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18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

21 ZOLTAN STIENER and YNEZ STIENER,
 individually and on behalf of all others similarly
 22 situated,

23 Plaintiffs,

24 v.

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

26 Defendants.

Case No. C 07-04486-SBA

CLASS ACTION

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: March 5, 2008
 Hon. Sandra B. Armstrong

Complaint filed: August 29, 2007

1 Pursuant to Civil L.R. 16-9 , the parties to the above-entitled action, Plaintiffs Zoltan
2 Stienen and Ynez Stienen (“Plaintiffs”) and Defendant Apple Inc. (“Apple”), jointly submit this
3 Case Management Statement. Defendant AT&T Mobility, LLC (“AT&T”)’s pretrial obligations
4 have been stayed by this Court’s Order dated November 28, 2007, pending resolution of its
5 Motion to Compel Arbitration.
6

7 **1. JURISDICTION AND SERVICE**

8 Plaintiffs’ complaint asserts jurisdiction on the basis of the Class Action Fairness Act, 28
9 U.S.C. § 1332(d)(2). There are no issues as to venue or personal jurisdiction. All parties have
10 been served.

11 **2. FACTUAL ISSUES**

12 Apple’s iPhone went on sale in the United States on June 29, 2007. Plaintiffs claim to
13 have purchased iPhones on that day. The principal factual disputes in this case surround (a) the
14 disclosure of the costs and details of the battery replacement program for the iPhone, and (b)
15 whether the costs and procedures of replacing the iPhone battery violate Defendants’ express or
16 implied warranties, or California Unfair Competition Law (“UCL”) § 17200. Apple contends that
17 it disclosed this information in numerous places and that these disclosures were available to
18 plaintiffs and any potential purchaser from the day the iPhone first went on sale. Apple intends to
19 file a Motion for Summary Judgment establishing that such disclosures were made and that there
20 is no factual or legal basis for all of plaintiffs’ claims.

21 **3. LEGAL ISSUES**

22 A threshold question is whether Defendant AT&T compel arbitration in accordance with
23 its arbitration clause. The clause contains a class action waiver which Plaintiffs claim renders it
24 unconscionable under applicable California and Ninth Circuit law. AT&T asserts that the clause
25 is enforceable.

26 The primary legal issues on the merits are whether plaintiffs can establish any basis for
27 their claims for breach of contract, violation of the implied warranty of merchantability,
28 fraudulent concealment, and violation of UCL § 17200. As noted above, Apple intends to file an

1 early summary judgment motion on the basis that its comprehensive disclosures negate any such
2 claims.

3 Defendants contend other legal issues include, but are not limited to, whether a class
4 action can be maintained and whether plaintiffs or class members suffered actual injury.

5 **4. MOTIONS**

6 Defendant AT&T has a pending motion to compel arbitration of plaintiffs' claims which
7 Plaintiffs oppose. That motion is fully briefed and is scheduled for hearing on February 26, 2008.
8 In addition, AT&T filed a motion for a stay pending resolution of this arbitration issue, and such
9 motion was granted by the Court on November 28, 2007.

10 Apple intends to file a Motion for Summary Judgment on the grounds that its disclosures
11 of the iPhone battery replacement program negate each of plaintiffs' claims and preclude any
12 basis for relief in this case.

13 **5. AMENDMENT OF PLEADINGS**

14 At this time, the parties do not anticipate amendments to the pleadings.

15 **6. EVIDENCE PRESERVATION**

16 Apple issued a litigation hold at the outset of the case.

17 **7. DISCLOSURES**

18 No disclosures have been made at this time. In light the stay of the proceedings regarding
19 AT&T, Apple and the Plaintiffs agree that initial disclosures should be postponed until after the
20 resolution of the AT&T motion.

21 **8. DISCOVERY**

22 The parties have not engaged in formal discovery. In light of Apple's intent to file an
23 early summary judgment motion on all causes of action, Apple believes that judicial economy
24 would be served by phasing discovery. Apple believes discovery should be limited to issues
25 necessary to the resolution of its summary judgment motion, and if the motion is denied, more
26 comprehensive discovery can then be undertaken. Plaintiffs believe that the motion as described
27 by Apple, is unlikely to be granted because the nature of the alleged "disclosures" and their
28 inadequacy as a matter of law. Even if granted, the motion will not resolve all issues in the case

1 and in all events it is inappropriate to have limitations on discovery simply because a party
2 announces its intention to move for summary judgment.

3 **9. CLASS ACTIONS**

4 Plaintiffs contends that this action can be maintained as a class action under Federal Rules
5 of Civil Procedure, Rule 23(a) and (b), and Plaintiffs bring this nationwide class action on behalf
6 of themselves and all individuals or entities who “bought and implemented the iPhone and
7 sustained damages as a result.” (Compl. ¶ 32.)

