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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

In re Apple & AT&TM Antitrust Litigation      NO. C 07-05152 JW

**ORDER BIFURCATING CLASS AND  
MERITS DISCOVERY; SCHEDULING  
CASE MANAGEMENT CONFERENCE**

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Presently before the Court are the parties' Proposed Discovery Plans.<sup>1</sup> Plaintiffs contend that simultaneous class and merits discovery is appropriate, while Defendant Apple contends that class discovery should precede merits discovery.

Discovery in a putative class action is generally limited to certification issues in the precertification stage. Babbitt v. Albertson's Inc., 1992 U.S. Dist. LEXIS 19091 at \*6 (N.D. Cal. Dec. 1, 1992) (citing Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 359 (1978)). "Discovery on the merits is usually deferred until it is certain that the case will be allowed to proceed as a class action." Id. at \*7 (citing Eisen v. Carlisle & Jacqelin, 417 U.S. 156, 177 (1974)).

In this case, the Court finds that bifurcation of class and merits discovery is in the best interest of the efficient resolution of this complex antitrust litigation. Accordingly, the parties are ordered to proceed with class discovery and merits discovery is STAYED.


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<sup>1</sup> (Plaintiffs' Proposed Discovery Plan, Docket Item No. 140; Defendant Apple, Inc.'s Proposed Discovery Plan, Docket Item No. 141.)

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Further, the parties are ordered to meet and confer and formulate a reasonable class discovery plan. The Court sets a Case Management Conference on **January 12, 2009 at 10:00 a.m.** On or before **January 5, 2009**, the parties shall file a Joint Case Management Statement which shall include the parties' proposed class discovery schedule.

Dated: December 12, 2008

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

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

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15 **Dated: December 12, 2008**

**Richard W. Wieking, Clerk**

17 **By:           /s/ JW Chambers**  
18 **Elizabeth Garcia**  
19 **Courtroom Deputy**

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