing false
23 and misleading advertising to the specific effect that the Nike+ FuelBand
24 could accurately track every calorie burned and step taken by a
25 FuelBand user engaged in physical activity while wearing the FuelBand;
- 26 • Whether Defendants breached warranties made as to the ability of the
27 FuelBand to accurately track every calorie burned and step taken by a
28 FuelBand user engaged in physical activity while wearing the FuelBand;

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- Whether Defendants implemented unfair or deceptive acts or practices in affirmatively promulgating and implementing false and misleading advertising to the specific effect that the Nike+ FuelBand could accurately track every calorie burned and step taken by a FuelBand user engaged in physical activity while wearing the FuelBand, thereby violating California *Civil Code* §§ 1750 *et seq.*;
- Whether Defendants misrepresented the ability of the Nike+ FuelBand to implement algorithms to accurately track, calculate, and report NikeFuel generated by a user engaged in physical activity while wearing the FuelBand;
- Whether Defendants violated California *Business & Professions Code* §§ 17200 *et seq.* by perpetrating unfair or fraudulent acts by means of misrepresentations to the effect that the Nike+ FuelBand could implement algorithms to accurately track, calculate, and report NikeFuel generated by a user engaged in physical activity while wearing the FuelBand;
- Whether Defendants violated California *Business & Professions Code* §§ 17500 *et seq.* by affirmatively promulgating and implementing false and misleading advertising to the specific effect that the Nike+ FuelBand could implement algorithms to accurately track, calculate, and report NikeFuel generated by a user engaged in physical activity while wearing the FuelBand;
- Whether Defendants breached warranties made as to the ability of the FuelBand to implement algorithms to accurately track, calculate, and report NikeFuel generated by a user engaged in physical activity while wearing the FuelBand;
- Whether Defendants implemented unfair or deceptive acts or practices by affirmatively promulgating and implementing false and misleading

1 advertising to the specific effect that the Nike+ FuelBand could
2 implement algorithms to accurately track, calculate, and report NikeFuel
3 generated by a user engaged in physical activity while wearing the
4 FuelBand, thereby violating California *Civil Code* §§ 1750 *et seq.*;

- 5 • Whether Defendants caused the Class Members damage by reason of
6 their misrepresentations;
- 7 • Whether Defendants unfairly or fraudulently took money from the Class
8 Members by conduct perpetrated in violation of California Business &
9 Professions Code § 17200 *et seq.*;
- 10 • Whether Defendants unfairly or fraudulently took money from the Class
11 Members by conduct perpetrated in violation of California Business &
12 Professions Code § 17500 *et seq.*;
- 13 • The appropriate measures of legal and equitable relief due to the Class,
14 and;
- 15 • Whether Defendants committed acts with fraud, oppression, and/or
16 malice.

17 11. These common questions predominate over all Class Members' claims,
18 including those of the Class Representative. Indeed, there is essentially no difference
19 between the Class Representative's claims and the other Class Members' claims. As a
20 result, the Class Representative's claims are typical of, if not identical to, claims owned by
21 and to be asserted by the rest of the Class Members.

22 12. Class action treatment is superior to the alternatives, if any, for the fair and
23 efficient adjudication of the controversy alleged herein. Such treatment will permit a large
24 number of similarly-situated persons to prosecute their common claims in a single forum
25 simultaneously, efficiently, and without duplication. Separate trials adjudicating
26 Defendants' liability will be inefficient, and will create the risk of producing inconsistent
27 verdicts. Consolidating the litigation of all Class Members will enhance judicial economy
28 and promote substantial justice. Class treatment will also permit the adjudication of

1 relatively small claims by many of the Class Members who could not individually afford to
2 litigate the claims asserted herein. There exist no difficulties that would preclude class
3 action treatment of this lawsuit, and no superior alternative exists for the fair and efficient
4 adjudication of the controversies asserted herein.

