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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 IN RE: APPLE INC. DEVICE
11 PERFORMANCE LITIGATION

Case No: 5:18-MD-02827-EJD

CLASS ACTION

12 **AMENDED [PROPOSED] ORDER**
13 **GRANTING CONSOLIDATION OF**
14 **RELATED ACTIONS; APPOINTMENT**
15 **OF INTERIM CO-LEAD COUNSEL,**
16 **PLAINTIFFS' EXECUTIVE**
17 **COMMITTEE & STEERING**
18 **COMMITTEE**

16 This relates to:

17 ALL ACTIONS
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Judge: Hon. Edward J. Davila
Courtroom: 4, 5th Floor
Hearing Date: May 10, 2018
Hearing Time: 10:00 a.m.

1 WHEREAS, the Court has received and considered motion(s) to consolidate the currently-
2 related cases against Defendant;

3 WHEREAS, the Court has received and considered motion(s) to appoint interim lead
4 counsel, an executive committee, and members of a steering committee submitted by various
5 counsel for the Plaintiffs;

6 WHEREAS, the Court recognizes the need to appoint an interim lead counsel structure to
7 coordinate litigation efficiently on behalf of all class members, and the importance of keeping
8 time, expense reports, reasonable fees, and eliminating duplication of efforts;

9 WHEREAS, having considered all timely submissions in light of the criteria set forth in the
10 Manual for Complex Litigation and Federal Rule of Civil Procedure 23(g), and having considered
11 oral argument during the hearing held on May 10, 2018, the Court orders as follows:

12 **I. CONSOLIDATION**

13 The district court may consolidate actions involving common questions of law and fact.
14 Fed. R. Civ. P. § 42(a)(2). The court exercises “broad discretion to decide how cases on its docket
15 are to be tried so that the business of the court may be dispatched with expedition and economy
16 while providing justice to the parties.” *Morin v. Turpin*, 778 F. Supp. 711, 733 (S.D.N.Y. 1991)
17 (citing 6 C. Wright & A. Miller, Federal Practice and Procedure 1471, at 359 (1971). In exercising
18 this discretion, the court “weighs the saving of time and effort consolidation would produce against
19 any inconvenience, delay, or expense that it would cause.” *Huene v. United States*, 743 F.2d 703,
20 704 (9th Cir. 1984). Consolidation may occur upon motion by a party or sua sponte. *In re Adams*
21 *Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987).

22 The Court finds that each case presents substantially similar factual and legal issues. Due
23 to the same or similar set of circumstances, discovery issues relating to each action will be parallel.
24 Furthermore, the actions are in the same procedural postures as Defendants have not yet filed an
25 answer or responsive motion. There is no basis to find that consolidation would cause
26 inconvenience, delay or expense, especially since the parties agree with the consolidation request.

27 Accordingly, the Court finds that consolidation appropriate and the motions to consolidate
28 are GRANTED.

II. APPOINTMENT OF INTERIM CLASS COUNSEL

This Order is intended to create a leadership structure for plaintiffs' counsel in order to organize, simplify, and streamline the handling of these matters on behalf of all plaintiffs, consistent with the fair administration of justice.

This Order sets forth procedures that will apply in the federal MDL proceeding, and applies to all cases that today or in the future become part of the MDL proceeding and any consolidated action that was previously a part of the coordinated MDL proceeding if the case is subsequently pending before this Court, and it binds all parties and their counsel in all such cases, including all attorneys appointed by this Court to leadership positions in the MDL proceeding.

A. Co-Lead Counsel

The Court has considered the chief criteria that lead plaintiffs' counsel should possess: (1) knowledge and experience in prosecuting complex litigation, including class actions; (2) willingness and ability to commit to a time-consuming process; (3) ability to work cooperatively with others; and (4) access to sufficient resources to prosecute the litigation in a timely manner. Fed. R. Civ. P. 23(g)(1)(A). The Court hereby appoints Cotchett, Pitre & McCarthy LLP and Kaplan Fox & Kilsheimer LLP as Interim Co-Lead Counsel in this action. The Court finds that these firms have extensive knowledge and experience in prosecuting complex litigation and class actions, are both willing and able to commit to a time-consuming process of litigating this case, have shown the ability to work cooperatively with others, garnering the support of a great number of colleagues and fellow counsel in this MDL, and have access to sufficient resources to prosecute this litigation in a timely manner.

