

1 PAUL J. HALL (SBN 066084)
paul.hall@dlapiper.com
2 ALEC CIERNY (SBN 275230)
alec.cierny@dlapiper.com
3 DLA PIPER LLP (US)
555 Mission Street, Suite 2400
4 San Francisco, CA 94105
Tel: (415) 836-2500
5 Fax: (415) 836-2501

6 JOSEPH COLLINS (Admitted *Pro Hac Vice*)
joseph.collins@dlapiper.com
7 DLA PIPER LLP (US)
203 North LaSalle Street, Suite 1900
8 Chicago, IL 60601-1293
Tel: (312) 368-4000
9 Fax: (312) 236-7516

10 Attorneys for Defendant
11 Apple Inc.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 **NANCY ROMINE MINKLER,**
16 Individually and on Behalf of All Others
Similarly Situated,

17 Plaintiffs,

18 v.

19 **APPLE INC.,**

20 Defendant.

CASE NO. 5:13-cv-05332-EJD

**JOINT CASE MANAGEMENT
STATEMENT**

**(FEDERAL RULE OF CIVIL
PROCEDURE 26(f) AND CIVIL LOCAL
RULE 16-9)**

DATE: JULY 18, 2014

TIME: 9:00 A.M.

COURTROOM: 4

Pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rule 16-9, Northern District of California Standing Order, and the Order Setting Case Management Statement, Plaintiff Nancy Romine Minkler (“Plaintiff”) and Defendant Apple Inc. (“Apple”) respectfully submit this Joint Case Management Statement.

1. JURISDICTION AND SERVICE:

Plaintiff alleges that this Court has subject matter jurisdiction over this case pursuant 28 U.S.C. §1332(d) and the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711, *et seq.*, which vests original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds \$5 million and where the citizenship of any member of the class of plaintiffs is different from that of any defendant. Plaintiff further alleges that the amount-in-controversy and diverse-citizenship requirements of CAFA are satisfied in this case. Plaintiff further alleges that Apple, a corporation doing business nationwide, transacts substantial business in this judicial district and is otherwise subject to personal jurisdiction here. Plaintiff alleges that venue is appropriate in this Court under 28 U.S.C. § 1391(b) and (c) because Apple is a resident and a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this venue.

No parties remain to be served.

2. FACTS:

The following facts are set forth in either Plaintiff’s Complaint or documents referenced therein and are accepted as true for purposes of Apple’s motion to dismiss currently pending with the Court.

A. The iPhone 5.

Apple released the Apple iPhone 5 on September 21, 2012. The iPhone 5 combines a mobile phone, a portable digital music and media player, and an internet communication device into a single hand-held product. The iPhone 5 came with a limited, one-year hardware warranty (“Hardware Warranty”) that covers the iPhone’s hardware against defects in materials and workmanship for a period of one (1) year from the date of original retail purchase by the end-user purchaser. The Hardware Warranty does not cover any software installed on the iPhone. Under

1 the Hardware Warranty, Plaintiff was free to return her iPhone for a refund if she did not agree to
2 its terms. The Hardware Warranty states in capitalized typeface that it is exclusive and in lieu of
3 all other oral or written warranties, express or implied.

4 In the event of a hardware defect, Plaintiff was required to submit a warranty claim to
5 Apple during the Warranty Period, and Apple would either “(i) repair the Apple Product using
6 new or previously used parts ..., (ii) replace the Apple Product with a device that is at least
7 functionally equivalent to the Apple Product ..., or (iii) exchange the Apple Product for a refund
8 of your purchase price.” The Hardware Warranty disclaims Apple’s liability for direct, special,
9 incidental, indirect or consequential damages.

10 **B. The Maps Licensing Agreement.**

11 Apple’s App Store has over 700,000 apps for the iPhone. One of those apps is Apple
12 Maps, a navigation service that works on any Apple device (not just the iPhone 5) supporting iOS
13 6 or later. The licensing agreement covering Maps is the Apple iOS Software Licensing
14 Agreement (“Maps License Agreement”). The Maps License Agreement states that Apple does
15 not guarantee the accuracy of Maps, and it should not be relied upon where precise location
16 information is needed. The Maps License Agreement further states that Maps is provided “as is,”
17 “as available,” and “without warranty of any kind,” and disclaims all implied warranties,
18 including the implied warranty of “merchantability” and “fitness for a particular purpose.” The
19 Maps License Agreement further states that Apple does not warrant that Maps “will be
20 uninterrupted or error-free,” or that defects in Maps will be corrected. By agreeing to its terms,
21 Plaintiff acknowledged that she did not rely on any oral or written statements and that Maps was
22 not intended for situations where inaccuracies could lead to personal injury or property damage.