5 13. Concentrating the Class Members' claims in the Los Angeles Superior Court is
6 preferable to maintaining this action in any other venue. This venue has a logical
7 connection to the events underlying the action since a substantial number of the Class
8 Members purchased their Nike+ FuelBands in Los Angeles County and reside here.

9 VENUE & JURISDICTION

10 14. Plaintiff files this action in Los Angeles Superior Court, where venue has been
11 and remains proper under California *Code of Civil Procedure* § 395.

12 15. The California Superior Court is the proper jurisdiction for this case pursuant
13 to 28 U.S.C. § 1332 because:

- 14 • A large number of the Class Members are California citizens;
- 15 • Apple is a California citizen from whom significant relief is sought by
16 the proposed Class and whose conduct described herein forms a
17 significant basis for the claims asserted by the proposed Class;
- 18 • Plaintiff's and many of the proposed Class Members' principal injuries
19 resulting from the conduct of each Defendant were incurred in
20 California, where this action is originally filed; and
- 21 • Plaintiff is unaware of any other predecessor class action that asserted
22 the same or similar factual allegations against any of the defendants on
23 behalf of the same or other persons. One other proposed action was filed
24 against Nike several months after this action, but the Court has stayed it
25 in favor of this action proceeding on its merits, and as of the time of this
26 filing, the stay remains in effect.

27 GENERAL ALLEGATIONS

28 16. Nike has dominated the sports apparel and technology industries for decades,

1 and has established itself as a global leader in both the professional and consumer sports and
2 fitness advertising and sales sectors. The Nike+ FuelBand has been a major component of
3 Nike's overall equipment sales since its early 2012 release.

4 17. Apple has dominated the personal technology industries for decades,
5 establishing itself as the most widely-known and prolific advertiser and distributor of
6 personal technology items available to consumers today.

7 18. Since approximately 2006, Nike and Apple have embarked upon various
8 partnership ventures in the sporting technology sector, forming a powerful alliance designed
9 to massively increase profit for both companies, and to supply evolving sporting technology
10 products to the purchasing consumer such as Levin and others similarly-situated.

11 19. The Nike+ FuelBand, one such product manufactured, advertised, marketed,
12 and sold by Defendants, is wearable personal technology in the form of a wristband that
13 Defendants advertise as capable of tracking every calorie burned and step taken by a
14 FuelBand user engaged in physical activity while wearing the FuelBand. In particular, both
15 Defendants consistently advertise to the general public in promotional materials and at
16 points of sale that the FuelBand "measures each step taken and calorie burned," "[t]racks
17 steps, calories, and time of day" and "tracks calories burned, steps taken and more." The
18 FuelBand is also consistently promoted by Defendants as a device capable of using
19 algorithms to accurately convert physical activity into NikeFuel, a conceptual measurement
20 of movement, reduced to visual markers on the face of the FuelBand. Specifically, the
21 FuelBand packaging, promotional materials, and point of sale items indicate that the "Nike
22 + FuelBand measures your everyday activity and turns it into NikeFuel."

23 20. In truth, the Nike+ FuelBand cannot and does not track each calorie burned, or
24 each step taken, nor does it accurately measure activity for conversion into NikeFuel, and
25 users experience wildly inaccurate step, calorie burn, and NikeFuel readings when using the
26 FuelBand. Defendants were aware when the FuelBand was first marketed, advertised and
27 sold to Levin and the buying public, and remained aware throughout the Class Period, that
28 the FuelBand was incapable of accurately tracking every calorie burned and step taken by

1 FuelBand users, that it was also unable to accurately reflect physical activity in any form of
2 presentation, whether as NikeFuel or otherwise, and that their advertising was therefore
3 false and misleading. As a result of Defendants' conduct, buyers of the FuelBand, including
4 the Class Members, were each in fact misled into purchasing a device that Defendants
5 purported would accurately perform the tasks referenced herein when it in fact does not and
6 cannot do so, thereby misleading and damaging consumers including Plaintiff and all others
7 similarly-situated.

