**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MASSACHUSETTS**

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| SIONYX, LLC,<br>*Plaintiff,*<br>vs.<br>APPLE INC.,<br>*Defendant*. | Civil Action No. 1:24-cv-12354-JEK<br>JURY TRIAL DEMANDED |

**JOINT STATEMENT AND PROPOSED SCHEDULING ORDER**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule 16.1(d), and the Court's February 5, 2025 Notice of Scheduling Conference, Plaintiff SiOnyx, LLC ("SiOnyx") and Defendant Apple Inc. ("Apple") submit this joint statement outlining the Parties' proposed discovery plan and pretrial schedule. The initial status conference in this matter is set for February 28, 2025.

## I. GENERAL PROVISIONS PURSUANT TO LOCAL RULE 16.1

### A. Agenda for Scheduling Conference

The Parties have agreed to the following agenda for the scheduling conference:

1. Overview of the case and major issues
2. Case schedule
3. The Parties' proposed discovery plan
4. Amendments to the protective order
5. Status of settlement discussions

### B. Obligation of Counsel to Confer

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule 16.1(b), the Parties conferred on February 7, 2025. For the purposes of calculating subsequent dates, the Parties agree that February 7, 2025, shall be considered the Rule 26(f) conference date.

### C. Trial by Magistrate Judge

The Parties do not consent to trial by magistrate judge.

### D. Alternative Dispute Resolution

At this time, the Parties do not believe alternative dispute resolution before a magistrate judge would be beneficial.

### E. Settlement Proposal

Pursuant to Local Rule 16.1(c), SiOnyx presented a written settlement proposal to Apple on February 19, 2025. Apple provided a written response to SiOnyx's settlement proposal on February 21, 2025.

### F. Certifications Pursuant to Local Rule 16.1(d)(3)

The Parties are in the process of conferring with counsel and will file their respective Local Rule 16.1(d)(3) certifications under separate cover.

## II. CONCISE SUMMARY OF POSITIONS

### A. Plaintiff's Concise Summary

As detailed in SiOnyx's Amended Complaint, SiOnyx alleges that Apple directly and/or indirectly infringes, literally and/or under the doctrine of equivalents, one or more claims of United States Patent No. 9,064,764 (the "764 Patent"), United States Patent No. 10,224,359 (the "359 Patent"), and United States Patent No. 11,721,714 (the "714 Patent") (collectively, the "Asserted Patents") pursuant to 35 U.S.C. §§ 271, *et seq.* SiOnyx further alleges that Apple's

infringement has been deliberate, willful, and with full knowledge of, or willful blindness to, the Asserted Patents.

As detailed in SiOnyx's Amended Complaint, as a result of Apple's infringement, SiOnyx seeks a judgment that Apple has infringed and continues to infringe; an award of damages sufficient to compensate SiOnyx for no less than a reasonable royalty pursuant to 35 U.S.C. § 284 and 35 U.S.C. § 287; a judgment that Apple's infringement has been willful and treble damages pursuant to 35 U.S.C. § 284; and a judgment that this is an exceptional case and that SiOnyx be awarded its costs, expenses, and attorneys' fees pursuant to 35 U.S.C. § 285.

### B. Defendant's Concise Summary

On January 8, 2025, Apple filed a Motion to Strike and Partial Motion to Dismiss Plaintiff's First Amended Complaint (ECF No. 30), wherein Apple moved to dismiss SiOnyx's claims of willful and indirect infringement. Apple's motion is fully briefed and ready for the Court's resolution. Apple denies that it infringes or has infringed any valid, enforceable claim of any of the Asserted Patents. Apple denies that SiOnyx is entitled to any of the relief that it seeks. Pursuant to 35 U.S.C. § 285, Apple plans to seek to recover the costs and attorneys' fees expended in defending against SiOnyx's claims.

