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Attorneys for Defendant
APPLE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

Plaintiff,

v.

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

Defendants.

Case No. CV 10-01610-RS

CLASS ACTION

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Date: Jan. 20, 2011
Time: 10:00 a.m.
Hon. Richard Seeborg, Courtroom 3

Complaint Filed: April 15, 2010
Trial Date: None Set

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

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. CV 10-03316-RS

Judge Richard Seeborg, Courtroom 3
Complaint Filed: July 28, 2010
Trial Date: None Set

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

I. PROCEDURAL STATUS

The Court continues to have jurisdiction under the Class Action Fairness Act. All currently named parties have been served. As the Court may recall from the parties' last Joint Case Management Conference Statement, Plaintiff Corsi served a CLRA demand letter on Apple on December 7, 2009, and the *Gallion* and *Corsi* actions were subsequently filed on April 15, 2010 and July 28, 2010, respectively. Defendant Apple, Inc. answered the *Gallion* complaint on June 7, 2010, and answered the *Corsi* complaint on September 20, 2010. The Court granted Plaintiffs' Motion for Order Appointing Interim Co-Lead Class Counsel on December 30, 2010 (Dkt. # 33).

II. ANTICIPATED MOTIONS

The parties' administrative motion to consider whether to relate the *Calix* action (referenced below), filed January 12, 2010, was granted January 14, 2011 (Dkt. # 37).

Plaintiffs' Statement. Plaintiffs anticipate filing a motion for class certification as well as a motion for "partial" summary judgment. The timing of these motions depends on the timing of production of necessary documents and information from Defendant and third parties. Such discovery is underway, the status of which is discussed below. Depending on the outcome of discussions with certain non-parties regarding their objections and responses to document subpoenas served by Plaintiffs (discussed below), Plaintiffs may file motions to compel.

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

III. AMENDMENT OF PLEADINGS

Plaintiffs may amend their complaints to add named plaintiffs/proposed class representatives. Plaintiffs reserve the right to seek leave to amend as may be warranted and permitted by law in the future.

IV. STATUS OF DISCOVERY

A. Current Discovery

1. *Plaintiffs' Statement*

Initial Disclosures. On July 23, 2010, Apple and the *Gallion* Plaintiff exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). Apple and the *Corsi* Plaintiff exchanged initial disclosures on October 28, 2010.

Document Production. On June 25, 2010, the *Gallion* Plaintiff served Apple with a First Request for Production of Documents.[1] On July 29, 2010, Apple served its written responses to the *Gallion* Plaintiff's first set of production requests.

Since then, Apple has produced documents on the following dates: **September 27, 2010** (approximately 300 pages); **November 5, 2010** (approximately 2,200 pages); and **December 3, 2010** (approximately 7,800 pages, more than 6,000 of which are illegible).

After receiving Apple's written responses, Plaintiffs promptly initiated several lengthy meet and confer sessions to address discovery matters. The parties have agreed on a protocol for identifying appropriate document custodians and databases from which to search for responsive documents in Apple's possession using a system of keyword searching. Counsel in the *Gallion* action, along with counsel in *Pennington v. Apple* (currently pending in Santa Clara Superior Court), each proposed lists of keywords, but that agreement was expressly conditioned on Apple's assurance that discovery would ***not*** be driven primarily by keyword searches. More specifically, counsel for the *Gallion* Plaintiffs explained at length the reasons for their misgivings about the use of keyword searches (*e.g.,* the need for a firm grasp of the terminology used by the

[1] The *Corsi* Plaintiff subsequently joined in these Requests. The *Pennington* Plaintiffs served their document requests in March 2010.

authors of documents that are responsive to Plaintiffs' document requests; the critical nature of constructing search terms and phrases that yield responsive materials; and the inherently over- and under-inclusive nature of keyword searching in general) and asked Apple's counsel whether "traditional" searches for responsive material—that is, identifying the individual Apple personnel who were likely to have been involved in particular issues involved with the litigation and questioning them about the existence and location of materials that are responsive to Plaintiffs' document requests—would be the primary means by which Apple's production efforts would be formulated.