B. Plaintiffs' Executive Committee

Having reviewed motions and supporting firm resumes, and finding that the proposed committees will advance judicial interests of efficiency and protect the interests of the proposed Class, the Court hereby appoints the following individuals to the Plaintiffs' Executive Committee ("PEC") (a chart illustrating the PEC composition is also attached hereto):

1 Mark J. Dearman
 2 **ROBBINS GELLER RUDMAN &**
 3 **DOWD LLP**
 4 120 East Palmetto Park Road, Suite 500
 5 Boca Raton, FL 33432
 6 (561) 750-3000
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6 Derek Howard
 7 **DEREK G. HOWARD LAW FIRM**
 8 42 Miller Ave
 9 Mill Valley, CA. 94941
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10 Kenneth Johnston
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D. Changes in Membership of EC

Appointments to the EC are personal in nature and may not be changed absent the authorization of Co-Lead Counsel or by court order. Accordingly, this Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace them, on their own request, or of this Court's own motion, should they become unable to do so. These appointments will last for the duration of the MDL proceeding, unless changed by Co-Lead Counsel or ordered by the Court.

E. Steering Committee (Designated Counsel)

Co-Lead Counsel or the PEC may utilize members of the Steering Committee ("Designated Counsel") on an ad hoc basis and appoint qualified counsel to perform legal services for plaintiffs. The Steering Committee members may aid and support any of the Co-Lead Counsel or PEC committees in executing the effective and efficient conduct of this litigation, and may also participate in the determination of any significant matters that arise in the litigation. The responsibilities of Designated Counsel shall be determined by Co-Lead Counsel or the individual PEC member(s) or subcommittee that is responsible for the particular project, service, or work assignment to be completed by Designated Counsel.

The Court hereby appoints the following individuals to the Steering Committee:

Joshua H. Eggnatz
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III. COMPOSITION AND RESPONSIBILITIES OF INTERIM CO-LEAD COUNSEL AND PLAINTIFFS' EXECUTIVE COMMITTEE

1. Responsibilities of Interim Co-Lead Counsel

Plaintiffs' Interim Co-Lead Counsel shall be responsible for determining the litigation strategy on behalf of all plaintiffs, and for the conduct of the litigation on behalf of the Plaintiff

1 class, including any trial or resolution. Plaintiffs' Interim Co-Lead Counsel shall promote the
 2 orderly and efficient conduct of this litigation and to avoid unnecessary duplication and
 3 unproductive efforts; act as spokesperson (either personally or by designee) for the Plaintiff class
 4 at pretrial conferences; and delegate work responsibilities to the Plaintiffs' Executive Committee
 5 or its Chair.

6 Plaintiffs' Interim Co-Lead Counsel shall have authority to enter into stipulations (either
 7 personally or by designee on the PEC) necessary for the conduct of the litigation with opposing
 8 counsel. No request for discovery, or other pre-trial or trial proceedings shall be initiated or filed,
 9 and no dispositive motion or response to any dispositive motion shall be filed by any plaintiff,
 10 except through Plaintiffs' Interim Co-Lead Counsel.

11 **2. Executive Committee Chair (Administrative Counsel)**

12 The Court hereby appoints Mark Dearman of Robbins Geller Rudman & Dowd LLP as the
 13 Chair of the Plaintiffs' Executive Committee ("PEC Chair") with the following duties:

- 14 a. The PEC Chair shall delegate work responsibilities to other Plaintiffs' counsel in a
 15 fair and orderly manner, and monitor the activities of all Plaintiffs' counsel to
 16 assure that Plaintiffs' pretrial preparation is conducted effectively, efficiently, and
 17 economically, that schedules are met, and that unnecessary expenditures of time and
 18 expense are avoided.
- 19 b. The PEC Chair shall be available and responsible for communications to and from
 20 this Court, including distributing orders and other directions from the Court to
 21 counsel, and for providing the local rules, standing orders, and guidelines of the
 22 U.S. District Court for the Northern District of California, and any other judge's
 23 rules and standing orders of the Court, to counsel as required by applicable Court
 24 rules.
- 25 c. The PEC Chair shall be responsible for creating and maintaining a master service
 26 list of all parties and their respective counsel, and shall promptly advise the Court
 27 and Defendants' counsel of changes to Plaintiffs' Service List.

