

\*E-Filed 8/19/11\*

1 Jeffrey L. Fazio (146043)  
 jlf@fazmiclaw.com  
 2 Dina E. Micheletti (184141)  
 dem@fazmiclaw.com  
 3 **FAZIO | MICHELETTI LLP**  
 2410 Camino Ramon, Suite 315  
 4 San Ramon, CA 94583  
 T: 925-543-2555  
 5 F: 925-369-0344

6 Steven A. Schwartz (*pro hoc vice*)  
 SAS@chimicles.com  
 7 Timothy N. Mathews (*pro hoc vice*)  
 TNM@chimicles.com  
 8 **CHIMICLES & TIKELLIS LLP**  
 361 W. Lancaster Avenue  
 9 Haverford, PA 19041  
 Telephone: (610) 642-8500

10 *Interim Co-Lead Class Counsel*

11  
12 IN RE APPLE IPHONE/IPOD WARRANTY  
LITIGATION

No. CV 10-01610-RS

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

13  
14 This Document Relates To:  
15

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

21 **I. DEFINITIONS**

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

23 1. This Protective Order shall govern all “Discovery Materials”  
 24 produced or disclosed during this litigation by ATTM. The term “Discovery Materials”  
 25 shall mean and include Documents, expert reports, briefs, memoranda, any other writings  
 26 submitted to or otherwise supplied to the Court; and such other materials and information  
 27

1 as may be produced or disclosed during the course of discovery in this litigation. The  
2 term “Document” has the broadest possible meaning permissible, and includes, without  
3 limitation, electronically stored information, and any compilations of data from which  
4 information can be obtained and/or translated through detection or recovery devices into  
5 a reasonably usable form, if necessary, by the responding party or person upon whom the  
6 request or subpoena is served. A draft or non-identical copy is a separate Document  
7 within the meaning of that term.

8 **B. Party or Parties**

9 2. “Party” or “Parties” means any party to this action or his, her, or its  
10 Representatives.

11 **C. Designating Party**

12 3. “Designating Party” means ATTM, if it designates any Discovery  
13 Material as Confidential Information or Highly Confidential—Attorneys’ Eyes Only  
14 Information.

15 **D. Receiving Party**

16 4. “Receiving Party” means a Party or his, her or its Representatives  
17 that receives Discovery Material from the Designating Party.

18 **E. Confidential Information**

19 5. “Confidential Information” means information that the Designating  
20 Party reasonably believes in good faith would, but for the terms of this Protective Order,  
21 be entitled to protection from disclosure due to its confidential, sensitive, or proprietary  
22 commercial content under applicable law. “Confidential Information” does not include  
23 information that is publicly available at the time of its production, regardless of whether  
24 it was once confidential. The Designating Party must take reasonable care to designate  
25 for protection only those parts of the Discovery Materials that the party reasonably  
26

1 believes to qualify for protection so that other portions of the Discovery Materials for  
2 which protection is not warranted are not unjustifiably designated.

3 **F. Highly Confidential—Attorneys’ Eyes Only Information**

4 6. “Highly Confidential—Attorneys’ Eyes Only Information” means  
5 Confidential Information as that term is defined herein that ATTM reasonably believes  
6 would, if disclosed to Apple’s in-house counsel, officers, directors, or employees or to  
7 another competitor of ATTM, cause ATTM to suffer serious economic harm or  
8 competitive disadvantage vis-a-vis Apple or another competitor of ATTM, or would  
9 otherwise jeopardize its business interests in connection with its relationship with Apple  
10 or another competitor of ATTM. “Highly Confidential—Attorneys’ Eyes Only  
11 Information” does not include information that is publicly available at the time of its  
12 production, regardless of whether it was once confidential. The Designating Party must  
13 take reasonable care to designate for protection only those parts of the Discovery  
14 Materials that it reasonably believes to qualify for protection so that other portions of the  
15 Discovery Materials for which protection is not warranted are not unjustifiably  
16 designated.

17 **G. Protected Material**

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

22 **H. Outside Counsel**

23 8. “Outside Counsel” means the counsel of record for the parties to  
24 this action who are not employees of a Party, their respective regularly-employed  
25 personnel, and those outside vendors (*e.g.*, persons who provide copy or electronic-data  
26  
27

1 imaging services, trial-preparation or trial-presentation services, jury consultant services)  
2 whose services are employed for the purpose of this litigation.

3 **I. In-House Counsel**

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

6 **J. Independent Expert**

7 10. “Independent Expert” means an expert and/or independent  
8 consultant retained or employed to advise or assist counsel in prosecuting or defending  
9 claims between the Parties, and who (a) is not a past or a current employee of a Party or  
10 of a competitor of a Party and who, at the time of retention, is not anticipated to become  
11 an employee of a Party or a competitor of a Designating Party; (b) is not a past or current  
12 employee of a Designating Party or a competitor of a Designating Party. Independent  
13 Expert includes a professional jury or trial consultant retained in connection with this  
14 litigation. Independent Expert, however, is not intended to and does not include any  
15 attorneys who are not employed by counsel. A list of ATTM’s restricted competitors is  
16 contained in Appendix B, an exhibit to be provided to Plaintiffs by ATTM. Rules  
17 concerning Independent Experts are further stated below.

18 **K. Related Case**

19 11. “Related Case” means any action, whether filed in state or federal  
20 court, that is based on the same operative facts and similar legal theories as those that  
21 appear in the complaints that are now on file in (a) *Gallion v. Apple, Inc.*, N.D. Cal. case  
22 no. CV 10-01610; (b) *Pennington v. Apple, Inc.*, Santa Clara County Superior Court case  
23 no. 1-10-CV-162659; (c) *Corsi v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no. CV10-  
24 03316; and/or (d) *Calix v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no. CV10-05895.  
25 “Related Case” also includes the *Gallion*, *Pennington*, *Corsi* and *Calix* actions  
26 themselves.

1 **II. DESIGNATION OF PROTECTED MATERIAL**

2 **A. Designation of Confidential Information and Highly**  
3 **Confidential—Attorneys’ Eyes Only Information**

4 12. Discovery Materials that the Designating Party deems to be  
5 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information  
6 must be designated on such by stamping the legend “CONFIDENTIAL” or “HIGHLY  
7 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” in a conspicuous location on each  
8 page of each Document that contains Confidential Information or Highly Confidential—  
9 Attorneys’ Eyes Only Information.

10 13. In the case of multi-page Documents, only those pages containing  
11 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information  
12 shall be marked CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS’  
13 EYES ONLY. Any page not so marked or identified shall not be subject to the terms of  
14 this Protective Order that apply to such material.

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

24 15. If a Receiving Party wishes to show non-designated portions of a  
25 Document or a transcript containing Confidential Information or Highly Confidential—  
26 Attorneys’ Eyes Only Information to a third party who is not otherwise entitled to see  
27 such information under the terms of this Protective Order, the Receiving Party shall first



1                   18.     The objection to the designation need not be any more specific  
2 than the designation itself; that is, if the Designating Party designates a Document or  
3 other material as Confidential Information or Highly Confidential—Attorneys’ Eyes  
4 Only Information without explaining the factual or legal basis for that designation, the  
5 Receiving Party’s objection need not provide the factual or legal basis for the objection.  
6 Conversely, if the Designating Party provides a specific legal and/or factual basis for the  
7 designation of a particular Document or set of Documents as Confidential Information or  
8 Highly Confidential—Attorneys’ Eyes Only Information, the Receiving Party shall  
9 provide a specific legal and/or factual basis for the objection(s) as well.

10                   19.     The burden of establishing that a Document or other material is  
11 entitled to protection as Confidential Information or Highly Confidential—Attorneys’  
12 Eyes Only Information under applicable law shall remain with the Designating Party,  
13 and, until the Designating Party carries that burden, it shall not be incumbent upon the  
14 Receiving Party to establish the validity of its objection(s) to the designation as  
15 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information.

16                   20.     In the event the Receiving Party objects to the designation of a  
17 Document(s) or any portion(s) thereof as Confidential Information or Highly  
18 Confidential—Attorneys’ Eyes Only Information, the parties shall attempt to resolve the  
19 dispute in good faith on an expedited and informal basis. If those efforts do not result in  
20 the resolution of the dispute within ten (10) days of the objection, the Designating Party  
21 may move the Court for an order upholding its designations of Confidential Information  
22 or Highly Confidential—Attorneys’ Eyes Only Information. If the Designating Party  
23 does not file such a motion within ten (10) business days after the 10-day informal  
24 resolution period has expired, the Document(s) or portions of a Document(s) that are the  
25 subject of the dispute will not be entitled to treatment as Confidential Information or  
26 Highly Confidential—Attorneys’ Eyes Only Information. If the Designating Party files  
27 the motion within ten (10) business days after the 10-day informal resolution period has

1 expired, the parties will continue to treat the challenged Document(s) as Confidential  
2 Information or Highly Confidential—Attorneys’ Eyes Only Information until the matter  
3 is resolved by the Court.