8 21. Despite their knowledge of the FuelBand's inability to accurately track each of
9 a user's calories burned, steps taken, or to read or measure physical activity sufficiently to
10 provide any form of accurate measurement of that activity, during the Class Period
11 Defendants promulgated and implemented the false and misleading advertising alleged
12 herein as part of a business scheme designed to unfairly and unlawfully reap substantial
13 profits at the expense of Levin and the Class.

14 22. To accomplish their scheme, Defendants each advertised and offered to the
15 Class Members, by means of various media, the opportunity to purchase the Nike+
16 FuelBand. Attached hereto as Exhibits 1-4 are some examples of Defendants'
17 advertisements. Levin witnessed and received several such offers prior to purchasing any
18 Nike+ FuelBand, and throughout the Class Period. Examples of the wording of
19 advertisements and offers Levin witnessed and relied upon prior to purchasing any Nike+
20 FuelBand included language identified in paragraph 19 above, indicating to Levin that the
21 FuelBand would track a user's every calorie burned and step taken during activity
22 undertaken while wearing the FuelBand, and that it would accurately read, measure, and
23 report a user's level of physical activity in the form of NikeFuel. Levin was subjected to
24 such advertisements by means of in-store advertising, product packaging, and product
25 advertisements on the Defendants' respective websites. At all times before Levin purchased
26 the FuelBands, their purported abilities to specifically track every step taken and calorie
27 burned, and to accurately report a user's physical activity while wearing the FuelBand (in
28 the form of NikeFuel), were to Levin the most important, if not only important, features of

1 the FuelBand.

2 23. Levin, like all FuelBand purchasers, reasonably expected that the FuelBands
3 she purchased were capable of performing the tasks referenced herein, and in fact bought
4 the devices because she believed, based upon her exposure to Defendants' marketing and
5 advertisements, that they would in fact accurately perform the tasks referenced herein and in
6 Defendants' marketing efforts. Based on that expectation, based further on the claims made
7 by Defendants, and also based upon what Levin believed were trustworthy reputations
8 enjoyed by Defendants, Levin purchased approximately nine (9) Nike+ FuelBands in Los
9 Angeles County – one (1) for personal use and approximately eight (8) to give as gifts. Said
10 FuelBands were purchased at the Nike store at the Grove Shopping Center in Los Angeles
11 County, and at the Apple Store at the Grove Shopping Center in Los Angeles County.

12 24. Despite Defendants' promises to Levin, the FuelBands purchased by Levin,
13 and in fact all of the FuelBands sold by Defendants, are and remain incapable of accurately
14 performing the functions that Defendants represented at all times relevant they are able to
15 perform, and Defendants' misrepresentations as such have continued throughout the Class
16 Period.

17 25. Throughout the Class Period and continuing to this day, Defendants have
18 dramatically increased their sales of the Nike+ FuelBand by means of utilizing the false and
19 misleading representations and advertising promulgated and implemented by them as
20 alleged herein, and Defendants have failed to remedy the inabilities of the FuelBand as
21 alleged herein. As a result, despite Defendants' claims that the Nike+ FuelBand accurately
22 tracks every calorie burned and step taken, and that it can accurately report a FuelBand
23 user's physical activity in the form of NikeFuel or in any form, the FuelBand remains
24 wholly unable to accurately perform the tasks referenced herein, no matter who the user of
25 the FuelBand is, and no matter what type of activity that user engages in.

26 ////

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CAUSES OF ACTION

FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.

(Against All Defendants by Plaintiff in Her Individual and Representative Capacity on Behalf of the Class)

26. Plaintiff hereby incorporates by reference all of the above paragraphs as though set forth fully herein in form and substance.

