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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN JOSE DIVISION

18 NAOTAKA KITAGAWA, JR., TIMOTHY J.
19 BROAD and JESSE REISMAN, on behalf of
themselves and all others similarly situated,

20 TRACEY HACKWITH, MAXX SCHOLTEN
21 AND MICHAEL MARTIN, Individually and On
Behalf of All Others Similarly Situated,

22 Plaintiffs,

23 v.

24 APPLE, INC., and, DOES 1 THROUGH 50,
25 inclusive,

26 Defendants.

Case No. C 09-01911 JW

Case No. C 09-03862 JW

**JOINT RULE 26(f) REPORT, CASE
MANAGEMENT STATEMENT AND
PROPOSED ORDER**

Date: October 19, 2009
Time: 10:00 a.m.
Courtroom: Hon. James Ware

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Introduction

On May 1, 2009, Plaintiffs Naotaka Kitagawa, Jr., Timothy J. Broad, and Jesse Reisman filed a complaint in this Court against Apple Inc. (“Apple”). On May 15, 2009, Plaintiffs Tracey Hackwith, Maxx Scholten, and Michael Martin filed a similar complaint against Apple in the United States District Court for the Central District of California.

On July 13, 2009, Apple filed a motion to transfer the *Hackwith* case to the Northern District of California; that motion was granted on August 12, 2009. On September 24, 2009, this Court issued an order relating the *Hackwith* case to the *Kitagawa* case (hereinafter, collectively, the “Related Actions”).

Both complaints allege that Apple’s 60W and 85W MagSafe power adapters (the “Adapters”) fray, spark, and fail prematurely, and both allege that Apple misrepresented the quality of the Adapters. Apple disputes these allegations. Plaintiffs in the Related Actions (hereinafter, collectively, “Plaintiffs”), together with Apple jointly submit this Joint Case Management Statement.

1. Jurisdiction and Service:

A. Jurisdiction

This Court has jurisdiction over the claims asserted in the Related Actions pursuant to 28 U.S.C. § 1332, as diversity between the parties exists and the matter in controversy exceeds the sum or value of \$5 million. Venue is proper in this Judicial District because Apple maintains its principal place of business in this district. Apple does not dispute personal jurisdiction or venue in this jurisdiction.

B. Service

Apple has accepted service of the Complaints in the Related Actions.

2. Facts:

Apple includes an 85-watt (“85W”) Power Adapter with the MacBook Pro laptop computers it sells. Apple also sells additional, stand-alone 85W Power Adapters for consumers who desire to purchase an additional adapter. Apple includes a 60W-watt (“60W”) Power

1 Adapter with the MacBook laptop computers it sells. Apple also sells additional, stand-alone
2 60W Power Adapters for consumers who desire to purchase an additional adapter.

3 Plaintiffs' Statement

4 Plaintiffs bring a nationwide class action on behalf of themselves and all other similarly
5 situated United States citizens who purchased Apple's defective "Apple 85W MagSafe Power
6 Adapter (for MacBook Pro)" and the "Apple 60W MagSafe Power Adapter (for the MacBook)"
7 (referred to collectively as the "MagSafe Adapters"). The MagSafe Adapters have both present
8 and latent defects. Among the problems with the MagSafe Adapters are premature failure,
9 effectiveness, safety and durability. Customers have frequently and consistently complained that
10 the MagSafe Adapters cord is flimsy, frays, melts and sparks when used as instructed. The flimsy
11 and sparking plug poses serious safety issues. And it is not only safety at issue here, but the cost
12 to consumers to purchase replacement adapters in order to power-up their computers when the
13 adapter does not work properly, safely or fails altogether. The adapter sold and marketed by
14 Apple, which is compatible with plaintiff's and class members' MacBook and MacBook Pro
15 computers, are the MagSafe Adapters, which currently have an on-line price tag of \$79.00,
16 exclusive of shipping costs. Therefore, owners of these particular models must purchase the
17 costly replacement MagSafe Adapters from the defendant in order to use their computers.

18 Apple is aware of the present and latent design defects inherent in the MagSafe Adapters,
19 but it refuses to notify or warn its customers of said defects. Furthermore, Apple falsely
20 represents the nature of these products in its advertisements and marketing. Apple continues to
21 market, manufacture and sell the defective MagSafe Adapters and profits significantly and
22 unjustly at the expense of plaintiff and other class members, who are forced to purchase
23 replacement MagSafe Adapters each time they fail or, alternatively, purchase new computers.

