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8 Attorneys for Defendant  
APPLE INC.

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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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CASE NO. 07-cv-5152-JW

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IN RE APPLE & AT&TM ANTITRUST  
LITIGATION

**JOINT CASE MANAGEMENT  
STATEMENT**

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Date: January 28, 2008  
Time: 10:00 AM  
Place: Courtroom 8, 4<sup>th</sup> Floor  
Judge: The Honorable James Ware

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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 *Smith* and *Holman* 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 *Smith* 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 Consolidated Amended Complaint and cannot file a Consolidated Amended Complaint on

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 **MOTIONS**

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 *Smith* 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 Dated: January 18, 2008

Respectfully submitted,  
CROWELL & MORING LLP

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By                   /s/ Daniel A. Sasse  
Daniel A. Sasse  
Attorneys for Defendant  
AT&T MOBILITY LLC

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7 Dated: January 18, 2008

Respectfully submitted,  
FOLKENFLIK & MCGERITY

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By                   /s/ Max Folkenflik  
Max Folkenflik  
Attorneys for Plaintiffs  
HOLMAN, RIVELLO, ET AL.

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13 Dated: January 18, 2008

Respectfully submitted,  
LAW OFFICES OF DAMIAN R. FERNANDEZ

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By                   /s/ Damian R. Fernandez  
Damian R. Fernandez  
Attorneys for Plaintiffs  
TIMOTHY SMITH, ET AL.

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**ELECTRONIC CASE FILING ATTESTATION**  
**(General Order No. 45(X)(B))**

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20 I, Christopher S. Yates, 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,  
LATHAM & WATKINS LLP  
Daniel M. Wall  
Alfred C. Pfeiffer  
Christopher S. Yates

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By                   /s/ Christopher S. Yates  
Christopher S. Yates  
Attorneys for Defendant  
APPLE INC.

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