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8 Attorneys for Defendant
 APPLE INC.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

14 CHARLENE GALLION, on behalf of herself and
 all others similarly situated,
 15
 Plaintiff,
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 v.
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 18 APPLE INC., a California corporation, and DOES
 1-100, inclusive,
 19
 Defendants.

Case No. CV 10-01610-RS

CLASS ACTION
ANSWER TO COMPLAINT
DEMAND FOR JURY TRIAL

Judge Richard Seeborg, Courtroom 3
 Complaint Filed: April 15, 2010
 Trial Date: None Set

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1 Defendant APPLE INC. (“Apple”), by and through its attorneys, answers the Complaint
2 filed by Plaintiff Charlene Gallion as follows:

3 **PARTIES**

4 1. Responding to paragraph 1 of the Complaint, Apple is without knowledge or
5 information sufficient to form a belief as to the truth of the averments contained in paragraph 1
6 and on that basis denies the averments.

7 2. Responding to paragraph 2 of the Complaint, Apple states that “Apple Inc.” is
8 incorporated in California. Apple further states that its executive offices and corporate
9 headquarters are located in Cupertino, Santa Clara County, California. Except as expressly
10 stated, Apple denies each and every averment contained in paragraph 2

11 3. Responding to paragraph 3 of the Complaint, Apple is without knowledge or
12 information sufficient to form a belief as to the truth of the averments contained in paragraph 3
13 and on that basis denies the averments.

14 4. Responding to paragraph 4 of the Complaint, Apple is without knowledge or
15 information sufficient to form a belief as to the truth of the averments contained in paragraph 4
16 and on that basis denies the averments.

17 **JURISDICTION AND VENUE**

18 5. Responding to paragraph 5 of the Complaint, Apple states that insofar as the
19 averments in paragraph 5 state conclusions of law, no response thereto is required. Except as
20 expressly stated, Apple denies each and every averment contained in paragraph 5.

21 a. Responding to subparagraph 5(a) of the Complaint, Apple is without knowledge or
22 information sufficient to form a belief as to the truth of the averments that the
23 matter in controversy exceeds the jurisdictional amount or that the proposed class
24 includes more than 100 members. Except as expressly stated, Apple denies each
25 and every averment contained in paragraph 5(a).

26 b. Responding to subparagraph 5(b) of the Complaint, Apple states that its executive
27 offices and corporate headquarters are located in Cupertino, California. Apple
28 further states that it is incorporated in California and that it is registered to do

1 business in the State of California. Apple further states that it has designed and
2 sold Apple iPhone and Apple iPod touch products equipped with Liquid Contact
3 Indicators and that such products include or are sold with warranties drafted and/or
4 approved by Apple. Insofar as the averments in paragraph 5(b) state conclusions
5 of law, no response thereto is required. Except as expressly stated, Apple denies
6 each and every averment contained in paragraph 5(b).

7 6. Responding to paragraph 6 of the Complaint, Apple states that it does business in
8 the Northern District of California and that its headquarters are located in Santa Clara County,
9 California. Insofar as the averments in paragraph 6 state conclusions of law, no response thereto
10 is required. Except as expressly stated, Apple denies each and every averment contained in
11 paragraph 6.

12 **GENERAL ALLEGATIONS**

13 7. Responding to paragraph 7 of the Complaint, Apple states that it designs and
14 markets a phone called the iPhone, and that it has sold the iPhone in the United States since
15 approximately June 2007. Apple further states that it has sold subsequent versions of the iPhone
16 referred to as the iPhone 3G and iPhone 3GS and such products have ranged in price from \$99 to
17 \$499. Except as expressly stated, Apple denies each and every averment contained in
18 paragraph 7.

19 8. Responding to paragraph 8 of the Complaint, Apple states that the iPhone is
20 configured so that U.S. customers must purchase cellular telephone service from AT&T Mobility
21 LLC ("AT&T") in order to use the iPhone to make telephone calls. Apple is informed and
22 believes that AT&T currently requires consumers to enter into a two-year contract with AT&T in
23 order to use their iPhone to make telephone calls. Except as expressly stated, Apple denies each
24 and every averment contained in paragraph 8.

25 9. Responding to paragraph 9 of the Complaint, Apple states that it designs, markets,
26 and sells a product known as the iPod touch. Apple further states that it sells the iPod touch in the
27 United States. Apple further states that the iPod touch and the iPhone have similar non-
28 telephonic features. Apple further states that it currently sells the iPod touch at prices ranging

1 from \$199 to \$399 depending on features and storage capacity. Except as expressly stated, Apple
2 denies each and every averment contained in paragraph 9.

