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12 IN RE APPLE IPHONE/IPOD WARRANTY
 LITIGATION

No. CV 10-01610-RS

14 This Document Relates To:

**STIPULATED PROTECTIVE
 ORDER GOVERNING
 PRODUCTION BY NON-
 PARTY AT&T MOBILITY
 LLC**

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

No. CV 10-01610-RS

18 Plaintiff,

19 v.

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

21 Defendants.

No. CV 10-03316-RS

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

24 Plaintiff,

25 v.

26 APPLE, INC.

27 Defendant.

1 DANIEL CALIX, individually and on behalf of
2 all others similarly situated,

3 Plaintiff,

4 v.

5 APPLE, INC.

6 Defendant.

7 The undersigned parties to this litigation hereby agree to the terms of this
8 Stipulated Protective Order Governing Production by Non-Party AT&T Mobility LLC
9 (“ATTM”) (hereafter, “Protective Order”), as set forth below, and to submit it to the
10 Court for adoption as an Order upon full execution by counsel on behalf of their
11 respective clients:

12 **I. DEFINITIONS**

13 **A. Material Subject To This Protective Order**

14 1. This Protective Order shall govern all “Discovery Materials”
15 produced or disclosed during this litigation by ATTM. The term “Discovery Materials”
16 shall mean and include Documents, expert reports, briefs, memoranda, any other writings
17 submitted to or otherwise supplied to the Court; and such other materials and information
18 as may be produced or disclosed during the course of discovery in this litigation. The
19 term “Document” has the broadest possible meaning permissible, and includes, without
20 limitation, electronically stored information, and any compilations of data from which
21 information can be obtained and/or translated through detection or recovery devices into
22 a reasonably usable form, if necessary, by the responding party or person upon whom the
23 request or subpoena is served. A draft or non-identical copy is a separate Document
24 within the meaning of that term.

1 or another competitor of ATTM. “Highly Confidential—Attorneys’ Eyes Only
2 Information” does not include information that is publicly available at the time of its
3 production, regardless of whether it was once confidential. The Designating Party must
4 take reasonable care to designate for protection only those parts of the Discovery
5 Materials that it reasonably believes to qualify for protection so that other portions of the
6 Discovery Materials for which protection is not warranted are not unjustifiably
7 designated.

8 **G. Protected Material**

9 7. “Protected Material” means any Document(s) or portion(s) thereof
10 that is designated as “Confidential Information” or “Highly Confidential—Attorneys’
11 Eyes Only Information” in accordance with Section II, below, to which an objection (a)
12 has not been made, (b) has been withdrawn, or (c) has been overruled by the Court.

13 **H. Outside Counsel**

14 8. “Outside Counsel” means the counsel of record for the parties to
15 this action who are not employees of a Party, their respective regularly-employed
16 personnel, and those outside vendors (*e.g.*, persons who provide copy or electronic-data
17 imaging services, trial-preparation or trial-presentation services, jury consultant services)
18 whose services are employed for the purpose of this litigation.

19 **I. In-House Counsel**

20 9. “In-House Counsel” means attorneys who are employees of a Party
21 and their support staff.

22 **J. Independent Expert**

23 10. “Independent Expert” means an expert and/or independent
24 consultant retained or employed to advise or assist counsel in prosecuting or defending
25 claims between the Parties, and who (a) is not a past or a current employee of a Party or
26 of a competitor of a Party and who, at the time of retention, is not anticipated to become
27

1 an employee of a Party or a competitor of a Designating Party; (b) is not a past or current
2 employee of a Designating Party or a competitor of a Designating Party. Independent
3 Expert includes a professional jury or trial consultant retained in connection with this
4 litigation. Independent Expert, however, is not intended to and does not include any
5 attorneys who are not employed by counsel. A list of ATTM's restricted competitors is
6 contained in Appendix B, an exhibit to be provided to Plaintiffs by ATTM. Rules
7 concerning Independent Experts are further stated below.

8 **K. Related Case**

9 11. "Related Case" means any action, whether filed in state or federal
10 court, that is based on the same operative facts and similar legal theories as those that
11 appear in the complaints that are now on file in (a) *Gallion v. Apple, Inc.*, N.D. Cal. case
12 no. CV 10-01610; (b) *Pennington v. Apple, Inc.*, Santa Clara County Superior Court case
13 no. 1-10-CV-162659; (c) *Corsi v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no. CV10-
14 03316; and/or (d) *Calix v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no. CV10-05895.
15 "Related Case" also includes the *Gallion*, *Pennington*, *Corsi* and *Calix* actions
16 themselves.