24 Apple's Statement

25 Apple strenuously denies that the Adapters are defective in any way. Indeed, the Adapters
26 have very low failure rates, as Apple can readily demonstrate. Moreover, Apple has thoroughly
27 investigated the alleged safety concerns and has found that the Adapters present no safety issues
28 of any kind.

1 The *Kitagawa* Plaintiffs’ claim that the Adapters “dangerously fray[], spark[], and
2 prematurely fail[]to work” is simply wrong, as is the *Hackwith* Plaintiffs’ claim that the Adapters
3 “will eventually fray at the connection to the adapter and spark, and, in some instances, catch
4 fire.” Typically, if the Adapters fail, they do so as the result of user abuse, to which power
5 adapters are particularly subject.

6 Similarly, Plaintiffs fail to understand that *all* adapters can appear to “spark” when
7 connected to an electrical outlet. This “sparking” is not a safety issue and does not reflect a
8 product defect.

9 Plaintiffs’ misrepresentation and concealment claims are similarly without merit. As
10 noted, the Adapters are not defective, and in fact, they have *low* failure rates. Thus, Apple did not
11 misrepresent or conceal anything.

12 **3. Legal Issues:**

13 The complaints in the Related Actions assert various causes of action, including
14 negligence, breach of express and implied warranties, and violation of California’s Unfair
15 Competition Law (California Business & Professions Code §§ 17200, *et seq.*), the Consumers
16 Legal Remedies Act (California Civil Code §§ 1750, *et seq.*), the Song-Beverly Consumer
17 Warranty Act (California Civil Code §§ 1791, *et seq.*), and California’s False Advertising Law
18 (California Business & Professions Code §§ 17500, *et seq.*). Also at issue is whether class
19 treatment is appropriate as to a nationwide class of 60W and 85W adapter purchasers.

20 **4. Motions:**

21 There are no motions currently pending. Plaintiffs anticipate filing a motion to
22 consolidate the Related Actions for all purposes. Apple will not oppose that motion. The parties
23 also anticipate the filing of class certification and summary judgment motions.

24 **5. Amendment of Pleadings:**

25 Should the Court grant Plaintiffs’ prospective motion to consolidate the Related Actions,
26 Plaintiffs will file Consolidated Amended Complaint and Apple will respond.

1 **6. Additional Parties Which the Parties Intend to Join:**

2 Plaintiffs anticipate that they will enter into a stipulation or move to consolidate this case
3 with the related case *Tracey Hackwith et al v. Apple Inc.*, Case 5:09-cv-03862 JW. Plaintiffs are
4 in the process of finalizing the details of coordinating these cases and will present a motion or
5 stipulation and proposed order to the Court shortly. Plaintiffs anticipate that additional parties
6 may be joined after the completion of preliminary discovery. Plaintiffs submit that they should
7 be allowed to join additional parties until December 31, 2009. Plaintiffs also reserve the right to
8 name additional class representatives.

9 **7. Disclosures:**

10 No disclosures have been made at this time. Pursuant to the Federal Rules of Civil
11 Procedure, the parties have agreed to exchange disclosures on or before October 16, 2009.

12 **8. Discovery:**

13 Neither side has propounded discovery in the Related Actions. The Parties' respective
14 proposed discovery plans are as follows:

15

Matter	Plaintiffs' Proposed Deadlines	Defendant's Proposed Deadlines
Amendment/Joinder of Additional Parties	December 31, 2009	December 31, 2009
Motion for Class Certification	March 30, 2010	June 30, 2010
Opposition to Motion for Class Certification	May 14, 2010 (45 days)	August 25, 2010
Reply to Motion for Class Certification	June 28, 2010 (45 days)	October 13, 2010
Class Certification Hearing	July 12, 2010 (Monday)	November 1, 2010 (Monday)
Fact Discovery Deadline	July 30, 2010	October 29, 2010

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1	Opening Expert Witness Disclosure	August 30, 2010	November 30, 2010
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3	Rebuttal Expert Witness Disclosure	September 30, 2010	January 14, 2011
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5	Expert Discovery Deadline	November 1, 2010	February 15, 2011
6			
7	Deadline for Filing Dispositive Motions	September 1, 2010	March 14, 2011
8			
9	Final Pre-Trial Conference	January 14, 2011	July 18, 2011
10			
11	Trial Date	January 28, 2011	August 1, 2011

12

13 Electronic Discovery:

14 The parties have agreed that electronic documents produced by Apple should be
 15 reformatted from their native Mac files and converted to TIF or PDF files with the full text
 16 extracted and be produced as metadata and/or summation load files, where possible. Plaintiffs
 17 reserve the right to request the native files.

