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9 Timothy P. Smith, and Michael G. Lee

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

12 \_\_\_\_\_  
13 In Re Apple & AT&TM Antitrust Litigation

NO. C 07-05152 JW

**PLAINTIFF’S MOTION TO ENLARGE  
TIME TO FILE MOTION TO  
DISQUALIFY COUNSEL AND FOR  
APPOINTMENT OF LEAD COUNSEL  
& DECLARATION OF DAMIAN R.  
FERNANDEZ**

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18 Date: March 10, 2008  
19 Time: 10:00 AM  
20 Judge: Honorable James Ware

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22 Pursuant to Local Rule 6-3, Plaintiffs Vincent Scotti, Dennis V. Macasaddu, Mark G.  
23 Morikawa, Timothy P. Smith, and Michael G. Lee (collectively “Plaintiffs”) hereby move the  
24 Court for an order enlarging the time within which plaintiffs may file a motion to disqualify  
25 counsel for the Holman plaintiffs and to be appointed as lead counsel (collectively “Motion for  
26 Lead Counsel”), and in the alternative for a new briefing schedule and hearing date to be set at  
27 the Court’s discretion.

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1 **I. INTRODUCTION**

2 At the case management conference on January 28, 2008, the Court set a briefing  
3 schedule on the Motion for Lead Counsel as follows:

- 4 Opening Brief: February 4, 2008
- 5 Opposition: February 18, 2008
- 6 Reply: February 25, 2008.

7 The hearing date is set for March 10, 2008, 10:00 AM.

8 At the conference, the parties discussed a related case pending in the Southern District of  
9 New York known as *Kliegerman v. Apple, Inc. and AT&T Mobility LLC*, Case No. 1-07-CV-  
10 08404-PKC. The Court was advised that on January 18, 2008, Apple filed a motion to transfer  
11 the *Kliegerman* action to this Court. Based on the uncertain time frame on when the transfer  
12 would be effectuated following a full briefing schedule in *Kliegerman*, it was agreed that the  
13 Motion for Lead Counsel would proceed forward on the briefing schedule indicated above.

14 However, on Monday, February 4, 2008, 3:52 PM, attorney Mark C. Rifkin, the attorney  
15 for plaintiff in *Kliegerman* sent an email to all counsel and addressed to your honor by Overnight  
16 Mail, advising that *Kliegerman* is stipulating to Apple's motion to transfer the *Kliegerman* action  
17 to this Court. A copy of Mr. Rifkin's letter is attached hereto as Exhibit 1. Mr. Rifkin further  
18 advises that it will be filing a motion to have his firm appointed as interim lead class counsel in  
19 this action. Mr. Rifkin proposed that it will file its motion on the same day that the opposition  
20 brief is due.

21 **II. GROUNDS FOR MOTION**

22 Based on the new development received from *Kliegerman's* counsel, plaintiff's counsel  
23 needs further time to research and write its brief to address the impact of the *Kliegerman* action  
24 as it relates to the Motion for Lead Counsel. Because Mr. Rifkin's email was submitted near the  
25 end of the close of business, there was not enough time to fully consider the impact of  
26 *Kliegerman's* stipulation and thereafter confer with counsel in this action to seek a stipulation to  
27 enlarge time to file the Motion for Lead Counsel or alternatively set a new briefing schedule and  
28 hearing date to accommodate the appearance of new counsel and the *Kliegerman* action.

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Nonetheless, by February 5, 2008, moving counsel will seek the stipulation from all counsel in this case and counsel for *Kliegerman* to arrive at a reasonable briefing schedule and hearing date in light of this new development. This motion is filed in order to request an extension before the expiration of this Court's previously issued deadline for the filing of the Motion for Lead Counsel.

No previous extensions of time have been requested regarding the Motion for Lead Counsel.

I, declare under penalty of perjury that the foregoing is true and correct.

Dated: February 4, 2008

Respectfully submitted,

**LAW OFFICE OF DAMIAN R. FERNANDEZ**

By: \_\_\_\_\_ /s/ Damian R. Fernandez

Damian R. Fernandez  
M. Van Smith

Attorneys for Plaintiffs  
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