17 **II. DESIGNATION OF PROTECTED MATERIAL**

18 **A. Designation of Confidential Information and Highly**
19 **Confidential—Attorneys' Eyes Only Information**

20 12. Discovery Materials that the Designating Party deems to be
21 Confidential Information or Highly Confidential—Attorneys' Eyes Only Information
22 must be designated on such by stamping the legend "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL—ATTORNEYS' EYES ONLY" in a conspicuous location on each
24 page of each Document that contains Confidential Information or Highly Confidential—
25 Attorneys' Eyes Only Information.

26 13. In the case of multi-page Documents, only those pages containing
27 Confidential Information or Highly Confidential—Attorneys' Eyes Only Information

1 shall be marked CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS’
2 EYES ONLY. Any page not so marked or identified shall not be subject to the terms of
3 this Protective Order that apply to such material.

4 14. The Designating Party may, on the record of a deposition, or by
5 written notice to counsel for the Parties not later than thirty (30) days after receipt of a
6 deposition transcript, designate portions of deposition testimony or Documents marked as
7 exhibits to that deposition as Confidential Information or Highly Confidential—
8 Attorneys’ Eyes Only Information, based on a good-faith determination that the portions
9 of testimony or Documents so designated contain Confidential Information or Highly
10 Confidential—Attorneys’ Eyes Only Information. To the extent reasonably possible, any
11 portions so designated shall be transcribed separately and marked by the court reporter as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

13 15. If a Receiving Party wishes to show non-designated portions of a
14 Document or a transcript containing Confidential Information or Highly Confidential—
15 Attorneys’ Eyes Only Information to a third party who is not otherwise entitled to see
16 such information under the terms of this Protective Order, the Receiving Party shall first
17 redact all pages marked as containing Confidential Information or Highly Confidential—
18 Attorneys’ Eyes Only Information before disclosing the Document(s) in question to the
19 third party.

20 16. The Designating Party must take care to limit any such designation
21 to specific material that qualifies under the appropriate standards. The Designating Party
22 must take reasonable care to designate for protection only those parts of material,
23 documents, items, or oral or written communications that the party reasonably believes to
24 qualify for protection — so that other portions of the material, documents, items, or
25 communications for which protection is not warranted are not swept unjustifiably within
26 the ambit of this Order. Mass, indiscriminate, or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified, or that have been made for an

1 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
2 process, or to impose unnecessary expenses and burdens on other parties), expose the
3 designating party to sanctions. If it comes to the Designating Party's attention that
4 information or items that it designated for protection do not qualify for protection at all,
5 or do not qualify for the level of protection initially asserted, the Designating Party must
6 promptly notify the Parties that it is withdrawing the mistaken designation.

7 **B. Challenges to Designations of Confidential Information or**
8 **Highly Confidential—Attorneys' Eyes Only Information**

9 17. If a Receiving Party disagrees with the designation of any
10 Document or any portion of a Document as Confidential Information or Highly
11 Confidential—Attorneys' Eyes Only Information, the Receiving Party shall provide
12 counsel for the Designating Party with written notice of that objection. If the designation
13 of Confidential Information or Highly Confidential—Attorneys' Eyes Only Information
14 is made during a deposition, the Receiving Party shall provide counsel for the
15 Designating Party with notice of the objection orally on the record or within thirty (30)
16 days after receipt of the deposition transcript.

17 18. The objection to the designation need not be any more specific
18 than the designation itself; that is, if the Designating Party designates a Document or
19 other material as Confidential Information or Highly Confidential—Attorneys' Eyes
20 Only Information without explaining the factual or legal basis for that designation, the
21 Receiving Party's objection need not provide the factual or legal basis for the objection.
22 Conversely, if the Designating Party provides a specific legal and/or factual basis for the
23 designation of a particular Document or set of Documents as Confidential Information or
24 Highly Confidential—Attorneys' Eyes Only Information, the Receiving Party shall
25 provide a specific legal and/or factual basis for the objection(s) as well.

26 19. The burden of establishing that a Document or other material is
27 entitled to protection as Confidential Information or Highly Confidential—Attorneys'

1 Eyes Only Information under applicable law shall remain with the Designating Party,
2 and, until the Designating Party carries that burden, it shall not be incumbent upon the
3 Receiving Party to establish the validity of its objection(s) to the designation as
4 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information.