Apple's counsel responded by stating that he understood Plaintiffs' concerns and that Apple would begin its production efforts by questioning personnel who were involved (or were likely to have been involved) with matters pertaining to LSIs, liquid damage to Devices, and claims for repair or replacement of Devices under applicable warranties. Apple's counsel also indicated that for those personnel involved or likely to have been involved with those matters, counsel would determine whether each person segregates his or her data into files, and for those who keep reliable, organized files, those files would be produced in their entirety after relevancy and privilege reviews (and not subjected to keyword searches). This process was confirmed in correspondence to Apple's counsel dated October 12, 2010 (copy attached hereto as Exhibit A). Since then, however, Plaintiffs have heard nothing further about the matter. Rather, it turns out that Apple's document-production efforts have centered almost exclusively around keyword searches (a final list of which was not produced until November 30).

More specifically, Apple has produced approximately 10,300 pages of responsive documents from collections that were not keyword searched. Over 6,000 pages of the production are illegible spreadsheet pages that Apple has promised to re-produce in usable format, but has not yet done so. The rest of this initial production consists largely of numerous duplicate copies of other documents such as different versions of warranty documents (only a handful of which are in English), customer service documents, and PowerPoint presentations regarding LSIs. The promised custodian files have not been produced at all.

In its portion of the CMC statement, below, Apple states, for the first time, that these documents are the only documents that were kept in segregated files, thus they are the only documents that will be produced without being subjected to keyword searches. This information does not comport with the discussions the parties had about Apple's document protocol, during which Apple's counsel sought to allay Plaintiffs' counsels' concerns that Apple would rely primarily on key word searches to locate responsive documents; indeed, the documents Apple produced on September 27 and on November 5 had already been gathered and were awaiting production at the time the parties discussed the protocol Apple would use to locate documents *going forward.* [2] At no time did Apple's counsel represent that the documents it had ***already*** gathered represented most of the documents that would not be subjected to a keyword search.

As for the additional 7,800 pages of documents Apple produced in December, again, more than 6,000 pages are illegible because of the way Apple produced those documents (bits and pieces of data that belong on one page of a spreadsheet have been produced across multiple pages, rendering the production not only unusable, but deceptively large).[3] Moreover, although Apple contends, for the first time below, that those documents came from the files of "key personnel involved with the subject matter of the case" who kept "files in a manner that did not require use of keyword searches," Apple also claims, for the first time, that the reason it has not yet reproduced these spreadsheets in a usable format is because "Apple is still in the process of locating the native versions of the files." Put simply, if these documents came from key personnel who maintain segregated files, the native versions of those files should be easy to

[2] The September 27 production occurred while those discussions were ongoing; likewise, Apple advised Plaintiffs of the availability of the documents that comprise the November 5 production during the September meet-and-confer discussions, but production of those documents was delayed pending entry of the protective order.

[3] Notwithstanding Apple's express agreement to designate as "Confidential" only those documents that have been carefully reviewed to ensure that they are legally protected from disclosure before stamping them as such, Apple has stamped the vast majority of the documents it has produced "Confidential"—including the many blank pages that comprise this production. Consequently, Plaintiffs' counsel are precluded by the protective order from attaching them to this CMC statement. Counsel will, however, bring representative samples with them to the conference.

locate. Yet Plaintiffs continue to wait for these documents too—just as Apple said at the outset of this litigation (when its counsel predicted that Plaintiffs' counsel would be "tearing their hair out" as a result of the delays in production).

Although Apple had previously advised Plaintiffs that it will have concluded most, if not all, of its document-production efforts by late January 2011, that date is no longer realistic. In early December 2010, counsel in the *Gallion* action requested that Apple propose a production schedule. At that time, counsel for Apple advised that they believed a proposal was premature, since the data collected from custodians had not yet been processed through the keyword search, and it was not yet clear how fast Apple counsel could review the documents. Thus, it was difficult to predict when production would be completed. Counsel for Apple advised that it expected that it would be in a position to propose a schedule for completion of all discovery during the first week of January 2011.

