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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

The Apple iPod iTunes Antitrust Litigation
_____/

NO. C 05-00037 JW
NO. C 07-06507 JW

Stacie Somers,
Plaintiff,

**ORDER VACATING CASE
MANAGEMENT CONFERENCE;
DENYING AS PREMATURE INDIRECT
PURCHASER ACTION PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

v.

Apple, Inc.
Defendant.

This case is scheduled for a Case Management Conference on February 22, 2010. Pursuant to the Federal Rules of Civil Procedure and Local Rules of this Court, the parties conferred and duly submitted a Joint Case Management Statement. (hereafter, "Statement," Docket Item No. 323.)

A. Direct Purchaser Action

Pursuant to the Court's request, Direct Purchaser Action Plaintiffs filed an Amended Consolidated Complaint on January 26, 2010. (See Docket Item No. 322.) Defendant's responsive pleading is due February 22, 2010, and Defendant represents that it will file a dispositive motion by that date with a hearing date noticed for April 26, 2010. (Statement at 1.) In light of Defendant's anticipated dispositive motion, the Court finds good cause to VACATE the Case Management Conference pending consideration of that motion.

1 In their Statement, the parties bring to the Court's attention an ongoing discovery dispute.
2 Defendant asks the Court to stay certain discovery until after its dispositive Motion is decided.
3 (Statement at 6.) The Court declines Defendant's request. As the Court has already made clear in
4 its prior Orders in this case and its statement on the record at the November 23, 2009 hearing on the
5 parties' various class certification motions, Plaintiffs may proceed with discovery at this time. The
6 parties shall bring any discovery disputes before Judge Lloyd. The Court declines to interfere with
7 Judge Lloyd's decisions regarding the briefing and hearing schedule for Plaintiffs' motion to
8 compel. **B. Indirect Purchaser Action**

9 In its December 29, 2009 Order,¹ the Court ordered the Indirect Purchaser Action Plaintiff to
10 show cause, if any, why her case should not be dismissed since the basis for a separate action,
11 namely, indirect purchasers of iPods, is no longer viable in light of the Court's denial of certification
12 of the damages class. The Court stated that once the Direct Purchaser Plaintiffs amend their
13 pleadings to add remedies also sought by the Indirect Purchaser Plaintiff, it appears that the Indirect
14 Purchaser Action will become unnecessary. (Id. at 11-12.) On February 1, 2010, the Indirect
15 Purchaser Action Plaintiff filed a Response to the Court's Order to Show Cause. (See Docket Item
16 No. 91.) On February 12, 2010, the Indirect Purchaser Action Plaintiff filed a Motion for Leave to
17 File a First Amended Complaint. (hereafter, "Motion for Leave," Docket Item No. 92.)

18 In light of the pending Order to Show Cause re Dismissal, the Court finds that consideration
19 of the Motion for Leave would be premature at this time. Accordingly, the Court DENIES the
20 Indirect Purchaser Action Plaintiff's Motion for Leave to File a First Amended Complaint without
21 prejudice to her ability to revive the Motion if the Court determines that the two cases should remain
22 separate actions.

23 At the **April 26, 2010** hearing, the Court will also address its Order to Show Cause. On or
24 before **March 19, 2010**, Defendant shall file its Reply to the Indirect Purchaser Plaintiff's Response
25 to the Order to Show Cause.


26 ¹ (Order Decertifying Classes Without Prejudice to Being Renewed; Inviting Further
27 Motions, Docket Item No. 303.)

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C. Conclusion

The Court VACATES the Case Management Conference scheduled for February 22, 2010. In its Order addressing Defendant's anticipated dispositive motion, the Court will set a further Case Management Conference, if necessary.

Dated: February 17, 2010



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Dated: February 17, 2010

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy