

**Service of Process
Transmittal**

05/18/2012

CT Log Number 520539316

TO: Ami Gomez
Apple Inc.
1 Infinite Loop, M/S 36-3NYJ
Cupertino, CA 95014-

RE: Process Served in California

FOR: Apple Inc. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Phoebe Juel, Pltf. vs. Apple Inc, Dft.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Complaint, Notice, Cover sheet, ADR Information Packet

COURT/AGENCY: Santa Clara County - Superior Court - San Jose, CA
Case # 112CV222854

NATURE OF ACTION: Breach of contract and fraud due to double-charge customers for songs bought from defendant

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 05/18/2012 at 14:25

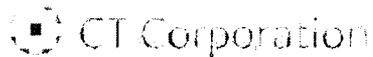
JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service - File written response // 08/28/12 at 3:00 p.m. - Case Management Conference // At least 15 days prior to the Case Management Conference - File Case Management Statement

ATTORNEY(S) / SENDER(S): Patrick J. Perotti
Dworken & Bernstein Co., L.P.A.
60 South Park Place
Painesville, OH 44077
440-352-3391

REMARKS: Please note that Page 2 of the Cover Sheet was not received with the documents at the time of service.

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Priority Overnight , 793585520781
Image SOP
Email Notification, Adeline Yu ayu@apple.com
Email Notification, Jeff Risher jrisher@apple.com
Email Notification, Lisa Olle olle@apple.com
Email Notification, Noreen Krall nkrall@apple.com
Email Notification, David Melaugh melaugh@apple.com
Email Notification, Jayna Whitt jwhitt@apple.com
Email Notification, Katie Prescott kprescott@apple.com
Email Notification, Iain Cunningham icunningham@apple.com
Email Notification, Colleen Brown colleen_brown@apple.com
Email Notification, Erica Tierney etierney@apple.com
Email Notification, Diana Loop loop@apple.com
Email Notification, Lara Eidemiller leidemiller@apple.com



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Apple Inc.
1 Infinite Loop, M/S 36-3NYJ
Cupertino, CA 95014-

RE: **Process Served in California**

FOR: Apple Inc. (Domestic State: CA)

Email Notification, Lynn Miller MILLER@APPLE.COM
Email Notification, Wendy Anna Herby wherby@apple.com
Email Notification, Sarita Venkat saritav@apple.com
Email Notification, Tom Vigdal tvigdal@apple.com
Email Notification, Cyndi Wheeler cwheeler@apple.com
Email Notification, Heather Moser hmoser@apple.com
Email Notification, Jackie Harlow jharlow@apple.com
Email Notification, Ami Gomez ami_r_gomez@apple.com
Email Notification, Roslyn Quinn roslyn_quinn@apple.com
Email Notification, Tim O'Neil toneil@apple.com
Email Notification, Charstie Wheelock wheelock@apple.com
Email Notification, Stan Flemister flemister@apple.com
Email Notification, Maya Kumar maya_kumar@apple.com
Email Notification, Erik Floyd efloyd@apple.com
Email Notification, David Eberhart deberhart@apple.com
Email Notification, Beth Kellermann kellermann@apple.com
Email Notification, Andrew Song asong@apple.com

SIGNED:
PER:
ADDRESS:
TELEPHONE:

C T Corporation System
Nancy Flores
818 West Seventh Street
Los Angeles, CA 90017
213-337-4615

Page 2 of 2 / RA

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Apple Inc.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Phoebe Juel

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

2012 APR 20 10:49:40

David H. Yarnashi, Clerk of the Santa Clara County Superior Court
County of Santa Clara, California

By: S. Garcia-Adell
Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara County Superior Court
191 North First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso)
1120V222854

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Patrick J. Perotti, Dworken & Bernstein, 60 South Park Place, Painesville, Ohio 44077 (440) 352-3391

DATE: APR 20 2012
(Fecha)

DAVID H. YARNASHI
Clerk of the Superior Court

Clerk, by
(Secretario)

BY FAX:
Garcia-Adell

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): Apple Inc.