5 20. In the event the Receiving Party objects to the designation of a
6 Document(s) or any portion(s) thereof as Confidential Information or Highly
7 Confidential—Attorneys’ Eyes Only Information, the parties shall attempt to resolve the
8 dispute in good faith on an expedited and informal basis. If those efforts do not result in
9 the resolution of the dispute within ten (10) days of the objection, the Designating Party
10 may move the Court for an order upholding its designations of Confidential Information
11 or Highly Confidential—Attorneys’ Eyes Only Information. If the Designating Party
12 does not file such a motion within ten (10) business days after the 10-day informal
13 resolution period has expired, the Document(s) or portions of a Document(s) that are the
14 subject of the dispute will not be entitled to treatment as Confidential Information or
15 Highly Confidential—Attorneys’ Eyes Only Information. If the Designating Party files
16 the motion within ten (10) business days after the 10-day informal resolution period has
17 expired, the parties will continue to treat the challenged Document(s) as Confidential
18 Information or Highly Confidential—Attorneys’ Eyes Only Information until the matter
19 is resolved by the Court.

20 21. To maintain a designation of Confidential Information or Highly
21 Confidential—Attorneys’ Eyes Only Information, the Designating Party bears the burden
22 of proving that the designated information satisfies the definitions of Confidential
23 Information or Highly Confidential—Attorneys’ Eyes Only Information set forth above.
24 Nothing in this Protective Order, or the fact that the parties have entered into this
25 Protective Order, is intended to diminish the Designating Party’s burden of proving that a
26 Document contains Confidential Information or Highly Confidential—Attorneys’ Eyes
27 Only Information. Similarly, nothing in this Protective Order, nor the fact that the parties

1 have entered into it, is intended to diminish or in any way alter the showing that must be
2 made under applicable law to establish that a Document(s) or any portion thereof that is
3 designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only
4 Information is actually entitled to the protection such materials are provided under the
5 terms of this Protective Order and under applicable law.

6 22. A Receiving Party shall not be obligated to object to or otherwise
7 challenge the propriety of the designation of a Document(s) or any portion thereof as
8 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information at
9 the time of production, and in no event shall not doing so preclude or in any way inhibit a
10 subsequent objection or other challenge to the designation(s). Similarly, the absence of
11 an objection or other challenge to the designation of a Document or any portion thereof
12 as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information
13 shall not be deemed or construed as a concession by the Receiving Party that the material
14 is entitled to protection from public distribution or disclosure under the terms of this
15 Protective Order and/or applicable law.

16 **III. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 **A. Access to Confidential Information**

18 23. In the absence of written permission from the Designating Party, or
19 an order of the Court, Confidential Information shall not be disclosed to or discussed with
20 any person other than:

- 21 a. Outside or In-House Counsel;
- 22 b. The parties to this litigation;
- 23 c. Current officers, directors, and employees of the
24 Defendant;
- 25 d. The Court, court personnel, court reporters,
26 deposition officers, and videographers;
- 27

1 e. Any non-party who authored the Confidential
2 Information or is shown to have previously received the Confidential Information;

3 f. Counsel for the plaintiffs in *Gallion v. Apple, Inc.*,
4 N.D. Cal. case no. CV10-01610, *Corsi v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal.
5 case no. CV10-03316 and *Calix v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no.
6 CV10-05895. To the extent a Receiving Party wishes to share Confidential
7 Information with counsel for the plaintiffs in *Pennington v. Apple, Inc.*, Santa
8 Clara County Superior Court case no. 1-10-CV-162659 or any other Related Case
9 other than *Gallion, Corsi or Calix*, such Receiving Party must seek and obtain
10 ATTM's written consent in advance, which written consent shall not be
11 unreasonably withheld;

12 g. The following additional persons, if they have read
13 this Protective Order and agree in writing to be bound by its terms by executing
14 an acknowledgment substantially in the form attached hereto as Appendix A:

- 15 (i) Persons retained to assist Outside or In-House
16 Counsel (e.g., contract attorneys); and
- 17 (ii) During their depositions, witnesses in the action to
18 whom it is reasonably necessary to disclose
19 Confidential Information for purposes of this
20 litigation.

21 24. The parties have agreed to table, for future negotiation and
22 agreement, the question of whether Confidential Information may be disclosed to former
23 officers, directors, and employees of the Defendant.

24 25. Counsel disclosing Confidential Information to persons pursuant to
25 paragraph 23(g), above, must maintain the executed original of all such
26 acknowledgements in their files until the conclusion of this action by final order,
27 settlement, or appeal.

