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10	UNITED STATES DISTRICT COURT		
11	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
12	SAN JOSE DIVISION		
13			
14		CASE NO.	07-cv-5152-JW
15		JOINT CASE MANAGEMENT	
16	IN RE APPLE & AT&TM ANTITRUST LITIGATION	STATEMI	
17		Date: Time:	January 28, 2008 10:00 AM
18		Place: Judge:	Courtroom 8, 4 th Floor The Honorable James Ware
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28 LATHAM®WATKINS up Attorneys At Law San Francisco			JOINT CASE MANAGEMENT STATEMENT CASE NO. 07-cv-5152-JW

1	Pursuant to Civil Local Rule 16-9, the undersigned counsel jointly submit this	
2	Case Management Statement. Except as otherwise stated herein, the Parties are in agreement as	
3	to the provisions contained herein.	
4	JURISDICTION AND SERVICE	
5	This Court has jurisdiction pursuant to the Sherman Antitrust Act, 15 U.S.C. §§ 1,	
6	2, and 28 U.S.C. §§ 1331 and 1337, and also pursuant to 28 U.S.C. §1332(d)(2) because	
7	diversity of citizenship exists between parties in this action, the aggregate amount in controversy	
8	exceeds \$5,000,000, and there are 100 or more members of the proposed Plaintiff Class. There	
9	are no disputes regarding jurisdiction or service.	
10	CASE STATUS	
11	This case is the consolidation of two purported class actions involving Apple's	
12	introduction of the iPhone in conjunction with service provided by AT&T Mobility: Holman	
13	and Rivello, et al. v. Apple, Inc., AT&T Mobility LLC, (No. 07-CV-05152-JW) and Timothy	
14	Smith, et al. v. Apple, Inc. et al. (No.07-CV-05662-RMW). Holman was commenced by original	
15	action in this Court on October 5, 2007. Smith was commenced by an action in the Santa Clara	
16	Superior Court, and subsequently removed to this Court. Following removal, Apple filed a	
17	motion to relate <i>Smith</i> and <i>Holman</i> pursuant to Civil Local Rule 3-12. Plaintiffs did not oppose	
18	Apple's motion.	
19	By order dated November 30, 2007, this Court: (a) granted Apple's motion to	
20	relate Smith and Holman; (b) sua sponte consolidated the two cases under the name In Re Apple	
21	and AT&TM Anti-Trust Litigation; (c) appointed counsel for Smith and Holman as Co-Lead	
22	Counsel; and (d) ordered the plaintiffs to file a Consolidated Amended Complaint (which date	
23	was extended by stipulation and order to January 18, 2008).	
24	Counsel for plaintiffs in <i>Smith</i> has determined that it is not appropriate for counsel	
25	for plaintiffs in Holman to appear as Co-Lead Counsel and intends to move to disqualify counsel	
26	for plaintiffs in Holman. Counsel for plaintiffs in Holman believes that the intended motion is	
27	without any foundation. As a result of this dispute, plaintiffs are unable to agree on a	
28 Latham₅watkins⊯	Consolidated Amended Complaint and cannot file a Consolidated Amended Complaint on	
ATTORNEYS AT LAW San Francisco	1 JOINT CASE MANAGEMENT STATEMENT CASE NO. 07-cv-5152-JW	

1	January 18, 2008. Counsel for Apple and AT&T Mobility have informed counsel for plaintiffs		
2	that defendants will not oppose an Administrative Motion which seeks to vacate the current date		
3	for the filing of a Consolidated Amended Complaint.		
4	INABILITY TO COMPLETE CERTAIN ITEMS ON THIS CASE MANAGEMENT		
5	STATEMENT		
6	The parties agree that in light of the dispute between counsel in Smith and		
7	Holman and the fact that as a result of the dispute plaintiffs cannot file a Consolidated Amended		
8	Complaint, items 2-3, 5-9, 11-12, and 14-18 of this Court's Standing Order cannot be completed		
9	at this time.		
10	<u>MOTIONS</u>		
11	Since no Consolidated Amended Complaint has been filed, the parties describe		
12	below only those motions which they presently expect to be filed.		
13	(1) Plaintiffs' counsel in <i>Smith</i> intends to file a motion to disqualify counsel in		
14	Holman and will seek to have the Court set a briefing schedule at the January 28, 2008, Initial		
15	Case Management Conference. Plaintiffs' counsel in Holman intends to oppose the motion and		
16	to move for an order appointing Max Folkenflik as Lead Counsel. Apple and AT&T Mobility		
17	take no position on any such motions.		
18	(2) AT&T Mobility intends to move to compel arbitration of any claims against it		
19	under the terms of its contracts with the plaintiffs, but believes that it cannot properly do so until		
20	the court appoints counsel with authority to address that motion.		
21	RELATED CASES		
22	On December 20, 2007 (Document 38), counsel for Apple filed a Notice of		
23	Pendency of Action or Other Proceeding pursuant to Civil Local Rule 3-13, notifying the Court		
24	of the pendency of another action which involves the same or similar subject matter and		
25	substantially all of the same parties as the instant case. That case, Kliegerman, et al. v. Apple,		
26	Inc., AT&T Mobility LLC (No. 07-CV-8404 (PKC), is currently pending in the United States		
27	District Court for the Southern District of New York. In accordance with Judge Castel's		
28	Individual Practices, on December 18, 2007, Apple submitted a letter brief seeking a pre-motion		

