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 APPLE INC.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

12 ZOLTAN STIENER and YNEZ STIENER,
 individually and on behalf of all others similarly
 13 situated,

14 Plaintiffs,

15 v.

16 APPLE, INC., AT&T MOBILITY, LLC, and
 DOES 1 THROUGH 50, inclusive,

17 Defendants.

Case No. C 07-04486-SBA

CLASS ACTION

**ANSWER TO CLASS ACTION
 COMPLAINT**

DEMAND FOR JURY TRIAL

The Hon. Sandra B. Armstrong
 Complaint filed: August 29, 2007

1 Defendant Apple Inc. (“Apple”), by and through its attorneys, answers Plaintiffs Zoltan
2 and Ynez Stiener’s (“plaintiffs”) Complaint as follows:

3 **INTRODUCTION**

4 1. Responding to paragraph 1 of the Complaint, Apple states that plaintiffs purport to
5 seek damages, attorneys fees and costs, and equitable relief for themselves and others similarly
6 situated. Apple denies that plaintiffs or members of the purported class have been damaged or are
7 entitled to relief of any kind. Except as expressly stated, Apple denies each and every averment
8 contained in paragraph 1.

9 2. Responding to paragraph 2 of the Complaint, Apple states that plaintiffs purport to
10 state a claim under the California Unfair Competition Law, Business and Professions Code
11 §§ 17200, *et seq.* (“UCL” or “§ 17200”), as well as for Breach of Contract, Breach of the Implied
12 Warranty of Merchantability, and Fraudulent Concealment. Apple denies that plaintiffs or
13 members of the purported class have been damaged in any way. Except as expressly stated,
14 Apple denies each and every averment contained in paragraph 2.

15 **PARTIES**

16 3. Responding to paragraph 3 of the Complaint, Apple is without knowledge or
17 information sufficient to form a belief as to the truth of the averments contained in paragraph 3
18 and on that basis denies the averments.

19 4. Responding to paragraph 4 of the Complaint, Apple states that it designs,
20 manufactures, and markets personal computers, portable digital music players, mobile phones,
21 and related software, services and peripherals. Apple states that it does business in the Northern
22 District of California. Apple further states that it sells its products in California and in the United
23 States. Apple is without knowledge or information sufficient to form a belief as to the truth of the
24 averments regarding AT&T contained in paragraph 4 and on that basis denies the averments.
25 Except as expressly stated, Apple denies each and every averment contained in paragraph 4.

26 5. Responding to paragraph 5 of the Complaint, Apple states that insofar as plaintiffs’
27 averments contained in paragraph 5 are not material and state conclusions of law, no response
28 thereto is required.

1 further respond to paragraph 21 because its use of the term “multimedia” is vague and
2 ambiguous. Without clarification, Apple is without knowledge or information sufficient to form a
3 belief as to the truth of such averments in paragraph 21 and on that basis denies the averments.

4 22. Responding to paragraph 22 of the Complaint, Apple states that the iPhone first
5 went on sale on Friday, June 29, 2007, through Apple’s retail stores and AT&T’s select retail
6 stores. Apple also states that its online store began taking orders for the iPhone on June 29, 2007.
7 Apple further states that, at that time, the iPhone was available in a 4GB model for \$499 and an
8 8GB model for \$599. Except as expressly stated, Apple denies each and every averment in
9 paragraph 22.

10 23. Responding to paragraph 23 of the Complaint, Apple states that 270,000 iPhone
11 units were sold during Apple’s Fiscal Year 2007 Third Quarter and that it reported that
12 information in its Fiscal Year 2007 Third Quarter 10-Q report and Quarterly Results Conference
13 Call. Apple is without knowledge or information sufficient to form a belief as to the truth of the
14 remaining averments contained in paragraph 23 and on that basis denies the averments.

15 24. Responding to paragraph 24 of the Complaint, Apple states that the iPhone is sold
16 at AT&T retail stores and that AT&T is the exclusive carrier for iPhone. Apple is unable to
17 further respond to paragraph 24 because its use of the term “mobile phone services” is vague and
18 ambiguous. Without clarification, Apple is without knowledge or information sufficient to form a
19 belief as to the truth of such averments in paragraph 24 and on that basis denies the averments.
20 Except as expressly stated, Apple denies each and every averment in paragraph 24.

21 25. Responding to paragraph 25 of the Complaint, Apple states that the iPhone
22 contains a rechargeable lithium-ion battery. Apple is unable to further respond to paragraph 25
23 because its use of the term “sealed unit” is vague and ambiguous. Without clarification, Apple is
24 without knowledge or information sufficient to form a belief as to the truth of such averments in
25 paragraph 25 and on that basis denies the averments. Except as expressly stated, Apple denies
26 each and every averment in paragraph 25.