3 **The Standard Warranty and Extended Warranty**

4 10. Responding to paragraph 10 of the Complaint, Apple states that to the extent
5 paragraph 10 is a reference to part of an Apple website, the website speaks for itself. Apple
6 further states that it provides a one-year limited warranty with its iPhone and iPod touch products.
7 Apple further states that the documents attached to the Complaint as Exhibit 1 appear to be copies
8 of a version of the Limited Warranty. Apple further states that the documents speak for
9 themselves. Insofar as the averments in paragraph 10 state conclusions of law, no response
10 thereto is required. Except as expressly stated, Apple denies each and every averment contained
11 in paragraph 10.

12 11. Responding to paragraph 11 of the Complaint, Apple states that the documents
13 attached to the Complaint speak for themselves. Except as expressly stated, Apple denies each
14 and every averment contained in paragraph 11.

15 12. Responding to paragraph 12 of the Complaint, Apple states that to the extent
16 paragraph 12 is a reference to part of an Apple website, the website speaks for itself. Apple
17 further states that consumers who purchase an iPhone or iPod touch have the opportunity to
18 purchase an AppleCare Protection Plan (“AppleCare”) for those products. Apple further states
19 that AppleCare for the iPhone currently costs \$69.00 and that AppleCare for the iPod touch
20 currently costs \$59.00. Apple further states that the documents attached to the Complaint as
21 Exhibit 2 appear to be copies of a version of the AppleCare Protection Plan. Apple further states
22 that the documents speak for themselves. Insofar as the averments in paragraph 12 state
23 conclusions of law, no response thereto is required. Except as expressly stated, Apple denies
24 each and every averment contained in paragraph 12.

25 13. Responding to paragraph 13 of the Complaint, Apple states that the documents
26 speak for themselves. Except as expressly stated, Apple denies each and every averment
27 contained in paragraph 13.

1 information sufficient to form a belief as to the truth of the remaining averments of paragraph 27
2 at this time, and on that basis denies each and every such averment.

3 28. Responding to paragraph 28 of the Complaint, Apple states that it is without
4 knowledge or information sufficient to form a belief as to the truth of the averments of
5 paragraph 28 at this time, and on that basis denies each and every such averment.

6 29. Responding to paragraph 29 of the Complaint, Apple states that it is without
7 knowledge or information sufficient to form a belief as to the truth of the averments of
8 paragraph 29 at this time, and on that basis denies each and every such averment.

9 30. Responding to paragraph 30 of the Complaint, Apple states that it is without
10 knowledge or information sufficient to form a belief as to the truth of the averments of
11 paragraph 30 at this time, and on that basis denies each and every such averment.

12 31. Responding to paragraph 31 of the Complaint, Apple states that it is without
13 knowledge or information sufficient to form a belief as to the truth of the averments of
14 paragraph 31 at this time, and on that basis denies each and every such averment.

15 32. Responding to paragraph 32 of the Complaint, Apple states that it is without
16 knowledge or information sufficient to form a belief as to the truth of the averments of
17 paragraph 32 at this time, and on that basis denies each and every such averment.

18 33. Responding to paragraph 33 of the Complaint, Apple states that it is without
19 knowledge or information sufficient to form a belief as to the truth of the averments of
20 paragraph 33 at this time, and on that basis denies each and every such averment.

21 34. Responding to paragraph 34 of the Complaint, Apple states that it is without
22 knowledge or information sufficient to form a belief as to the truth of the averments of
23 paragraph 34 at this time, and on that basis denies each and every such averment.

24 35. Responding to paragraph 35 of the Complaint, Apple states that it is without
25 knowledge or information sufficient to form a belief as to the truth of the averments of
26 paragraph 35 at this time, and on that basis denies each and every such averment.

27 36. Responding to paragraph 36 of the Complaint, Apple denies each and every
28 averment contained in paragraph 36.

1 **THIRD CLAIM FOR RELIEF**

2 **(Violation of the Song-Beverly Consumer Warranty Act)**

3 68. Responding to paragraph 68 of the Complaint, Apple realleges and incorporates by
4 reference each and every preceding paragraph of this Answer as if fully set forth herein.

5 69. Responding to paragraph 69 of the Complaint, Apple states that insofar as
6 Plaintiff's averments in paragraph 69 state conclusions of law, no response thereto is required.
7 Except as expressly stated, Apple denies each and every averment contained in paragraph 69.

8 70. Responding to paragraph 70 of the Complaint, Apple states that insofar as
9 Plaintiff's averments in paragraph 70 state conclusions of law, no response thereto is required.
10 Except as expressly stated, Apple denies each and every averment contained in paragraph 70.

11 71. Responding to paragraph 71 of the Complaint, Apple states that insofar as
12 Plaintiff's averments in paragraph 71 state conclusions of law, no response thereto is required.
13 Except as expressly stated, Apple denies each and every averment contained in paragraph 71.

14 72. Responding to paragraph 72 of the Complaint, Apple denies each and every
15 averment contained in paragraph 72.

16 73. Responding to paragraph 73 of the Complaint, Apple denies each and every
17 averment contained in paragraph 73.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Fraud)**

20 74. Responding to paragraph 74 of the Complaint, Apple realleges and incorporates by
21 reference each and every preceding paragraph of this Answer as if fully set forth herein.