- d. The PEC Chair shall be responsible for ensuring that any updates and changes to the local rules, standing orders, and guidelines of this District or the Court are timely communicated to counsel as needed, working with the PEC member(s) where it is appropriate and relevant to their responsibilities.
- e. The PEC Chair shall be responsible for distributing to counsel, as appropriate, Orders notices, and correspondence from the Court, to the extent such documents are not electronically filed; and discovery, pleadings, correspondence, and other documents from Defendants' counsel that are not electronically filed.
- f. The PEC Chair shall be responsible for obtaining and maintaining time records for Plaintiffs' counsel, as well as preparing and submitting reports to the Court as requested.

3. State Court & Regulatory Liaison Counsel

The Court hereby appoints Derek Howard of the Derek G. Howard Law Firm as the State Court & Regulatory Liaison Counsel. The State Court & Regulatory Liaison Counsel shall monitor any ongoing litigation in any state court, including California, as well as any governmental or regulatory proceedings, and coordinate with such proceedings to foster efficiency, minimize duplicative discovery, and avoid management difficulties. The State Court & Regulatory Liaison Counsel shall report to the Interim Co-Lead Counsel, and the Court as requested, and shall be responsible for ensuring that any material developments and relevant updates in the state court proceedings are communicated to the appropriate members of the PEC.

4. International Liaison Counsel

The Court hereby appoints Eli Greenstein of Kessler Topaz Metzler Check LLP, Kenneth Johnston of Johnston Pratt PLLC, and Kyle McGee of Grant & Eisenhofer, P.A., as International Liaison Counsel. The International Liaison Counsel shall monitor any ongoing litigation in any international courts, and continue to foster efficiency, minimize duplicative discovery, and avoid management difficulties. The International Liaison Counsel shall report to the Interim Co-Lead Counsel and ensure any material developments and relevant updates in the international courts are communicated to the appropriate members of the PEC. The International Liaison Counsel shall also research, make recommendations to Interim Co-Lead Counsel, and assist in the pursuit of any claims

1 based on laws outside the United States or on behalf of Class members residing outside the United
2 States.

3 **5. Law and Briefing Committee**

4 The Court hereby appoints Amy Keller of Dicello Levitt & Casey LLC and Kathleen
5 Herkenhoff of Haeggquist & Eck as co-chairs of the Law and Briefing Committee, responsible for
6 coordinating the research and preparation of all pleadings and motions and assisting in the
7 preparation of oral arguments at any hearings.

8 **6. Defensive Discovery and Plaintiff Coordination Committee**

9 The Court hereby appoints Gayle Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield
10 LLP and Tina Wolfson of Ahdoot & Wolfson as co-chairs of the Defensive Discovery and Plaintiff
11 Coordination Committee, responsible for coordinating all discovery obligations of Plaintiffs and
12 the Class consistent with the requirements of the Federal Rules of Civil Procedure, including the
13 preservation of information, Rule 26 initial disclosures, responses to interrogatories, requests for
14 production of documents, and request for admissions, and examination at depositions, as well as
15 any motion practice related thereto.