4           21. To maintain a designation of Confidential Information or Highly  
5 Confidential—Attorneys’ Eyes Only Information, the Designating Party bears the burden  
6 of proving that the designated information satisfies the definitions of Confidential  
7 Information or Highly Confidential—Attorneys’ Eyes Only Information set forth above.  
8 Nothing in this Protective Order, or the fact that the parties have entered into this  
9 Protective Order, is intended to diminish the Designating Party’s burden of proving that a  
10 Document contains Confidential Information or Highly Confidential—Attorneys’ Eyes  
11 Only Information. Similarly, nothing in this Protective Order, nor the fact that the parties  
12 have entered into it, is intended to diminish or in any way alter the showing that must be  
13 made under applicable law to establish that a Document(s) or any portion thereof that is  
14 designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only  
15 Information is actually entitled to the protection such materials are provided under the  
16 terms of this Protective Order and under applicable law.

17           22. A Receiving Party shall not be obligated to object to or otherwise  
18 challenge the propriety of the designation of a Document(s) or any portion thereof as  
19 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information at  
20 the time of production, and in no event shall not doing so preclude or in any way inhibit a  
21 subsequent objection or other challenge to the designation(s). Similarly, the absence of  
22 an objection or other challenge to the designation of a Document or any portion thereof  
23 as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information  
24 shall not be deemed or construed as a concession by the Receiving Party that the material  
25 is entitled to protection from public distribution or disclosure under the terms of this  
26 Protective Order and/or applicable law.

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

2 **A. Access to Confidential Information**

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

- 6 a. Outside or In-House Counsel;
- 7 b. The parties to this litigation;
- 8 c. Current officers, directors, and employees of the  
9 Defendant;
- 10 d. The Court, court personnel, court reporters,  
11 deposition officers, and videographers;
- 12 e. Any non-party who authored the Confidential  
13 Information or is shown to have previously received the Confidential Information;
- 14 f. Counsel for the plaintiffs in *Gallion v. Apple, Inc.*,  
15 N.D. Cal. case no. CV10-01610, *Corsi v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal.  
16 case no. CV10-03316 and *Calix v. Apple, Inc.*, U.S. Dist. Ct., N.D. Cal. case no.  
17 CV10-05895. To the extent a Receiving Party wishes to share Confidential  
18 Information with counsel for the plaintiffs in *Pennington v. Apple, Inc.*, Santa  
19 Clara County Superior Court case no. 1-10-CV-162659 or any other Related Case  
20 other than *Gallion, Corsi or Calix*, such Receiving Party must seek and obtain  
21 ATTM's written consent in advance, which written consent shall not be  
22 unreasonably withheld;
- 23 g. The following additional persons, if they have read  
24 this Protective Order and agree in writing to be bound by its terms by executing  
25 an acknowledgment substantially in the form attached hereto as Appendix A:
- 26 (i) Persons retained to assist Outside or In-House  
27 Counsel (e.g., contract attorneys); and

1 (ii) During their depositions, witnesses in the action to  
2 whom it is reasonably necessary to disclose  
3 Confidential Information for purposes of this  
4 litigation.

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

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

12 26. In no event shall this Protective Order be read or construed to  
13 require that the Parties reveal the identities of their Independent Experts before such  
14 Independent Experts are required to be disclosed (if at all) under Federal Rule of Civil  
15 Procedure 26(a)(2).

16 **B. Access to Highly Confidential—Attorneys’ Eyes Only**  
17 **Information**

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

- 21 a. The Receiving Party’s Outside Counsel;  
22 b. In-House Counsel of the Receiving Party (1) who has no  
23 involvement in competitive decision-making, and (2) to whom disclosure is reasonably  
24 necessary for this litigation;  
25 c. The Court, court personnel, court reporters, deposition  
26 officers, and videographers;



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

5 (c) Witnesses receiving Highly Confidential—  
6 Attorneys' Eyes Only Information under this subparagraph shall not be allowed to retain  
7 copies of any such material received unless otherwise provided for under this Protective  
8 Order. A witness who received Protected Information during a deposition, however, may  
9 review that material while reviewing the transcript of the deposition for accuracy,  
10 provided that the Highly Confidential—Attorneys' Eyes Only Information is not retained  
11 by the witness after the review of the transcript for accuracy is complete.

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

14 (iii) Pages of transcribed deposition testimony or  
15 exhibits to depositions that reveal Highly Confidential—Attorneys' Eyes Only  
16 Information must be marked Highly Confidential—Attorneys' Eyes Only by the court  
17 reporter and may not be disclosed to anyone except as permitted under this Stipulated  
18 Protective Order, and Highly Confidential—Attorneys' Eyes Only shall also be marked  
19 on the cover of the deposition transcript. Only persons entitled to receive "Highly  
20 Confidential—Attorneys' Eyes Only Information shall be present when such information  
21 is disclosed at a deposition.