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

1 27. Responding to paragraph 27 of the Complaint, Apple states that it offers battery
2 replacement for out-of-warranty iPhones for \$79, plus \$6.95 for shipping. Except as expressly
3 stated, Apple denies each and every averment in paragraph 27.

4 28. Responding to paragraph 28 of the Complaint, Apple states that, for a service fee
5 of \$29, it can provide an “AppleCare Service Phone” for a consumer to use with all of his or her
6 data while the consumer’s iPhone is being repaired. Except as expressly stated, Apple denies
7 each and every averment in paragraph 28.

8 29. Responding to paragraph 29 of the Complaint, Apple is without knowledge or
9 information sufficient to form a belief as to the truth of the averments regarding plaintiffs’
10 purchases contained in paragraph 29 and on that basis denies the averments. Apple states that all
11 iPhone service plans are based on a two-year service agreement with AT&T. Except as expressly
12 stated, Apple denies each and every averment in paragraph 29.

13 30. Responding to paragraph 30 of the Complaint, Apple denies each and every
14 averment in paragraph 30.

15 31. Responding to paragraph 31 of the Complaint, Apple denies each and every
16 averment in paragraph 31.

17 **CLASS ACTION ALLEGATIONS**

18 32. Responding to paragraph 32 of the Complaint, Apple states that plaintiffs purport
19 to bring a class action against Apple. Apple denies that class treatment is appropriate and denies
20 that plaintiffs or members of the purported class have been damaged or are entitled to relief of
21 any kind. Except as expressly stated, Apple denies each and every averment contained in
22 paragraph 32.

23 33. Responding to paragraph 33 of the Complaint, insofar as plaintiffs’ averments in
24 paragraph 33 state conclusions of law, no response thereto is required. To the extent an answer is
25 required, Apple denies each and every averment contained in paragraph 33.

26 34. Responding to paragraph 34 of the Complaint, insofar as plaintiffs’ averments in
27 paragraph 34 state conclusions of law, no response thereto is required. To the extent an answer is
28 required, Apple denies each and every averment contained in paragraph 34.

1 35. Responding to paragraph 35 of the Complaint, Apple states that plaintiffs'
2 allegations are conclusions of law and no response is required thereto.

3 36. Responding to paragraph 36 of the Complaint, Apple states that plaintiffs'
4 allegations are conclusions of law and no response is required thereto.

5 37. Responding to paragraph 37 of the Complaint, Apple states that plaintiffs'
6 allegations are conclusions of law and no response is required thereto.

7 38. Responding to paragraph 38 of the Complaint, insofar as plaintiffs' averments in
8 paragraph 38 state conclusions of law, no response thereto is required. To the extent an answer is
9 required, Apple denies each and every averment contained in paragraph 38.

10 39. Responding to paragraph 39 of the Complaint, insofar as plaintiffs' averments in
11 paragraph 39 state conclusions of law, no response thereto is required. To the extent an answer is
12 required, Apple denies each and every averment contained in paragraph 39 and each and every
13 averment contained in all subparagraphs of paragraph 39.

14 40. Responding to paragraph 40 of the Complaint, insofar as plaintiffs' averments in
15 paragraph 40 state conclusions of law, no response thereto is required. To the extent an answer is
16 required, Apple denies each and every averment contained in paragraph 40.

17 41. Responding to paragraph 41 of the Complaint, insofar as plaintiffs' averments in
18 paragraph 41 state conclusions of law, no response thereto is required. To the extent an answer is
19 required, Apple denies each and every averment contained in paragraph 41.

20 42. Responding to paragraph 42 of the Complaint, insofar as plaintiffs' averments in
21 paragraph 42 state conclusions of law, no response thereto is required. To the extent an answer is
22 required, Apple denies each and every averment contained in paragraph 42.

23 43. Responding to paragraph 43 of the Complaint, insofar as plaintiffs' averments in
24 paragraph 43 state conclusions of law, no response thereto is required. To the extent an answer is
25 required, Apple denies each and every averment contained in paragraph 43.

26 44. Responding to paragraph 44 of the Complaint, insofar as plaintiffs' averments in
27 paragraph 44 state conclusions of law, no response thereto is required. Apple states that, if a class
28 were certified, which Apple contends would be inappropriate, it would be possible to notify

1 putative class members through publication or mailings to known addresses. Apple makes no
2 concessions with respect to the appropriate form of notice. Apple denies that class treatment is
3 appropriate. Except as expressly stated, Apple denies each and every averment contained in
4 paragraph 44.