27. By reason of the conduct alleged herein, Defendants engaged in unlawful, fraudulent and unfair business practices that included, but were not limited to:

- Misleading Levin and the Class into purchasing the FuelBand, that Defendants falsely represented was capable of accurately tracking every calorie burned and step taken as a result of physical activity undertaken while wearing the FuelBand, and that Defendants also falsely represented was capable of using algorithms to accurately read, measure, and report physical activity in the form of NikeFuel, knowing that these statements were false and likely to induce Levin and the Class Members into purchasing the FuelBand;
- Promulgating and implementing advertising that was false and was both designed to and likely to mislead Levin and the Class in order to reap a tremendous profit at the respective and collective expense of Levin and the Class, and;
- Accepting from Levin and the Class payment for Nike+ FuelBands that were sold under false pretenses and that Defendants knew were not as Defendants represented them to be, namely, that they could not accurately perform the functions advertised as Defendants represented they could.

28. Defendants' actions constitute unlawful business acts or practices within the meaning of California *Business & Professions Code* §§ 17200 et seq.

1 29. Accordingly, Plaintiff may obtain and is entitled to all remedies and penalties
2 authorized by the statute, including without limitation restitution, disgorgement, injunctive
3 relief, and other penalties for each illegal or fraudulent business act or practice, and
4 attorneys' fees pursuant to statute and the Court's equitable powers, in amounts subject to
5 proof.

6 **SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA BUSINESS AND**
7 **PROFESSIONS CODE §§ 17500 ET SEQ.**

8 (Against All Defendants by Plaintiff in Her Individual and Representative Capacity on
9 Behalf of the Class)

10 30. Plaintiff hereby incorporates by reference all of the above paragraphs as though
11 set forth fully herein in form and substance.

12 31. As alleged herein, Defendants engaged in false advertising practices that
13 included, but were not limited to:

- 14 • Using false and misleading advertising to offer and induce Levin and the
15 Class into purchasing the FuelBand, that Defendants falsely represented
16 was capable of accurately tracking every calorie burned and step taken
17 as a result of physical activity undertaken while wearing the FuelBand,
18 and that Defendants also falsely represented was capable of using
19 algorithms to accurately read, measure, and report physical activity in
20 the form of NikeFuel, knowing that these statements were false and
21 likely to induce Levin and the Class Members into purchasing the
22 FuelBand;
- 23 • Promulgating and implementing advertising that was false and was both
24 designed to and likely to mislead Levin and the Class in order to reap a
25 tremendous profit at the respective and collective expense of Levin and
26 the Class, and;
- 27 • Accepting from Levin and the Class payment for Nike+ FuelBands that
28 were marketed and sold under false pretense and that Defendants knew

1 were not as Defendants represented them to be, namely, that they could
2 not track every calorie burned by a FuelBand user as Defendants
3 represented they could.

4 32. Defendants' actions constitute unlawful business acts or practices within the
5 meaning of California Business & Professions Code §§ 17200, *et seq.*

6 33. Accordingly, Plaintiff may obtain and is entitled to all remedies and penalties
7 authorized by the statute, including without limitation restitution, disgorgement, and other
8 penalties for each illegal or fraudulent business act or practice, and attorneys' fees pursuant
9 to statute and the Court's equitable powers, in amounts subject to proof.

10 **THIRD CAUSE OF ACTION: BREACH OF WARRANTY**

11 (Against All Defendants by Plaintiff in Her Individual and Representative Capacity on
12 Behalf of the Class)

13 34. Plaintiff hereby incorporates by reference all of the above paragraphs as though
14 set forth fully herein in form and substance.

15 35. Defendants and each of them were sellers of the Nike+ FuelBand to Plaintiff
16 and others similarly-situated, including the Class.

