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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN JOSE DIVISION**
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12 JONATHAN LALO, individually and On Be-
13 half of a Class of Similarly Situated Individu-
als,

14 Plaintiff,

15 v.
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17 APPLE INC, a California Corporation;
18 BACKFLIP, a Delaware Corporation;
19 DICTIONARY.COM, a California
Corporation; PANDORA, INC., a California
20 Corporation; THE WEATHER CHANNEL, a
Georgia Corporation,

21 Defendants.

22 DUSTIN FREEMAN, JARED PARSLEY,
23 COLE PARR, and PRECIOUS ARRANG-
TON, on behalf of themselves and all similar-
ly situated,

24 Plaintiffs,

25 v.
26

27 APPLE, INC., a Delaware Corporation;
28 GOGII, INC., a Delaware Corporation; PAN-
DORA MEDIA, INC., a California Corpora-

Case No. CV-10-5878 LHK (PSG)

**STIPULATION AND [Proposed] CASE
MANAGEMENT ORDER NO. 1**

Case No. CV-10-5881 LHK (PSG)

tion; BACKFLIP STUDIOS, INC., a Delaware Corporation; THE WEATHER CHANNEL, INC., a Georgia Corporation; DICTIONARY.COM, LLC., a California Corporation; OUTFIT7 LTD, a Foreign Corporation; ROOM CANDY, INC., a California Corporation; SUNSTORM INTERACTIVE, Inc., an Indiana Corporation,
Defendants.

ANTHONY CHIU, individually and on behalf of all others similarly situated,
Plaintiff,
v.
APPLE, INC., a California Corporation, and DOES 1 to 50 inclusive,
Defendants.

Case No. CV-11-0407 LHK

DANIEL RODIMER, et al.
Plaintiffs

Case No. CV-11-0700 PSG

v.
APPLE, INC., FLURRY, INC., MEDIALETS, INC., PINCH MEDIA, INC., QUATTRO WIRELESS, INC., IAC/INTERACTIVE CORP., DICTIONARY.COM, PANDORA, INC., and THE WEATHER CHANNEL
Defendants.

STIPULATION AND [PROPOSED] CASE MANAGEMENT ORDER NUMBER 1

Subject to the Court's review and approval, IT IS HEREBY STIPULATED AND AGREED AND ORDERED as follows:

WHEREAS, the related actions *Lalo, et al. v. Apple Inc., et al.*, CV-10-5878-LHK; *Freeman, et al. v. Apple Inc., et al.*, CV-10-5881-LHK, *Chiu v. Apple, Inc., et al.*, CV-11-0407-LHK and *Rodimer v. Apple, Inc., et al.*, CV 11-0700 PSG (collectively, the "Actions") are pending before this Court; and,

1 WHEREAS, counsel for the various plaintiffs have each concluded that it is in the best
2 interests of the respective parties and absent putative class members that the above-captioned
3 actions be consolidated for all purposes and proceed as contemplated herein; and,

4 WHEREAS, all parties that have appeared, through their respective counsel have stipu-
5 lated to the terms provided herein;

6 WHEREAS, it is anticipated that additional related actions may be transferred to, re-
7 moved to, or filed in this Court; and,

8 WHEREAS, the existence of common questions of law and fact in the Actions now
9 pending before this Court, the interests of fair and efficient administration of the Actions, the
10 avoidance of unnecessary duplicative efforts and the avoidance of inconsistency in outcomes,
11 warrants the consolidation of the Actions, establishment of an organizational structure for
12 plaintiffs' counsel, and the setting of a status conference to discuss, among other things, sched-
13 ules for the filing of pleadings, motion practice and discovery, and good cause appearing there-
14 fore:

15 **IT IS HEREBY ORDERED AS FOLLOWS:**

16 **I. CONSOLIDATION AND TREATMENT OF SUBSEQUENT ACTIONS**

17 1. The Court finds that *Lalo, et al. v. Apple Inc., et al.*, CV-10-5878-LHK; *Free-*
18 *man, et al. v. Apple Inc., et al.*, CV-10-5881-LHK, *Chiu v. Apple, Inc.*, CV-11-0407-LHK and
19 *Rodimer, et al. v. Apple, Inc., et al.* CV-11-0700-PSG present substantially similar issues of law
20 and fact, have been previously related, and are hereby consolidated into *Lalo, et al. v. Apple*
21 *Inc., et al.*, CV-10-5878, and are referred to herein as the Consolidated Action. Each document
22 filed by a party to this litigation shall bear the following caption:

23 _____
24 In re iPhone Application Litigation

No. CV-10-5878 LHK (PSG)

25 _____
26 2. The terms of this Order shall apply to the Consolidated Action and to any and all
27 actions later instituted in, removed to, or transferred to this Court that involve the same or sub-
28 stantially similar issues of law and fact, subject to the following procedures:

1 a. When such a case is filed in, removed to, or transferred to this Court, the
2 Clerk of Court shall:

- 3 (1) place a copy of this Order in the separate file for such action;
4 (2) provide a copy of this Order by mail or electronically pursuant to the
5 local rules to counsel for plaintiff(s) in the newly filed or transferred action and
6 to any defendant(s) in the newly filed or transferred action; and
7 (3) make an appropriate entry on the docket for the Consolidated Action.