## III. DISCOVERY PLAN

The parties jointly propose to the Court the following discovery plan:

### A. Initial Disclosures

The Parties agree to exchange the information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure by Friday, March 14, 2025.

### B. Scope of Discovery

All facts relating to the claims, counterclaims, and defenses of the parties, and to the asserted relief, and/or any other issues raised in the pleadings and/or contentions as they

presently exist or may be amended. The parties do not presently propose conducting discovery in phases. The Parties have agreed to the Discovery Plan and Proposed Schedule, attached hereto as Exhibit A. The Discovery Plan includes procedures for, and limits to, the preservation and discovery of electronic materials.

**C. Phased Discovery**

The parties do not propose bifurcated or phased discovery in this action.

**D. Protective Order**

Apple submits that a case-specific protective order is warranted in this case, since it expects that discovery will entail production of documents and/or testimony containing confidential, proprietary, personal, and/or commercially sensitive information. Moreover, Apple submits that a case-specific protective order is necessary to balance the Parties' need for information to conduct the litigation against their need to maintain the confidentiality of certain information. The Parties will cooperate to draft a case-specific protective order, which they will submit to the Court for approval on or by the date ordered by the Court.

**E. Electronically Stored Information**

All documents existing in color shall be produced in color in electronic format in single-page JPEG or PDF format or equivalent, or, if existing in black and white, in single-page, Group IV tagged image file format ("TIFF"), in accordance with the following:

1. TIFF Image files, JPEG files, or PDF files shall be produced along with Concordance/Opticon load files linking the images to the corresponding document that indicate the beginning and ending of each document. Each file shall be named according to the unique corresponding Bates number associated with the first page of the document. Each file shall be branded according to the Bates number and any necessary confidentiality designation as provided in the Protective Order. If a document is more than one page, the unitization of the

document and any attachments and/or affixed notes shall be maintained as they existed in the original document. When it is impracticable for an electronic document to be produced in this manner, including because any information contained in the document would be omitted, distorted, reorganized, or otherwise made more difficult to read or understand than the document's native format, a party may produce the document in its native format.

2. Extracted text shall be provided in document-level text files. However, for documents which already exist in PDF format prior to production (i.e., which the producing party receives from a client or third party in PDF format), the producing party may provide them in that same PDF format, whether searchable or non-searchable. For documents converted to PDF format prior to production, the producing party shall make reasonable efforts to convert to searchable PDF.

3. Parent and child emails. If producing emails, the Parties shall produce email attachments sequentially after the parent email. With respect to an email chain, the Parties are permitted to produce the longest unique chain and the Parties do not need to separately produce the lesser-included emails unless those lesser-included emails include unique attachments not included in the longest chain. If a lesser-included email includes a unique attachment, then the lesser-included email must be separately produced with the attachment. If any part of an email or its attachments is responsive, the entire email and attachments will be produced, except any attachments that must be withheld or redacted on the basis of privilege, third party confidentiality obligations (until consent is received or a court orders otherwise), immunity or privacy laws, or as otherwise permitted by written agreement of the Parties.

4. When producing documents, the Parties will keep document families intact. For the purposes of this Stipulation, a "document family" is a collection of pages or files,

constituting a logical single communication of information, but consisting of more than a single stand-alone record. One example of a document family is an email (the parent) containing an attachment (the child).

5. Each document image shall contain a footer with a sequentially ascending production number. Documents will be produced with sequential Bates numbering. To the extent a producing party departs from sequential Bates numbering of documents, the producing party will provide an explanation of its numbering convention to the receiving party.

6. Scanned images of hardcopy or paper documents will be logically unitized to preserve the integrity of the document. All hardcopy or paper documents shall be scanned and produced in the same manner as documents existing in electronic format, above.

7. Native Files. All spreadsheets (*e.g.*, excel, .xls, .xlsx, .csv, etc., but not including .numbers in the first instance) shall be produced in native format. A party may request the native version of any ESI, and the parties will meet and confer to discuss requests for the production of files in native format, on a case-by-case basis. A party shall not make unduly burdensome and unreasonable requests for the production of documents in native format, and a party shall not unreasonably refuse a request for the production of documents in native format. If a dispute arises with regard to requests for the production of files or file types in native format, the Parties will meet and confer in good faith to try to resolve it. If the Parties are unable to reach agreement with regard to requests for additional documents in native-file format, the Parties reserve the right to seek relief from the Court. Documents produced natively shall be represented in the set of imaged documents by a slipsheet indicating the production identification number and confidentiality designation for the native file that is being produced. A party may produce a

document in a non-native format where production in native format would result in the production of privileged or otherwise non-discoverable information.

8. Requests for Hi-Resolution Documents. The parties agree to respond to reasonable and specific requests for the production of higher resolution images. Nothing in this stipulation shall preclude a producing party from objecting to such requests as unreasonable in number, timing or scope, provided that a producing party shall not object if the document as originally produced is illegible or difficult to read. The producing party shall have the option of responding by producing a native-file version of the document. If a dispute arises with regard to requests for higher resolution images, the parties will meet and confer in good faith to try to resolve it.

9. Materials Requiring Different Production Format. If particular documents or materials warrant a different format from that described above, then the Parties will cooperate to arrange for the mutually-acceptable production of such documents. The Parties agree to not intentionally degrade the searchability of documents as part of the document production process.

10. Custodian. Regardless of the format of the documents, the Parties shall identify the individual custodian or the other source of the document.

11. Metadata. Except as specified herein, ESI, and emails (if any), will be produced as single-paged JPEG/PDF/TIFF images with associated text and load files. The producing party shall produce the following categories of metadata with the load file, where applicable, and to the extent reasonably feasible. The Parties are not obligated to create and produce metadata for any document that does not contain such metadata in the native version of the document at the time the document is collected. The parties reserve their rights to object to any request for the creation of metadata for documents that do not contain metadata in the original.

| Field Name | Relates to Doc Type | Description |
|---|---|---|
| BegAttach | All | The Document ID number associated with the first page of a parent document or parent email. |
| EndAttach | All | The Document ID number associated with the last page of the last attachment to a parent document or parent email. |
| Authlast | Office Doc | |
| PgCount/Pages | All | The number of pages for a document. |
| Bcc | Email | The display name of the blind copyee(s) of an email. |
| BegDoc# | Doc and Email | The Document ID number associated with the first page of a document or email. |
| Cc | Email | The display name of the copyee(s) of a email. |
| Datecrtd/Datecreated | Doc | Date the document was created |
| Datemod/Datesaved | Doc | Date the document was last modified. |
| Datercvd | Email | The date the email was received; or for email attachments, the date the parent email was received |
| Datesent | Email | The date the email was sent; or for email attachments, the date the parent email was sent |
| NativeFile/DocLink | Doc or Email, if native | File path location to the current native file location on the delivery medium. |
| Enddoc# | Doc and Email | The Document ID number associated with the last page of a document or email |
| Filename | Doc | Original file name of the native file, including file extension. |
| FileExt | Doc | File extension of original native file. |
| Filesize | Doc | The size of original native file |

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| From | Email | The display name of the author or sender of an email. |
| Hash (e.g., Md5Hash or SHAH-256) | All | Document hash value (used for deduplication or other processing). |
| Email_Subject | Email | The subject line of an email. |
| TimeCrtd/TimeCreated | Doc | Time the document was created |
| TimeMod/TimeSaved | Doc | Time the document was last modified |
| TimeRcvd | Email | The time the email was received; or for email attachments, the date the parent email was received |
| TimeSent | Email | The time the email was sent; or for email attachments, the time the parent email was sent |
| To | Email | The display name of the recipient(s) of an email. |
| Custodian | All | The custodian of a document or an email. |
| Allcustodians | All | All custodians who were in possession of a deduplicated email or document, including the person or group identified in the CUSTODIAN field. |

12. Deduplication. A party is only required to produce a single copy of a responsive document. A party may remove exact duplicate documents (*i.e.*, documents with the same content), including, but not limited to, email, to reduce the unnecessary cost of reviewing and producing exact duplicate documents. Data may be de-duplicated on a global level. Names of custodians of copies of files eliminated due to global deduplication shall be provided in the "Allcustodians" metadata field accompanying the original file.

13. Culling and Filtering. Each party will use reasonable efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Hash values that may be filtered out during this process are located in the

National Software Reference Library ("NSRL") NIST hash set list. Additional culling of system file types based on file extension may include, but are not limited to: WINNT, LOGS, DRVS, C++ Program File (c), C++ Builder 6 (cpp), Channel Definition Format (cdf), Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard File (rwz), Scrap Object, System File (dll), temporary files (tmp), Windows Error Dump (dmp), Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), Program Installers.

14. Notwithstanding the foregoing, obligations to preserve and produce potentially response electronically-stored information will be reasonable and proportionate. To reduce the costs and burdens of preservation, the following categories of documents do not need to be preserved or searched for production:

1. "deleted," "slack," "fragmented," or "unallocated" data on hard drives;
2. random access memory (RAM) or other ephemeral data;
3. on-line access data such as temporary internet files, history, cache, cookies, temporary file folders, etc.;
4. data in metadata fields that are frequently updated automatically, such as last opened dates, provided that last modified dates are preserved and produced;
5. instant messaging;
6. automatically saved versions of documents;
7. system or executable files (.exe, .dll, etc.);

8. audio, video, or audio-visual information, including telephonic recordings or voicemail (*e.g.*, .wav, .mp3, .avi, .swf, etc.), unless the responsiveness of specific files is made known to counsel during search, review, collection, or production of other responsive information;

9. unreadable or corrupt files;

10. data from Blackberry, iPhone, or other smartphone devices where the producing party conducts a reasonable inquiry and determines that the information and documents contained on those devices is most likely duplicative and can be obtained from other sources (*e.g.*, other email systems);

11. materials retained primarily for backup or disaster recovery purposes; and

12. other forms of ESI whose preservation requires extraordinary affirmative measures that are not utilized in the ordinary course of business.

**F. Scope of Electronic Discovery**

The parties agree that unless otherwise noted below, the scope of discovery will be governed by Rule 26 of the Federal Rules of Civil Procedure and each party shall conduct a reasonable search for responsive documents in the location(s) where they are likely to reside. The producing party shall not be required to search for additional copies of such responsive documents that may be located elsewhere absent a showing of good cause that the production of such additional copies is necessary.

1. **Discovery of Email**

Except as provided for in this paragraph, the Parties agree that email shall not be subject to discovery from the Parties. A party may specifically request email discovery only by propounding specific email production requests and providing a written explanation of good cause along with its formal requests – *e.g.*, because no other form of document production will

provide sufficient evidence of a matter in dispute or requiring proof. In no event shall a Party propound more than five email production requests. If a party propounds one or more email production requests, the Parties shall then discuss the request(s) and agree to a specific and narrowly tailored email protocol involving, *e.g.*, appropriate custodian(s), search terms, and time frame(s). If the Parties are unable to reach agreement with regard to requests for email discovery, the Parties reserve the right to seek relief from the Court.

**G. Third-Party Discovery**

The Parties shall serve upon each other all subpoenas served upon a third party no later than the same day of service of the subpoena on the third party.

All material received pursuant to any third party subpoena shall be produced to the other Party within five business days of receipt from the third party.

If a Party intends to depose a third party, that Party will make a good faith effort to coordinate with all Parties on the time, date, and location of the deposition.

The Parties shall take reasonable steps to ensure that the existence of confidentiality or non-disclosure agreements with non-parties ("Non-Party Confidentiality Agreements") does not significantly delay the production of any such documents or information that a Party is obligated to produce but for the existence of the Non-Party Confidentiality Agreement. In no event shall the Parties be required to take any action that would result in a breach of a Non-Party Confidentiality Agreement.

**H. Discovery of Expert Materials**

Pursuant to Rules 26(a)(2) and 26(b)(4)(B) and (C) of the Federal Rules of Civil Procedure, testifying experts shall not be subject to discovery on any draft of their reports and such draft reports, notes, or outlines for draft reports are also exempt from production and discovery. The parties agree that no discovery can or will be taken from any non-testifying

expert, except to the extent that the work of a non-testifying expert is relied upon by a testifying expert. In the event that a testifying expert relies upon testing or other analysis conducted by a non-testifying expert, discovery, including deposition testimony, may be taken from the non-testifying expert. No conversations or communications between counsel and any testifying or non-testifying expert, including emails, written agreements, or correspondence, will be subject to discovery, unless the conversations or communications are relied upon by a testifying expert in formulating his or her final report, or any opinion in this litigation. Materials, communications, and other information exempt from discovery shall be treated as attorney work product.

The parties agree not to inquire at deposition, trial, or hearing as to the contents of drafts of expert reports, drafts of expert declarations, or drafts of expert affidavits, nor to notes pertaining thereto, whether drafted in connection with the instant litigation or any prior or currently pending litigation or proceeding involving any of the parties. The parties further agree that they will not inquire at deposition, trial or hearing as to the expert's communications, written or oral, with counsel, whether generated in connection with the instant litigation or a prior or currently pending litigation or proceeding involving any of the parties, except to the extent that the expert references or cites information provided from counsel in his or her expert report, declaration, affidavit, or testimony, or otherwise has relied on or considered information from counsel in forming his or her opinions. Notwithstanding the foregoing, the parties may inquire at deposition, trial, or hearing as to the expert's communications, written or oral, with counsel, whether generated in connection with this instant litigation or a prior or currently pending litigation or proceeding involving any of the parties for the purpose of determining whether the expert relied on any of that information in forming his or her opinion.

The parties will identify and produce copies of any documents relied upon or considered by the expert in his or her expert report. Furthermore, subject to and without waiving the provisions of Rule 26(b)(4)(B) and (C), the parties further agree that nothing in this Discovery Plan is intended to restrict the parties' ability to (i) inquire into the basis of any of the opinions expressed by any expert in his or her report, declaration, affidavit, or testimony, including the manner by which such opinions were reached and information considered in reaching such opinions, even if such information was provided by counsel; or (ii) otherwise inquire into the process by which an expert report, affidavit, or declaration was drafted, provided that, in so doing, the parties may not discover the contents of any such drafts of expert reports, declarations, or affidavits, nor notes pertaining thereto, or communications with counsel not relied upon by the expert as the basis for his or her opinions.

**I. Electronic Service**

Electronic service (including email and secure file transfer) shall be the official form of service in this case for all discovery, including requests, responses, and document productions. The Parties may designate one or more email addresses for service of discovery and agree that only individuals permitted access to documents containing confidential information pursuant to the applicable Protective Order will be included in the email distribution addresses.

All discovery requests will be served in searchable .pdf format. Discovery requests that are served after 8:00 P.M. Eastern time will be deemed served on the next business day at the election of the receiving party, which election is not to be made unreasonably.

All responses and objections to discovery requests (but not documents produced in response to any such request) shall be served in searchable .pdf format by 11:59 P.M. Eastern time on the date due or as agreed to by the Parties.

For clarity and ease of use, all responses to a set of discovery requests will include all prior responses to that set of discovery, with the date of each response identified in each initial and/or supplemental response. In other words, responses to a given set of discovery requests will be made in a running document containing all prior responses as opposed to supplementation in piecemeal fashion in separate documents. Notwithstanding the foregoing, exhibits or addenda to prior responses need not be reproduced in supplemental responses.

The Parties agree that verifications are not required for sets of interrogatory responses that are served and supplemented as discovery proceeds. Verifications to final interrogatory responses shall be provided no later five business days after the close of fact discovery.

The Parties agree that service of papers filed under seal via CM/ECF system will be served electronically on the day of filing by 8:00 P.M. Eastern Time.

### J. Discovery Event Limitations

The Parties agree to the limitations on the number of discovery events for each Party set out in Local Rule 26.1(c). The Parties agree to confer in good faith to the extent any Party believes it requires relief from one or more of these limitations, which shall only be granted with leave of the Court.

## IV. PROPOSED SCHEDULE

The Parties propose the following schedule to govern discovery, which is subject to further motion by the Parties, either jointly or individually.

| Event | Proposed Deadline |
|---|---|
| Scheduling Conference | Friday, February 28, 2025 |
| Initial Disclosures under Fed. R. Civ. P. 26(a)(1) | Friday, March 14, 2025 |
| Patentee's Preliminary, Patent-Related Disclosures | Friday, March 21, 2025 |
| Conference Concerning Preliminary Patent Disclosures | Friday, April 11, 2025 |

| Event | Proposed Deadline |
|---|---|
| Accused Infringer's Preliminary Production of Technical Documents, Source Code, and Samples of Accused Products | Friday, May 2, 2025 |
| Exchange list of proposed claim terms for construction | Friday, May 23, 2025 |
| Exchange of Proposed Constructions for claim terms on joint list of claim terms for construction and supporting evidence for those constructions | Friday, June 13, 2025 |
| Meet and Confer regarding Proposed Claim Constructions | Friday, June 20, 2025 |
| Filing of Joint List of Claim Terms for Construction and Proposed Constructions | Friday, June 27, 2025 |
| Simultaneous Opening *Markman* Briefs | Friday, July 18, 2025 or 133 days before *Markman* hearing, whichever is later |
| Simultaneous Rebuttal *Markman* Briefs | Friday, August 15, 2025 or 105 days before *Markman* hearing, whichever is later |
| Filing of Tutorials before *Markman* Hearing | 14 days before *Markman* Hearing, To be set by Court |
| *Markman* Hearing | By November 28, 2025, To be set by Court (9 months after Conference) |
| Close of Fact Discovery | Later of May 28, 2026 or 60 days after Claim Construction Order |
| Opening Expert Reports for issues on which each party bears the burden of proof | Later of June 26, 2026 or 30 days after Close of Fact Discovery |
| Rebuttal Expert Reports | Later of July 24, 2026 or 30 days after Opening Expert Reports |
| Close of Expert Discovery and Deadline for Completion (Fed. R. Civ. P. 26(b)(4)) | Later of August 28, 2026 or 90 days after Close of Fact Discovery |
| Deadline to file Summary Judgment Motions | Later of September 25, 2026 or 30 days after close of Expert Discovery |
| Opposition to Summary Judgment Motions | 21 days after filing of Summary Judgment Motions |
| Reply to Opposition to Summary Judgment Motion | 14 days after filing of Summary Judgment Opposition |
| Summary Judgment Hearing | To be set by Court |
| Pre-Trial Disclosures regarding Experts (Fed. R. Civ. P. 26(a)(2)) | 90 days before Pre-Trial Conference |
| Pre-Trial Disclosures (Fed. R. Civ. P. 26(a)(3)) | 28 days before Pre-Trial Conference |
| Joint Pre-Trial Memorandum | 7 days before Pre-Trial Conference |

| Event | Proposed Deadline |
|---|---|
| Pre-Trial Conference | To be Set by Court |
| Trial Brief | 7 days before Trial |
| Trial | To be set by Court, and by February 28, 2027 (24 months after Conference) |

Dated: February 25, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 25, 2025.

*/s/ Michael Strapp*
Michael Strapp