17 36. As sellers of such products to Levin and the Class Members, Defendants
18 implemented the sales, marketing, promotion, and advertising referenced herein, and made
19 the representations during the sales transactions concerned herein as such are alleged in
20 paragraph 19, above. Specifically, Defendants consistently advertised to the general public
21 in promotional materials and at points of sale, and during the sales transaction from
22 Defendants to Plaintiff and the Class Members, that the FuelBand "measures each step
23 taken and calorie burned," "[t]racks steps, calories, and time of day" and "tracks calories
24 burned, steps taken and more." The FuelBand was also consistently promoted by
25 Defendants through the promotion and sales process as a device capable of relying on
26 algorithms to accurately convert physical activity into NikeFuel, a conceptual measurement
27 of movement, reduced to visual markers on the face of the FuelBand. Specifically, the
28 FuelBand packaging, promotional materials, and point of sale items indicate that the "Nike

1 + FuelBand measures your everyday activity and turns it into NikeFuel.” All such
2 representations were made to the buying public, including without limitation Plaintiff and
3 the Class, as express warranties regarding the purported abilities of the FuelBand.

4 37. In making the representations alleged herein, including those regarding the
5 FuelBand’s ability to count each step taken by a user, its ability to count each calorie burned
6 by a user, and its ability to implement algorithms to accurately track, record, and report
7 physical activity in the form of NikeFuel, Defendants made implied warranties of
8 merchantability as to the subject products and warranted that they were fit for their
9 particular and anticipated purposes.

10 38. As alleged herein, the Nike+ FuelBand is unable and was never able to perform
11 the tasks it was represented and warranted to be capable of performing, and in making the
12 representations made as alleged herein with knowledge that the product was unable to
13 perform in conformity with the warranties made, Defendants breached said warranties.

14 39. Nike has developed and maintained a network of authorized distributors and
15 retailers, including without limitation Defendant Apple, all of which were at relevant times
16 authorized Nike resellers of the FuelBand, and none of which was, or was ever intended to
17 be, an ultimate consumer of the FuelBand. Instead, Plaintiff and those similarly-situated
18 were the intended ultimate consumers of the FuelBand, and Defendants intended the
19 warranties alleged herein to inure only to those ultimate consumers.

20 40. Within a reasonable time after Plaintiff knew of the warranty breaches alleged
21 herein, Plaintiff provided the manufacturer with notice of the same, and of Plaintiff’s intent
22 to look to Defendants for damages.

23 41. As a direct and proximate result of the conduct of Defendants, in making the
24 misrepresentations alleged herein, and in failing to replace the FuelBands Plaintiff
25 purchased, or any of them, with devices conforming to the warranties and representations
26 made, Defendants breached their warranties as to the FuelBand.

27 42. As a direct and proximate result of the warranty breaches alleged herein,
28 Plaintiff and the Class Members suffered damage, injury, loss, and harm, all according to

1 proof.

2 **FOURTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA CIVIL CODE**
3 **§§ 1750, ET SEQ.**

4 43. Plaintiff hereby incorporates by reference all of the above paragraphs as though
5 set forth fully herein in form and substance.

6 44. The FuelBands that are the subject of this action qualify as "goods" within the
7 meaning of California Civil Code section 1761, subsection (a), of the Consumers Legal
8 Remedies Act, codified at California Civil Code sections 1750 *et seq.*

9 45. Defendants are "persons" within the meaning of California Civil Code section
10 1761, subsection (c), and Plaintiff and the Class Members are "consumers" within the
11 meaning of subsection (d) of section 1761.

12 46. The purchase and sale agreements between Plaintiff and the Class Members on
13 the one hand, and Defendants on the other, qualify as "transactions" within the meaning of
14 California Civil Code section 1761, subsection (e).

15 47. Defendants' conduct as alleged herein constituted unfair, false, misleading and
16 deceptive practices, and was undertaken unlawfully, with the intent of inducing Plaintiff and
17 the Class Members to enter into transactions which would result in unjust pecuniary and
18 other loss to them, and unjust pecuniary and other gain to Defendants.

19 48. As a direct and proximate result of the conduct of Defendants as alleged herein,
20 Plaintiff and the Class Members were damaged, and are entitled to and seek relief including
21 but not limited to restitution, and an injunction prohibiting Defendants from engaging in
22 unfair, false, misleading and deceptive practices as alleged herein, in addition to those other
23 remedies the Court may deem proper according to proof;

24 **FIFTH CAUSE OF ACTION: COMMON COUNTS**

25 49. Plaintiff hereby incorporates by reference all of the above paragraphs as though
26 set forth fully herein in form and substance.