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

26 29. In no event shall this Protective Order be read or construed to  
27 require that the Parties reveal the identities of their Independent Experts to anyone,

1 including any Party or any Designating Party, before such Independent Experts are  
2 required to be disclosed (if at all) under Federal Rule of Civil Procedure 26(a)(2).

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

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

9 **D. Procedure for Disclosure of “Confidential Information” and**  
10 **“Highly Confidential—Attorneys’ Eyes Only Information” to**  
11 **Independent Experts**

12 31. The parties have agreed to table, for future negotiation and  
13 agreement or resolution by the Court, the procedure for disclosure of “Confidential  
14 Information” and “Highly Confidential—Attorneys’ Eyes Only Information” to  
15 Independent Experts. Until such time as the parties reach an agreement or the Court  
16 issues an order specifying the procedure for disclosure of “Confidential Information” and  
17 “Highly Confidential—Attorneys’ Eyes Only Information” to Independent Experts,  
18 plaintiffs agree they will not disclose any “Confidential Information” or “Highly  
19 Confidential—Attorneys’ Eyes Only Information” to any Independent Expert.

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

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

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



1 Document(s) were disclosed with written notice that identifies the Incorrectly-Labeled  
2 Document(s); states that the Designating Party has asserted that they contain Confidential  
3 Information or Highly Confidential—Attorneys’ Eyes Only Information; and requests  
4 that the Incorrectly-Labeled Document(s) be returned and that they not be further  
5 distributed or disclosed to the public. This requirement shall not apply to third parties  
6 identified in paragraphs 23(a)-23(e) and/or 27(a)-27(d), above.

7 37. In no event shall the Receiving Party be under any obligation to  
8 ensure that third parties comply with the Designating Party’s request.

9 **H. Evidentiary Hearings and Trial**

10 38. This Protective Order is not intended to govern the use of  
11 Protected Material at evidentiary hearings or at the trial of this action. Procedures  
12 governing the use of Protected Material at evidentiary hearings and at trial, if necessary,  
13 will be established by separate order.

14 **I. Right to Further Relief**

15 39. Nothing in this Protective Order shall abridge the right of any  
16 person to seek judicial review or to pursue other appropriate judicial action to seek a  
17 modification or amendment of this Protective Order. All motions seeking interpretation,  
18 modification or amendment of any of the provisions of this Protective Order and/or to  
19 enforce, modify or quash the underlying subpoena shall be brought in the United States  
20 District Court for the Northern District of California. All references in this Protective  
21 Order to “the Court” are to the United States District Court for the Northern District of  
22 California.

23 **IV. AMENDMENT**

24 40. This Protective Order may not be amended without agreement of  
25 counsel for all parties and any non-party signatories to this Protective Order in the form  
26 of a written stipulation filed with the Court or by an order of the Court after a duly  
27 noticed motion.

1 **V. RIGHT TO ASSERT OTHER OBJECTIONS**

2 41. This Protective Order shall not be construed as waiving any right  
3 to assert a claim of privilege, relevance, over breadth, burdensomeness or other grounds  
4 for not producing requested Discovery Material.

5 **VI. TERMINATION AND SURVIVAL OF OBLIGATIONS**

6 42. No restriction imposed by this Protective Order may be terminated,  
7 except by a written stipulation executed by counsel of record for all parties, or by an  
8 order of this Court for good cause shown. The termination of this action shall not  
9 terminate the obligations specified in this Protective Order.

10 Dated: August 18, 2011

**FAZIO | MICHELETTI LLP**

11  
12  
13 By           /s/ Jeffrey L. Fazio            
Jeffrey L. Fazio

14 Interim Co-Lead Class Counsel

15  
16 Dated: August 18, 2011

**CHIMICLES & TIKELLIS LLP**

17  
18 By           /s/ Steven A. Schwartz            
Steven A. Schwartz

19 Interim Co-Lead Class Counsel

20  
21 Dated: August 18, 2011

**MORRISON FOERSTER LLP**

22  
23 By           /s/ Andrew D. Muhlbach            
Andrew D. Muhlbach

24 Attorneys for Defendant Apple, Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: August 18, 2011

**CROWELL & MORING LLP**

By           /s/ Kathleen Taylor Sooy            
Kathleen Taylor Sooy

Attorneys for Non-Party AT&T  
Mobility LLC



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

IT IS SO ORDERED.

Dated: August 19, 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: \_\_\_\_\_