16 **7. Offensive Discovery and ESI Coordination Committee**

17 The Court hereby appoints Ariana Tadler of Milberg Tadler Phillips Grossman LLP and
18 Karin Swope of Keller Rohrbach LLP as co-chairs of the Offensive Discovery and ESI
19 Coordination Committee, responsible for coordinating all discovery propounded on behalf of the
20 Plaintiffs and the Class consistent with the requirements of the Federal Rules of Civil Procedure,
21 including the pursuit of information, Rule 26 initial disclosure negotiation, interrogatories, requests
22 for production of documents, requests for admissions, depositions, and any motion practice related
23 thereto. The Offensive Discovery and ESI Coordination Committee shall also be responsible for
24 coordinating ESI practices in this case, including negotiations with Defendant concerning an e-
25 discovery plan, developing an ESI protocol for this case, and ensuring that appropriate protective
26 orders are in place to guard against any release of proprietary, confidential, or personal ESI. The
27 Offensive Discovery and ESI Coordination Committee will work with the EC to assess ESI needs
28 and issues, implement appropriate ESI preservation procedures, identify custodians of potentially
relevant ESI, and develop search terms for data searches. The Offensive Discovery and ESI

1 Coordination Committee will handle ESI processing tasks and shall ensure that responsive ESI is
2 collected and produced in a cost-effective manner that preserves the integrity of that ESI and
3 enables counsel to recognize and appropriately deal with evidentiary issues associated with the
4 admissibility of electronically generated and stored evidence.

5 **8. Discovery: Device Development**

6 The Court hereby appoints Tim Blood of Blood Hurst O'Reardon LLP and Christopher
7 Ridout of Zimmerman Reed LLP as co-chairs of the Discovery/Device Development Committee,
8 responsible for coordinating all discovery efforts related to the development of the devices at issue,
9 including the relevant technology together with the Offensive Discovery and ESI Coordination
10 Committee. The Device Development Committee will inform and educate the Offensive
11 Discovery and ESI Coordination Committee about the relevant legal and factual issues in the case
12 impacting discovery, including witnesses, key evidentiary issues, and any relevant risks associated
13 with the discovery tasks at hand, and will work with the Experts Committee to select, retain, and
14 consult with appropriate experts concerning device development issues.

15 **9. Discovery: Marketing**

16 The Court hereby appoints Melissa Emert of Stull, Stull & Brody and Rosemary Rivas of
17 Levi & Korsinsky LLP as co-chairs of the Discovery/Marketing Committee, responsible for
18 coordinating all discovery efforts related to the marketing of the devices at issue together with the
19 Offensive Discovery and ESI Coordination Committee. The Discovery/Marketing Committee will
20 inform and educate the Offensive Discovery and ESI Coordination Committee about the relevant
21 legal and factual issues in the case impacting discovery, including witnesses, key evidentiary issues,
22 and any relevant risks associated with the discovery tasks at hand, and will work with the Experts
23 Committee as necessary to select, retain, and consult with appropriate experts concerning marketing
24 issues.

25 **10. Discovery: Third Party**

26 The Court hereby appoints Charlie Schaeffer of Levin Sedran & Berman and Geoffrey
27 Rushing of Saveri & Saveri Inc. as co-chairs of the Third Party Discovery Committee, responsible
28 for coordinating all third party discovery propounded on behalf of the Plaintiffs and the Class
consistent with the requirements of the Federal Rules of Civil Procedure and applicable local rules,
**AMENDED [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR
CONSOLIDATION, APPOINTMENT OF INTERIM CO-LEAD COUNSEL AND
PLAINTIFFS' COMMITTEES; Case No. 5:18-MD-02827-EJD**

1 including the pursuit of documents, depositions, and any motion practice related to third party
 2 discovery.. The committee will coordinate third party discovery with the Offensive Discovery and
 3 ESI Coordination Committee and appropriate e committees, to evaluate and develop procedures and
 4 a plan for discovery of third parties that is efficient, cost-effective, and non-duplicative.

5 **11. Experts**

6 The Court hereby appoints Doug McNamara of Cohen Milstein Sellers & Toll LLC and
 7 Stephen Rosenthal of Podhurst Orsek P.A. as co-chairs of the Experts Committee, responsible for
 8 researching and retaining experts as to matters relevant to this action, overseeing the preparation of
 9 expert disclosures, reports and depositions consistent with the requirements of the Federal Rules of
 10 Civil Procedure, and shall coordinate expert discovery with the Offensive Discovery and ESI
 11 Coordination Committee and the PEC, including the response to experts disclosed by Defendants,
 12 and any motion practice related thereto.