On January 6, 2011, counsel for Apple advised that its vendor had experienced processing delays over the holidays, and that processing was still incomplete. However, using estimates based on the processed data and information collected on review rates, Apple advised that it expected to be able to complete the review and production of documents from those custodians already collected by the end of May, 2010. As of the filing of this Statement, the processing is still incomplete. However, Apple has advised Plaintiffs that it anticipates that processing will be completed prior to the case management conference on January 20, 2010, and has said it will advise all parties and the Court at the conference if Apple's initial estimate requires revision. While Apple continues to assure Plaintiffs that it will produce documents on a "rolling basis," Apple made the same representation in the last CMC statement (at which time it said it anticipated "that significant additional production will take place on a rolling basis"), yet the number of usable pages produced since then is only approximately 4,000, many of which are either multiple copies of the same document, publicly-available documents (such as warranties that are available online), and foreign-language versions of certain documents, such as Apple's warranties.

Given that both parties agree that discovery is necessary in order to move this case forward, Plaintiffs hope to discuss a means of advancing the pace of discovery at the case management conference.

Other Written Discovery. Apple has agreed to provide narrative responses to some of the requests propounded in the *Gallion* Plaintiff's First Request for Production, as well as written responses to other issues raised by Apple's responses. Apple has provided responses to some of these requests, but others are still outstanding, even though the commitment to provide such further responses was made over three months ago, in mid-October 2010. (See correspondence dated Nov. 4, 2010, attached hereto as Exhibit B.) Apple has indicated that it is still in the process of locating the necessary information to respond, but it has not yet given Plaintiffs a date by which they can expect that production. Apple also has committed to serve substantive responses on January 14, 2011 to the *Corsi* Plaintiff's First Set of Interrogatories and Request for Production, which were served on November 22, 2010.

Subpoenas. In mid-November, Plaintiffs jointly served subpoenas *duces tecum* on AT&T Mobility, LLC ("AT&T"), 3M Company ("3M"), and Squaretrade, Inc. ("Squaretrade"). In short, the information Plaintiffs seek from these third parties are based largely on their involvement with the issues in the present litigation or issues that are quite similar to those issues. For example, Squaretrade has issued reports to the public stating that the iPhone was substantially more reliable than its principal competitors, but that it was also far more prone to "accidental" damage (including water damage) than its competitors for reasons that Squaretrade claimed it could not explain. 3M manufactures the water contact indicator tape that Apple uses as LSIs, which 3M advertises as "provid[ing] evidence of water damage during shipment or when validating consumer warranty claims." AT&T offers water-damage insurance coverage for every cell phone it sells, except two: the GoPhone, which is a pre-paid disposable, and the iPhone.

Plaintiffs are actively engaged in "meet and confer" discussions with all three third parties regarding the subpoenas. Depending on the outcome of these discussions, Plaintiffs may file one or more motions to compel, either in this Court or in the Courts from which the subpoenas issued.

2. *Defendant's Statement*

Apple denies that it ever represented that "it will have concluded most, if not all, of its document-production efforts by late January 2011." Apple has followed the document collection and review process described to plaintiffs and agreed upon by the parties. Apple identified key personnel involved with the subject matter of the case and collected their documents, including their e-mail. Where these custodians kept files in a manner that did not require use of keyword searches, Apple has reviewed them for relevancy and privilege and produced them. These custodians' files are the source of the approximately 10,300 pages of documents that have been produced to date.

The remainder of the collected documents (which comprise the vast majority of the over 1 Terabyte of data collected) consist of files and custodians' email accounts that all parties have agreed should be searched using keywords. A list of keyword search terms was not finalized until November 30, 2010. Apple has been diligently processing the remaining custodian data since that time, and a team of attorneys has been reviewing those custodians' data as soon as it was processed. As of the filing of this Statement, Apple anticipates sending its first production from this dataset at the end of this week or early next week. As noted in Plaintiff's statement, Apple intends to make rolling productions thereafter approximately every two to three weeks. Apple still expects that all processing will be completed by the Case Management Conference, and that it will be able to provide an update to Plaintiffs and the Court as to a realistic production deadline.