18 **9. Class Actions:**

19 Plaintiffs' Statement

20 Plaintiffs contend that this action is maintainable as a class action under Federal Rules of
 21 Civil Procedure, Rule 23(a) and (b). The *Kitagawa* Plaintiffs bring this nationwide class action
 22 on behalf of themselves and consumers who purchased an Apple MagSafe 60W Adapter or Apple
 23 MagSafe 85W Adapter from the time of their introduction in the marketplace through and
 24 including the date of class notice. The *Hackwith* Plaintiffs bring this action on behalf of
 25 themselves and all persons who purchased a MagSafe Adapter for primarily personal purposes,
 26 and not for resale, in the United States.

1 Pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b), plaintiffs bring this
2 nationwide class action on behalf of themselves and all other United States purchasers of Apple's
3 defective MagSafe Adapters.

4 Plaintiffs allege that the MagSafe Adapters were negligently designed and manufactured,
5 resulting in dangerous frays, sparks and premature failure. Plaintiffs further allege that all
6 MagSafe Adapters pose a present and latent danger to its users when used as instructed, and that
7 Apple has known of this dangerous defect, but fails to disclose it or to warn its customers of the
8 defect. In addition, Apple has been aware that its MagSafe Adapters prematurely fail. When
9 their MagSafe Adapters are damaged or fail, MacBook and MacBook Pro users are compelled to
10 pay to replace them with costly and defective MagSafe Adapters, in order to use their computers.

11 Apple has known about the present and latent defects inherent in its MagSafe Adapters
12 but continues to market, manufacture and sell the MagSafe Adapters in order to turn a profit at
13 the expense of plaintiffs and class members. Moreover, Apple falsely represents the nature of this
14 product in its advertisements and marketing to be powerful, high-performing, ultra-portable and
15 durable.

16 All class members have suffered injury to their property by purchasing negligently
17 designed MagSafe Adapters with latent and/or present defects. In addition, class members have
18 suffered injury by having to pay to replace adapters which spark, fray, melt and/or prematurely
19 fail.

20 The class is reasonably estimated to be in the thousands or tens of thousands or more and
21 is thus so numerous that joinder of all its members is impracticable. The precise number of class
22 members and their addresses are unknown to plaintiffs, but can be ascertained through
23 appropriate discovery of defendant's records. Class members may be notified of the pendency of
24 this action by publication and/or other notice.

25 There is a well-defined community of interest in the relevant questions of law and fact
26 affecting putative class members. Common questions of law and fact predominate over any
27 individual questions affecting class members, including, but not limited to the following:
28

- 1 • whether defendant exercised reasonable care in testing its MagSafe Adapters prior
- 2 to its release for commercial sale;
- 3 • whether the MagSafe Adapters are defective when used as directed, intended or in
- 4 a reasonably foreseeable manner;
- 5 • whether feasible alternative safer formulations of the MagSafe Adapters were
- 6 available;
- 7 • whether the MagSafe Adapters are and were fit for their intended purpose;
- 8 • whether defendant has breached the implied warranty of merchantability;
- 9 • whether defendant has violated the Magnuson-Moss Warranty Act;
- 10 • whether defendant acted negligently;
- 11 • whether defendant is strictly liable to plaintiff and class members;
- 12 • whether defendant failed to warn plaintiff and class members of any product
- 13 defects, including but not limited to safety issues;
- 14 • whether defendant has violated the Song-Beverly Act ;
- 15 • whether defendant has violated the CLRA;
- 16 • whether defendant committed unfair, unlawful and/or fraudulent business
- 17 practices, in violation of Cal. Bus. & Prof. Code §17200, in its marketing,
- 18 promotion, solicitation, sales and issuance of the MagSafe Adapter to plaintiffs
- 19 and class members;
- 20 • whether plaintiff and proposed class members have been harmed and the proper
- 21 measure of relief;
- 22 • whether defendant has been unjustly enriched at the expense of the class;
- 23 • whether plaintiffs and the class are entitled to damages; and
- 24 • whether the class is entitled to injunctive, declaratory, and/or other relief.