23 **C. The Maps Launch.**

24 Immediately after Apple Maps was launched, users and commentators publicly criticized
25 it. In response to the criticism, Apple issued a statement on September 25, 2012, saying that the
26 company is “continuously improving” Maps and “appreciates all the customer feedback.” A few
27 days later, Apple CEO Tim Cook posted a letter on the company’s website apologizing for
28 “falling short” on Maps and suggesting that customers use non-Apple map applications or website

1 while Apple works to improve Maps.

2 **D. Statements Relied On By Plaintiff.**

3 Plaintiff alleges that she saw statements made by an Apple representative in June of 2012
4 touting the new iOS 6 as a “major initiative.” Plaintiff further alleges that “[s]he chose to upgrade
5 to the iPhone 5 based on representations regarding iOS 6, a substantial part of which was the
6 defective Apple Maps.” Plaintiff further alleges that “[j]ust prior to the release of Apple’s iPhone
7 5 on September 21, 2012, [she] visited the Apple website which touted the ‘non-stop work’ of
8 Apple that led to ‘a number of improvements to Maps.’” According to Plaintiff, “[t]hese
9 representations about the new and improved Apple Maps influenced her decision to purchase the
10 iPhone 5.”

11 **E. Other Statements Referenced In The Complaint.**

12 Plaintiff alleges that she saw the letter from Apple’s CEO apologizing for Maps’ problems
13 before she purchased the iPhone 5. In paragraph 114 of the Complaint, Plaintiff alleges that
14 “Apple claims to review each application before offering it to its users” and “purports to have
15 implemented app standards,” but she does not provide the time and place of these purported
16 representations. Plaintiff does not allege that she relied on any of the foregoing statements when
17 purchasing the iPhone 5.

18 **F. Plaintiff’s Experience With Apple Maps.**

19 Plaintiff does not allege when and where she purchased her iPhone 5. Plaintiff alleges
20 only that “approximately two days” after purchasing the iPhone 5, “the Maps Application
21 improperly labeled numerous streets, buildings and landmarks, as well as led her to several
22 incorrect locations.”

23 **3. LEGAL ISSUES:**

24 This action raises the following legal issues:

- 25 • Whether Plaintiff alleges a breach of express or implied warranty claim under the
26 California Commercial Code §§ 2313, 2314, 2607;
27

- Whether Plaintiff alleges a claim under the Magnuson Moss Warranty Act, 18 U.S.C. § 2301(d)(1);
- Whether Plaintiff alleges a claim under the California Business and Professions Code § 17200, et seq., § 17500, et seq., and California Civil Code § 1750, et seq.;
- Whether Plaintiff alleges a claim for negligent misrepresentation;
- Whether Plaintiff pleads her claims against Apple with the level of particularity required by Rule 9(b) of the Federal Rules of Civil Procedure; and
- Whether the putative class should be certified under Federal Rule of Civil Procedure 23, which question includes a determination of: a) whether the class is so numerous that joinder of all members is impracticable, b) whether there are questions of law or fact common to the class, c) whether the claims or defenses of the representative parties are typical of the claims or defenses of the class, and d) whether the representative parties will fairly and adequately protect the interests of the class.

4. MOTIONS:

Pending Motions:

Apple has filed a motion to dismiss under Rule 12(b)(6) for failure to state a claim. The motion is scheduled to be heard on July 18, 2014.

Anticipated Motions:

It is anticipated that Plaintiff will move for class certification under Rule 23. Plaintiff and/or Apple may also bring motions for summary judgment and/or summary adjudication. Discovery motions may be filed if and as needed (none identified at this time).

5. AMENDMENT OF PLEADINGS:

Plaintiff may seek to amend her complaint if permitted by the Court after ruling on Apple's motion to dismiss.

6. EVIDENCE PRESERVATION:

Counsel for all of the parties have discussed with their clients the need to preserve all potentially relevant evidence.

1 **7. DISCLOSURES:**

2 As set forth in the Joint Discovery Plan provided below in Section 17, the parties propose
3 that the Initial Disclosure exchange be made 30 days after Apple answers Plaintiff's operative
4 complaint.

5 **8. DISCOVERY:**

6 **a. Discovery Taken to Date**

7 No party has taken any discovery.

8 **b. Scope of Anticipated Discovery**

9 The Parties agree to commence discovery 30 days after Apple answers Plaintiff's
10 operative complaint. The pending motion to dismiss may eliminate and/or narrow issues.
11 Thereafter, the parties anticipate conducting written discovery, deposing the named plaintiff,
12 deposing Apple representatives, expert depositions, and discovery against third parties as
13 necessary. The parties will discuss bifurcating class discovery and fact discovery to streamline
14 the proceedings.