With regard to Plaintiffs' complaints about the quality of the documents produced, Apple attempts to remove duplicate documents via an automated process. Apple has agreed to produce native versions of specific documents identified by the Plaintiffs to date, as well as any other specific files Plaintiffs identify. Apple is still in the process of locating the native versions of the files requested in the December 20 e-mail.

B. Contemplated Discovery

Additional Discovery Contemplated by Plaintiffs. Plaintiffs anticipate propounding at least one more set of interrogatories and requests for admissions, and engaging in targeted

followup discovery, including depositions of specifically-identified Apple personnel and of persons that Apple designates as most knowledgeable witnesses under Rule 30(b)(6).

Additional Discovery Contemplated by Defendant. Defendant anticipates propounding written discovery and taking the deposition of the named Plaintiffs.

V. RELATED CASES

The parties are aware of two cases related to the *Gallion* and *Corsi* actions:

A. *Pennington v. Apple, Inc.*, No. 1-10-CV-162659 (Cal. Sup. Ct., Cty. of Santa Clara).

Unlike the present cases, which seek to certify a nationwide class of consumers who own any iPhone or iPhone touch device equipped with external LSIs, the *Pennington* Plaintiffs currently seek to certify a class of California consumers who own some, but not all, of the iPhones (and none of the iPods) at issue in the present case, and seek equitable relief, but not damages on behalf of the class proposed in *Pennington*. Plaintiffs' counsel in the *Pennington* matter has indicated to Apple's counsel an intent to file an amended complaint potentially expanding the relief sought, but has not yet done so.

B. *Calix v. Apple, Inc.*, No. 10-cv-676 (M.D. La.)

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. The plaintiff, Daniel Calix, subsequently agreed to a voluntary transfer to this Court, and the new action was filed on December 27, 2010, as *Calix v. Apple Inc.*, No. C 10-05895-DMR (N.D. Cal., Oakland Division). The factual allegations of the *Calix* complaint duplicate the complaint in the *Gallion* action almost verbatim. However, *Calix* seeks relief on behalf of a class of Louisiana "domiciliaries" only. The parties have filed an administrative motion to relate the *Calix* action to the *Gallion* and *Corsi* actions. Plaintiffs' counsel in *Calix* joined in the Joint Motion for Appointment of Interim Class Counsel.

VI. SETTLEMENT AND ADR

The parties to the *Gallion* action have attended ADR Phone Conferences on July 26, 2010, October 25, 2010, and December 15, 2010. The parties to the *Corsi* action attended an ADR

Phone Conference on October 26, 2010. A further ADR Phone Conference for both actions is scheduled for January 19, 2011 at 2:30 p.m. The parties agree that until discovery is more advanced, it is premature to attempt to engage in ADR. The parties do not foreclose the possibility of engaging in ADR later, depending on developments in discovery and motions, including class certification and the dispositive motions mentioned above.

VII. SCHEDULING AND TRIAL

The parties agree that additional discovery must be completed before a class certification motion schedule is set. The parties respectfully suggest that other dates, such as the discovery cutoff, a deadline for the filing of dispositive motions, and the trial date, be set following the ruling on the class certification motion. The parties agree that not all of Plaintiffs' claims are subject to jury trial and that it is premature to estimate the length of trial prior to a ruling on class certification.

Respectfully submitted,

Dated: January 12, 2011

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EX. A

FAZIO | MICHELETTI LLP
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October 12, 2010

BY ELECTRONIC MAIL

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Re: *Gallion v. Apple, Inc.*, No. 10-1610
Initial List of Search Terms for Document Review

Dear Drew:

I am writing to confirm our understanding of the procedures Apple intends to employ while conducting its search for materials responsive to Plaintiff's document production request.

We expressed concern that Apple's proposal to use key words in lieu of a document-by-document review could lead to a situation in which Apple overlooks important documents merely because the words upon which we agree do not include precisely the same terms (or the same proximity to one another) that appear in otherwise responsive documents. That concern is particularly apt where, as here, Plaintiff is leaving it to Apple in the first instance to propose the context in which the search terms will be used.

