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6 similarly situated

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiff,
19 v.

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

21 Defendants,

22 CHRISTOPER CORSI, on behalf of
23 himself and all others similarly situated,

24 Plaintiff,

25 v.

26 APPLE, INC.,

27 Defendant.
28

No. 10-cv-01610-SC

ERRATA RE STIPULATION AND
PROPOSED ORDER TO
APPOINT INTERIM CO-LEAD
CLASS COUNSEL
(Fed. R. Civ. P. 23(g)(3))

CHAMBERS COPY

No. 10-cv-03316-RS

DATE:
TIME:
COURTROOM: 7
TRIAL DATE: Not set

Hon. Richard Seeborg

1 After filing the Stipulation and Proposed Order to Appoint Interim Co-Lead
2 Class Counsel yesterday (December 21, 2010), Plaintiffs' counsel noticed that the
3 caption page on that document was incorrect, in that it referred to a notion of
4 motion and motion rather than to the stipulation. Accordingly, Plaintiffs hereby
5 submit this Errata to correct the error, and have attached hereto at **Exhibit A** a
6 Corrected Stipulation and Proposed Order Appointing Interim Co-Lead Class
7 Counsel.

8
9 DATED: December 22, 2010

FAZIO | MICHELETTI LLP

10 by /s/ Jeffrey L. Fazio

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

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

18 Plaintiff,
19 v.

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

21 Defendants,

22 CHRISTOPHER CORSI, on behalf of
23 himself and all others similarly situated,

24 Plaintiff,

25 v.

26 APPLE, INC.,

27 Defendant.
28

No. 10-cv-01610-RS

**CORRECTED STIPULATION
AND PROPOSED ORDER
APPOINTING INTERIM CO-
LEAD CLASS COUNSEL
(Fed. R. Civ. P. 23(g)(3))**

CHAMBERS COPY

No. 10-cv-03316-RS

**DATE: NA
TIME: NA
COURTROOM: 7
TRIAL DATE: Not set**

Hon. Richard Seeborg

1 From the outset of the two related actions that are now pending before this
2 Court, *Gallion v. Apple, Inc.*, No. 10-cv-01610-RS, and *Corsi v. Apple, Inc.*, No. 10-
3 cv-03316-RS (the “Related Actions”), counsel for all parties have striven to
4 coordinate the litigation so as to streamline discovery and other aspects of the
5 litigation, and to avoid needless duplication of effort. To date, those efforts have
6 been informal, but they have been effective.

7 Shortly after *Corsi* was filed, the parties to both actions entered into a
8 stipulation with Defendant Apple, Inc. (“Apple”) by which Apple would file an
9 administrative motion for a determination that the *Corsi* and *Gallion* cases are
10 “related,” as that term is used in Local Rule 3-12. As Apple explained in that
11 motion,

12 [t]he nature of the relationship between this first-filed action
13 and the subsequently filed *Corsi* action is that: (1) the cases both
14 assert substantially similar claims against the same defendant, Apple;
15 (2) the putative classes in both actions substantially overlap; and
16 (3) both cases require determination of the same or substantially
17 similar questions of fact and law. Specifically, each action focuses on
18 (i) whether the Liquid Contact Indicators (“LCIs”) in Apple’s iPhone
19 and iPod products are a reliable indicator of liquid damage; and (ii)
20 whether Apple’s warranty policies concerning the LCIs are reasonable
or appropriate. Indeed, substantial portions of the *Corsi* complaint
appear to be identical to the *Gallion* complaint.

Due to their similarity, if not treated as related, these cases are
likely to require substantial duplication of labor and expense and
present a potential danger of inconsistent rulings regarding the same
issues of law. Given the closely related nature of each of these cases,
the treatment of these actions as related would serve the interests of
judicial economy and avoid the potential for conflicting rulings.

21 Administrative Motion to Consider Whether Cases Should Be Related at 1 (filed
22 Aug. 6, 2010) (footnote omitted) (Docket No. 20). The Court granted that motion the
23 following week. See Related Case Order (Aug. 13, 2010).

24 For the same reasons, Plaintiffs hereby seek an order appointing counsel for
25 the parties to the Related Actions, Fazio | Micheletti LLP (“FM”) and Chimicles &
26 Tikellis LLP (“CT”), as interim co-lead counsel pursuant to Federal Rule of Civil
27 Procedure 23(g). Such an order will serve to formally organize the efforts of law
28

1 firms from different parts of the country and coordinate discovery and motion
2 practice in the Related Actions.¹

3 Thus far, proceeding with the litigation on an informal basis has not been an
4 issue because the parties to the Related Actions, and the parties to *Pennington v.*
5 *Apple, Inc.*, No. 1-10-CV-162659, which is pending before the Santa Clara County
6 Superior Court, have agreed to work together with counsel for Apple on a
7 cooperative basis.