15 **c. Electronically Stored Information**

16 The parties will discuss a protocol for the production of electronically stored information.
17 The parties will confer about

- 18 • the time frames potentially required for the production of electronically stored
- 19 information from various sources,
- 20 • the sources that will be searched,
- 21 • a mutually agreeable format for production of electronically stored information, and
- 22 • the extent to which metadata will be produced.

23 The parties anticipate submitting a stipulated electronic discovery order.

24 **9. CLASS ACTIONS:**

25 This is an alleged class action pursuant to the Federal Rules of Civil Procedure 23(a),
26 23(b)(1), (b)(2) and (b)(3). The proposed Class is defined as follows:
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28

1 All persons and entities who purchased in the United States an Apple Device for
2 their own use and not for resale, which uses utilizes Apple's iOS operating
3 systems 6.0, 6.1.3, 7.0, or 7.0.3. Excluded from the Class are (1) Apple; (2) any
4 entity in which Apple has a controlling interest; (3) Apple's officers, directors,
and employees; (4) Apple's legal representatives, successors, and assigns; and (5)
the Court to which this case is assigned.

5 The parties anticipate that Plaintiff will modify this class definition after conducting pre-
6 certification discovery, but before seeking class certification.

7 Apple contends that the case is not suitable for class treatment for a number of reasons,
8 including that (1) individual class member issues, including issues of materiality and reliance,
9 predominate over common questions of fact and law; and (2) the case does not satisfy criteria of
10 commonality, typicality, or superiority of a class.
11

12 **10. RELATED CASES:**

13 The parties are not aware of any related cases.

14 **11. RELIEF:**

15 Plaintiff seeks the following relief:

- 16 • An order certifying this case as a class action and appointing Plaintiff and her counsel
17 to represent the Class;
- 18 • A temporary, preliminary and/or permanent order for injunctive relief enjoining Apple
19 from pursuing the policies, acts and practices complained of herein;
- 20 • A temporary, preliminary and/or permanent order for injunctive relief requiring Apple
21 to undertake an informational campaign to inform members of the general public as to
22 the wrongfulness of Apple's practices;
- 23 • An award of actual, statutory and/or exemplary damages, as appropriate for the
24 particular causes of action;
- 25 • An order requiring disgorgement of Apple's ill-gotten gains by requiring the payment
26 of restitution to Plaintiff and members of the Class, as appropriate for the particular
27 causes of action;
28

- Reasonable attorneys' fees;
- All related costs of this suit;
- Pre- and post-judgment interest; and
- Such other and further relief as the Court may deem necessary or appropriate.

Plaintiff believes that at this stage it is premature to state the amount of damages sought. Plaintiff will supplement this statement with the amount of damages sought after initial fact discovery and class certification proceedings.

Apple denies any liability with respect to any of Plaintiff's claims.

12. SETTLEMENT AND ADR:

The parties believe that it is premature to explore settlement at this time. The parties have complied with ADR L.R. 3-5.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:

The parties have not consented to proceed before a magistrate for all purposes and have received an assignment to a district court judge.

14. OTHER REFERENCES:

The case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES:

The parties agree that the Court's ruling on motion(s) to dismiss will eliminate or narrow the issues in the case.

16. EXPEDITED SCHEDULE:

The parties do not believe that this is the type of action that can be handled on an expedited basis with streamlined procedures.

17. SCHEDULING:

The parties propose the following pre-trial and trial schedule, based on the "Answer Date," *i.e.*, the date that Apple files an answer to Plaintiff's operative complaint:

Initial Disclosures:	30 days after the Answer Date
Deadline for Plaintiff to File Motion for Class Certification:	8 months after the Answer Date
Close of Factual Discovery:	13 months after the Answer Date
Initial Expert Disclosures:	14 months after the Answer Date
Rebuttal Expert Disclosures:	15 ½ months after the Answer Date
Close of Expert Discovery:	17 months after the Answer Date
Deadline for Filing Dispositive Motions:	18 ½ months after the Answer Date
Final Pretrial Conference:	30 days after the Court's ruling on dispositive motions
Trial Date:	75 days after the Court's ruling on dispositive motions

18. TRIAL:

The parties believe that it is too early to estimate the length of trial. Plaintiff demanded a trial by jury in her complaint.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS:

The parties have each filed a Certification of Interested Entities or Parties and certify that, other than the named parties, there is no such interest to report.

20. OTHER MATTERS:

The parties do not presently know of any other matters to be addressed here that may facilitate the just, speedy and inexpensive disposition of this matter.

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Dated: July 11, 2014

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Joseph Collins

JOSEPH COLLINS

Attorneys for Defendant
APPLE INC.

STEWART & STEWART, P.C.

By: /s/ Donald W. Stewart

DONALD W. STEWART

Attorneys for Plaintiff
NANCY ROMINE MINKLER