Although "fuzzy" search logic can help neutralize misspellings and the like, it does not guarantee that all responsive information will be caught in the net. Conversely, fuzzy searches create the potential for netting a large volume of non-responsive materials, which begs the question: How much time or effort does keyword searching really save if it ultimately leads to a document-by-document review that involves wading through vast numbers of non-responsive documents?

During our September 3 meet-and-confer call, you sought to allay our concerns by describing the procedures Apple intends to employ when searching for responsive documents. As we discussed then, much of what you

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told us seems quite practical and useful (at least in theory). I write now to ensure that we understand precisely what it is that Apple is proposing, so that we can be certain the parties are truly in accord with respect to the issues we discussed during the last two telephone conferences. Following is our understanding of those issues:

As a threshold matter, Apple is not destroying metadata; rather, metadata will be collected and produced.

As for the document collection process, we understand that Apple will begin by identifying the principal people involved with the subject matter of this case. Each of these individuals will be interviewed by outside counsel. During those interviews, counsel will ask a series of questions designed to elicit from them information about the location (and potential location) of materials and information that is responsive to Plaintiff's document requests and, more generally, to the subject matter of the litigation (*e.g.*, the individual's office and home computers, servers, external drives, iPhones, iPads, iPods, external media, thumb drives, laptops, shared files). One purpose of this interview is to locate data that is unique, and not merely duplicative of what is stored on the individual's primary computer.

Apple will then search all identified sources for responsive documents (as that term is described in our document requests).

Each person's e-mail files will be copied in their entirety and subjected to key-word searches, using the terms upon which the parties have agreed. As we discussed, it is virtually certain that the parties will modify the key-word searches after the initial searches are conducted, the product of which will likely yield insight into the terminology and concepts used by Apple personnel, as well as the need to refine the Boolean search methodology (*e.g.,* the proximity in which words are likely to appear with others). Also, we have included multiple-word terms to give you an idea of the concepts that inform the searches, ***not*** to imply that the terms are always run together. For example, "water test" may yield a significant number of responsive documents, but we also expect that the words will be run separately and/or in conjunction with other terms that appear in the list (*e.g.,* "water" OR "liquid" w/10 "test" OR "inspect!" OR "assess!").

For all other electronic files, Apple will determine whether each person segregates his or her data into files, and, if so, whether those files are reliable (*i.e.*, whether the individual is meticulous about segregating data, or whether that person's files have gaps).

With respect to those individuals who keep reliable, organized files, Apple will copy those files in their entirety; after that data is processed by a third-party vendor,[1] the entire contents of those files will read and reviewed by lawyers for relevancy, privileged material (which will be logged on a privilege log), and for the existence of highly-sensitive information (such as that pertaining to unreleased products). With respect to the latter category of information, you advised us that Apple intends to redact it. You also advised us that all redacted information will be identified in a log containing sufficient information to enable us to assess the nature, scope, and propriety of the redactions.[2]

If an individual does not maintain a reliable file system, Apple will copy all of his or her electronic data and instruct its third-party vendor to subject the entire data set to key-word searches, using words upon which we agree. The results of those searches will be read and reviewed by lawyers for relevance, privilege and unreleased product information.

As we understand it, the purpose of the initial key-word list is to try to capture as much relevant material as possible during the first search. Thus, to ensure that key-word searches are as comprehensive as possible, Apple will ask each individual, during the interview process, how s/he refers to the issues in this litigation when writing about them. (You used the example of some people referring to the LSIs as water dots.)

Once the parties have a working search-term list, Apple's vendor will run searches using one or two individuals' files as test subjects, then do some sampling to determine what documents have been captured and what may have been left behind. The purpose of this exercise is to refine the key-word searches to make them as accurate as possible by eliminating false negatives and false positives. When Apple is confident in the accuracy of its search protocol, it will use that protocol going forward.[3]

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[1] We understood "processing" to mean that the vendor will convert the documents from native format into multi-page .tiff format with load files for Summation (and with metadata attached).

