

## EXHIBIT 2

# LATHAM & WATKINS<sup>LLP</sup>

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December 6, 2007

## BY FEDERAL EXPRESS

Hon. P. Kevin Castel  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St., Room 2260  
New York, NY 10007

File No. 036209-0026

Re: *Herbert H. Kliegerman, et al. v. Apple, Inc. and AT&T Mobility, LLC* (S.D.N.Y., No. 07-CV-08404-PKC);

*In re Apple and AT&TM Anti-Trust Litigation*, (N.D. Cal. No. CV-07-05152-JW), formerly *Timothy P. Smith, et al. v. Apple, Inc., AT&T Mobility, LLC, et al.* (N.D. Cal. No. 07-CV-05562-JW; and *Paul Holman, et al. v. Apple, Inc., AT&T Mobility, LLC, et al.* (N.D. Cal. No. 07-CV-05152-JW)

Dear Judge Castel:

We represent defendant Apple Inc. ("Apple") in *Kliegerman, et al. v. Apple, Inc. and AT&T Mobility, LLC* ("Kleigerman"), currently pending before Your Honor. We write on behalf of our client to alert the Court that two related cases, *Smith, et al. v. Apple, Inc., AT&T Mobility, LLC, et al.* ("Smith") and *Holman, et al. v. Apple, Inc., AT&T Mobility, LLC, et al.* ("Holman") are currently pending in the Northern District of California, before the Hon. James Ware, and to advise the Court of a recent development in the related cases.

*Kliegerman, Smith* and *Holman* all involve the same named defendants (Apple and AT&T Mobility, LLC), and all present similar antitrust and unfair competition claims based on marketing and technological issues relating to the iPhone. All three cases purport to represent nationwide classes of all persons who purchased an iPhone.

By administrative motion in the *Holman* case dated November 9, 2007, Apple requested a finding that the *Smith* and *Holman* cases are related under the Local Rules of the United States District Court, Northern District of California. Judge Ware granted Apple's motion on November 30, 2007. In addition, Judge Ware *sua sponte* ordered the consolidation of the actions, the filing of a consolidated amended complaint, and the use of the caption *In re Apple*

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and *AT&TM Anti-Trust Litigation*, CV-07-05152-JW. A copy of Judge Ware's November 30, 2007 Order is attached hereto as Exhibit 1.

Please do not hesitate to let us know if you have any questions or would like any additional information.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel M. Wall". The signature is written in a cursive, flowing style.

Daniel M. Wall  
of LATHAM & WATKINS LLP  
(*Pro Hac Vice application pending*)

Enclosure

cc: Counsel for Plaintiffs in *Kliegerman*  
Counsel for Plaintiffs in *In re Apple and AT&TM Anti-Trust Litigation*  
Counsel for AT&T Mobility LLC  
(all cc's by email and with enclosure)

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

In Re Apple & AT&TM Anti-Trust Litigation

NO. C 07-05152 JW  
NO. C 07-05662 RMW


**ORDER RELATING CASES;  
CONSOLIDATING CASES; AND  
SETTING CASE MANAGEMENT  
CONFERENCE**

Presently before the Court is Defendant Apple, Inc. ("Apple") Administrative Motion to Consider Whether Cases Should be Related, filed on November 9, 2007. Apple moves the Court to consider whether Timothy Smith, et. al., v. Apple, Inc. et. al., No. C 07-05662 RMW, is related to the above-entitled action. Having considered Apple's submissions, the Court finds the two actions are "related cases" within the meaning of Civ. L.R. 3-12 because they involve substantially the same transaction and parties. Both actions allege causes of actions for anti-trust violations, monopolization, and unfair business practices stemming from Apple's exclusive agreement with AT&T Mobility, LLC ("AT&TM") regarding Apple's iPhone. The Smith action also includes purchasers of music and ringtones from Apple's iTunes store. However, the causes of action related to this additional group are not substantial when compared to the majority of the causes of action which pertain to the alleged anti-trust violations. Accordingly, the Court, *sua sponte*, consolidates the two actions.

1 Since Holman is the first to filed case, it shall be the lead case. Plaintiffs' counsel for both  
2 actions are appointed Co-Lead Counsel. All future filings shall be filed in C 07-05152 JW and bear  
3 the following caption: *In Re Apple & AT&TM Anti-Trust Litigation*.

4 The Court vacates all previous deadlines and case schedules. A Consolidated Amended  
5 Complaint shall be filed within thirty (30) days from the date of this Order. The parties shall appear  
6 for an Initial Case Management Conference on **January 28, 2008 at 10:00 A.M.** Pursuant to the  
7 Civil Local Rules of Court, the parties shall meet and confer, and file a Joint Case Management  
8 Statement by January 18, 2008.

9  
10 Dated: November 30, 2007

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

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

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**Dated: November 30, 2007**

**Richard W. Wieking, Clerk**

**By: /s/ JW Chambers**  
**Elizabeth Garcia**  
**Courtroom Deputy**