13 **12. Damages/Settlement**

14 The Court hereby appoints Ben Barnow of Barnow & Associates and Anthony Fata of
 15 Cafferty Clobes Meriwether & Sprengel LLP as co-chairs of the Damages/Settlement Committee,
 16 responsible for coordinating efforts relating to damages, whether monetary or injunctive relief,
 17 including issues raised in discovery, expert disclosures, motions or trial, as well as assisting Co-Lead
 18 Counsel in representing the Plaintiff class in any arbitrations, mediations, and/or settlement
 19 conferences, consistent with the Court's ADR Local Rules and procedures.

20 **13. Trial Preparation**

21 The Court hereby appoints Stanley Bernstein of Bernstein Liebhard and Todd Garber of
 22 Finkelstein Blankenship as co-chairs of the Trial Preparation Committee, responsible for assisting
 23 Co-Lead Counsel in all stages of trial preparation, including but not limited to the structure of the
 24 trial in the pretrial process, submission of detailed trial plans, decisions regarding issues, claims, and
 25 defenses that may apply, execution of the trial plan, preparation of pre-trial motions and all trial
 26 documents required under this Court's standing order, and consultation with Co-Lead Counsel

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2 regarding trial strategy and the conferring and planning that is mandated by Rule 26(f) of the Federal
3 Rules of Civil Procedure and by ADR Local Rule 3-5,

4 **IT IS SO ORDERED.**

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6 Dated: May _____, 2018

EDWARD J. DAVILA
United States District Judge

PLAINTIFFS' CO-LEAD COUNSEL

Cotchett, Pitre & McCarthy LLP

Kaplan Fox & Kilsheimer LLP

PLAINTIFFS' EXECUTIVE COMMITTEE (PEC)

1. Administration / PEC Chair

Mark J. Dearman
*(Robbins Geller
Rudman & Dowd
LLP)*

2. State Court & Regulatory Liaison

Derek Howard
*(Derek G. Howard
Law Firm)*

3. International Liaison

Eli Greenstein
*(Kessler Topaz
Metzler Check LLP)*

Kenneth Johnston
(Johnson Pratt)

Kyle McGee
*(Grant &
Eisenhofer)*

4. Law & Briefing

Amy Keller
*(Dicello Levitt &
Casey LLC)*

Kathleen Herkenhoff
*(Haeggquist & Eck,
LLP)*

5. Discovery: Defensive & Plaintiff Coordination

Gayle Blatt
*(Casey Gerry Schenk
Francavilla Blatt &
Penfield LLP)*

Tina Wolfson
(Ahdoot & Wolfson)

6. Discovery: Offensive & ESI Coordinator

Ariana Tadler
*(Milberg Tadler
Phillips Grossman
LLP)*

Karen Swope
(Keller Rohrbach)

7. Discovery: Device Development

Timothy Blood
*(Blood Hurst
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Christopher Ridout
*(Zimmerman Reed
LLP)*

8. Discovery: Marketing

Melissa Emert
*(Stull, Stull &
Brody)*

Rosemary Rivas
*(Levi & Korsinsky
LLP)*

9. Discovery: Third Party

Charles Schaeffer
*(Levin Sedran &
Berman)*

Geoffrey Rushing
*(Saveri & Saveri
Inc.)*

10. Experts

Doug McNamara
*(Cohen Milstein
Sellers & Toll PLLC)*

***Stephen F.
Rosenthal***
*(Podhurst Orsek
P.A.)*

11. Damages / Settlement

Ben Barnow
*(Barnow &
Associates)*

Anthony Fata
*(Cafferty Clobes
Meriwether &
Sprengel LLP)*

12. Trial Prep

Stanley Bernstein
*(Bernstein
Liebhard, LLP)*

Todd Garber
*(Finkelstein,
Blankinship, Frei-
Pearson & Garber,
LLP)*

PLAINTIFFS' STEERING COMMITTEE (PSC)