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 APPLE INC.

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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13 PAUL HOLMAN and LUCY RIVELLO,  
 14 individually and on behalf of all others  
 similarly situated,

15 Plaintiffs,

16 v.

17 APPLE INC., AT&T MOBILITY, LLC, and  
 18 DOES 1 through 50, inclusive,

19 Defendants.

CASE NO. C 07-05152 JW

**DEFENDANT APPLE INC.'S  
 ADMINISTRATIVE MOTION TO  
 CONSIDER WHETHER CASES SHOULD  
 BE RELATED**

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1 Pursuant to Civil Local Rule 7-11, Apple Inc. (“Apple”) hereby moves the Court  
 2 for consideration of whether the matter *Timothy P. Smith, et al. v. Apple Inc., AT&T Mobility*  
 3 *LLC, et al.*, Case No. 07-CV-05662-HRL (filed October 5, 2007 and removed to federal court  
 4 November 7, 2007) (“*Smith*”) is related, as defined by Civil Local Rule 3-12, to this action  
 5 (*Holman, et al. v. Apple Inc., AT&T Mobility LLC, et al. – “Holman*”). As described further  
 6 below, *Holman* and *Smith* both involve the same defendants (Apple and AT&T Mobility LLC),  
 7 and both challenge an agreement between Apple and AT&T Mobility LLC concerning the  
 8 iPhone, alleging that the agreement violates the antitrust and unfair competition laws. In  
 9 addition, both *Holman* and *Smith* challenge various business conduct related to the iPhone and  
 10 software updates to the iPhone. In short, *Holman* and *Smith* concern substantially the same  
 11 parties, property, transaction or event, and are thus related cases within the meaning of Civil  
 12 Local Rule 3-12.

13 **I. SMITH AND HOLMAN CONCERN SUBSTANTIALLY THE SAME PARTIES,**  
 14 **PRODUCTS, AND ALLEGED TRANSACTIONS AND AGREEMENTS**

15 *Smith* and *Holman* are both actions brought against Apple and AT&T Mobility  
 16 LLC (“ATTM”) which allege that Apple and ATTM entered into what plaintiffs call an unlawful  
 17 agreement under which ATTM will be the exclusive provider of phone and data services for the  
 18 iPhone in the United States and Apple will allegedly receive a portion of ATTM’s profits.  
 19 *Holman* Complaint ¶¶ 38, 41; *Smith* First Amended Complaint (“FAC”) ¶¶ 28(1)-(3). The  
 20 complaints further allege that through the use of a software lock and a software update, Apple  
 21 has prohibited iPhone owners from unlocking their phones for use with cellular telephone service  
 22 providers other than ATTM. *Holman* Complaint ¶¶ 34, 51-55; *Smith* FAC ¶¶ 28(4), 40-42.

23 Based on these allegations, both the *Smith* and *Holman* complaints assert claims  
 24 against Apple and ATTM for unlawful tying and attempted monopolization under Sections 1 and  
 25 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2. *Holman* Complaint ¶¶ 90-97; *Smith* FAC  
 26 ¶¶ 128-35. The *Smith* and *Holman* complaints both also plead claims based on alleged violations  
 27 of California’s Unfair Competition Law in addition to alleged violations of the California  
 28 Cartwright Act’s prohibitions on unlawful tying and unlawful trusts. *Holman* Complaint ¶¶ 76-

1 89; *Smith* FAC ¶¶ 117-27, 196-207. While *Smith* and *Holman* each assert additional causes of  
 2 action against Apple and ATTM, all such claims relate to the same set of alleged practices of the  
 3 defendants described above. Thus, *Smith*'s separate causes of action for common law  
 4 monopolization, *Smith* FAC ¶¶ 183-89, breach of warranties, *id.* ¶¶ 136-57, and alleged  
 5 violations of the Consumer Legal Remedies Act, *id.* ¶¶ 158-65, the Computer Fraud Abuse Act,  
 6 *id.* ¶¶ 166-71, the Racketeer Influenced and Corrupt Organizations Act, *id.* ¶¶ 190-95, and  
 7 California Penal Code § 502, *id.* ¶¶ 172-82, are all based on the same alleged agreements and  
 8 practices of ATTM and Apple. The same is true for *Holman*'s additional cause of action for  
 9 "computer trespass/trespass to chattels." *Holman* Complaint ¶¶ 98-102.

10 Furthermore, both *Holman* and *Smith* are purported class actions that seek to  
 11 represent the interests of the same class of people. *Holman*'s proposed class is composed of "all  
 12 individuals or entities who at any time from June 29, 2007 to the date of judgment in this action,  
 13 bought and implemented the iPhone and sustained damages as a result." *Holman* Complaint ¶  
 14 63. *Smith*'s purported class is made up of "[a]ll persons or entities who... purchased or own an  
 15 iPhone, intended for use by themselves, their families, or their members, participants, or  
 16 employees ... during the period from June 29, 2007 through such time in the future as the effects  
 17 of Apple's illegal conduct, as alleged herein, have ceased... [and who] purchased audio or video  
 18 files from the iTunes Music Store during the Class Period." *Smith* FAC ¶¶ 93(a)-(b); *see also id.*  
 19 ¶¶ 94(a)-(b). The two potential classes are thus nearly identical.

20 In short, the factual allegations and legal claims of the *Holman* and *Smith* cases  
 21 "concern substantially the same parties, property, transaction or event." Civil L. R. 3-12(a)(1).

22 **II. IT WOULD BE UNDULY BURDENSOME FOR THESE ACTIONS TO**  
 23 **PROCEED BEFORE TWO DIFFERENT JUDGES**

24 The *Smith* and *Holman* cases should be assigned to the same judge to promote  
 25 judicial economy. If the cases proceeded in front of separate judges, each judge would be  
 26 required to educate himself or herself as to the same set of transactions, the same product  
 27 markets, and identical or substantially similar legal arguments being made by both plaintiffs and  
 28 defendants. Furthermore, Apple and ATTM, as defendants in both actions, will be required to

1 defend the same or substantially similar actions before two different judges, with duplicative  
2 hearings and motions, yet potentially incompatible schedules and rulings. In short, allowing  
3 these cases to proceed separately “will be an unduly burdensome duplication of labor and  
4 expense” that may lead to conflicting results. Civil L. R. 3-12(a)(2). Relating both cases and  
5 placing them under the supervision of one judge not only stands to save the Court and the parties  
6 significant costs, but will also likely facilitate and expedite both cases.

7 **III. CONCLUSION**

8 Pursuant to Civil Local Rule 3-12(f), Apple respectfully requests that this Court  
9 grant its Motion and order the *Holman* and *Smith* cases related.

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Dated: November 9, 2007

Respectfully submitted,

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