

1 PENELOPE A. PREVOLOS (CA SBN 87607)
 (PPrevolos@mofo.com)
 2 ANDREW D. MUHLBACH (CA SBN 175694)
 (AMuhlbach@mofo.com)
 3 ALEXEI KLESTOFF (CA SBN 224016)
 (AKlestoff@mofo.com)

4 MORRISON & FOERSTER LLP
 5 425 Market Street
 San Francisco, California 94105-2482
 6 Telephone: 415.268.7000
 Facsimile: 415.268.7522

7 Attorneys for Defendant
 8 APPLE INC.

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 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
 21 behalf of themselves and all others similarly
 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 SECOND
 AMENDED NOTICE OF
 MOTION AND MOTION TO
 DISMISS THE THIRD AMENDED
 COMPLAINT**

Date: December 17, 2010
 Time: 9:00 am
 Courtroom: 3

26
 27
 28

1 PLEASE TAKE NOTICE that on December 17, 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 Second Amended Notice of Motion and Motion and the
10 Memorandum of Points and Authorities, the Request for Judicial Notice (“RJN”), and the
11 declaration of Alexei Klestoff filed on June 28, 2010, all pleadings and papers filed herein, oral
12 argument by counsel, and such other and further matter that properly may be received by the
13 Court.

14
15 Dated: October 5, 2010

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

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

20 Attorneys for Defendant
21 APPLE INC.
22
23
24
25
26
27
28

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 AMENDED NOTICE OF MOTION AND**
12 **MOTION TO DISMISS THE THIRD AMENDED**
13 **COMPLAINT**

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

17 Douglas McNamara
18 COHEN MILSTEIN SELLERS & TOLL PLLC
19 1100 New York Ave., NW
20 West Tower, Suite 500
21 Washington, D.C. 20005-3964
22 *Attorney for Plaintiffs*

23 Michael A. Berg
24 MEISELMAN DENLEA PACKMAN CARTON & EBERZ PC
25 1311 Mamaroneck Avenue
26 White Plains, NY 10605
27 *Attorney for Plaintiffs*

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

Executed at San Francisco, California, this 5th day of October, 2010.

Mia Gimenez
(typed)

/s/ Mia Gimenez
(signature)

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: October 5, 2010.

MORRISON & FOERSTER LLP

/s/ Penelope A. Preovolos
Penelope A. Preovolos