[2] We have not agreed to the propriety of Apple's redacting unreleased product information where, as here, a protective order will be in place; however, we have agreed to take a wait-and-see approach to determine if this becomes an issue that warrants further discussion.

[3] It is unclear whether this will be a collaborative review and process at this stage (meaning one in which Plaintiffs' counsel will participate). We believe that a collaborative review and process makes sense, because it will not only enable the parties to refine the search (if necessary) sooner rather

If, during the search and review process, it becomes apparent that words, phrases, etc. that have not been identified as key words, but are nonetheless responsive to Plaintiff's document requests, additional key-word searches will be conducted using the new terms and/or the modified search methodology. The most likely scenario is one in which the authors of documents use terms with which Plaintiff's counsel are not familiar, or where it becomes evident that changing the proximity of a term will yield a more comprehensive result (*e.g.,* using the phrase "inspection request" would not catch a statement such as "the customer requested that we conduct an inspection of her device," so the search might be modified as "inspect! /10 request!" to ensure that the search yields that information).

As we understand it, the third-party vendor that will be conducting the document searches was founded by former Apple employees and is, therefore, intimately familiar with Apple's computer systems, and with Apple terminology. When searching for responsive documents, the vendor will use what you referred to as "fundamental UNIX search tools," a process that includes conducting "fuzzy" type searches.

The vendor will use wild cards in its searches and will do other things in an effort to ensure the searches as accurate as possible. You mentioned two things in that regard. *First*, the vendor will convert all electronic sources to full-text searchable PDF files, then subject those files to electronic searching.[4] *Second*, the vendor will also run the searches in a manner that enables it to identify proximities between words as those words would appear on the printed page, but not necessarily in the electronic file.

You used the example of a PowerPoint presentation that has text in a title box and text elsewhere in the document. As you described it, a traditional electronic search might count the title box and the text below it as being housed in two separate areas. Accordingly, a search for iPhone w/10 LSI or LCI might not pick up this document; however, a search that looks at the material as it appears on the printed page would. The same is true with respect to information in headers and footers, and in some unique Apple formats.

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than later, but will enable them to avoid disputes over the methodology that is employed during the search process. Please advise.

[4] Again, for those individuals who keep reliable, segregated files, Apple will review the contents of those files in their entirety. In other words, the material in those files will not be subject to key-word searches.

The foregoing reflects our understanding of our discussions regarding Apple's efforts to locate responsive documents. Please let us know if what we have misunderstood what you told us in any way, or if you have anything else to add.

Thanks.

Very truly yours,

/s/ Dina Micheletti

Dina E. Micheletti

EX. B

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November 4, 2010

VIA ELECTRONIC DELIVERY

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Re: *Gallion v. Apple, Inc.*, N.D. Cal. case no. 3:10-cv-01610-RS

Dear Drew:

I write to confirm the matters discussed during our "meet and confer" calls on September 3, September 20 and October 15, 2010 with respect to Apple's responses to plaintiff's first set of requests for production of documents.

Apple's "Preliminary Statement" and "General Objections"

On September 3, 2010, we discussed the points made in Apple's "Preliminary Statement" and "General Objections," as well as the statement in many of Apple's responses that documents would be produced "subject to reaching an agreement with plaintiff concerning a narrowing of the document custodians to be searched and the parameters of an electronic search (*e.g.* keywords) for potentially responsive documents." The substance of that discussion is memorialized in Dina Micheletti's letter dated October 12, 2010. That letter summarizes the procedures that will be employed to compile and produce responsive documents from Apple's custodians and databases. That process will be referred to in this letter as "Apple's initial document pull."

Additionally, on September 20, 2010, we agreed to use the definition set forth in Federal Rule of Civil Procedure 34(a)(1)(A) as the definition of the term "DOCUMENTS" as used in the requests.

Also, Apple agreed that it would use the definition of "YOU" and "YOUR" set forth in Plaintiff's production requests, with the exception that Plaintiff has agreed that "YOU" and "YOUR" does not include Apple's shareholders.