- under:
- CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other (specify):
- CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (authorized person)

4. by personal delivery on (date):

1 Patrick J. Perotti (Ohio Bar No. 0005481)
Nicole T. Fiorelli (Ohio Bar No. 0079204)
2 Michael R. Rudick (Ohio Bar No. 000090)
DWORKEN & BERNSTEIN Co., L.P.A.
3 60 South Park Place
Painesville, Ohio 44077
4 Telephone: (440) 352-3391
Facsimile: (440) 352-3469
5

6 John A. Kithas (California Bar No. 64284)
Chris D. Land (California Bar No. 238261)
LAW OFFICES OF JOHN A. KITHAS
7 One Embarcadero Center, Suite 1020
San Francisco, CA 94111
8 Telephone: 415-788-8100
Facsimile: 415-788-8001
9

10 Attorneys for Plaintiff PHOEBE JUEL

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SANTA CLARA**
14 **UNLIMITED JURISDICTION**

15 PHOEBE JUEL,

16 Plaintiff,

17 vs.

18 APPLE INC,

19 Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR BREACH OF
CONTRACT, FRAUD, AND UNJUST
ENRICHMENT**

20
21 Now comes, Phoebe Juel, individually and as representative of all others similarly situated,
22 and for her Class Action Complaint states:

23
24 **INTRODUCTION**

25 Plaintiff has filed this complaint against Apple and its "iTunes" store for herself and a class
26 because Apple double-charges customers for the same song. Plaintiff and the class bought songs
27 from Apple in the iTunes store. On occasion, one or more songs would randomly and inexplicably
28 disappear. When plaintiff and the class sought to retrieve them from Apple, Apple illegally and in

1 breach of its contract charged each class member a second time for the same song. This law suit
2 alleges that Apple is engaging in breach of contract and fraud through this frequent, improper
3 practice by which Apple has made millions of dollars it was not entitled to receive.
4

5 PARTIES

- 6 1. Phoebe Juel is an individual and resident of the State of Pennsylvania.
- 7 2. Defendant Apple Inc. (hereinafter "Apple" or "Defendant") is a California corporation
8 headquartered in Cupertino, California. Defendant provides consumers with products such as
9 consumer electronics, computer hardware, computer software, and runs the largest online music
10 store in the world, called the "iTunes store."
11

12 JURISDICTION

- 13 3. This court has personal jurisdiction over Defendant because Defendant is registered
14 and headquartered in the state of California, enters into contracts to supply goods in the State of
15 California and submits to the jurisdiction of the courts of the State of California.
16

17 FACTS

- 18 4. Apple provides music, for a fee, to its customers through its service known as
19 "iTunes".¹

- 20 5. A customer visits the 'iTunes' store online, selects the music they want, provides
21 iTunes with their credit card number, pays approximately .99 cents for each song, and then receives
22 the song electronically onto their computer, iPod, or other device. The purchased songs are called
23 "Products" by iTunes.

- 24 6. Under the contract applicable to this purchase, the customer is entitled to keep and
25 listen to that song for as long as they wish so long as they do so "for personal, noncommercial use."²
26
27

28 ¹ <http://www.apple.com/itunes/> (last viewed Apr. 10, 2012).

² <http://www.apple.com/legal/itunes/us/terms.html> (last viewed Apr. 10, 2012).

1 7. So that the customer has portability of this music, customers are “authorized to use
2 Products on five Apple-authorized devices at any time,”³ and “store Products from up to five
3 different Accounts at a time on compatible devices.”⁴

4 8. For example, after the customer purchases a song such as “Brown Sugar” by the
5 Rolling Stones, they can store it on an iPod, a home computer, an office computer, an iPhone, and a
6 vacation home computer. The “portability” of the music is a key aspect of the purchase, so the
7 customer can enjoy their songs wherever they go, and on devices they authorize.

