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 19 and all others similarly situated

20 **UNITED STATES DISTRICT COURT**
 21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

22 GIORGIO GOMELSKY,
 23 On behalf of himself and
 24 all others similarly situated

Case No. C-08-04969 JF

25 Plaintiffs,

**STIPULATION AND PROPOSED
 ORDER**

26 v.

27 APPLE INC.,

28 Defendants.

Pursuant to Federal Rule of Civil Procedure 15 and Civil Local Rules 7-7(a)(1) and 7-12, the parties, by and through their respective counsel, hereby stipulate as follows:

WHEREAS, Plaintiff filed the complaint in the above-captioned matter on October 30, 2008;

WHEREAS, Defendant filed its Motion to Dismiss and to Strike (the "Motion") on December 22, 2009;

1 WHEREAS, the Motion is currently noticed for hearing on March 6, 2009, and no
2 opposition to the Motion has been filed;

3 WHEREAS, the Plaintiff has given careful consideration to the arguments raised in
4 the Motion and has determined that filing an amended complaint would conserve judicial
5 resources as well as the resources of the parties;

6 WHEREAS, there have been no previous amendments to the complaint and no
7 responsive pleading has been served;

8 WHEREAS, the Plaintiff has advised Defendant of his intention to file an amended
9 complaint narrowing the claims asserted and substituting and/or adding named plaintiffs;

10 WHEREAS, Defendant has agreed that, in light of the foregoing, the hearing on the
11 Motion should be continued until after Defendant has had the opportunity to evaluate the
12 amended complaint;

13 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

14 1. Plaintiff shall file an amended complaint within thirty (30) days of the date of
15 this Stipulation;

16 2. The March 6, 2009 hearing date on the Motion shall be adjourned; and

17 3. Within thirty (30) days following the filing of the amended complaint,
18 Defendant will advise the Court whether it intends to move to dismiss the amended
19 complaint, or to answer the amended complaint in which case the Motion will be
20 withdrawn.

21 Dated: January 29, 2009

Caldwell Leslie & Proctor, PC

22
23 By: /s/ Robyn C. Crowther
Robyn C. Crowther
Attorneys for Plaintiff

24
25 Dated: January 29, 2009

Morrison & Foerster LLP

26
27 By: /s/ Andrew D. Muhlbach
Andrew D. Muhlbach
Attorneys for Defendant

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2 *Filer's Attestation:* Pursuant to General Order No. 45.1, I, Robyn C. Crowther attest that I
3 obtained concurrence in the filing of this document from the other signatories.

4 **PROPOSED ORDER**

5 PURSUANT TO STIPULATION, IT IS SO ORDERED.

6 Dated: January __, 2009

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8 _____
9 The Honorable Jeremy Fogel
10 United States District Judge