22 75. Responding to paragraph 75 of the Complaint, Apple denies each and every
23 averment contained in paragraph 75.

24 76. Responding to paragraph 76 of the Complaint, Apple denies each and every
25 averment contained in paragraph 76.

26 77. Responding to paragraph 77 of the Complaint, Apple denies each and every
27 averment contained in paragraph 77.

1 class have been injured or damaged in any way and further denies that Plaintiff or the members of
2 the purported class are entitled to relief of any kind.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Unjust Enrichment)**

5 98. Responding to paragraph 98 of the Complaint, Apple realleges and incorporates by
6 reference each and every preceding paragraph of this Answer as if fully set forth herein.

7 99. Responding to paragraph 99 of the Complaint, Apple denies each and every
8 averment contained in paragraph 99.

9 100. Responding to paragraph 100 of the Complaint, Apple denies each and every
10 averment contained in paragraph 100.

11 101. Responding to paragraph 101 of the Complaint, Apple states that Plaintiff seeks an
12 order as stated. Except as expressly stated, Apple denies each and every averment contained in
13 paragraph 101. Apple denies that Plaintiff or the members of the purported class have been
14 injured or damaged in any way and further denies that Plaintiff or the members of the purported
15 class are entitled to relief of any kind.

16 **PRAYER FOR RELIEF**

17 Apple denies that Plaintiff's purported class is certifiable or that Plaintiff or the members
18 of the purported class suffered injury or damage, and further denies that Plaintiff or the members
19 of the purported class are entitled to relief of any kind.

20 **AFFIRMATIVE DEFENSES**

21 As to affirmative defenses to the Complaint, Apple does not, by stating the matters set
22 forth in these defenses, allege or admit that it has the burden of proof and/or persuasion with
23 respect to any of these matters, and does not assume the burden of proof or persuasion as to any
24 matters as to which Plaintiff has the burden of proof or persuasion.

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Failure to State a Claim)**

27 1. The Complaint, and each and every cause of action therein, fails to state facts
28 sufficient to constitute a cause, or causes, of action against Apple.

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SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

2. The claims of the purported class are barred, in whole or in part, because members of the purported class lack standing to assert any or all of the causes of action alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

(Lack of Article III Standing)

3. Apple alleges on information and belief that members of the purported class lack standing under Article III of the Constitution of the United States.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

4. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

5. Plaintiff's claims, and those of the purported class, are barred, in whole or in part, to the extent that Plaintiff and members of the purported class have released, settled, entered into an accord and satisfaction of, or otherwise compromised their claims.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

6. Plaintiff and the purported class have failed to mitigate their damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

7. Plaintiff's claims, and those of the purported class, are barred, in whole or in part, by their own comparative fault.

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EIGHTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

8. Any and all events, happenings, injuries and damages set forth in the Complaint were proximately caused and contributed to by the acts and/or omissions of Plaintiff and/or members of the purported class, and such acts and/or omissions totally bar or reduce any recovery on the party of Plaintiff and/or the purported class.

NINTH AFFIRMATIVE DEFENSE

(Constitutional)

9. The claims of Plaintiff and the purported class are in contravention of Apple’s rights under applicable clauses of the United States and California Constitutions, including without limitation the following provisions: (a) said claims constitute an impermissible burden on interstate commerce in contravention of Article I, Section 8 of the United States Constitution; (b) said claims violate Apple’s right to Due Process under the Fourteenth Amendment of the United States Constitution; (c) said claims contravene the constitutional prohibition against vague and overbroad laws; (d) such claims contravene freedom of speech rights under the California Constitution and the First and Fourteenth Amendments to the United States Constitution; and (e) said claims contravene the Due Process Clause of the California Constitution.

TENTH AFFIRMATIVE DEFENSE

(Bona Fide Error)

10. The claims of Plaintiffs and the purported class are barred because, although Apple denies each and every claim of Plaintiffs and the purported class and denies that Apple engaged in wrongdoing or error of any kind, any alleged error on Apple’s part was a bona fide error notwithstanding Apple’s use of reasonable procedures adopted to avoid any such error.

Apple reserves the right to assert other defenses as discovery progresses.

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PRAYER

WHEREFORE, Apple prays for judgment as follows:

1. That Plaintiff and the purported class take nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice and judgment be entered in favor of Apple;
3. That Apple be awarded its costs of suit; and
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Apple hereby demands a trial by jury on all issues upon which trial by jury may be had.

Dated: June 7, 2010

PENELOPE A. PREOVOLOS
ANDREW DAVID MUHLBACH
HEATHER A. MOSER
SAMUEL J. BOONE LUNIER
MORRISON & FOERSTER LLP

By: /s/ Penelope A. Preovolos
PENELOPE A. PREOVOLOS

Attorneys for Defendant
APPLE INC.