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12 Attorneys for Plaintiff, Charlene Gallion,  
13 on behalf of herself and all others  
14 similarly situated

15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

18 CHARLENE GALLION, on behalf of herself  
and all others similarly situated,

19 Plaintiff,

20 v.

22 APPLE, INC., a California corporation, and  
DOES 1-100, inclusive,

23 Defendants.  
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**No. CV 10-01610-RS**

**JOINT UPDATED CASE  
MANAGEMENT CONFERENCE  
STATEMENT**

DATE: October 28, 2010

TIME: 10:00 a.m.

COURTROOM: 3

Hon. Richard Seeborg

1 Pursuant to Civil Local Rule 16-10(d), the parties respectfully submit this Joint Updated  
2 Case Management Conference Statement.

3 **1. SUMMARY OF FACTS AND PROCEDURAL STATUS**

4 As the Court may recall from the parties' last Joint Case Management Conference  
5 Statement, filed on July 22, 2010, this action was commenced on April 15, 2010 and involves a  
6 putative nationwide class of purchasers of iPhone, iPhone 3G, iPhone 3GS, and iPod touch  
7 devices ("Class Devices"). The Complaint alleges that defendant Apple, Inc. wrongfully denies  
8 warranty coverage for Class Devices by claiming, in reliance on faulty sensors, that the Devices  
9 have been damaged by liquid. Defendant Apple, Inc. denies all allegations in the Complaint and  
10 further denies that class certification is appropriate, that Plaintiff or the putative class have been  
11 injured or damaged or are entitled to relief of any kind. The Court continues to have jurisdiction  
12 under the Class Action Fairness Act. All currently named parties have been served. Defendant  
13 Apple, Inc. answered the complaint on June 7, 2010.

14 **2. ANTICIPATED MOTIONS**

15 There are currently no pending motions.

16 *Plaintiff's Statement.* Plaintiff anticipates filing a motion for class certification as well  
17 as a motion for "partial" summary judgment. The timing of these motions depends on the timing  
18 of production of necessary documents and information from Defendant and third parties. Since  
19 the last Case Management Conference, the parties have made progress with regard to a protocol  
20 for searching and producing documents from Defendant's custodians and databases (as discussed  
21 in more detail in Section 4, below). Plaintiff also anticipates filing a motion for appointment of  
22 interim counsel pursuant to Federal Rule of Civil Procedure 23(g)(3), in light of the related cases  
23 mentioned below (see Sections 6 and 7, below).

24 *Defendant's Statement.* Defendant anticipates filing a motion for summary judgment.  
25 Defendant proposes that a class certification schedule be set at a future case management  
26 conference once discovery has been substantially completed.

27 **3. AMENDMENT OF PLEADINGS**

28 Plaintiff anticipates that she will amend her complaint to add named Plaintiffs/proposed

1 class representatives. Plaintiff reserves the right to seek leave to amend as may be warranted and  
2 permitted by law in the future.

3 Defendant proposes that a January 6, 2010 deadline should be set for all amendments to  
4 the complaint.

5 **4. DISCLOSURES AND DISCOVERY**

6 On June 25, 2010, Plaintiff served Defendant with a First Request for Production of  
7 Documents. On July 23, 2010, the parties exchanged initial disclosures pursuant to Federal Rule  
8 of Civil Procedure 26(a)(1). On July 29, 2010, Defendant served its written responses to  
9 Plaintiff's first set of production requests.

10 Since that time, the parties' counsel have engaged in several lengthy "meet and confer"  
11 telephone conferences to address discovery matters. They have agreed on a protocol for  
12 identifying appropriate document custodians and databases from which to search for responsive  
13 documents in Defendant's possession using a system of keyword searching. Plaintiff's counsel  
14 are working with Defendant's counsel to devise a list of appropriate keywords to be used in this  
15 effort, which will be followed by the parties devising search strings that use Boolean operators in  
16 ways that are most likely to net materials that are responsive to Plaintiff's requests for  
17 production. Based on these "meet and confer" discussions, the parties have every reason to  
18 anticipate that the production will be very extensive. In approximately early October, Defendant  
19 produced some documents (approximately 300 pages consisting of publically-available warranty  
20 documents, most of which are in foreign languages), but the parties anticipate that significant  
21 additional production will take place on a rolling basis.

22 Production of additional documents awaits finalization and entry of an appropriate  
23 protective order (discussed in Section 5, below).

24 ***Additional Discovery Contemplated by Plaintiff.*** Plaintiff also anticipates propounding  
25 at least one set of interrogatories and requests for admissions, and to engage in targeted follow-  
26 up discovery, including depositions (of specifically-identified Apple personnel and of persons  
27 that Apple designates as most knowledgeable witnesses under Rule 30(b)(6)). In addition to the  
28 foregoing, Plaintiff anticipates serving several third parties (including AT&T Corporation, which

1 provides wireless services for the iPhone, and 3M Company, which manufactures the LSIs  
2 Defendant installs in Class Devices) with subpoenas *duces tecum*.

3 *Additional Discovery Contemplated by Defendant.* Defendant anticipates propounding  
4 written discovery and taking the deposition of the named Plaintiff.

5 **5. STATUS OF PROTECTIVE ORDER**

6 Plaintiff submitted a stipulated protective order to Defendant last May. Although it took  
7 over a month for Defendant to respond, it appeared that the parties were in agreement as to the  
8 terms of the proposed protective order shortly after they discussed the matter in July, when  
9 Plaintiffs submitted a revised draft that addressed each of Defendant's concerns. Since then,  
10 however, Defendant has raised new issues each time it appeared that the matter had been  
11 resolved. As it stands now, Defendant has advised Plaintiff that it would like additional time to  
12 review the current draft (circulated by Plaintiff on October 19), and to attempt to reach  
13 agreement on any remaining points in dispute by the close of business on Tuesday, October 26.  
14 Accordingly, Plaintiff has agreed to defer the matter until then. On the afternoon of October 26,  
15 Plaintiff will submit to the Court either: (a) a fully-executed stipulation and proposed protective  
16 order; or (b) a blackline version of the proposed protective order reflecting any remaining points  
17 in dispute, along with a short memorandum to apprise the Court of the procedural history of the  
18 matter and the manner in which Plaintiff proposes to resolve it.

