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16 **Attorneys for Plaintiff**
 17 **Affinity Labs of Texas, LLC**

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 19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
OAKLAND DIVISION

21 AFFINITY LABS OF TEXAS, LLC, a
 22 Texas Limited Liability Company,

23 Plaintiff and
 Counterclaim-Defendant,

24 v.

25 APPLE INC., a California Corporation,

26 Defendant and
 27 Counterclaim-Plaintiff.

CASE NO. CV 09-4436-CW

CIVIL LOCAL RULE 6-2(a)
STIPULATION AND ORDER

Judge: Hon. Claudia Wilken

1 IT IS HEREBY STIPULATED by and between Plaintiff Affinity Labs of Texas, LLC
2 (“Affinity”) and Defendant Apple Inc. (“Apple”) as follows:

3 WHEREAS, the Joint Case Management Statement submitted by the parties and adopted
4 by the Court included a limit of 70 hours for depositions for each party;

5 WHEREAS, a disagreement has arisen as to whether Affinity has used 70 hours of
6 deposition time in this case; and

7 WHEREAS, the parties have reached an agreement on how to proceed with deposition
8 discovery and certain other third party discovery, as described below;

9 NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN THE
10 PARTIES HERETO, THROUGH THEIR RESPECTIVE COUNSEL AND SUBJECT TO THE
11 APPROVAL OF THE COURT, AS FOLLOWS:

- 12 1. Beginning as of the date that this Stipulation is submitted by the parties, Apple
13 shall not oppose, and Affinity shall not seek more than, an additional 6 depositions
14 of third parties currently under subpoena, including Anthony Fadell, James Geier,
15 Clay Cowgill, Pandora, AT&T, and one additional software application developer,
16 subject to Paragraph 5 below. This stipulation is not intended to alter the rights of
17 third parties to seek relief from the Court pertaining to Affinity’s subpoena on any
18 basis other than an allegation that Affinity has exceeded the permitted number of
19 deposition hours under the Joint Case Management Statement (which is hereby
20 amended with respect to deposition hours to permit the hours of depositions set
21 forth in this Stipulation).
- 22 2. Apple shall not oppose, and Affinity shall not seek more than, 5 hours on the
23 record during the deposition of Mr. Fadell and 2.5 hours each on the record for the
24 other five depositions referenced in the previous paragraph.
- 25 3. No depositions shall be taken after March 21, 2011 (absent further order of this
26 Court in resolving a motion for Protective Order filed by a third party or an Order
27 or agreement relating to Paragraph 5 below), except that (a) Apple will not oppose
28 Affinity’s efforts to take the depositions of Mr. Fadell, Mr. Geier, Pandora, and

1 AT&T as soon as possible after the March 21, 2011 fact discovery deadline, if they
2 cannot be scheduled before then, and (b) Apple will not oppose Affinity's efforts to
3 take the deposition of the one additional software developer after the March 21,
4 2011 fact discovery deadline. Notwithstanding the foregoing, Affinity will
5 complete the depositions described in Paragraph 1 at least one week prior to
6 Apple's rebuttal expert report on non-infringement unless otherwise directed by the
7 Court's order.

8 4. Affinity shall not be permitted to depose during the remainder of this case any
9 Apple employees, except that the parties mutually agree to reserve their rights and
10 objections as to the deposition of an individual identified in a letter between the
11 parties dated March 16, 2011, which is not subject to any of the terms in this
12 Stipulation.

13 5. If either party believes that it needs any additional deposition discovery in the case
14 beyond what is set forth in the previous paragraphs, the party shall be permitted to
15 move for a maximum of 3 additional depositions not to exceed 2.5 hours each on
16 the record, and such relief will only be granted on a showing of good cause. To the
17 extent permitted by the Court, these depositions will be for the sole purpose of
18 authenticating third-party documents and, if accurate, establishment of the
19 "business record" status of these documents. If it believes it has good cause,
20 Affinity shall also be permitted to move to compel document discovery from
21 subpoenaed software application developers up to 14 days after the March 21, 2011
22 fact discovery cut-off, to which motions all defenses are reserved (except for a
23 defense that such motion was filed after the fact discovery cut-off).

24 6. Neither party can use the timing of Mr. Fadell's deposition as a basis to supplement
25 an expert report. To the extent that Mr. Fadell's testimony is presented at trial, any
26 party's expert is permitted to comment that Mr. Fadell's trial testimony is
27 consistent with a specific, previously reported opinion of the expert. With respect
28 to Pandora (whose counsel has indicated it will not be available for deposition

1 before March 21, 2011), AT&T (who has filed for a motion for protective order),
2 and the additional one software application developer referenced in Paragraph 1
3 above, any supplementation of reports shall be limited to a string cite of Bates
4 numbers and/or deposition testimony to support specific, previously reported
5 opinions. It is the parties' understanding that Mr. Cowgill will be made available
6 for deposition before the end of fact discovery, and therefore supplementation
7 should not be an issue for Mr. Cowgill's testimony. Additionally, it is the party's
8 expectation that Mr. Geier's testimony will be relied on for Affinity's rebuttal
9 validity report, and the parties expect the deposition to be completed before the
10 deadline for Affinity's rebuttal validity report; in the event Mr. Geier's deposition
11 is not completed before that date, supplementation of Affinity's rebuttal validity
12 report shall be limited to a string cite of Bates numbers and/or deposition testimony
13 to support specific, previously reported opinions.

- 14 7. The parties will work together in good faith to obtain and not object to (i) the
15 authentication of third-party documents through a declaration, and (ii) if accurate,
16 the establishment of "business record" status of third party documents (for
17 purposes of a hearsay exception) through a declaration.

18 Dated: March 16, 2011

RICHARD L. SEABOLT
L. NORWOOD JAMESON
MATTHEW C. GAUDET

DUANE MORRIS LLP

22
23 By: /s/ Matthew C. Gaudet
Matthew C. Gaudet

24 Attorneys for Plaintiff AFFINITY LABS OF
25 TEXAS, LLC

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Pursuant to General Order No. 45 X(B), I hereby attest that concurrence in the filing of this document has been obtained from Darin Snyder.

Dated: March 16, 2011

RICHARD L. SEABOLT
L. NORWOOD JAMESON
MATTHEW C. GAUDET

DUANE MORRIS LLP

By: /s/ Matthew C. Gaudet
Matthew C. Gaudet

Attorneys for Plaintiff AFFINITY LABS OF TEXAS, LLC

Dated: March 16, 2011

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By: /s/ Darin Snyder
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Attorneys for Defendant APPLE INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED,

Dated: 3/31/2011



Honorable Claudia Wilken
United States District Judge