

1 Michael W. Sobol (State Bar No. 194857)

msobol@lchb.com

2 Roger N. Heller (State Bar No. 215348)

rheller@lchb.com

3 Allison Elgart (State Bart No. 241901)

aelgart@lchb.com

4 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

275 Battery Street, 29th Floor

5 San Francisco, CA 94111-3339

Telephone: (415) 956-1000

6 Facsimile: (415) 956-1008

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7 *Attorneys for Weisblatt Plaintiffs*

8 [Additional Counsel listed on signature page]

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

11 ADAM WEISBLATT, JOE HANNA, and
12 DAVID TURK, individually and on behalf of
all others similarly situated,

13 Plaintiffs,

14 v.

15 APPLE INC., AT&T MOBILITY LLC,
16 and Does 1-10,

Defendants.

Case No. 5:10-cv-02553-RMW

**STIPULATION AND []
ORDER FOR CONSOLIDATION
PURSUANT TO FED. R. CIV. P. 42**

17 STUART LOGAN, on behalf of himself and
18 all others similarly situated,

19 Plaintiff,

20 v.

21 APPLE INC. and AT&T MOBILITY LLC,

22 Defendants,

23 COLETTE OSETEK, individually and on
behalf of all others similarly situated,

24 Plaintiff,

25 v.

26 APPLE INC.,

27 Defendant,

Case No. 5:10-cv-02588-RMW

Case No. 5:10-cv-04253-RMW

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		CASE NOS. 5:10-cv-02553-RMW, 5:10-cv-2588-RMW, 5:10-cv-4523-RMW
STIPULATION AND [] ORDER FOR CONSOLIDATION		

1 WHEREAS, *Weisblatt et. al v. Apple Inc. et al.* (N.D. Cal. Case No. 5:10-cv-02553-
2 RMW) (the “*Weisblatt*” action”) was filed on June 9, 2010, naming as defendants Apple Inc.
3 (“Apple”), AT&T Inc., and AT&T Mobility LLC (“AT&T Mobility”);

4 WHEREAS, plaintiffs in the *Weisblatt* action filed their First Amended Complaint on
5 June 23, 2010;

6 WHEREAS, by stipulated Order dated September 22, 2010, defendant AT&T Inc. was
7 dismissed from the *Weisblatt* action without prejudice;

8 WHEREAS, *Logan v. Apple Inc. et. al.* (N. D. Cal. Case No. 5:10-cv-02588-RMW) (the
9 “*Logan* action”) was filed on June 11, 2010, naming as defendants Apple and AT&T Mobility;

10 WHEREAS, by Order dated September 14, 2010, this Court related the *Logan* action to
11 the *Weisblatt* action;

12 WHEREAS, pursuant to the Stipulation And Order Regarding Motion To Compel
13 Arbitration, Discovery And Deferral Of Responsive Pleading Of AT&T Mobility LLC, dated
14 November 4, 2010 (*Logan* Dkt. No. 41), AT&T Mobility’s time to respond to the *Logan*
15 complaint was extended to December 6, 2010;

16 WHEREAS, pursuant to the Order Granting Motion of AT&T Mobility LLC For An
17 Extension Of Time To Respond To The First Amended Complaint, dated November 15, 2010
18 (*Weisblatt* Dkt. No. 61), AT&T Mobility’s time to respond to the *Weisblatt* First Amended
19 Complaint was extended to December 6, 2010;

20 WHEREAS, Case Management Conferences in the *Weisblatt* and *Logan* actions are
21 scheduled for December 17, 2010 (*see* Order on Defendant AT&T Mobility LLC’s Motion To
22 Compel Arbitration Or, In The Alternative, To Stay Case, dated October 18, 2010, *Weisblatt*
23 Dkt. No. 50, and Stipulation And Order Continuing November 19, 2010 Case Management
24 Conference To December 17, 2010, dated November 17, 2010, *Logan* Dkt. No. 46);

25 WHEREAS, *Osetek v. Apple Inc.* (N.D. Cal. Case No. 5:10-cv-04253-RMW) (the
26 “*Osetek* action”) was filed on September 20, 2010, naming Apple as a defendant;

27 WHEREAS, by Order dated October 27, 2010, this Court related the *Osetek* action to the
28 *Weisblatt* action;

1 WHEREAS, the *Weisblatt*, *Logan*, and *Osetek* actions are all currently pending before this
2 Court;

3 WHEREAS, on November 4, 2010, defendant Apple filed a Motion to Consolidate
4 Related Actions (*Weisblatt* Dkt. No. 57; *Logan* Dkt. No. 42; *Osetek* Dkt. No. 12) (“Motion to
5 Consolidate”), asking the Court to consolidate the *Weisblatt*, *Logan*, and *Osetek* actions for all
6 purposes pursuant to Fed. R. Civ. P. 42, and the hearing on Apple’s Motion to Consolidate is
7 currently scheduled for January 7, 2011;

8 WHEREAS, on November 12, 2010, defendant AT&T Mobility filed its Notice of Joinder
9 in Apple Inc.’s Motions to Consolidate Related Actions as to the two actions in which AT&T
10 Mobility is named as a defendant, *Weisblatt* and *Logan* (*Weisblatt* Dkt. No. 59 and *Logan* Dkt.
11 No. 45); and

12 WHEREAS, the *Weisblatt*, *Logan*, and *Osetek* actions arise from the same circumstances
13 and allegations, and involve common questions of law and fact,

14 Plaintiffs in the *Weisblatt*, *Logan*, and *Osetek* actions, defendant Apple, and defendant
15 AT&T Mobility, by and through their respective counsel, hereby stipulate as follows:

- 16 1. The *Weisblatt*, *Logan*, and *Osetek* actions shall be consolidated for all purposes,
17 pursuant to Fed. R. Civ. P. 42(a). The case number for the consolidated
18 proceedings shall be 5:10-cv-02553-RMW (the case number for the first-filed
19 *Weisblatt* action).
- 20 2. Defendant Apple’s pending Motion to Consolidate is dismissed as moot, and the
21 January 7, 2011 hearing for Apple’s Motion to Consolidate is vacated.
- 22 3. Defendant AT&T Mobility shall not be required to respond further to the
23 complaints filed in the *Weisblatt* or *Logan* actions.
- 24 4. Plaintiffs shall file a consolidated master complaint (“Master Complaint”) by no
25 later than December 10, 2010.
- 26 5. Defendants Apple and AT&T Mobility shall file their responses to the Master
27 Complaint by no later than January 14, 2011. To the extent that Apple and/or
28 AT&T Mobility move to dismiss one or more of the claims alleged in the Master

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Complaint: (a) Plaintiffs shall file their opposition(s) to any such motion(s) by no later than February 11, 2011; and (b) defendant(s) shall file their replies by no later March 4, 2010. Any such motions shall be heard by the Court on March 18, 2011 at 9:00 a.m.

- 6. The Case Management Conferences scheduled for December 17, 2010 in the *Weisblatt* and *Logan* actions are hereby taken off calendar. The Initial Case Management Conference in the consolidated action shall be held on March 18, 2011 at 10:30 a.m. or on such later date as the Court orders.
- 7. The Court's Order on Defendant AT&T Mobility's Motion to Compel Arbitration or, in the Alternative, to Stay Case, entered in the *Weisblatt* action on October 18, 2010 (*Weisblatt* Dkt. No. 50), shall be fully binding on the parties in the consolidated action. The parties agree that AT&T Mobility's right to seek to compel arbitration of the named plaintiff's claims in accordance with their arbitration agreements is preserved, and in particular agree that all arguments raised in AT&T Mobility's Motions to Compel Arbitration and to Dismiss Claims or, in the Alternative, to Stay Case, filed in the *Weisblatt* action (*Weisblatt* Dkt. No. 23) and *Logan* action (*Logan* Dkt. No. 32), shall be preserved as if such arguments were raised in the consolidated action.

IT IS SO STIPULATED.

1 Dated: December 6, 2010

Counsel for Weisblatt Plaintiffs:

2 LIEFF CABRASER HEIMANN & BERNSTEIN,
3 LLP

4
5 By: /s/ Michael W. Sobol
6 Michael W. Sobol
7 msobol@lchb.com
8 Roger N. Heller
9 rheller@lchb.com
10 Allison Elgart
11 aelgart@lchb.com
12 275 Battery Street, 29th Floor
13 San Francisco, CA 94111-3339
14 Telephone: (415) 956-1000
15 Facsimile: (415) 956-1008

16 Dated: December 6, 2010

Counsel for Logan Plaintiffs

17 THE WESTON FIRM

18 By: /s/ Gregory S. Weston
19 Gregory S. Weston
20 greg@westonfirm.com
21 888 Turquoise Street
22 San Diego, CA 92109
23 Telephone: (858) 488-1672
24 Facsimile: (480) 247-4553

25 Jack Fitzgerald
26 jack@westonfirm.com
27 2811 Sykes Court
28 Santa Clara, California 95051
Telephone: (408) 459-0305

19 Dated: December 6, 2010

Counsel for Osetek Plaintiffs

20 SCHUBERT JONCKHEER & KOLBE LLP

21 By: /s/ Willem F. Jonckheer
22 Willem F. Jonckheer
23 wjonckheer@schubertlawfirm.com
24 Three Embarcadero Center
25 Suite 1650
26 San Francisco, CA 94111
27 Telephone: (415) 788-4220
28 Facsimile: (415) 788-0161

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DATED: December 6, 2010

Counsel for Apple Inc.

MORRISON & FOERSTER LLP

By: /s/ Penelope A. Preovolos
Penelope A. Preovolos
ppreovolos@mofo.com
Andrew D. Muhlbach (CA SBN 175694)
amuhlbach@mofo.com
Heather A. Moser (CA SBN 212686)
hmoser@mofo.com
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522

DATED: December 6, 2010

Counsel for AT&T Mobility LLC

CROWELL & MORING, LLP

By: /s/ M. Kay Martin
M. Kay Martin (CSB No. 154697)
mmartin@crowell.com
275 Battery Street, 23rd Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827

Kathleen Taylor Sooy
ksooy@crowell.com
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
Tel: (202) 624-2500
Facsimile: (202) 628-5116

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: 12/15/10

Ronald M. Whyte

Hon. Ronald M. Whyte
United States District Judge