

1 MILES EHRLICH (Bar No. 237954)
miles@ramsey-ehrllich.com
2 ISMAIL RAMSEY (Bar No. 189820)
izzy@ramsey-ehrllich.com
3 RAMSEY & EHRLICH LLP
803 Hearst Avenue
4 Berkeley, CA 94710
(510) 548-3600 (Tel)
5 (510) 291-3060 (Fax)

6 Attorneys for Defendant Paul Devine

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 APPLE, INC.,

13 Plaintiff,

14 vs.

15 PAUL DEVINE and CPK
ENGINEERING, INC.,

16
17 Defendants

) Case No.: CV 10-03563 JW

) STIPULATION AND [PROPOSED] ORDER
) STAYING THIS CASE AND CONTINUING
) DEFENDANTS' OBLIGATION TO FILE A
) RESPONSIVE PLEADING UNDER FED. R.
) CIV. P. 12

18 Plaintiff Apple Inc. and defendants Paul S. Devine, by and through the
19 undersigned counsel, and CPK Engineering, Inc., by and through its undersigned
20 corporate representative, stipulate and agree as follows:

21 1. Mr. Devine is currently one of two defendants in a criminal case pending
22 before this Court, *United States v. Paul Devine*, N.D. Cal. Case No. CR 10-00603 JW.
23 The indictment in the criminal case is based on the same allegedly fraudulent conduct at
24 issue in the present civil case.

25 2. On October 21, 2010, the United States filed a Notice of Related Case in
26 the criminal case stating that (a) Mr. Devine is charged in each of the criminal
27 indictment's twenty-three counts, (b) defendant CPK Engineering, Inc. is mentioned in
28 the indictment as an instrument of the alleged fraud, and (c) both defendants in the civil

1 case are alleged to have engaged in, among other things, the same fraudulent kickback
2 scheme that is the primary subject of the indictment. (*See United States v. Paul Devine*,
3 Docket No. 18.) On November 4, 2010, this Court issued an order finding that this case
4 and the aforementioned criminal case are related. (*See United States v. Paul Devine*,
5 Criminal Docket No. 19.)

6 3. The parties believe that once the criminal case is resolved, the issues to be
7 litigated in this case may be significantly narrowed thereby preserving resources of the
8 parties and this Court. The parties do not believe that a stay of this case pending
9 resolution of the criminal case will prejudice any party to this case or the public interest.
10 *See Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (identifying
11 judicial efficiency, potential prejudice to the parties, and the public interest as factors to
12 be considered when determining whether to stay civil proceedings in the face of parallel
13 criminal proceedings).

14 4. The initial Case Management Conference in this case is scheduled for
15 March 28, 2011.

16 5. On September 9, 2010, plaintiff Apple Inc. and Mr. Devine previously
17 stipulated to an extension of time for Mr. Devine to file a responsive pleading. (*See*
18 *Apple, Inc. v. Devine*, Doc. No. 6.)

19 Accordingly, the parties hereby stipulate and respectfully request that this Court
20 enter an order (a) staying the present civil case, *Apple Inc. v. Paul Devine and CPK*
21 *Engineering, Inc.*, CV 10-03563 JW, in its entirety and as to all parties pending the
22 resolution of the criminal case, *United States v. Paul Devine*, CR 10-00603 JW, or until
23 further order of this Court, (b) permitting any party to request that the Court lift the stay
24 before the resolution of the criminal case if the circumstances of the criminal case suggest
25 that the stay is no longer appropriate, and (c) permitting defendants to file a responsive
26 pleading to plaintiff Apple Inc.'s civil complaint up to 45 days following lifting of this
27 stay.

1 The parties also stipulate and respectfully request that this Court vacate the March
2 28, 2011 Case Management Conference and schedule a Case Management Conference
3 for August 22, 2011, approximately six months from the date of this stipulation, or as
4 otherwise is convenient for the Court.

5 Dated:

Respectfully Submitted,

6 RAMSEY & EHRLICH LLP

7 //s//

8 ISMAIL RAMSEY
9 Attorney for Paul Devine

10 O'MELVENY & MYERS LLP

11 //s//

12 SHARON M. BUNZEL
13 Attorney for Apple, Inc.

14 //s//

15 PAUL DEVINE
16 Individually, and as corporate
17 representative of CPK Engineering, Inc.

18
19
20 GOOD CAUSE HAVING BEEN SHOWN, IT IS SO ORDERED.

21 Dated:

22
23
24 _____
25 HON. JAMES WARE
26 US DISTRICT COURT JUDGE
27
28