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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re iPHONE APPLICATION LITIGATION	Case No. CV-10-5878 LHK (PSG) **PLAINTIFFS' RESPONSE TO DEFENDANT APPLE INC.'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT** Judge: Hon. Lucy H. Koh

Plaintiffs respectfully submit this Response to Defendant Apple Inc.'s Motion for Enlargement of Time to Complaint:

The extension of time requested by Defendants is an unnecessary delay, a needless deviation from the schedule to which the parties agreed at the April 6, 2011 case management conference, and an unfair prejudice to Plaintiffs.

Control of the schedule of this litigation lies with the Court. The Court, with input from *both* Plaintiffs and Defendants agreed on a fair and realistic timetable for the filing and response to a Master Complaint. Now, for reasons of tactical advantage, Defendants seek to upset that schedule to the detriment of Plaintiffs. The only relevant inquiry in determining whether the extension should be granted is whether the litigants and the Court's interests in a timely resolution of this matter are served. In the instant case, they are not.

Plaintiffs ask the Court to consider that the "dilemma" of which Defendant complains is largely of its own making and contradicts the arguments regarding scheduling made by its own counsel at the first case management conference on April 6, 2011.[1] Nowhere does Apple argue that it *needs* additional time to respond. It is clear that the requested extension is not a matter of professional courtesy but one of substance by which Apple again seeks delay.

At the April 6, 2011, Conference, the Court carefully crafted a schedule that would keep this litigation on pace and allow the parties to begin moving beyond the pleading stage of this litigation over the course of the summer. In fact, Defendant Apple's verbal request to stay these proceedings pending a ruling on their anticipated Motion to Dismiss was specifically denied by the Court because that is not the law in this district or the Ninth Circuit.

In order to accommodate the Court's desire to keep this litigation moving, Plaintiffs moved up the anticipated date of filing their Consolidated Complaint so that Defendant Apple would be able to respond prior to the May 25, 2011, case management conference. At no point did Apple make known its intentions to a stay until after the Consolidated Complaint was filed.

[1] As discussed in detail in Plaintiffs' Opposition to Stay, no action outside of these consolidated actions have moved forward in any way whatsoever.

Similarly, Apple never advised Plaintiffs that it would seek an extension until the end of last week. Even during the Rule 26(f) meet and confer in advance of the upcoming case management conference, Apple never mentioned that it would seek to delay its response to the Consolidated Complaint.

Apple has offered two reasons for its extension: the newly named Defendants and Apple's petition for before the Judicial Panel on Multi-District Litigation.

First, the possible extension of time for newly named defendants should have no bearing on the response time for Apple.[2] The fact that certain defendants would be dropped and others would be added in the Consolidated Complaint was expressly addressed at the April 6, 2011 Conference by the parties and by the Court. Apple had the opportunity to factor the new Defendants into their position on the amount of time needed to respond to the Consolidated Complaint and did not do so. To argue some sort of disadvantage now is disingenuous. More importantly, the fact that certain Defendants might respond after Defendant Apple responds has no bearing on whether Apple should be required to timely respond to Plaintiffs' Consolidated Complaint. Plaintiff does not seek to have the Court consider the motions to dismiss separately, but simply seeks to have Apple respond on the Court-ordered schedule to which they agreed.

Second, Apple's own petition for an MDL and its own request for a stay should not be the basis for a substantive change in the schedule Ordered by this Court. The existence of cases outside the Northern District of California was known to Apple prior to the April 6, 2011, Conference and was brought to the attention of the Court on April 6, 2011. In fact, after the April 6, 2011 Conference, only a single additional case was filed (District Court Puerto Rico) prior to Apple filing its MDL Petition.[3]

[2] At this point in time, Plaintiffs have entered into stipulations with some of the newly added or served Defendants' who were not parties at the time of the April 6, 2011 conference due to the fact that they were just served and/or have just retained their counsel. These stipulations set a response date of June 13, 2011, which is two weeks longer than the time that would be afforded to them by operation of the Federal Rules. Plaintiffs believe any extension by a party appearing at the first case management order would need to be accomplished by a stipulation and order under the local rules rather than by a stipulation alone since it would alter a deadline of the Court.

[3] The other cases before the MDL Panel were all filed *after* Apple filed its MDL Petition.

Nothing has changed since the last case management conference to justify alteration of the Court's schedule except for actions taken by Defendant Apple itself. By asking this Court to postpone its response deadline to Plaintiffs' Complaint until June 13, 2011, Defendant Apple is merely attempting to manufacture excuses to delay these proceedings. Apple suggested these dates at the April 6, 2011 Conference and Plaintiff relied on those dates in agreeing to file its consolidated complaint on shortened time.

The oldest of these cases have now been pending since December 2010. Defendant Apple will hardly be prejudiced by requiring them to respond for the first time to Plaintiffs' Complaint five months after first being served. For these reasons, Plaintiffs respectfully request that the Court adhere to the schedule it previously Ordered after the April 6, 2011 case management conference and deny Defendant Apple's request.

Dated: May 17, 2011

Respectfully submitted,

KAMBERLAW, LLC

By: /s/
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