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7 Attorneys for Defendant
 8 APPLE INC.

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

13 REUBEN BERENBLAT, ANDREW
 14 PERSONETTE, EARL C. SIMPSON, LAURA
 MILLER, On behalf of themselves and all others
 15 similarly situated,

16 Plaintiffs,

17 v.

18 APPLE INC.,

19 Defendant.

20 THOMAS WAGNER, SCOTT MEYERS, On
 behalf of themselves and all others similarly
 21 situated,

22 Plaintiffs,

23 v.

24 APPLE INC.,

25 Defendant.

Case No. C-08-04969 JF
 Case No. C-09-01649 JF

**APPLE INC.'S NOTICE OF
 MOTION AND MOTION TO
 DISMISS THE THIRD AMENDED
 COMPLAINT**

Date: September 24, 2010
 Time: 9:00 am
 Courtroom: 3

1 PLEASE TAKE NOTICE that on September 24, 2010 at 9:00 am, in the courtroom of the
2 Honorable Jeremy Fogel, San Jose, California, defendant Apple Inc. (“Apple”) will move to
3 dismiss all of Plaintiffs’ claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to
4 state a claim upon which relief can be granted.

5 Apple moves to dismiss Plaintiffs’ claims on the following grounds: (1) Plaintiffs fail to
6 state a claim for violation of the Unfair Competition Law because Apple’s actions were not
7 fraudulent; and (2) Plaintiffs fail to state a claim for unjust enrichment because no such cause of
8 action exists in California and because nothing about Apple’s actions was “unjust.”

9 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
10 and Authorities that follows, the Request for Judicial Notice (“RJN”), and the declaration of
11 Alexei Klestoff filed concurrently herewith, all pleadings and papers filed herein, oral argument
12 by counsel, and such other and further matter that properly may be received by the Court.

13
14 Dated: June 28, 2010

PENELOPE A. PREVOLOS
ANDREW D. MUHLBACH
ALEXEI KLESTOFF
MORRISON & FOERSTER LLP

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16
17 By: /s/ Penelope A. Prevolos
18 Penelope A. Prevolos

19 Attorneys for Defendant
20 APPLE INC.

1 **CERTIFICATE OF SERVICE BY MAIL**
2 (Fed. R. Civ. Proc. rule 5(b))

3 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address
4 is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause;
5 I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice
6 for collection and processing of correspondence for mailing with the United States Postal Service
7 and know that in the ordinary course of Morrison & Foerster's business practice the document
8 described below will be deposited with the United States Postal Service on the same date that it is
9 placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

10 I further declare that on the date hereof I served a copy of:

11 **APPLE INC.'S NOTICE OF MOTION AND MOTION TO
12 DISMISS THE THIRD AMENDED COMPLAINT**

13 **APPLE INC.'S MEMORANDUM OF POINTS AND
14 AUTHORITIES IN SUPPORT OF ITS MOTION TO
15 DISMISS THE THIRD AMENDED COMPLAINT**

16 **DECLARATION OF ALEXEI KLESTOFF IN SUPPORT OF
17 APPLE INC.'S MOTION TO DISMISS THIRD AMENDED
18 COMPLAINT**

19 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
20 APPLE INC.'S MOTION TO DISMISS THE THIRD
21 AMENDED COMPLAINT**

22 **[PROPOSED] ORDER GRANTING APPLE INC.'S MOTION
23 TO DISMISS THE THIRD AMENDED COMPLAINT**

24 on the following by placing a true copy thereof enclosed in a sealed envelope addressed as
25 follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco,
26 California 94105-2482, in accordance with Morrison & Foerster's ordinary business practices:

27 Douglas McNamara
28 COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave., NW
West Tower, Suite 500
Washington, D.C. 20005-3964
Attorney for Plaintiffs

Michael A. Berg
MEISELMAN DENLEA PACKMAN CARTON & EBERZ PC
1311 Mamaroneck Avenue
White Plains, NY 10605
Attorney for Plaintiffs

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

Executed at San Francisco, California, this 28th day of June, 2010.

Mia R. Gimenez
(typed)

/s/ Mia Gimenez
(signature)

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ATTESTATION OF E-FILED SIGNATURE

I, Penelope A. Preovolos, am the ECF User whose ID and password are being used to file this Certificate of Service. In compliance with General Order 45, X.B., I hereby attest that Mia Gimenez has read and approved this Certificate of Service and consents to its filing in this action.

Dated: June 28, 2010.

MORRISON & FOERSTER LLP

_____/s/ Penelope A. Preovolos_____
Penelope A. Preovolos