19 **6. RELATED CASES**

20 The parties are aware of three cases related to this one:

- 21 (a) *Pennington v. Apple, Inc.*, Santa Clara County Superior Court case no. 1-10-CV-  
22 162659. Unlike the present case, which seeks to certify a nationwide class of  
23 consumers who own any iPhone or iPhone touch device equipped with external  
24 LSIs, the *Pennington* plaintiffs currently seek to certify a class of California  
25 consumers who own some, but not all, of the iPhones (and none of the iPods) at  
26 issue in the present case, and seek equitable relief, but not damages on behalf of  
27 the class proposed in *Pennington*. Plaintiffs' counsel in the *Pennington* matter  
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has indicated to Defendant’s counsel an intent to file an amended complaint potentially expanding the relief sought, but has not yet done so.<sup>1</sup>

(b) *Corsi v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no. CV10-03316. *Corsi* was filed in this Court on July 28, 2010. By Order filed August 13, 2010, this Court formally related *Corsi* to this action pursuant to N.D. Cal. Civil Local Rule 3-12. The complaint in *Corsi* duplicates the complaint in this action almost verbatim.

(c) *Calix v. Apple, Inc.*, U.S. Dist. Ct., M.D. La. case no. 10-cv-676. *Calix* was commenced in Louisiana state court on September 2, 2010 and was removed by Apple to the United States District Court for the Middle District of Louisiana on October 7, 2010. Apple filed its answer on October 14, 2010. Apple intends to seek transfer (voluntary or involuntary) of *Calix* to this Court. The factual allegations of the *Calix* complaint duplicate the complaint in this action almost verbatim. However, *Calix* seeks relief on behalf of a class of Louisiana “domiciliaries” only. The *Calix* action is therefore subsumed by this case.

7. **APPOINTMENT OF INTERIM CLASS COUNSEL**

In light of the increasing number of related cases, plaintiff’s counsel in this action anticipate filing a motion for an order appointing them as interim class counsel pursuant to Federal Rule of Civil Procedure 23(g)(3).

Plaintiff’s counsel in this action have not only filed ahead of the other federal actions, they have also taken the lead in developing the facts and theories of recovery stated in the complaints in both of those other actions. Plaintiff’s counsel in this action have also taken the lead in advancing discovery, and in drafting the stipulated protective order. Similarly, Plaintiff’s counsel provided counsel in *Pennington* with a draft of the protective order, and pointed them to

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<sup>1</sup> Although the present action was filed approximately three months after the *Pennington* action was filed, counsel for Plaintiff Gallion have been investigating the facts and researching the legal principles applicable to this action since September 2009. The core claims in *Pennington* are quite similar to those alleged in the present case—that Defendant has wrongfully denied warranty coverage based solely on triggered external LSIs—but seeks damages and other relief that the *Pennington* plaintiffs do not seek, and a nationwide class of all iPhone and iPod touch owners versus the California class of certain iPhone owners sought in *Pennington*.

1 a Model Order that the Santa Clara County Superior Court adopted for use in cases like this one,  
2 which counsel for Plaintiff Gallion drafted roughly a decade ago in a UCL case against General  
3 Motors.

4 Recognizing the need to impose order on, and to avoid duplication of effort in, the  
5 litigation, Plaintiff's counsel are working with counsel for the *Corsi* Plaintiffs in an effort to  
6 devise a stipulation and proposed order that will establish the organizational structure for all  
7 Plaintiffs' counsel involved in the federal litigation. Plaintiff's counsel will be prepared to  
8 discuss the details of the proposed organizational structure during the next Case Management  
9 Conference. Defendant's counsel are also willing to discuss the details of the proposed  
10 organizational structure, but reserve the right to oppose such a motion should it be filed.

11 **8. SETTLEMENT AND ADR**

12 An ADR Phone Conference was held July 26, 2010 at 10:00 a.m. A further ADR Phone  
13 Conference has been scheduled for October 25, 2010 at 10:00 a.m. The parties agree that until  
14 discovery is more advanced, it is premature to attempt to engage in ADR. The parties do not  
15 foreclose the possibility of engaging in ADR later, depending on developments in discovery and  
16 motions, including class certification and the dispositive motions mentioned above.

17 **9. SCHEDULING AND TRIAL**

18 As discussed in Section 2, above, the parties agree that additional discovery must be  
19 completed before a class certification motion schedule is set. The parties respectfully suggest  
20 that other dates, such as the discovery cutoff, a deadline for the filing of dispositive motions, and  
21 the trial date, be set following the ruling on the class certification motion. The parties agree that  
22 not all of Plaintiff's claims are subject to jury trial and that it is premature to estimate the length  
23 of trial prior to a ruling on class certification.

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DATED: October 22, 2010

Respectfully submitted,

**FAZIO | MICHELETTI LLP**

by           /s/ Jeffrey L. Fazio            
Jeffrey L. Fazio

Attorneys for Plaintiff, Charlene Gallion,  
on behalf of herself and the proposed class

DATED: October 22, 2010

**MORRISON | FOERSTER LLP**

by           /s/ Andrew D. Muhlbach            
Andrew D. Muhlbach  
Attorneys for Defendant, Apple, Inc.