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13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**  
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 16 **SAN JOSE DIVISION**

17 REUBEN BERENBLAT, ANDREW  
 18 PERSONETTE, EARL C. SIMPSON,  
 19 LAURA MILLER, On behalf of  
 themselves and all others similarly situated,

20 Plaintiffs,

21  
22 v.

23 APPLE INC.,

24 Defendant.

Case No. C-08-04969 JF

**DECLARATION OF MICHAEL A.  
 BERG IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 ADMINISTRATIVE RELIEF**

**[Motion for Administrative Relief and  
 Proposed Order Submitted Herewith]**

1 I, Michael A. Berg, declare and state:

2 1. I am an attorney in good standing admitted to the bar of the State of New York,  
3 and admitted to appear in this action *pro hac vice*.

4 2. I am counsel to the law firm of MEISELMAN, DENLEA, PACKMAN, CARTON  
5 & EBERZ P.C. ("MDPCE"), attorneys for Plaintiffs in the above-captioned putative class action.

6 3. I respectfully submit this declaration on behalf of all plaintiffs, in support of their  
7 Motion for Administrative Relief ("Motion") seeking leave of the Court to conduct limited  
8 discovery prior to filing the Third Amended Complaint. The grounds for this request and the  
9 scope of the proposed discovery are set forth in the Motion.

10 4. On April 21, 2010, pursuant to Local Civil Rule 7-12, I left a detailed voicemail  
11 for one of Apple's attorneys, Alexei Klestoff, Esq., asking whether Apple would stipulate to  
12 permit the requested discovery. A few minutes later I left a message for another of Apple's  
13 attorneys, Andrew David Muhlbach, requesting that he return my call. I received no response  
14 from either Mr. Klestoff or Mr. Muhlbach.

15 5. On April 22, 2010, at 11:22 a.m. (EDT), I emailed Mr. Klestoff, Mr. Muhlbach,  
16 and yet another attorney for Apple, Penelope A. Preovolos, Esq., repeating my request that Apple  
17 stipulate to allow the requested discovery, providing additional detail, and asking for a response  
18 by 5 p.m. (EDT) today. A true and complete copy of my email is attached hereto.

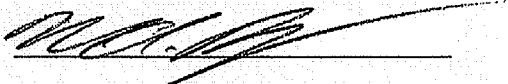
19 6. I have received no response to any of my messages, other than an automatic email  
20 from Ms. Preovolos's email account advising me that she is out of the office and cannot respond.

21 7. A stipulation cannot be obtained in this matter because Apple's attorneys have not  
22 responded to my inquiries.

23 8. Accordingly, pursuant to Local Civil Rule 7-11, Plaintiffs respectfully request that  
24 this Court enter an order providing Plaintiffs (i) an opportunity to serve not more than five  
25 document requests on Apple; (ii) a one-day deposition of an Apple designee pursuant to Federal  
26 Rule of Civil Procedure 30(b)(6), limited to Apple's knowledge of the alleged defect, the sources  
27 of its knowledge, its responses to information and complaints received about the defect, and its  
28 concealment thereof; and (iii) sufficient time to amend the complaint based on such discovery.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 22, 2010, at White Plains, New York.



MICHAEL A. BERG, ESQ.

## Michael Berg

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**From:** Michael Berg  
**Sent:** Thursday, April 22, 2010 11:22 AM  
**To:** 'Klestoff, Alexei'; 'amuhlbach@mofoco.com'; 'ppreovolos@mofoco.com'  
**Cc:** Jeffrey Carton; 'McNamara, Doug'  
**Subject:** Berenblat v. Apple

Dear Counsel:

I write on behalf of the plaintiffs in the above-referenced action.

Yesterday I left Alexei Klestoff a detailed voice-mail asking whether Apple, Inc. will stipulate to allow plaintiffs to conduct limited discovery concerning Apple's knowledge of the alleged product defect prior to filing the Third Amended Complaint. I also left a message for Drew Muhlbach. I have received no response.

To elaborate slightly on my voice-mail, we seek to propound not more than five document requests and to take a Rule 30(b)(6) deposition of not more than one day's duration. We also seek a reasonable extension of time to file the Third Amended Complaint in light of the discovery so obtained.

Please let us know by 5 p.m. (EDT) today whether Apple will so agree and so stipulate.

Regards,  
Michael

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