8 Apple contends that this action cannot properly be maintained as a nationwide class
9 action. In addition, Apple believes that any ruling on class certification should be deferred
10 pending the California Supreme Court’s resolution of *Pfizer v. Superior Court*, 141 Cal. App. 4th
11 290 (July 11, 2006), *review granted*, *de-published by*, S145775, 2006 Cal. LEXIS (Nov. 1, 2006)
12 and *In re Tobacco II Cases*, 142 Cal. App. 4th 891 (Sept. 5, 2001), *review granted*, *de-published*
13 *by Tobacco II Cases*, S147345, 2006 Cal. LEXIS 13332 (Oct. 26, 2006). Apple contends, both
14 the plaintiffs’ ability to certify a class and the scope of discovery will be substantially influenced
15 by the outcome of these cases.

16 Plaintiffs do not believe these cases will dispose of the claims made in the complaint in
17 this case and that a stay while this issue is determined would be inappropriate. *See True v. Am.*
18 *Honda Motor Co.*, Case No. 07-287-VAP, at 14-15, 2007 U.S. Dist. LEXIS 74885 (C.D. Cal.
19 June 22, 2007) (denying motion to dismiss UCL and CLRA claims); *Sanchez v. Wal-Mart*
20 *Stores, Inc.*, Case No. CIV S-06-CV-2573 DFL KJM, 2007 U.S. Dist. LEXIS 33746, 2007 WL
21 1345706, at *3 (E.D. Cal. May 8, 2007) (same); *Bristow v. Lycoming Engines*, Case No. CIV. S-
22 06-1947 LKK GGH, 2007 U.S. Dist. LEXIS 31350, 2007 WL 1106098, at *7 (E.D. Cal. Apr. 10,
23 2007) (same); *Trew v. Volvo Cars of N. Am., LLC*, Case No. CIV-S-05-1379 DFL PAN, 2006
24 U.S. Dist. LEXIS 4890, 2006 WL 306904, at *5-6 (E.D. Cal. Feb. 8, 2006) (same).

1 **10. RELATED CASES**

2 A related case is pending in the United States District Court for the Northern District of
3 Illinois, *Trujillo v. Apple Computer Inc.*, Case No. 07-CV-04946. This case was removed to
4 federal court on August 31, 2007. Apple filed a Motion for Summary Judgment in *Trujillo* on
5 December 7, 2007. That motion is on the same grounds as Apple’s summary judgment motion to
6 be filed in this case — that Apple’s disclosures related to the iPhone battery preclude the alleged
7 claims. The parties in *Trujillo* are engaged in discovery limited to the resolution of such motion.

8 **11. RELIEF**

9 Plaintiffs’ Complaint seeks consequential damages, restitution, an accounting, and
10 reasonable attorney fees and expenses. Apple disputes that any basis exists for such relief.

11 **12. SETTLEMENT AND ADR**

12 The parties filed ADR certifications on November 14, 2007, along with a Joint Notice of
13 Need for ADR Phone Conference.

14 **13. CONSENT TO MAGISTRATE JUDGE**

15 The parties decline assignment to a magistrate judge.

16 **14. OTHER REFERENCES**

17 At this point, the parties see no basis for other references.

18 **15. NARROWING OF ISSUES**

19 As noted above, Apple intends to file an early summary judgment motion.

20 **16. EXPEDITED SCHEDULE**

21 Apple does not believe that this is the type of case that can be handled on an expedited
22 basis with streamlined procedures. Plaintiffs disagree.

23 **17. SCHEDULING**

24 Apple believes that initial disclosures and comprehensive discovery should be deferred
25 pending resolution of Apple’s early summary judgment motion as well as resolution of AT&T’s
26 pending motion to compel arbitration. Plaintiffs believe that once the arbitration motion is
27 decided, discovery should initial disclosures and comprehensive discovery should commence.

1 **18. TRIAL**

2 Given AT&T’s pending motion to compel arbitration and Apple’s proposed summary
3 judgment motion, Apple believes that it is difficult to address trial considerations at this point.
4 Apple estimates that the length of trial would be 15-20 days. Plaintiffs estimate 5 to 7 trial days.

5 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

6 Apple filed its Certificate of Interested Entities or Persons on October 19, 2007, stating:
7 “Apple has no parent corporation. According to Apple’s Proxy Statement filed with the United
8 States Securities and Exchange Commission in April 2007, there are no beneficial owners that
9 hold more than 10% of Apple’s outstanding common stock.”

10 **20. OTHER**

11 The parties have no other case management issues at this time.

12
13 Dated: February 22, 2008

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19 Dated: February 22, 2008

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I, Penelope A. Preovolos, am the ECF user whose ID and password are being used to file this ADR Certification. In compliance with General Order 45.X.B, I hereby attest that Max Folkenflik has concurred in this filing.

Dated: February 22, 2008

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