We also discussed Plaintiff's definition of "EXTERNAL LSI." Apple has objected to that definition on the ground that, according to Apple, it can be read to mean that some LSIs are actually located "outside" the device in a manner that exposes them to the elements. You

explained that, notwithstanding Apple's use of the word "external" to differentiate between LSIs/LCIs that can be seen without opening the device and those that can only be seen if the device is opened, Apple considers the LSIs located near the dock connector and in the headphone jack to be "externally viewable," but not "external" to the device. We advised you that we are not trying to force Apple to agree that these LSIs are literally located "outside" the device; however, we need to make sure both parties mean the same thing when they use the term "external LSIs" (or external LCIs").

You said you would indicate, in Apple's revised responses, that "external" means the LSIs/LCIs that are externally viewable through the headphone jack or dock connector (as opposed to those LCIs/LSIs that can only be seen if the device is opened).

We also discussed the meaning of Apple's overbreadth objections. You agreed that Apple will not unilaterally narrow the scope of its responses and will respond to the requests as written, subject to the agreements discussed herein and the agreement we reached during our September 3 phone call regarding Apple's initial document pull.

Specific Production Requests

Request Nos. 1-9, 17, 19, 21-24, 26-28, 33, 46-47, and 52. Apple's response to each of these requests consists of various objections, followed by a statement that "subject to and without waiving the foregoing objections," Apple will produce responsive documents "on a rolling basis." We agreed that, for each of these requests, Apple will produce non-privileged documents responsive to the requests, as written, as part of Apple's initial document pull (subject to our right to seek further production later). You indicated that Apple will not unilaterally withhold non-privileged, responsive documents on the basis of its "burdensome" or "overbroad" objections if those documents are culled through Apple's initial document pull.

Request No. 10. This request seeks information regarding the ability and/or qualifications of Apple personnel to determine whether a class device has sustained liquid damage. You explained that Apple's problem with this request was that it may encompass private information maintained in employee personnel files. We clarified that this request was not intended to reach individual personnel files, but that all other responsive documents should be produced as part of Apple's initial document pull.

Request Nos. 11, 12, 13, 14, 25, 42, 44, 45. You explained that Apple's problem with these requests was that each of them encompassed (among other records) information contained in Apple's centralized electronic database of customer interactions. You said that this database consists of millions of records, many of which include private information belonging to Apple's customers, such as passwords, credit card numbers, etc. Thus, although the database is searchable, every record would have to be individually reviewed for such information, which you indicated would be an enormous task.

You did, however, indicate that you could search the database for responsive information (such as the number of claims rejected due to triggered LSIs) and give us those numbers, with

the understanding that Apple personnel often do not record such rejections if the customer elects not to pay to repair or replace his or her device. That said, if there is a record of a customer interaction, it will be contained in this database.

We agreed that, for now: (1) Apple would produce all responsive documents as part of its initial document pull, except those that may be contained in the database of customer interactions (subject to our right to seek further production later); and (2) you would tell us how many hits you obtained from the database (without producing the individual records), and (3) you would check with Apple regarding the possibility of producing a sample of responsive individual records from the database. This sample would enable plaintiffs' counsel to determine things such as the fields included in the database, the "tags," and the type of data captured. Please get back to us on this by November 10, 2010. Further, we agreed that Apple would serve a supplemental response to these requests making the basis for its objection clear. Please serve these supplemental responses by November 12, 2010.

Aside from the issue regarding the customer interaction database, Apple will produce responsive documents subject to our agreement as to the scope of Apple's initial document pull.

Request Nos. 15, 16, 34, 35, 36. Each of these requests seeks information relating to specified "inspections, examinations and/or tests" performed by Apple or third parties. Apple objects to the use of the word test to the extent it could be read to mean any informal experiment performed on devices by Apple personnel (we discussed the example of an Apple employee pouring water on a device to see what might happen to it). We indicated that we did not intend to seek such information, but that we had to agree on a definition of test to ensure the parties understood each other. You stated that, if Apple is doing something to try to answer a question it will be considered a "test," regardless of whether it is formally labeled a "test." You indicated that all the people responsible for such tests within Apple have been included as custodians for purposes of Apple's initial document pull. You further indicated that Apple would produce all documents relating not only to test protocols and test results, but also to reliability and design testing, as well as discussions related to tests, test protocols, test results, etc. We agreed to accept this limitation, subject to our right to review the production and request further production at a later time.