8 9. Another key aspect of the contract is the right of the customer to “burn” combinations
9 of their songs into a playlist on a disc up to seven times. “Burning” is the process of copying songs
10 from an electronic device onto a Compact Disc. The contract provides “you shall be authorized to
11 burn an audio playlist up to seven times.”⁵

12 10. Apple and iTunes have spoken at length about how songs can be used and shared
13 between devices. For example, their press releases have stated:

14 “The iTunes Music Store offers the revolutionary rights to burn an unlimited number of CDs
15 for personal use and to put music on an unlimited number of iPods for on-the-go listening,”
16 said Steve Jobs.⁶

17 Songs are downloaded in pristine digital quality and can be burned onto an unlimited number
18 of CDs for personal use, played on up to three Macintosh computers, listened to on an
19 unlimited number of iPods, and used in other Mac applications, including iPhoto, iMovie and
20 iDVD.⁷

21 The iTunes Music Store offers groundbreaking personal use rights that allow users to burn
22 songs onto an unlimited number of CDs for personal use, listen to songs on an unlimited
23 number of iPods, play songs on up to three Macintosh® computers, and use songs in other
24 applications on the Mac®, including iPhoto™, iMovie™ and iDVD™.⁸

25 Songs can be burned at no extra cost onto an unlimited number of CDs for personal use,
26 played on up to three computers, and listened to on an unlimited number of iPods.⁹

27 The iTunes Music Store gives users the ability to play songs on up to five personal
28 computers, burn a song onto CDs an unlimited number of times, burn the same playlist up to
seven times and listen to their music on an unlimited number of iPods.¹⁰

25 ³ *Id.*

26 ⁴ *Id.*

27 ⁵ *Id.*

28 ⁶ <http://www.apple.com/pr/library/2003/apr/28musicstore.html> (last viewed Apr. 10, 2012).

⁷ <http://www.apple.com/pr/library/2003/may/14musicstore.html> (last viewed Apr. 10, 2012).

⁸ <http://www.apple.com/pr/library/2003/may/05musicstore.html> (last viewed Apr. 10, 2012).

⁹ <http://www.apple.com/pr/library/2003/sep/08musicstore.html> (last viewed Apr. 10, 2012).

¹⁰ <http://www.apple.com/pr/library/2004/oct/14itunes.html> (last viewed Apr. 10, 2012).

1 The iTunes Music Store, available in the US, UK, France and Germany, is the best way for
2 PC and Mac® users to legally discover, purchase and download music online. Incorporating
3 pioneering features, unmatched personal use rights, breakthrough pricing and Apple's
4 legendary ease of use, the iTunes Music Store gives users the ability to play songs on up to
5 five personal computers, burn a song onto CDs an unlimited number of times, burn the same
6 playlist up to seven times and listen to their music on an unlimited number of iPods. With
7 125 million song downloads to date and a 70% market share of the legal digital music
8 market, the iTunes Music Store is the leading online music destination in the world.¹¹

9 The iTunes Music Store gives users the ability to play songs on up to five personal
10 computers, burn a song onto CDs an unlimited number of times, burn the same playlist up to
11 seven times and listen to their music on an unlimited number of iPods.¹²

12 The third generation iTunes Music Store features the industry's largest online music catalog
13 of over 700,000 songs from all five major music companies and over 450 independent music
14 labels, as well as groundbreaking new features including: The rights to play songs purchased
15 from the iTunes Music Store, including songs previously purchased, on up to five personal
16 computers, two more than before.¹³

17 All iTunes Music Stores feature the same groundbreaking personal use rights, giving users
18 the ability to play songs on up to five personal computers, burn a single song onto CDs an
19 unlimited number of times, burn the same playlist up to seven times and listen to their music
20 on an unlimited number of iPods.¹⁴

21 With DRM-free music from the EMI catalog, iTunes customers will have the ability to
22 download tracks from their favorite EMI artists without any usage restrictions that limit the
23 types of devices or number of computers that purchased songs can be played on.¹⁵

24 With the expansion of iTunes Plus, customers can now download tracks from a variety of
25 labels without limitations¹⁶ on the type of music player or number of computers that purchased
26 songs can be played on.

