

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 SHAWN A. WILLIAMS
 Post Montgomery Center
 3 One Montgomery Street, Suite 1800
 San Francisco, CA 94104
 4 Telephone: 415/288-4545
 415/288-4534 (fax)

5 BARNOW AND ASSOCIATES, P.C.
 6 BEN BARNOW
 ERICH P. SCHORK
 7 One North LaSalle Street, Suite 4600
 Chicago, IL 60602
 8 Telephone: 312/621-2000
 9 312/641-5504 (fax)

10 GARDY & NOTIS, LLP
 James S. Notis
 11 Jennifer Sarnelli (State Bar No. 242510)
 501 Fifth Avenue, Suite 1408
 12 New York, NY 10017
 Telephone: 212/905-0509
 13 212/905-0508 (fax)

14 [Proposed] Co-Lead Counsel for Plaintiffs

15 [Additional counsel appear on signature page.]

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN JOSE DIVISION

20	FRANK M. FAZIO, Individually and on)	Case No. 12-cv-01127
	Behalf of All Others Similarly Situated,)	
21)	
	Plaintiff,)	STIPULATION AND PROPOSED ORDER
22)	CONSOLIDATING CASES AND
	vs.)	APPOINTING PLAINTIFFS' CO-LEAD
23)	COUNSEL
	APPLE INC., a California corporation,)	
24)	
	Defendant.)	
25)	

26 [Additional caption on following page]

1 DANIEL M. BALASSONE and BENJAMIN)
SWARTZMAN, Individually and on Behalf of)
2 All Others Similarly Situated,)
3)
Plaintiff,)
4)
vs.)
5 APPLE, INC., and DOES 1-100.)
6)
Defendant.)
7)

Case No. 12-cv-01384

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1 WHEREAS, there are two consumer actions on behalf of purchasers of defendant Apple
2 Inc.'s ("Apple" or "Defendant") iPhone 4S that are pending in this District:

3 Abbreviated Case Name	Case Number	Date Filed
4 <i>Fazio v. Apple Inc., a California corporation</i>	12-cv-01127	March 6, 2012
5 <i>Balassone v. Apple, Inc., and DOES 1-100</i>	12-cv-01384	March 20, 2012

6
7 WHEREAS, the two consumer actions identified above arise out of the same transactions
8 and occurrences and involve the same or substantially similar issues of law and fact, and
9 therefore, should be consolidated for all purposes under Fed. R. Civ. P. 42(a)¹;

10 WHEREAS, counsel for Plaintiffs in the above-referenced actions have met and
11 conferred and agree the cases should be consolidated;

12 WHEREAS, after meeting and conferring, all plaintiffs and plaintiffs' counsel agree that
13 the law firms of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), Barnow and
14 Associates P.C. ("Barnow") and Gardy & Notis, LLP ("Gardy Notis") be appointed Plaintiffs'
15 Co-Lead Counsel;

16 WHEREAS, counsel for Plaintiffs and Defendant in the above-referenced actions have
17 met and conferred, and Defendant supports this motion for consolidation and takes no position
18 on Plaintiffs' motion for appointment of Plaintiffs' Co-Lead Counsel;

19 WHEREAS, the agreed-upon schedule set forth below is not intended for the purpose of
20 delay, will not cause prejudice to any party, and will promote judicial efficiency.

21 THEREFORE, IT IS STIPULATED AND AGREED by Plaintiffs and Defendant,
22 through their respective counsel of record, as follows:

23 **CONSOLIDATION OF ACTIONS**

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25
26 ¹ An administrative motion to relate the *Balassone* action to the *Fazio* action pursuant to
27 Local Rules 3-12(b) and 7-11 was filed on March 26, 2012 in the *Balassone* action (Dkt. No. 4).
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1 1. The following actions are hereby consolidated for all purposes, including pretrial
2 proceedings, trial and appeal:

3 Abbreviated Case Name	Case Number	Date Filed
4 <i>Fazio v. Apple Inc., a California corporation</i>	12-cv-01127	March 6, 2012
5 <i>Balassone v. Apple, Inc., and DOES 1-100</i>	12-cv-01384	March 20, 2012

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7 2. The caption of this consolidated action shall be “*In Re iPhone 4S Consumer*
8 *Litigation*,” and the files of this consolidated action shall be maintained in one file, under Master
9 File No. 12-cv-01127. Any other actions now pending in, later filed in, or transferred to this
10 Court which arise out of, or are related to, the same facts as alleged in the above-referenced cases
11 shall be consolidated for all purposes, if and when they are brought to the Court’s attention.

