

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

FOUNDED 1888

270 MADISON AVENUE
NEW YORK, NY 10016
212-545-4600

SYMPHONY TOWERS
750 B STREET - SUITE 2770
SAN DIEGO, CA 92101

625 NORTH FLAGLER DRIVE
WEST PALM BEACH, FL 33401

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC
656 WEST RANDOLPH STREET, SUITE 500W
CHICAGO, IL 60661

MARK C. RIFKIN
212-545-4762
FAX 212-686-0114
rifkin@whafh.com

February 4, 2008

Holman et al v. Apple, Inc. et al

Doc. 59

BY OVERNIGHT MAIL

Honorable James Ware
United States District Judge
United States District Court
for the Northern District of California
280 South 1st Street
San Jose, California 95113

Re: *In re Apple & AT&TM Antitrust Litigation*, N.D. Ca. No. C 07-05152 JW

Re: *Kliegerman v. Apple, Inc.*, S.D.N.Y. No. 1:07-cv-08404-PKC

Dear Judge Ware:

This Firm is counsel to plaintiff Herbert Kliegerman and the putative classes in the second-listed above matter, which is pending before Judge Kevin P. Castel in the Southern District of New York. I write to apprise the Court of developments pertinent to the above two matters and to request a briefing schedule. I am sending this letter directly to your Honor in accordance with conversations that my partner, Alexander Schmidt, has had with Your Honor's Calendar Clerk, Elizabeth Garcia.

Like the Plaintiffs in the matters that have been consolidated before Your Honor in the *In re Apple & AT&TM Antitrust Litigation*, our client, Mr. Kliegerman, has asserted antitrust and other claims on behalf of himself and other persons who have purchased iPhones and attendant voice and data service plans. We understand that Mr. Kliegerman's action has been identified as a "related action" in the Joint Case Management Statement that the parties in *In re Apple & AT&TM Antitrust Litigation* filed on January 18, 2008 (Doc. # 52). We understand further that counsel for Apple, Inc. and AT&T Mobility, LLC have advised Your Honor that Apple has moved before Judge Castel to have the *Kliegerman* action transferred to Your Honor's Court so that it also may be consolidated into the *In re Apple & AT&TM Antitrust Litigation*.

I write to advise Your Honor that by tomorrow, February 5, 2008, Mr. Kliegerman will be consenting to Apple's transfer motion and proposed consolidation upon transfer. I write to further advise Your Honor that Mr. Kliegerman would like to file a motion to have this Firm's New York office appointed interim lead class counsel in the *In re Apple & AT&TM Antitrust Litigation*, with this Firm's San Diego office acting as local counsel.

Honorable James Ware
February 4, 2008
Page 2

Pursuant to Your Honor's Order Following Case Management Conference, filed January 29, 2008 (Doc. # 57), counsel for the *Smith* plaintiffs are to file their motion to disqualify the *Holman* plaintiffs' counsel and to be appointed as lead counsel no later than today, February 4, and the *Holman* plaintiffs' counsel are to file their opposition and cross-motion for appointment as lead counsel by February 18, with any replies due February 25. Because it will take several days to effectuate the transfer of the *Kliegerman* action, we respectfully request permission to file our proposed interim lead counsel motion on February 18, when the *Holman* plaintiffs' cross-motion is presently due, with any opposition to our motion filed by February 25.

This Firm is a preeminent plaintiffs' class action law firm with extensive antitrust class action experience, and we have expended considerable resources investigating and preparing the *Kliegerman* action for litigation. Our lead counsel application will show that we are very well-qualified to represent the putative classes in the *In re Apple & AT&TM Antitrust Litigation* once Mr. Kliegerman's case is transferred.

If the Court prefers us to file our lead counsel application before February 18 we are prepared to do so. If the *Kliegerman* suit has not yet been transferred by the Court's preferred submission date, we can file a motion to intervene before the transfer is effectuated, if necessary.

Respectfully submitted,


Mark C. Rifkin

cc: **(ALL VIA ELECTRONIC MAIL)**

Max Folkenfrix, Esq. (max@fmlaw.net)
H. Tim Hoffman, Esq. (hth@hoffmanandlazeear.com)
Arthur W. Lazeear, Esq. (awl@hoffmanandlazeear.com)
Counsel for Plaintiffs in Holman

Damian Fernandez, Esq. (damianfernandez@gmail.com)
M. Van Smith, Esq. (mvsmith@sbcglobal.net)
Counsel for Plaintiffs in Smith

Daniel M. Wall, Esq. (dan.wall@lw.com)
Christopher S. Yates, Esq. (chris.yates@lw.com)
Donald M. Falk, Esq. (dfalk@mayerbrown.com)
*Counsel for Defendant Apple, Inc.
in Holman, Smith and Kliegerman*

Honorable James Ware
February 4, 2008
Page 3

Daniel A. Sasse, Esq. (dsasse@crowell.com)
*Counsel for Defendant AT&T Mobility LLC
in Holman, Smith and Kliegerman*

Frank M. Gregorek, Esq. (gregorek@whafh.com)
Alexander H. Schmidt, Esq. (schmidt@whafh.com)
Randall S. Newman, Esq. (rsn@randallnewman.net)
Stephen P. DeNittis, Esq. (sdenittis@shabeldenittis.com)
Counsel for Plaintiff in Kliegerman

/500518