8 b. Each new case that arises out of the subject matter of the Consolidated Action
9 which is filed in this Court or transferred to this Court, shall be consolidated with the
10 Consolidated Action and this Order shall apply thereto, unless a party in such newly-
11 filed or transferred action objects to consolidation, as provided for herein, or any provi-
12 sion of this order, within ten (10) days after the date upon which a copy of this Order is
13 served on counsel for such party, by filing an application for relief and this Court deems
14 it appropriate to grant such application.

15 3. Counsel shall call to the attention of the Court and the Clerk the filing or trans-
16 fer of any case that might properly be consolidated with the Consolidated Action. Mailing or
17 other delivery of a copy of this Order by Defendants' counsel or Plaintiffs' Interim Class Coun-
18 sel (see II. Below), as appropriate, to the counsel in any newly filed or transferred actions shall
19 constitute valid notice thereof for purposes of establishing its applicability to such action in ac-
20 cordance herewith.

21 **II. ORGANIZATION OF PLAINTIFFS' COUNSEL**

22 1. Plaintiffs shall use their best efforts to self-organize and recommend to the
23 Court counsel to serve as Interim Class Counsel under FRCP 23(g). Such recommendation
24 shall be submitted to the Court with papers supporting the qualifications for such Interim Class
25 Counsel within ten days of the entry of this Order. Any Plaintiff may oppose such recommen-
26 dation by filing an opposition within 10 days of notice of consolidation of their case or the fil-
27 ing of said recommendation, whichever is later.
28

2. Interim Class Counsel, acting on behalf of Plaintiffs, shall have the following duties:

- a. To coordinate all proceedings, including preparing, structuring, and presenting pretrial and other management related orders;
- b. To encourage full cooperation and efficiency among all counsel;
- c. To create any necessary committees and appoint committee chairs and otherwise delegate responsibilities for specific tasks in a manner to assure that pretrial and trial preparation is conducted effectively, efficiently, and economically;
- d. To delegate work responsibilities and monitor the activities of counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;
- e. To act as spokespersons at all court conferences;
- f. To call meetings of themselves and/or other counsel as appropriate or necessary from time to time;
- g. To initiate and conduct settlement negotiations with counsel for the various Defendants;
- h. To determine Plaintiffs' position on all matters arising during this litigation (after such consultation with other counsel as they deem appropriate) and present such position orally and/or in writing to the Court and opposing parties;
- i. To consult with and employ experts, as necessary;
- j. To initiate, coordinate and conduct discovery;
- k. To represent Plaintiffs at trial and on any appeal of this matter;
- l. To negotiate and execute agreements with local counsel or other cooperating attorneys;

1 m. To determine the appropriate fee allocation among Plaintiffs' counsel as
2 they contributed to resolution or otherwise provided benefit to the class;
3 and

4 n. To perform such other duties as are necessary in connection with the
5 prosecution of this litigation.

6 3. Interim Class Counsel shall be the contact between Plaintiffs' counsel
7 and Defendant's counsel as well as the spokesperson for Plaintiffs' counsel. All agreements
8 reached with the Interim Class Counsel shall be binding on all other Plaintiffs' counsel in the
9 Consolidated Action.

10 4. Interim Class Counsel are hereby designated as the counsel for Plaintiffs
11 in the Consolidated Action upon whom all notices, orders, pleadings, motions, discovery, and
12 memoranda relating to the Consolidated Action shall be served, and Defendants shall effect
13 service of papers on Plaintiffs in the Consolidated Action by serving Interim Class Counsel.

14 5. No motion or request for discovery shall be served or filed by Plaintiffs,
15 or other pretrial proceedings initiated by Plaintiffs, except by or with the authorization of Inter-
16 im Class Counsel.

17 6. The organizational structure set forth in this section applies to all Plain-
18 tiffs' counsel in the Consolidated Action, including any action subsequently governed by this
19 Order.

20 7. No communications among Plaintiffs' counsel shall be taken as a waiver
21 of any privilege or protection to which they would otherwise be entitled.

22 **III. FILING OF PLEADINGS**

23 Within 30 days of appointment by the Court, Interim Class Counsel shall file an amend-
24 ed consolidated pleading. Defendants' shall move or respond to the consolidated complaint
25 within 45 days thereafter. If defendants shall move to dismiss, Interim Class Counsel shall
26 have 30 days to respond and Defendants shall have 20 days thereafter to file a reply. Defend-
27 ants shall have no obligation to respond to any prior filed pleading in the actions consolidated
28 herein. No other deadlines shall be superseded by entry of this Order.

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This Order may be modified, supplemented, or superseded by order of the Court or upon any party for good cause shown.

Dated: March 3, 2011

By: s/Avi Kreitenberg
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Dated: March 7, 2011

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Dated: March 4, 2011

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Dated: March 4, 2011

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7 Dated: March 4, 2011

8 By: s/Michael H. Page
Michael H. Page

9 On Behalf of Defendant Pandora, Inc.,
10 IAC/Interactive Corp., Dictionary.com, LLC and
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17 IAC/INTERACTIVE CORP., DICTIONARY.COM, LLC AND YELP

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Dated: March 8, 2011

By: s/Sacha Von Mende Henry
Sascha Von Mende Henry

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Dated: March 9, 2011

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On Behalf of Defendant Groupon, Inc.

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Dated: March 9, 2011

By: s/James Donato

James Donato

On Behalf of Defendant Webmd Health Services
Group, Inc

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ATTORNEYS FOR DEFENDANT WEBMD HEALTH
SERVICES GROUP, INC.

PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

Dated: _____

UNITED STATES DISTRICT COURT JUDGE