12 3. Every pleading filed in this consolidated action, or in any separate action included
13 herein, shall bear the following caption:

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 IN RE IPHONE 4S CONSUMER) Master File No. 12-cv-01127
18 LITIGATION)
)
19 _____)
This Document Relates To:)
20 _____
21 _____

22 4. When a pleading is intended to be applicable to all actions governed by this
23 Order, the words “All Actions” shall appear immediately after the words “This Document
24 Relates To:” in the above-referenced caption. When a pleading is intended to be applicable to
25 only some, but not all, of the consolidated actions, this Court’s docket number for each
26 individual action to which the pleading is intended to be applicable and the abbreviated case
27 name of said action shall appear immediately after the words “This Document Relates To:” in
28

1 the above-referenced caption (e.g., “No. 12-cv-01127, *Fazio v. Apple Inc., a California*
2 *corporation*”).

3 5. A Master Docket and a Master File are hereby established for the above
4 consolidated proceedings, and for all other related cases filed in or transferred to this Court.
5 Separate dockets shall continue to be maintained for each of the individual actions hereby
6 consolidated, and entries shall be made in the docket of each individual case in accordance with
7 the regular procedures of the clerk of this Court, except as modified by this Order.

8 6. When a pleading is filed and the caption shows that it is applicable to “All
9 Actions,” the clerk shall file such pleading in the Master File and note such filing on the Master
10 Docket. No further copies need be filed, and no other docket entries need be made.

11 7. When a pleading is filed and the caption shows that it is to be applicable to fewer
12 than all of the consolidated actions, the clerk will file such pleading in the Master File only but
13 shall docket such filing on the Master Docket and the docket of each applicable action.

14 8. When a case which properly belongs as part of *In re iPhone 4S Consumer*
15 *Litigation* is filed in this Court or transferred to this Court from another court, the clerk of this
16 Court shall:

- 17 (a) Place a copy of this Order in the separate file for such action;
- 18 (b) Mail to the attorneys for the plaintiff(s) in the newly-filed or transferred
19 case a copy of this Order and direct that this Order be served upon or mailed to any new
20 defendant(s) or their counsel in the newly-filed or transferred case; and
- 21 (c) Make an appropriate entry on the Master Docket. This Court requests the
22 assistance of counsel in calling to the attention of the clerk of this Court the filing or transfer of
23 any case which properly might be consolidated as part of *In re iPhone 4S Consumer Litigation*.

24 **ORGANIZATION OF PLAINTIFFS’ COUNSEL**

25 9. The organizational structure of plaintiffs’ counsel established by this Order shall
26 bind plaintiffs’ counsel in the consolidated action, including any action subsequently governed
27 by this Order.

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1 10. The Court appoints the following law firms to act on behalf of plaintiffs in the
2 consolidated actions, including any plaintiffs subsequently governed by this Order, with the
3 responsibilities hereinafter prescribed.

4 (a) As Plaintiffs' Co-Lead Counsel:

- 5 1. Robbins Geller Rudman & Dowd LLP
- 6 2. Barnow and Associates, P.C.
- 7 3. Gardy & Notis, LLP

8 11. Plaintiffs' Co-Lead Counsel shall have day-to-day responsibility for the conduct
9 of the consolidated litigation; shall determine how to prosecute the case and shall initiate,
10 coordinate and supervise the efforts of plaintiffs' counsel in the consolidated action in the areas
11 of discovery, briefing, trial and settlement.

12 12. Plaintiffs' Co-Lead Counsel may delegate responsibility for specific tasks to other
13 plaintiffs' counsel in the consolidated action in a manner to assure that pretrial preparation is
14 conducted effectively, efficiently and economically; shall assist in maintaining communication
15 among counsel; and shall monitor the activities of plaintiffs' counsel to assure that schedules are
16 met and unnecessary expenditures of time and money are avoided. Plaintiffs' Co-Lead Counsel
17 shall maintain the official service list of all plaintiffs and plaintiffs' counsel in the consolidated
18 action, including their addresses. Plaintiffs' Co-Lead Counsel shall perform whatever any
19 additional functions that may be assigned to them by the Court. Agreements reached between
20 Defendant and Plaintiffs' Co-Lead Counsel are binding on all plaintiffs and their counsel. No
21 discovery shall be served, and no motion shall be filed, by any plaintiffs' counsel without the
22 consent of Plaintiffs' Co-Lead Counsel, unless leave of Court is obtained.

23 13. Service of all papers filed with the Court shall be accomplished by e-filing, and
24 no other type of service shall be required. Service of all papers that are not filed with the Court
25 shall be accomplished by plaintiffs serving defendant's counsel, and by defendant serving
26 Plaintiffs' Co-Lead Counsel, as applicable, by either: (i) overnight mail service; (ii) telecopier or
27 (iii) hand delivery. Whenever feasible, the serving party shall send courtesy copies
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1 simultaneously via e-mail in PDF format, to Defendant's counsel or to Plaintiffs' Co-Lead
2 Counsel, as applicable.

3 **SCHEDULE**

4 14. Plaintiffs shall file a Master Consolidated Complaint within 14 days of the date
5 this Order is entered. Defendant need not respond to the *Fazio* or *Balassone* complaints already
6 filed or any other case which is subsequently consolidated herein.