27 With the release of iTunes Plus, customers can now download tracks from their favorite EMI
28 artists without limitations¹⁷ on the type of music player or number of computers that purchased
29 songs can be played on.

30 iTunes 9 also introduces Home Sharing, which lets you easily transfer music, movies and TV
31 shows among up to five authorized computers in your home. Family members can now view
32 up to five iTunes libraries on their home network, see only the portion of these libraries they
33 don't already have, import their favorite content directly to their own libraries, and
34 automatically add new purchases from other computers into their library... syncing music,
35 photos, movies and TV shows is easier than ever with the added ability to sync music by
36 artist and genre and sync photos by Events and Faces.¹⁸

37 ¹¹ <http://www.apple.com/pr/library/2004/sep/01/itunesaffiliate.html> (last viewed Apr. 10, 2012).

38 ¹² <http://www.apple.com/pr/library/2004/aug/10/itms.html>; repeated at <http://www.apple.com/pr/library/2004/jul/21/indie.html> (last
39 viewed Apr. 10, 2012).

40 ¹³ <http://www.apple.com/pr/library/2004/may/05/itunes.html>; repeated at <http://www.apple.com/pr/library/2004/apr/28/itunes.html> (last
41 viewed Apr. 10, 2012).

42 ¹⁴ <http://www.apple.com/pr/library/2005/mar/10/blu-ray.html>, repeated at <http://www.apple.com/pr/library/2005/jun/02/itms.html> and
43 <http://www.apple.com/pr/library/2005/jun/23/itunes.html> (last viewed Apr. 10, 2012).

44 ¹⁵ <http://www.apple.com/pr/library/2007/04/02/itunes.html> (last viewed Apr. 10, 2012).

45 ¹⁶ <http://www.apple.com/pr/library/2007/10/17/itunes.html> (last viewed Apr. 10, 2012).

46 ¹⁷ <http://www.apple.com/pr/library/2007/05/30/itunesplus.html> (last viewed Apr. 10, 2012).

47 ¹⁸ <http://www.apple.com/pr/library/2009/09/09/itunes.html> (last viewed Apr. 10, 2012).

1
2 With just one click, they can purchase the songs they want and download them directly into
their iTunes 4 music library for just 99 cents per song, without any subscription fees.¹⁹

3 The pioneering iTunes Music Store and the market-leading iPod™ digital music player,
4 providing music lovers with a seamless experience for buying, managing and listening to
their digital music collections anywhere.²⁰

5 iTunes customers can also choose to download their favorite songs from the world's largest
6 music catalog directly onto their iPhone™ 3G over their 3G network just as they do with Wi-
Fi today, for the same price as downloading to their computer. And beginning in April, based
7 on what the music labels charge Apple, songs on iTunes will be available at one of three
price points: 69 cents, 99 cents and \$1.29, with most albums still priced at \$9.99.²¹

8 11. Plaintiff and the other class members purchased one or more songs from the defendant
9 pursuant to the foregoing agreement.

10 12. In breach of the agreement, plaintiff and the class were unable to access, either
11 immediately or subsequently, one or more of their purchased songs. Further, in breach of the
12 agreement, when plaintiff and the class sought to recover the song from defendant, they were unable
13 to do so without paying for the song again.

14 13. Defendant's records indicate which songs a customer has purchased.

15 14. In breach of the contract, and despite the knowledge of each customer's purchased
16 songs, defendant charged plaintiff and the class members again for accessing a song they had already
17 purchased.

18 15. Plaintiff had an iTunes account with Defendant and contracted with Defendant to
19 purchase music.

