

1 PENELOPE A. PREOVOLOS (CA SBN 87607)
 PPreovolos@mofo.com
 2 ANDREW DAVID MUHLBACH (CA SBN 175694)
 AMuhlbach@mofo.com
 3 HEATHER A. MOSER (CA SBN 212686)
 HMoser@mofo.com
 4 SAMUEL J. BOONE LUNIER (CA SBN 252732)
 slunier@mofo.com
 5 MORRISON & FOERSTER LLP
 425 Market Street
 6 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 7 Facsimile: 415.268.7522

8 Attorneys for Defendant
 APPLE INC.

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

14 IN RE APPLE IPHONE/IPOD WARRANTY
 LITIGATION

Case No. CV 10-01610-RS

CLASS ACTION

**ANSWER TO MASTER
 COMPLAINT**

DEMAND FOR JURY TRIAL

Judge Richard Seeborg, Courtroom 3
 Complaint Filed: June 30, 2011
 Trial Date: None Set

1 Defendant Apple Inc. (“Apple”), by and through its attorneys, answers the Master
2 Complaint (“Complaint”) filed by Plaintiffs Charlene Gallion, Christopher Corsi, Daniel Calix,
3 and Raj Johal as follows:

4 **PARTIES**

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

8 2. Responding to paragraph 2 of the Complaint, Apple is without knowledge or
9 information sufficient to form a belief as to the truth of the averments contained in paragraph 2
10 and on that basis denies the averments.

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 5. Responding to paragraph 5 of the Complaint, Apple states that “Apple Inc.” is
18 incorporated in California. Apple further states that its executive offices and corporate
19 headquarters are located in Cupertino, Santa Clara County, California. Except as expressly
20 stated, Apple denies each and every averment contained in paragraph 5.

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

24 7. Responding to paragraph 7 of the Complaint, Apple is without knowledge or
25 information sufficient to form a belief as to the truth of the averments contained in paragraph 7
26 and on that basis denies the averments.

1 **JURISDICTION AND VENUE**

2 8. Responding to paragraph 8 of the Complaint, Apple states that insofar as the
3 averments in paragraph 8 state conclusions of law, no response thereto is required. Except as
4 expressly stated, Apple denies each and every averment contained in paragraph 8.

5 a. Responding to subparagraph 8(a) of the Complaint, Apple is without knowledge or
6 information sufficient to form a belief as to the truth of the averments that the
7 matter in controversy exceeds the jurisdictional amount or that the proposed class
8 includes more than 100 members. Except as expressly stated, Apple denies each
9 and every averment contained in paragraph 8(a).

10 b. Responding to subparagraph 8(b) of the Complaint, Apple states that its executive
11 offices and corporate headquarters are located in Cupertino, California. Apple
12 further states that it is incorporated in California and that it is registered to do
13 business in the State of California. Apple further states that it has designed and
14 sold Apple iPhone and Apple iPod touch products equipped with Liquid Contact
15 Indicators and that such products include or are sold with warranties drafted and/or
16 approved by Apple. Insofar as the averments in paragraph 8(b) state conclusions
17 of law, no response thereto is required. Except as expressly stated, Apple denies
18 each and every averment contained in paragraph 8(b).

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

24 **GENERAL ALLEGATIONS**

25 10. Responding to paragraph 10 of the Complaint, Apple states that it designs and
26 markets a phone called the iPhone, and that it has sold the iPhone in the United States since
27 approximately June 2007. Apple further states that it has sold subsequent versions of the iPhone
28 referred to as the iPhone 3G, iPhone 3GS, and iPhone 4, and such products have ranged in price

1 from \$99 to \$499. Except as expressly stated, Apple denies each and every averment contained
2 in paragraph 10.

3 11. Responding to paragraph 11 of the Complaint, Apple states that until
4 approximately January 2011, the iPhone was configured so that U.S. customers were required to
5 purchase cellular telephone service from AT&T Mobility LLC (“AT&T”) in order to use the
6 iPhone to make telephone calls. Apple is informed and believes that AT&T currently requires
7 consumers to enter into a two-year contract with AT&T in order to use their iPhone to make
8 telephone calls. Except as expressly stated, Apple denies each and every averment contained in
9 paragraph 11.

10 12. Responding to paragraph 12 of the Complaint, Apple states that it designs,
11 markets, and sells a product known as the iPod touch. Apple further states that it sells the iPod
12 touch in the United States. Apple further states that the iPod touch and the iPhone have similar
13 non-telephonic features. Apple further states that it currently sells the iPod touch at prices
14 ranging from \$199 to \$399 depending on features and storage capacity. Except as expressly
15 stated, Apple denies each and every averment contained in paragraph 12.

16 **The Standard Warranty and Extended Warranty**

17 13. Responding to paragraph 13 of the Complaint, Apple states that to the extent
18 paragraph 13 is a reference to part of an Apple website, the website speaks for itself. Apple
19 further states that it provides a one-year limited warranty with its iPhone and iPod touch products.
20 Apple further states that the documents attached to the Complaint as Exhibit 1 appear to be copies
21 of a version of the Limited Warranty. Apple further states that the documents speak for
22 themselves. Insofar as the averments in paragraph 11 state conclusions of law, no response
23 thereto is required. Except as expressly stated, Apple denies each and every averment contained
24 in paragraph 11.