7 15. Defendant shall answer or otherwise respond to the Master Consolidated
8 Complaint within 30 days of service thereof. In the event that Defendant files and serves any
9 motion directed at the Master Consolidated Complaint, the parties shall meet and confer to
10 determine an appropriate briefing schedule, which shall be presented to the Court for approval.

11 IT IS SO STIPULATED.

12 DATED: March 26, 2012

ROBBINS GELLER RUDMAN
& DOWD LLP
SHAWN A. WILLIAMS

13
14
15 s/ Shawn A. Williams
SHAWN A. WILLIAMS

16 Post Montgomery Center
17 One Montgomery Street, Suite 1800
18 San Francisco, CA 94104
19 Telephone: 415/288-4545
20 415/288-4534 (fax)

21 ROBBINS GELLER RUDMAN
& DOWD LLP
22 ROBERT M. ROTHMAN
23 58 South Service Road, Suite 200
24 Melville, NY 11747
25 Telephone: 631/367-7100
26 631/367-1173 (fax)
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ROBBINS GELLER RUDMAN
& DOWD LLP
PAUL J. GELLER
STUART A. DAVIDSON
MARK DEARMAN
KATHLEEN BARBER
120 E. Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

*Counsel for Plaintiff Frank M. Fazio and
[Proposed] Co-Lead Counsel for Plaintiffs*

DATED: March 26, 2012

BARNOW AND ASSOCIATES, P.C.
BEN BARNOW
ERICH P. SCHORK

s/ Ben Barnow
BEN BARNOW

One North LaSalle Street, Suite 4600
Chicago, IL 60602
Telephone: 312/621-2000
312/641-5504 (fax)

*Counsel for Plaintiff Frank M. Fazio and
[Proposed] Co-Lead Counsel for Plaintiffs*

DATED: March 26, 2012

GARDY & NOTIS, LLP
JAMES S. NOTIS
JENNIFER SARNELLI (State Bar No. 242510)

s/ Jennifer Sarnelli
JENNIFER SARNELLI

501 Fifth Avenue, Suite, 1408
New York, NY 10017
Telephone: 212/905-0509
212/905-0508 (fax)

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GARDY & NOTIS, LLP
CHARLES A. GERMERSHAUSEN
560 Sylvan Avenue, Suite 3085
Englewood Cliffs, NJ 07632
Telephone: 201/567-7377
201/567-7337 (fax)

*Counsel for Plaintiffs Daniel Balassone &
Benjamin Swartzman and [Proposed] Co-Lead
Counsel for Plaintiffs*

I, Shawn A. Williams, am the ECF User whose ID and the password are being used to file this STIPULATION AND [PROPOSED] ORDER CONSOLIDATING CASES AND APPOINTING PLAINTIFFS' CO-LEAD COUNSEL. In compliance with General Order 45, X.B., I hereby attest that Ben Barnow, Jennifer Sarnelli and Gail Lees have concurred in this filing.

s/ Shawn A. Williams
SHAWN A. WILLIAMS

* * *

ORDER

Having considered the parties' Stipulation, and good cause appearing, the Court hereby GRANTS the parties' Stipulation.

IT IS SO ORDERED. Except that the case is in the Oakland Division, not the San Jose Division.

DATED: 3/29/2012



THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

Mailing Information for a Case 5:12-cv-01127-HRL

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Mark Jeffrey Dearman**
mdearman@rgrdlaw.com
- **Paul J. Geller**
pgeller@rgrdlaw.com
- **Benjamin Matthew Glickman**
bglickman@gibsondunn.com,mmccrory@gibsondunn.com
- **Gail E. Lees**
glees@gibsondunn.com,jwalker@gibsondunn.com,wlamb@gibsondunn.com,jjessen@gibsondunn.com
- **Robert M. Rothman**
rothman@rgrdlaw.com,e_file_ny@rgrdlaw.com
- **Erich Paul Schork**
e.schork@barnowlaw.com
- **Shawn A. Williams**
shawnw@rgrdlaw.com,khuang@rgrdlaw.com,e_file_sd@rgrdlaw.com,nnewton@rgrdlaw.com,e_file_sf@rgrdlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Kathleen **L. Barber**
Robbins Geller Rudman & Dowd LLP
120 East Palmetto Park Road
Suite 500
Boca Raton, FL 33432

Ben **Barnow**
Barnow and Associates P.C.
One N. LaSalle Street
Suite 4600
Chicago, IL 60602

Stuart **A. Davidson**
Coughlin Stoia Geller Rudman & Robbins LLP
120 E. Palmetto Park Road
Suite 500
Boca Raton, FL 33432-4809

Matthew **S. Kahn**
Gibson Dunn and Crutcher
555 Mission Street, Suite 3000
San Francisco, CA 94105