25 The claims of plaintiffs and the other class members have a common origin and share a
26 common basis. The claims originate from the same negligent design on the part of the defendant
27 and its affiliated agents and their acts in furtherance thereof.

28

1 Plaintiffs' claims are typical of those of absent class members. If brought and prosecuted
2 individually, the claims of each class member would require proof of the same material and
3 substantive facts, rely upon the same remedial theories and seek the same relief.

4 Plaintiffs will fairly and adequately protect the interests of the class and has no interests
5 adverse to or that indirectly and irrevocably conflict with the interests of other class members.
6 Plaintiffs are willing and prepared to serve the Court and the putative class in a representative
7 capacity with all of the obligations and duties material thereto.

8 Plaintiffs have retained the services of counsel, identified below on the signature page,
9 who are experienced in complex class-action litigation. Plaintiffs' counsel will adequately
10 prosecute this action, and will otherwise assert, protect and fairly and adequately represent
11 plaintiffs and all absent class members.

12 The prosecution of separate actions by individual class members would create a risk of
13 inconsistent or varying adjudications, which would establish incompatible standards of conduct
14 for the parties opposing the class. Such incompatible standards of conduct and varying
15 adjudications on the same essential facts, proof and legal theories would also create and allow the
16 existence of inconsistent and incompatible rights within the class.

17 A class action is superior to other methods for the fair and efficient adjudication of the
18 controversies raised in this Complaint because:

- 19 • individual claims by the class members would be impracticable as the costs of
20 pursuit would far exceed what any one class member has at stake;
- 21 • no individual litigation has been commenced over the controversies alleged in this
22 Complaint, and individual class members are unlikely to have an interest in
23 separately prosecuting and controlling individual actions;
- 24 • the concentration of litigation of these claims in one forum will achieve efficiency
25 and promote judicial economy; and
- 26 • the proposed class action is manageable.

1 Defendant's Statement

2 Apple denies that this case can properly be maintained as a class action. Among other
3 reasons, Plaintiffs cannot demonstrate typicality, and individual issues overwhelm any possible
4 common issues, thus precluding the required predominance of common issues and rendering the
5 class unmanageable. The subjectivity of determining when failures are premature, and the
6 differing ways in which the class members used and cared for their adapters, result in individual
7 issues which will pose formidable obstacles to class certification.

8 Here, as noted, only a small percentage of the 85W and 60W adapters have failed; the
9 failure rates are well within industry norms. Thus, the vast majority of class members have not
10 and will not suffer injury of any kind. Moreover, Plaintiffs and the purported class members will
11 be required to show on an individual basis what representations each class member saw, how they
12 were misled, whether they relied, and how the alleged misrepresentation caused them injury. Nor
13 can Plaintiffs avoid these issues by using a concealment theory, since Apple concealed nothing.
14 In addition, a concealment theory cannot support Plaintiffs' Consumers Legal Remedies Act
15 claim, which requires an affirmative misrepresentation.

16 Similarly, Plaintiffs cannot obtain certification of their breach of warranty claim. Such
17 claims require proof that all or substantially all the adapters would fail during the reasonable life
18 of the product. *See, e.g., Hicks v. Kaufman & Broad Home Corp.*, 89 Cal.App.4th 908, 923
19 (2001).

20 Most fundamentally, because adapters are particularly prone to user abuse, even those few
21 class members with failed adapters would have to demonstrate on an individual basis how they
22 used their adapters and that the adapters did not fail as a result of the class members' individual
23 usage patterns. For all these reasons, Apple believes it is clear that Plaintiffs cannot certify a
24 class.

25 Proposal for How and When Court Will Consider Whether the Case Can Be Maintained
26 As a Class Action:

27 The parties agree that the Court should consider whether the case can be maintained as a
28 class action upon completion of class certification briefing. Plaintiffs propose that the hearing on

1 class certification be held on July 12, 2010. Apple proposes that the class certification hearing be
2 held on November 1, 2010.

3 **10. Related Cases:**

4 The parties are unaware of any additional related actions or proceedings.

5 **11. Relief:**

6 The *Kitagawa* Plaintiffs seek damages (including punitive damages), restitution and
7 disgorgement, injunctive relief, and such other relief the Court may deem proper. The *Hackwith*
8 Plaintiffs seek damages, appropriate injunctive and declaratory relief, fees and costs, and such
9 other relief the Court may deem proper. Apple denies that plaintiffs have been injured or
10 damaged and further disputes that Plaintiffs are entitled to relief of any kind.