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

1 20. Responding to paragraph 20 of the Complaint, Apple states that the document
2 speaks for itself. Except as expressly stated, Apple denies each and every averment contained in
3 paragraph 20.

4 21. Responding to paragraph 21 of the Complaint, Apple states that the liquid contact
5 indicators in iPhone and iPod touch devices employ Water Contact Indicator Tape manufactured
6 by 3M Company, model nos. 5558 and 5559. Apple is without knowledge or information
7 sufficient to form a belief as to the truth of the averments contained in paragraph 21 concerning
8 promotional materials used by 3M Company and on that basis denies these averments. Except as
9 expressly stated, Apple denies each and every averment contained in paragraph 21.

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

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

14 24. Responding to paragraph 24 of the Complaint, Apple states that the document
15 attached to the Complaint as Exhibit 4 appears to be a page from Apple's website entitled
16 "iPhone and iPod: Water damage is not covered by warranty" as it existed on September 10,
17 2009. Apple further states that this document speaks for itself. Apple states that the document
18 attached to the Complaint as Exhibit 5 appears to be page from Apple's website entitled "iPhone
19 and iPod: Water damage is not covered by warranty" as it existed on December 22, 2009. Apple
20 further states that this document speaks for itself. Except as expressly stated, Apple denies each
21 and every averment contained in paragraph 24.

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

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

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

1 touch with a new or refurbished iPod touch for a fee that is currently between \$99 and \$249
2 depending on the iPod touch model. Except as expressly stated, Apple denies each and every
3 averment contained in paragraph 34.

4 35. Responding to paragraph 35 of the Complaint, Apple states that customers who
5 elect to exchange their iPhone pursuant to Apple's Out-Of-Warranty Service are required to
6 tender their damaged iPhone to Apple. Apple further states that the document attached to the
7 Complaint as Exhibit 6 appears to be a page from Apple's website entitled "iPhone Service:
8 Frequently Asked Questions" printed on March 11, 2010. Apple further states that this document
9 speaks for itself. Except as expressly stated, Apple denies each and every averment contained in
10 paragraph 35.

11 **Plaintiffs' Experience With Triggered Liquid Submersion Indicators**

12 *Charlene Gallion*

13 36. Responding to paragraph 36 of the Complaint, Apple denies that the experience
14 described by Plaintiffs is "typical." Apple further states that it is without knowledge or
15 information sufficient to form a belief as to the truth of the remaining averments of paragraph 36
16 at this time, and on that basis denies each and every such averment.

17 37. Responding to paragraph 37 of the Complaint, Apple states that it is without
18 knowledge or information sufficient to form a belief as to the truth of the averments of
19 paragraph 37 at this time, and on that basis denies each and every such averment.

20 38. Responding to paragraph 38 of the Complaint, Apple states that it is without
21 knowledge or information sufficient to form a belief as to the truth of the averments of
22 paragraph 38 at this time, and on that basis denies each and every such averment.

23 39. Responding to paragraph 39 of the Complaint, Apple states that it is without
24 knowledge or information sufficient to form a belief as to the truth of the averments of
25 paragraph 39 at this time, and on that basis denies each and every such averment.

26 40. Responding to paragraph 40 of the Complaint, Apple states that it is without
27 knowledge or information sufficient to form a belief as to the truth of the averments of
28 paragraph 40 at this time, and on that basis denies each and every such averment.

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Daniel Calix

50. Responding to paragraph 50 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 50 at this time, and on that basis denies each and every such averment.

51. Responding to paragraph 51 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 51 at this time, and on that basis denies each and every such averment.

52. Responding to paragraph 52 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 52 at this time, and on that basis denies each and every such averment.

Raj Johal

53. Responding to paragraph 53 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 53 at this time, and on that basis denies each and every such averment.

54. Responding to paragraph 54 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 54 at this time, and on that basis denies each and every such averment.

55. Responding to paragraph 55 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 55 at this time, and on that basis denies each and every such averment.

56. Responding to paragraph 56 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 56 at this time, and on that basis denies each and every such averment.

57. Responding to paragraph 57 of the Complaint, Apple states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 57 at this time, and on that basis denies each and every such averment.

58. Responding to paragraph 58 of the Complaint, Apple states that an individual named Raj S. Johal filed a complaint with the Consumer Protection Division of the Washington

1 Attorney's General office concerning an iPod touch device. Apple is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining averments of paragraph 58
3 at this time, and on that basis denies each and every such remaining averment.

4 59. Responding to paragraph 59 of the Complaint, Apple states that the quoted
5 language appears to be from correspondence between Apple and the Consumer Protection
6 Division of the Washington Attorney's General office sent on or about June 17, 2010. Apple is
7 without knowledge or information sufficient to form a belief as to the truth of the remaining
8 averments of paragraph 59 at this time, and on that basis denies each and every such remaining
9 averment.