1 f. The following additional persons, if they have read this
2 Protective Order and agree in writing to be bound by its terms by executing an
3 acknowledgment substantially in the form attached hereto as Appendix A:

4 (i) Persons retained to assist Outside Counsel (e.g.,
5 contract attorneys); and

6 (ii) During their depositions, witnesses in the action to
7 whom it is reasonably necessary to disclose Highly Confidential—Attorneys’ Eyes Only
8 Information for purposes of this litigation, if the following requirements are satisfied:

9 (a) At least ten (10) days prior to the deposition,
10 the Party intending to use Highly Confidential—Attorneys’ Eyes Only Information
11 notifies the Designating Party of that desire, with a specific identification of the Protected
12 Information to be disclosed, and the Designating Party fails to object in writing to such
13 desire within seven (7) days after notice. If, however, an objection is made in writing, the
14 Protected Information may not be disclosed to the witness until and unless the Receiving
15 Party desiring to make such disclosure moves for, and obtains, appropriate relief from the
16 Court. Such a motion may be heard on shortened notice.

17 (b) Nothing in this subparagraph shall be
18 construed to alter the Designating Party’s burden to establish that a Document or other
19 material is entitled to protection as Highly Confidential—Attorneys’ Eyes Only
20 Information under applicable law, as set forth in Paragraphs 19 and 21, above.

21 (c) Witnesses receiving Highly Confidential—
22 Attorneys’ Eyes Only Information under this subparagraph shall not be allowed to retain
23 copies of any such material received unless otherwise provided for under this Protective
24 Order. A witness who received Protected Information during a deposition, however, may
25 review that material while reviewing the transcript of the deposition for accuracy,
26 provided that the Highly Confidential—Attorneys’ Eyes Only Information is not retained
27 by the witness after the review of the transcript for accuracy is complete.

1 (d) The requirements of this subparagraph do
2 not apply to the depositions of witnesses who are current ATTM employees.

3 (iii) Pages of transcribed deposition testimony or
4 exhibits to depositions that reveal Highly Confidential—Attorneys’ Eyes Only
5 Information must be marked Highly Confidential—Attorneys’ Eyes Only by the court
6 reporter and may not be disclosed to anyone except as permitted under this Stipulated
7 Protective Order, and Highly Confidential—Attorneys’ Eyes Only shall also be marked
8 on the cover of the deposition transcript. Only persons entitled to receive “Highly
9 Confidential—Attorneys’ Eyes Only Information shall be present when such information
10 is disclosed at a deposition.

11 28. Counsel disclosing Highly Confidential—Attorneys’ Eyes Only
12 Information to persons pursuant to paragraph 27(f), above, must maintain the executed
13 original of all such acknowledgements in their files until the conclusion of this action by
14 final order, settlement, or appeal.

15 29. In no event shall this Protective Order be read or construed to
16 require that the Parties reveal the identities of their Independent Experts to anyone,
17 including any Party or any Designating Party, before such Independent Experts are
18 required to be disclosed (if at all) under Federal Rule of Civil Procedure 26(a)(2).

19 **C. Use of “Confidential Information” and “Highly Confidential—**
20 **Attorneys’ Eyes Only Information”**

21 30. All “Confidential Information” or “Highly Confidential—
22 Attorneys’ Eyes Only Information” produced or exchanged pursuant to this Protective
23 Order shall be used by the Receiving Party or Parties solely for the purpose of the
24 *Gallion, Corsi* or *Calix* cases.

1 **D. Procedure for Disclosure of “Confidential Information” and**
2 **“Highly Confidential—Attorneys’ Eyes Only Information” to**
3 **Independent Experts**

4 31. The parties have agreed to table, for future negotiation and
5 agreement or resolution by the Court, the procedure for disclosure of “Confidential
6 Information” and “Highly Confidential—Attorneys’ Eyes Only Information” to
7 Independent Experts. Until such time as the parties reach an agreement or the Court
8 issues an order specifying the procedure for disclosure of “Confidential Information” and
9 “Highly Confidential—Attorneys’ Eyes Only Information” to Independent Experts,
10 plaintiffs agree they will not disclose any “Confidential Information” or “Highly
11 Confidential—Attorneys’ Eyes Only Information” to any Independent Expert.

12 32. Nothing in this Stipulated Protective Order shall be construed to
13 require the disclosure of the identity of an Independent Expert to any Party before such
14 disclosure is required by Federal Rule of Civil Procedure 26(a)(2).