5 **FIRST COUNT**
6 **(Breach of Contract)**

7 45. Responding to paragraph 45 of the Complaint, Apple realleges and reincorporates
8 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

9 46. Responding to paragraph 46 of the Complaint, insofar as plaintiffs' averments in
10 paragraph 46 state conclusions of law, no response thereto is required. To the extent an answer is
11 required, Apple denies each and every averment contained in paragraph 46.

12 47. Responding to paragraph 47 of the Complaint, Apple denies each and every
13 averment contained in paragraph 47.

14 48. Responding to paragraph 48 of the Complaint, Apple denies each and every
15 averment contained in paragraph 48 and further denies that plaintiffs or members of the purported
16 class have been damaged or are entitled to relief of any kind.

17 **SECOND COUNT**
18 **(Violation of Implied Warranty of Merchantability)**

19 49. Responding to paragraph 49 of the Complaint, Apple realleges and reincorporates
20 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

21 50. Responding to paragraph 50 of the Complaint, Apple states that plaintiffs'
22 allegations are conclusions of law and no response is required thereto.

23 51. Responding to paragraph 51 of the Complaint, Apple denies each and every
24 averment contained in paragraph 51.

25 52. Responding to paragraph 52 of the Complaint, Apple denies each and every
26 averment contained in paragraph 52 and further denies that plaintiffs or members of the purported
27 class have been damaged or are entitled to relief of any kind.

**THIRD COUNT
(Fraudulent Concealment)**

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2 53. Responding to paragraph 53 of the Complaint, Apple realleges and reincorporates
3 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

4 54. Responding to paragraph 54 of the Complaint, Apple denies each and every
5 averment contained in paragraph 54.

6 55. Responding to paragraph 55 of the Complaint, Apple denies each and every
7 averment contained in paragraph 55.

8 56. Responding to paragraph 56 of the Complaint, Apple denied each and every
9 averment contained in paragraph 56.

10 57. Responding to paragraph 57 of the Complaint, Apple denies each and every
11 averment contained in paragraph 57 and further denies that plaintiffs or members of the purported
12 class have been damaged or are entitled to relief of any kind.

**FOURTH COUNT
(Cal. Business and Professions Code § 17200 et seq.)**

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15 58. Responding to paragraph 58 of the Complaint, Apple realleges and reincorporates
16 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

17 59. Responding to paragraph 59 of the Complaint, Apple denies each and every
18 averment contained in paragraph 59.

**FIFTH COUNT
(Accounting)**

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20 60. Responding to paragraph 60 of the Complaint, Apple realleges and reincorporates
21 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

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

24 62. Responding to paragraph 62 of the Complaint, Apple denies each and every
25 averment contained in paragraph 62.
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PRAYER FOR RELIEF

Apple denies that plaintiffs or any member of the purported class suffered injury or damage, and further denies that plaintiffs or any member of the purported class is entitled to relief of any kind.

AFFIRMATIVE DEFENSES

As to affirmative defenses to the Complaint, Apple does not, by stating the matters set forth in these defenses, allege or admit that it has the burden of proof and/or persuasion with respect to any of these matters, and does not assume the burden of proof or persuasion as to any matters as to which plaintiffs have the burden of proof or persuasion.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim — All Causes of Action)

1. The Complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause, or causes, of action against Apple.

SECOND AFFIRMATIVE DEFENSE

(Failure to Notify of Breach of Warranty)

2. As to those causes of action based upon a breach of warranty, plaintiffs failed to notify Apple of any breach of warranty within a reasonable time after plaintiffs knew or should have known of any purported breach.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

3. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

4. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the equitable doctrine of estoppel.

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FIFTH AFFIRMATIVE DEFENSE

(Equitable Relief — Remedies)

5. Plaintiffs and the purported class are barred from asserting the claims for equitable relief alleged in the Complaint because they have adequate remedies at law and/or the equitable relief is neither necessary nor proper under applicable law.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

6. Plaintiffs and the purported class have failed to mitigate their damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Article III Standing)

7. Apple alleges on information and belief that plaintiffs and the members of the purported class lack standing under Article III of the Constitution of the United States.

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
4. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Apple hereby demands a trial by jury on all issues upon which trial by jury may be had.

Dated: October 19, 2007

PENELOPE A. PREOVOLOS
ANDREW D. MUHLBACH
JOHANNA W. ROBERTS
MORRISON & FOERSTER LLP

By: /s/ Penelope A. Preovolos
Penelope A. Preovolos

Attorneys for Defendant
APPLE INC.