27 50. Defendants' conduct as alleged herein is such that, and has created such
28 damage to Plaintiff and the Class that, no adequate remedy at law exists, and Plaintiff and

1 the Class are thus entitled to and seek remedies at equity as alleged herein.

2 51. The purchase and sale transactions between Defendants on the one hand, and
3 Plaintiff and the Class Members on the other, constituted quasi-contracts implied in law,
4 and were backed and supported by the promises of Defendants made in *assumpsit*.

5 52. Inasmuch Defendants deceived Plaintiff and the Class Members into entering
6 the agreements alleged herein, and as Defendants enjoyed pecuniary gain at the expense of
7 Plaintiff and the Class Members as a proximate result thereof, Defendants were unjustly
8 enriched, entitling Plaintiff and the Class Members to an injunction, restitution of ill-gotten
9 gains, and disgorgement of Defendants' profits.

10 53. Plaintiff and the Class Members expended funds to purchase the FuelBands
11 and therefore a disputed *res* is at issue. Insofar as said funds rightfully belong to Plaintiff
12 and the Class Members as a result of the unlawful means by which Defendants obtained
13 them, the funds and Defendants are subject to, and Plaintiff seeks, the imposition and
14 equitable remedy of a constructive trust over the funds, to prevent their waste and to prevent
15 Defendants' continued unjust enrichment.

16
17 **PRAYER FOR RELIEF**

18
19 **WHEREFORE**, Plaintiff prays for judgment and relief as follows:


- 20 1. For a declaration that this lawsuit may properly be maintained as a class action,
21 and a declaration certifying the Class Representative's claims herein;
22 2. For general damages in an amount to be proven at trial;
23 3. For special damages in an amount to be proven at trial;
24 4. For disgorgement of profits and for restitution in amounts to be proven at trial;
25 5. For injunctive relief;
26 6. For any other available penalties for each illegal or fraudulent business act or
27 practice;
28 7. For attorneys' fees pursuant to statute and the Court's equitable powers, in

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- amounts subject to proof;
- 8. For exemplary damages pursuant to California *Code of Civil Procedure* §3294;
- 9. For prejudgment interest; and
- 10. For such other and further relief as may be just and proper.

Dated: April 27, 2015

LAW OFFICES OF PAUL N. PHILIPS, APLC

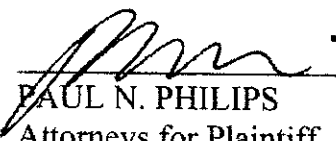
By: 
 PAUL N. PHILIPS
 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of the within causes by jury.

Dated: April 27, 2015

LAW OFFICES OF PAUL N. PHILIPS, APLC

By: 
 PAUL N. PHILIPS
 Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 9255 West Sunset Boulevard, Suite 920, West Hollywood, California 90069-3306.

On May 27, 2015, I served the foregoing document described as:

STIPULATION OF THE PARTIES FOR FILING OF SECOND AMENDED COMPLAINT; [PROPOSED] ORDER

on the interested parties in this action as follows:

Keith D. Griffin, Esq.
GIRARDI & KEESE
1126 Wilshire Boulevard
Los Angeles, California 90017

Courtesy Copy
Co-Counsel for Plaintiffs Carolyn Levin and the Putative Class

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Counsel for Defendants Nike, Inc. and Apple Inc.

[X] BY ELECTRONIC SERVICE VIA FILE & SERVE XPRESS:

I caused the above document(s) to be served through File & Serve Xpress at address to those parties listed on the service list. The service transmission was reported as a complete and a copy of the File & Serve Xpress Filing receipt Page/Confirmation will be maintained with the original document(s) in this office.

I declare, under penalty of perjury according to the laws of the State of California that the foregoing is true and correct. Executed this 27th day of May 2015, at West Hollywood, California.

[Handwritten Signature]
Matthew Hale