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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:***

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16 Dated: December 6, 2010

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19 Dated: December 6, 2010

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DATED: December 6, 2010

*Counsel for Apple Inc.*

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DATED: December 6, 2010

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: 12/15/10

*Ronald M. Whyte*

Hon. Ronald M. Whyte  
United States District Judge