Request No. 18. This request seeks documents that "contain information about, memorialize, and/or discuss" what Apple does with class devices with triggered LSIs that are not refurbished. You stated that Apple does not refurbish devices with water damage and does not salvage parts from such devices. We indicated that we still needed to know generally what happens to these devices, and that we would redraft this request to narrow it or propound an interrogatory seeking this information.

Request No. 20. We agreed to withdraw this request for the time being, subject to our right to re-propound it later.

Request Nos. 29, 37, 38, 39, 40, 41, 43. Apple's response to each of these requests states that "the information sought by the request can be more readily obtained with less burden and

expense to Apple by service of a special interrogatory seeking same." You offered to provide, and we agreed to accept, a written, narrative response in lieu of production of additional documents. We did not waive our right to seek a further response if we consider the information provided to be inadequate. You indicated that you would check with your client and would attempt to serve these supplemental responses no later than Friday, October 29, 2010. We have not yet received any supplemental responses. Please provide them at your earliest convenience.

Request No. 30. This request seeks documents that "contain information about, memorialize, and/or discuss the reason(s) for any changes made to the 'Exclusions and Limitations' section" of Apple's warranties. You offered to produce responsive documents if the request were limited to changes made to the section of the warranties that relate to the concept of liquid damage. We agreed to so limit the request.

Request No. 31. This request seeks "each version" of the documents attached to plaintiff's Complaint as Exhibits 5 and 6. You offered to produce responsive documents if the request were limited to final versions, rather than draft. We agreed to this proposal, subject to our right to review the final versions and to request production of drafts if needed at a future time.

Request No. 32. This request seeks documents that "contain information about, memorialize, and/or discuss the reason(s) the name of EXTERNAL LSIs was changed from "Liquid Submersion Indicators" to "Liquid Contact Indicators." You indicated that your client has no objection to producing documents responsive to this request provided that the documents are encompassed within the material maintained by the custodians you have already identified for Apple's initial document pull. You said that, without client approval, you could not agree to produce responsive documents if doing so would require Apple to conduct a search of different custodians. You further indicated that you would check and see whether any additional custodians would need to be included in the search in order to fully respond to this request. Please get back to us with Apple's position no later than November 10, 2010.

Request Nos. 48-49. These requests seek documents relating to Apple's efforts (if any) to participate in, and to monitor comments or complaints made in, various internet fora. You indicated that to the extent responsive documents are included in Apple's initial document pull, they will be produced. You also indicated that there is no specific individual(s) employed by Apple whose job is to do this; on the other hand, however, you said you were sure some Apple employees check up on outside sites from time to time. Finally, you indicated that you will check and confirm whether (a) Apple hires any third-party firm (such as Nielson BuzzMetrics) to monitor third-party sites; and (b) whether specific Apple employee(s) monitor and/or participate in the Apple-hosted support forums (in which case those custodians would be added to Apple's initial document pull). Please get back to us with this information no later than November 10, 2010.

Request No. 50. This request seeks information relating to "AT&T's decision to exclude the iPhone from coverage under AT&T's Wireless Phone Insurance." You indicated that you

would check whether Apple had any involvement or say in this decision, and get back to us. Please do so no later than November 10, 2010.

Request No. 51. You suggested, and we agreed, that this request overlapped to some degree with Request Nos. 9 and 10. We agreed to table this request until documents responsive to Nos. 9 and 10 have been produced.

Please contact me immediately if your understanding of our conversations and agreements differs from the above.

Sincerely,

/s/ Kimberly A. Kralowec

Kimberly A. Kralowec

cc (by electronic delivery): Jeffrey L. Fazio
Dina E. Micheletti
Earl L. Bohacek
Sam J.B. Lunier
Alexei Klestoff