8 Now that another action based on the same operative facts—*Calix v. Apple,*
9 *Inc.*, which was filed in Louisiana state court and removed to the U.S. District Court
10 for the Middle District of Louisiana—has been filed, it has become evident that a
11 formal organizational structure would benefit the interests of all concerned. Thus,
12 counsel for the *Calix* Plaintiffs have agreed (1) that FM and CT will serve as co-lead
13 counsel for Plaintiffs in the *Gallion*, *Corsi*, and *Calix* actions and (2) to voluntarily
14 transfer the *Calix* action to this Court. Moreover, Plaintiffs' counsel have discussed
15 the matter with counsel for Apple, who have confirmed that Apple does not oppose
16 the appointment of FM and CT as co-lead counsel. Accordingly, Apple's counsel
17 have authorized Plaintiffs' counsel to represent to the Court that Apple does not
18 oppose the adoption of this Stipulation as an order of the Court.

19 If appointed as interim co-lead counsel for Plaintiffs, FM and CT will serve to
20 protect the interests of Plaintiffs and the proposed class by imposing order on the
21 litigation prior to class certification; eliminating unnecessary duplication of effort
22 and the potential for conflict between competing actions; allocating work among
23 Plaintiffs' counsel in a fair, efficient, and streamlined manner; and pursuing a
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25 ¹ A court may appoint more than one firm to act as co-lead counsel. *See, e.g.,*
26 *In re Air Cargo Shipping*, 240 F.R.D. at 58-59 (appointing four law firms as co-lead
27 counsel); *Nowak v. Ford Motor Co.*, 240 F.R.D. 355, 361 (E.D. Mich. 2006)
28 (appointing two law firms as co-lead counsel); *In Re Pressure Sensitive Labelstock*
Antitrust Litig., 2007 WL 415066, (M.D. Pa. Nov. 19 2007) (appointing four law
firms as co-lead class counsel after previously appointing same four firms as co-lead
interim class counsel).

1 unified approach to any proposals that may be made to resolve the underlying
2 disputes by settlement. By their signatures set forth below, counsel for each of the
3 federal Plaintiffs have agreed to the appointment of FM and CT as interim co-lead
4 Plaintiffs' counsel, and that the appointment will establish a unified leadership
5 structure that will move the litigation forward in an effective and efficient manner.²
6 As indicated by FM and CT's firm resumes, which are attached to this Stipulation
7 at Tabs 1 and 2, respectively, both firms are eminently qualified to lead the class, as
8 they have in many other class actions. Therefore, each of the criteria set forth in
9 Federal Rule of Civil Procedure 23(g) are satisfied.³

10 Thus, Plaintiffs, through their respective counsel, hereby stipulate to the
11 appointment of Fazio | Micheletti LLP and Chimicles & Tikellis LLP as interim co-
12 lead counsel pursuant to Federal Rule of Civil Procedure 23(g), and respectfully
13 request that the Court adopt this Stipulation as an order of the Court.
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17 ² The unanimous support of the plaintiffs is a compelling reason to appoint
18 interim co-lead counsel as proposed by this Stipulation. *See, e.g., In re Aluminum*
19 *Phosphide Antitrust Litig.*, 1994 WL 4818487, *5, *7 (D. Kan. May 17, 1994) ("In
20 designating lead counsel, the Court will also give due consideration to the
21 preferences expressed by the parties themselves, through their counsel. . . . Absent
22 persuasive evidence to the contrary, the court assumes that nominations and votes
23 for lead counsel are made in good faith for reasons that benefit the client").

24 ³ The standards set forth in Rule 23(g)(1)(A)(1)(i)-(iv) apply in choosing
25 interim class counsel. *See, e.g., Brigiotta's Farmland Produce & Garden Ctr., Inc. v.*
26 *United Potato Growers of Idaho, Inc.*, 2010 U.S. Dist. LEXIS 106443, *5 (D. Idaho
27 Oct. 4, 2010) ("Courts generally look to the same factors used in determining the
28 adequacy of class counsel under Rule 23(g)(1)(A) when appointing interim counsel");
Thompson v. World Alliance Fin. Corp., 2010 U.S. Dist. LEXIS 85912, *28 (E.D.N.Y.
Aug. 20, 2010) (same); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D.
56, 57 (E.D.N.Y. 2006) (same); *Parkinson v. Hyundai Motor Am.*, 2006 U.S. Dist.
LEXIS 59055, *6-7 (C.D. Cal. Aug. 7, 2006) (same). As the attached resumes
demonstrate, FM and CT easily meet the criteria set forth in Rule 23(g)(1)(A)(i)-(iv),
as they have identified and investigated the claims and potential claims in the
action; they have extensive experience in handling class actions, other complex
litigation, and the types of claims asserted in the present litigation; they have
extensive knowledge of the applicable law; and they and their co-counsel are
prepared to commit the resources necessary to properly represent the class.

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SO STIPULATED.

DATED: December 22, 2010

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17 DATED: December 22, 2010

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13 SO ORDERED.

14 DATED: 12-29-, 2010

15 
16 Hon. Richard Seeborg
17 United States District Judge
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