10 60. Responding to paragraph 60 of the Complaint, Apple denies each and every
11 averment contained in paragraph 60.

12 61. Responding to paragraph 61 of the Complaint, Apple denies each and every
13 averment contained in paragraph 61.

14 62. Responding to paragraph 62 of the Complaint, Apple denies each and every
15 averment contained in paragraph 62.

16 63. Responding to paragraph 63 of the Complaint, Apple states that Plaintiffs purport
17 to bring this action on behalf of an alleged class to obtain the relief sought in their prayer for
18 relief. Apple denies that class treatment is appropriate. Apple denies that Plaintiffs or the
19 members of the purported class have been injured or damaged in any way and further denies that
20 Plaintiffs or the members of the purported class are entitled to relief of any kind. Except as
21 expressly stated, Apple denies each and every averment contained in paragraph 63.

22 **STATUTES OF LIMITATION**

23 64. Responding to paragraph 64 of the Complaint, Apple denies each and every
24 averment contained in paragraph 64.

25 65. Responding to paragraph 65 of the Complaint, Apple denies each and every
26 averment contained in paragraph 65.

27 66. Responding to paragraph 66 of the Complaint, Apple denies each and every
28 averment contained in paragraph 66.

1 **CHOICE OF LAW**

2 67. Responding to paragraph 67 of the Complaint, Apple states that insofar as the
3 averments in paragraph 67 state conclusions of law, no response thereto is required. Except as
4 expressly stated, Apple denies each and every averment contained in paragraph 67.

5 68. Responding to paragraph 68 of the Complaint, Apple states that the documents
6 speak for themselves. Except as expressly stated, Apple denies each and every averment
7 contained in paragraph 68.

8 **CLASS ALLEGATIONS**

9 69. Responding to paragraph 69 of the Complaint, Apple states that Plaintiffs purport
10 to bring a class action against Apple. Apple denies that class treatment is appropriate.

11 70. Responding to paragraph 70 of the Complaint, Apple states that Plaintiffs purport
12 to bring a class action against Apple and seeks to represent a purported class as stated. Apple
13 denies that class treatment is appropriate.

14 71. Responding to paragraph 71 of the Complaint, Apple states that Plaintiffs purport
15 to bring a class action against Apple and seeks to represent a purported class as stated. Apple
16 denies that class treatment is appropriate.

17 72. Responding to paragraph 72 of the Complaint, Apple states that Plaintiffs purport
18 to bring a class action against Apple and seeks to represent a purported class as stated. Apple
19 denies that class treatment is appropriate.

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

22 74. Responding to paragraph 74 of the Complaint, Apple denies each and every
23 averment contained in paragraph 74.

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

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

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

3 120. Responding to paragraph 120 of the Complaint, Apple states that Plaintiffs seek an
4 order as stated. Except as expressly stated, Apple denies each and every averment contained in
5 paragraph 120. Apple denies that Plaintiffs or the members of the purported class have been
6 injured or damaged in any way and further denies that Plaintiffs or the members of the purported
7 class are entitled to relief of any kind.

8 **SIXTH CLAIM FOR RELIEF**

9 **(Unfair, Fraudulent, and Unfair Business Practices 10 in Violation of the Unfair Competition Law)**

11 121. Responding to paragraph 121 of the Complaint, Apple realleges and incorporates
12 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

13 122. Responding to paragraph 122 of the Complaint, Apple denies each and every
14 averment contained in paragraph 122.

15 123. Responding to paragraph 123 of the Complaint, Apple denies each and every
16 averment contained in paragraph 123.

17 124. Responding to paragraph 124 of the Complaint, Apple states that Plaintiffs seek
18 injunctive and other relief as stated. Except as expressly stated, Apple denies each and every
19 averment contained in paragraph 124. Apple denies that Plaintiffs or the members of the
20 purported class have been injured or damaged in any way and further denies that Plaintiffs or the
21 members of the purported class are entitled to relief of any kind.

22 **SEVENTH CLAIM FOR RELIEF**

23 **(Unjust Enrichment)**

24 125. Responding to paragraph 125 of the Complaint, Apple realleges and incorporates
25 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

26 126. Responding to paragraph 126 of the Complaint, Apple denies each and every
27 averment contained in paragraph 126.

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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. Plaintiffs' claims, and those of the purported class, are barred, in whole or in part, to the extent that Plaintiffs 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. Plaintiffs and the purported class have failed to mitigate their damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

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

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 Plaintiffs and/or members of the purported class, and such acts and/or omissions totally bar or reduce any recovery on the party of Plaintiffs and/or the purported class.

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NINTH AFFIRMATIVE DEFENSE

(Constitutional)

9. The claims of Plaintiffs 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.

PRAYER

WHEREFORE, Apple prays for judgment as follows:

1. That Plaintiffs 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

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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: August 1, 2011

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.