11 **12. Settlement and ADR:**

12 The parties have filed their respective Alternative Dispute Resolution (“ADR”)
13 Certifications pursuant to Civil Local Rule 16-8(b). At this time, the parties believe ADR is
14 premature. However, in compliance with the ADR Rules, on October 9, 2009, the parties filed a
15 Joint Notice of Need for ADR Phone Conference. No phone conference has been held or
16 scheduled to date.

17 **13. Consent to Magistrate Judge For All Purposes:**

18 The parties object to a magistrate judge conducting all further proceedings, including trial
19 and entry of judgment.

20 **14. Other References:**

21 The parties do not believe that the Related Actions are suitable for binding arbitration or a
22 special master.

23 **15. Narrowing of Issues:**

24 Through the use of requests for admissions and interrogatories, the parties anticipate that
25 they will be able to narrow the scope of issues in dispute in the litigation.

26 **16. Expedited Schedule:**

27 The parties believe this action should not proceed on an expedited basis, as defined by the
28 Local Rules of this Court.

1 **17. Scheduling:**

2 The parties request that the Court set a deadline for the filing of the consolidation motion.
3 The parties further request that the Court set a Rule 16(b) conference in approximately 60-90
4 days.

5 **18. Trial:**

6 Plaintiffs estimate that the trial of the action can be completed in 14 court days.
7 Apple believes that providing a trial estimate is premature at this time.

8 **19. Disclosure of Non-party Interested Entities or Persons:**

9 Both parties have filed their respective “Certifications of Interested Entities or Persons” in
10 both actions pursuant to Civil Local Rule 3-16.

11 Plaintiffs’ Disclosure:

12 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
13 named parties, there is no such interest to report.

14 Apple’s Disclosure:

15 Pursuant to Northern District Local Rule 3-16 and Federal Rule of Civil Procedure 7.1(a),
16 defendant Apple Inc., through its counsel, hereby certifies that the following listed persons,
17 associations of persons, firms, partnerships, corporations (including parent corporations) or other
18 entities (i) have a financial interest in the subject matter in controversy or in a party to the
19 proceeding; or (ii) have a non-financial interest in that subject matter or in a party that could be
20 substantially affected by the outcome of this proceeding. Apple has no parent corporation.
21 According to Apple’s Proxy Statement filed with the United States Securities and Exchange
22 Commission in January 2009, there are no beneficial owners that hold more than 10% of Apple’s
23 outstanding common stock.

24 Dated: October 09, 2009

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ALREEN HAEGGQUIST
ZELDES & HAEGGQUIST, LLP

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By: /s/Helen I. Zeldes
Helen I. Zeldes

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Attorneys for the *Kitagawa* Plaintiffs

Dated: October 09, 2009

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

NAOTAKA KITAGAWA, JR., TIMOTHY J. BROAD and JESSE REISMAN, on behalf of themselves and all others similarly situated,

Case No. C 09-01911 JW

TRACEY HACKWITH, MAXX SCHOLTEN AND MICHAEL MARTIN, Individually and On Behalf of All Others Similarly Situated,

Case No. C 09-03862 JW

Plaintiffs,

[PROPOSED] SCHEDULING ORDER

v.

APPLE, INC., and, DOES 1 THROUGH 50, inclusive,

Defendants.

Plaintiffs in the *Kitagawa* and *Hackwith* cases shall file their motion for consolidation on or before _____, 2009. The parties shall appear for a Case Management Conference on _____, 2009, at 9:00 a.m.

PROPOSED DISCOVERY AND MOTIONS DEADLINES

Matter	
Amended/Joinder of Additional Parties	
Motion for Class Certification	
Opposition to Motion for Class Certification	
Reply to Motion for Class Certification	
Class Certification Hearing	
Fact Discovery Deadline	
Opening Expert Witness Disclosure	
Rebuttal Expert Witness Disclosure	
Expert Discovery Deadline	
Deadline for Filing Dispositive Motions	
Final Pre-Trial Conference	

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Matter	
Trial Date	

IT IS SO ORDERED, this ____ day of _____, 2009.

James Ware
United States District Judge