15 **E. Use By Producing Party of its Own Protected Material**

16 33. Nothing contained in this Protective Order shall affect the
17 Designating Party’s right to disclose to anyone its own Protected Material. However, in
18 the event the Designating Party treats its own Protected Material in a manner that is
19 inconsistent with its status as such (*e.g.*, disclosing Protected Material to the public), the
20 content of the Document(s) in question shall lose its status as Protected Material.

21 **F. Filing Protected Material with the Court**

22 34. Without written permission from the Designating Party or a court
23 order secured after appropriate notice to all interested persons, a Party may not file in the
24 public record in this action any Protected Material. A Party that seeks to file under seal
25 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may
26 only be filed under seal pursuant to a court order authorizing the sealing of the specific
27 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
28 only upon a request establishing that the Protected Material at issue is privileged,

1 protectable as a trade secret, or otherwise entitled to protection under the law. If a
2 Receiving Party's request to file Protected Material under seal pursuant to Civil Local
3 Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in
4 the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the
5 court.

6 **G. Inadvertent Disclosure of Protected Material**

7 35. If the Designating Party, through inadvertence, fails to designate
8 any Document as Confidential Information or Highly Confidential—Attorneys' Eyes
9 Only Information in accordance with the provisions of this Protective Order
10 ("Incorrectly-Labeled Document"), the Designating Party may give written notice to the
11 other parties that the Incorrectly-Labeled Document(s) should have been designated as
12 Confidential Information or Highly Confidential—Attorneys' Eyes Only Information and
13 should be treated as such in accordance with the provisions of this Protective Order.
14 Parties must treat Incorrectly-Labeled Document(s) as Confidential Information or
15 Highly Confidential—Attorneys' Eyes Only Information from the date such notice is
16 received.

17 36. Within a reasonable time after receipt of written notice from the
18 Designating Party as described in paragraph 35, above, the Receiving Party shall make a
19 good-faith effort to provide any third parties to whom the Incorrectly-Labeled
20 Document(s) were disclosed with written notice that identifies the Incorrectly-Labeled
21 Document(s); states that the Designating Party has asserted that they contain Confidential
22 Information or Highly Confidential—Attorneys' Eyes Only Information; and requests
23 that the Incorrectly-Labeled Document(s) be returned and that they not be further
24 distributed or disclosed to the public. This requirement shall not apply to third parties
25 identified in paragraphs 23(a)-23(e) and/or 27(a)-27(d), above.

26 37. In no event shall the Receiving Party be under any obligation to
27 ensure that third parties comply with the Designating Party's request.

1 order of this Court for good cause shown. The termination of this action shall not
2 terminate the obligations specified in this Protective Order.

3 Dated: August 18, 2011

FAZIO | MICHELETTI LLP

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5
6 By /s/ Jeffrey L. Fazio
Jeffrey L. Fazio

7 Interim Co-Lead Class Counsel

8
9 Dated: August 18, 2011

CHIMICLES & TIKELLIS LLP

10
11 By /s/ Steven A. Schwartz
Steven A. Schwartz

12 Interim Co-Lead Class Counsel

13
14 Dated: August 18, 2011

MORRISON FOERSTER LLP

15
16 By /s/ Andrew D. Muhlbach
Andrew D. Muhlbach

17 Attorneys for Defendant Apple, Inc.

18
19 Dated: August 18, 2011

CROWELL & MORING LLP

20
21 By /s/ Kathleen Taylor Sooy
Kathleen Taylor Sooy

22 Attorneys for Non-Party AT&T
23 Mobility LLC

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ORDER

IT IS SO ORDERED.

Dated: August ____, 2011

Hon. Richard Seeborg
Judge of the District Court

Appendix A

DECLARATION REGARDING COMPLIANCE WITH PROTECTIVE ORDER

I, _____, declare as follows:

1. I have read the Stipulated Protective Order (“Protective Order”) filed in this litigation.

2. _____, an attorney with the firm of _____, explained to me the meaning and effect of this undertaking and of the Protective Order, and I agree to abide by and be bound by both.

3. I agree to treat all materials designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” and all copies, notes or other records containing or referring to such materials, and the substance or contents of such materials in accordance with the terms of the Protective Order.

4. I agree to be subject to the jurisdiction of the United States District Court for the Northern District of California, for purposes of enforcing the terms of this Protective Order.

5. I shall not at any time, either during the pendency of these proceedings or after conclusion of these proceedings, use or divulge any of the Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information made available to me pursuant to the Order.

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

Place Signed: _____

Signed: _____

Printed Name: _____