1	conference at which it would seek leave to file a motion to transfer the Kliegerman action to this		
2	District. On December 19, 2007, Judge Castel issued an Order waiving the pre-motion		
3	conference, granting Apple leave to proceed with the motion to transfer and specifying that the		
4	motion should be filed on or before January 18, 2008, and adjourning the time to respond to the		
5	Amended Complaint pending a decision on the motion to transfer. On January 18, 2008, Apple		
6	moved to transfer Kliegerman to this District pursuant to 28 U.S.C. § 1404(a). A copy of		
7	Apple's motion to transfer is attached hereto as Exhibit 1.		
8	Counsel for plaintiffs in Smith believes that the case Zoltan Steiner and Ynez		
9	Steiner, et al. v. Apple Computer, Inc., AT&T Mobility, LLC, et al. (No. C-07-04486 SBA),		
10	presently pending before Judge Armstrong of this District is a related case.		
11	DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS		
12	Each party has filed the "Certification of Interested Entities or Persons" required		
13	by Civil Local Rule 3-16.		
14	OTHER MATTERS		
15	Given the dispute between counsel in Smith and Holman and the fact that as a		
16	result of the dispute plaintiffs cannot file a Consolidated Amended Complaint, the Court will		
17	need to address the dates for the filing of a Consolidated Amended Complaint and Initial		
18	Disclosures, and the management of the case pending resolution of the appointment of Lead		
19	Counsel for the plaintiffs.		
20	Counsel for plaintiffs in <i>Smith</i> is considering associating a new counsel in this		
21	matter.		
22	Dated: January 18, 2008 Respectfully submitted,		
23	LATHAM & WATKINS LLP		
24	Daniel M. Wall Alfred C. Pfeiffer		
25	Christopher S. Yates		
26	By /s/ Christopher S. Yates		
27	Christopher S. Yates Attorneys for Defendant		
28	APPLE INC.		
LATHAM®WATKINS Attorneys At Law San Francisco	3 JOINT CASE MANAGEMENT STATEMENT CASE NO. 07-cv-5152-JW		

1	Dated: January 18, 2008	Respectfully submitted,	
2		CROWELL & MORING LLP	
3			
4		By <u>/s/ Daniel A. Sasse</u> Daniel A. Sasse	
5		Attorneys for Defendant AT&T MOBILITY LLC	
6			
7	Dated: January 18, 2008	Respectfully submitted,	
8		FOLKENFLIK & MCGERITY	
9			
10		By <u>/s/ Max Folkenflik</u> Max Folkenflik	
11		Attorneys for Plaintiffs HOLMAN, RIVELLO, ET AL.	
12			
13	Dated: January 18, 2008	Respectfully submitted,	
14		LAW OFFICES OF DAMIAN R. FERNANDEZ	
15		By /s/ Damian R Fernandez	
16		By <u>/s/ Damian R. Fernandez</u> Damian R. Fernandez Attorneys for Plaintiffs	
17		TIMOTHY SMITH, ET AL.	
18	ELECTRONIC CASE FILING ATTESTATION		
19	(General Order No. 45(X)(B))		
20	I, Christopher S. Yate	s, attest that concurrence in the filing of this document has	
21	been obtained from each of the other	signatories.	
22	Dated: January 18, 2008	Respectfully submitted,	
23		LATHAM & WATKINS LLP	
24		Daniel M. Wall Alfred C. Pfeiffer	
25		Christopher S. Yates	
26		By/s/ Christopher S. Yates	
27		Christopher S. Yates Attorneys for Defendant	
28		APPLE INC.	
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