20 16. On December 31, 2010 at 7:05 p.m., Plaintiff purchased a song from Defendant
21 through iTunes.

22 17. Plaintiff later looked for the song in her iTunes program.

23 18. The song did not appear in iTunes or on Plaintiff's computer, nor was Plaintiff able to
24 access the song in any other way.

25 19. All other attempts to access the song from Defendant were fruitless. Plaintiff was
26 totally unable to access the song.

27
28 ¹⁹ <http://www.apple.com/pr/library/2003/jun/23itunes.html> (last viewed Apr. 10, 2012).

²⁰ <http://www.apple.com/pr/library/2003/oct/20itunes.html> (last viewed Apr. 10, 2012).

1 58. Despite this knowledge, Defendant did not fix its program so that it would allow
2 Plaintiff to access or play the songs which she had purchased.

3 59. The retention of Plaintiff's money is unjust in that Defendant's own program
4 prevented Plaintiff from accessing the song that she downloaded and owned.

5 60. Plaintiff has thus been damaged.

6 61. Defendant has acted in the same way toward all members of the class.

7
8 PRAAYER FOR RELIEF

9 WHEREFORE Plaintiff demands judgment as follows:

10 1. For an Order determining at the earliest possible time that this matter may proceed as
11 a class action under C.R.C. 3.760 *et seq.* and certifying this case as such;

12 2. For an injunction prohibiting Defendant from charging customers for music that the
13 customers have already downloaded.

14 3. For consequential, incidental, and other monetary damages;

15 4. For reasonable costs and attorney fees necessarily incurred herein.

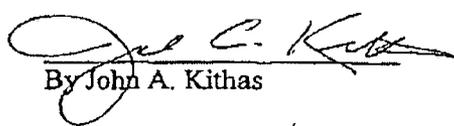
16
17 DATED: April 18, 2012

DWORKEN & BERNSTEIN CO., L.P.A.
Attorneys for Plaintiff PHOEBE JUEL

18
19
20 
21 By Patrick J. Perotti

22 DATED: April 18, 2012

LAW OFFICES OF JOHN A. KITHAS
Attorneys for Plaintiff PHOEBE JUEL

23
24
25 
26 By John A. Kithas

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: 1-12-CV-222854

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the Summons and Complaint;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: www.scscourt.org

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Peter Kirwan Department: 8

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: August 28, 2012 Time: 3:00pm in Department: 8

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed ADR Stipulation Form (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.scscourt.org or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Patrick J. Perotti (Ohio #0005481) John A. Kitbas (Calif. #64284)
 DWORKE & BERNSTEIN CO. LPA LAW OFFICES OF JOHN A. KITBAS
 60 South Park Place One Embarcadero Center, Suite 1020
 Painesville, OH 44077 San Francisco, CA 94111
 TELEPHONE NO.: (440) 352-3391 FAX NO.: (440) 352-3469

FOR COURT USE ONLY

SANTA CLARA COUNTY
 SUPERIOR COURT

ATTORNEY FOR (Name): Plaintiff PHOEBE JUEL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
 STREET ADDRESS: 191 North First Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Jose 95113
 BRANCH NAME:

FILED by **FAX**

CASE NAME:
 Juel v. Apple Inc.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (46)</p> <p><input type="checkbox"/> Other PIP/D/W/D (23)</p> <p>Non-PIP/D/W/D (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> CMI rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (26)</p> <p><input type="checkbox"/> Other non-PIP/D/W/D tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (38)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input checked="" type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (38)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 3
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related cases. (You may use form CM-015.)

Date: April 18, 2012
 John A. Kitbas


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
Coordinator
ADR Administrator
408-882-2530

Santa Clara County DRPA
408-792-2784

ATTORNEY OR PARTY WITHOUT AN ATTORNEY (NAME AND ADDRESS)	TELEPHONE NUMBER:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF:		CASE NUMBER:
DEFENDANT:		
ADR STIPULATION AND ORDER FORM		

Pursuant to California Rule of Court 3.221(a)(4), the parties and their attorneys stipulate that all parties in this action have appeared, and the claims in this action shall be submitted to the following alternative dispute resolution process:

- Mediation
- Neutral Evaluation
- Referee/Special Master
- Early Settlement Conference
- Binding Arbitration
- Non-binding Judicial Arbitration pursuant to CCP §1141.10 et seq., CRC Rule 3.810 et seq.
 - Discovery will remain open until 30 days before trial
- Other: _____

It is also stipulated that _____ (name of individual neutral, not organization) shall serve as _____ (neutral function/process) and that the session will take place on _____ (enter a FIRM date) at _____ (time).

This is is not an Order after CMC Hearing. The CMC Hearing was held on _____.

Date: _____

(Type or Print Name)

(Signature)

(Attach Additional Signature Pages if Necessary)

ORDER ON REVERSE SIDE

ORDER:

Case Number: _____

The Case Management Conference currently set for _____, 20____, at _____ AM/PM in Department _____ is hereby vacated.

Mediation Status Review

Case Status Review re: _____

Trial Setting Conference

is set for _____, 20____, at _____ AM/PM in Department _____.

Judicial Arbitration Order Review Hearing will be set by notice upon assignment of the arbitrator.

Trial Setting Conference following ADR Review is set for _____, 20____, at _____ AM/PM in Department _____.

IT IS SO ORDERED.

Date: _____
Judicial Officer

CLERK'S CERTIFICATE OF PERSONAL SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this document was hand-delivered to the parties listed below at _____ (time) on _____ (date) in the Clerk's Office, Calendar Unit of the Superior Court of California, County of Santa Clara located at 191 N. First Street, San José, California.

David H. Yamasaki, Clerk of the Court, by _____, Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true and correct copy of this document was mailed first class postage prepaid in a sealed envelope addressed as shown below and the document was mailed at _____ (time) on _____ (date) in San Jose, California.

David H. Yamasaki, Clerk of the Court, by _____, Deputy Clerk

TO: _____

TO: _____

TO: _____

TO: _____

ATTORNEY OR PARTY WITHOUT AN ATTORNEY (NAME AND ADDRESS)	TELEPHONE NUMBER:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF:		CASE NUMBER:
DEFENDANT:		
JUDGES ADR PROGRAM STIPULATION AND ORDER FORM		

The parties and their attorneys stipulate that the claims in this action be submitted to the Judges ADR Program as a

- Mediation
- Settlement Conference.

It is further stipulated that the matter be submitted to the following Judge(s), in the following order:

- 1. The Hon. _____, Judge, Superior Court of California, County of Santa Clara; or
- 2. The Hon. _____, Judge, Superior Court of California, County of Santa Clara; or
- 3. A Judge of the Superior Court of California, County of Santa Clara assigned by the Civil Supervising Judge.

We estimate the trial will take _____ days.

Parties and counsel have read and agree to be bound by the Rules of the Judges ADR Program, and the Rules Court of the Superior Court of California, County of Santa Clara.

Date: _____

(Attorney for Plaintiff, or Self-Represented Plaintiff)

(Signature)

(Attorney for Defendant or Self-Represented Defendant)

(Signature)

(Attach Additional Signature Pages if Necessary)

ORDER ON REVERSE SIDE

ORDER:	CASE NUMBER:
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Application for Judges ADR is:

- Approved
- Denied

This case is submitted for

- Mediation
- Settlement Conference

to Judge _____, Department _____

Parties and/or counsel shall contact the ADR Judge within 10 calendar days for scheduling of the hearing.

Mediation/Settlement Status Review is set for _____, 20____, at _____ A.M./P.M. in Department _____.

The Case Management Conference set for _____, 20____, at _____ A.M./P.M. in Department _____ remains set is vacated.

IT IS SO ORDERED.

Date: _____

Judicial Officer