

1 MICHAEL J. BETTINGER (SBN 122196)
 IRENE YANG (SBN 245464)
 2 K&L GATES LLP
 4 Embarcadero Center, Suite 1200
 3 San Francisco, California 94111-5994
 Telephone: 415.882.8200
 4 Facsimile: 415.882.8220
mike.bettinger@klgates.com
 5 irene.yang@klgates.com

6 Of Counsel:
 MICHAEL J. ABERNATHY
 7 BRIAN J. ARNOLD
 K&L GATES LLP
 8 70 West Madison Street, Suite 3100
 Chicago, Illinois 560602
 9 Telephone: (312) 372-1121
 Facsimile: (312) 827-8000
 10 mike.abernathy@klgates.com
brian.arnold@klgates.com

11 Attorneys for *Amicus Curiae*
 12 T-MOBILE USA, INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

17 APPLE INC., a California corporation,
 18 Plaintiff,
 19 vs.
 20 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity; SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New
 York corporation; SAMSUNG
 22 TELECOMMUNICATIONS AMERICA,
 23 LLC, a Delaware limited liability company,
 24 Defendants.

CASE NO. 11-cv-01846-LHK

**NOTICE OF MOTION AND MOTION
 FOR LEAVE TO FILE BRIEF OF
 AMICUS CURIAE T-MOBILE USA, INC.
 REGARDING APPLE INC.'S MOTION
 FOR A PRELIMINARY INJUNCTION
 AND FOR LEAVE TO APPEAR AT
 PRELIMINARY INJUNCTION HEARING**

Date: October 13, 2011
 Time: 1:30 p.m.
 Courtroom 8, 4th Floor
 Judge: Hon. Lucy H. Koh

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 **PLEASE TAKE NOTICE** that on October 13, 2011 at 1:30 p.m. or at any other date and
3 time as the Court may order, T-Mobile USA, Inc. (“T-Mobile”) will and hereby does bring to this
4 Court its Motion for Leave to File Brief of *Amicus Curiae* T-Mobile USA, Inc. Regarding Apple
5 Inc.’s Motion for a Preliminary Injunction and for Leave to Appear at the Preliminary Injunction
6 Hearing (“Motion for Leave”).

7 T-Mobile asks this Court to allow it to file the attached *amicus curiae* brief regarding Apple
8 Inc.’s Motion for a Preliminary Injunction (“P.I. Motion”). T-Mobile also asks this Court to allow it
9 to appear at the preliminary injunction hearing on October 13, 2011 and present oral argument on
10 issues relating to its *amicus curiae* brief. As explained below, T-Mobile has a substantial interest in
11 this matter, separate and apart from the interests of the parties in the above-captioned action, as to
12 why Apple’s P.I. Motion should not be granted and Defendants’ products should not be enjoined.

13 This Motion for Leave is based on this Notice of Motion and Motion, the Points and
14 Authorities below, the proposed *amicus curiae* brief of T-Mobile, the concurrently-filed Motion for
15 an Order Shortening Time and declaration in support thereof, and such other matters as may be
16 presented to the Court at oral argument.

17 **RELIEF REQUESTED**

18 T-Mobile seeks leave to file a brief as *amicus curiae* regarding Apple’s P.I. Motion, which is
19 scheduled for hearing before the Court on October 13, 2011 at 1:30 p.m., and seeks leave to appear at
20 the hearing and present oral argument on issues relating to its *amicus* brief.

21 **POINTS AND AUTHORITIES**

22 *Amicus curiae* T-Mobile is a national provider of wireless voice, messaging, and data services
23 capable of reaching over 293 million Americans. T-Mobile’s lineup of handheld devices, particularly
24 its smartphone offerings, is heavy with Samsung-manufactured devices. T-Mobile respectfully
25 requests leave to file the attached *amicus* brief to apprise the Court of public interest considerations
26 implicated by Apple’s P.I. Motion, which seeks to preliminarily enjoin Samsung products, including
27 the Galaxy S 4G smartphone and Galaxy Tab 10.1 tablet, in the midst of the critical holiday shopping
28 season. *See* Apple Inc.’s Motion for a Preliminary Injunction (Dkt. No. 86). T-Mobile also

1 respectfully requests leave to appear at the preliminary injunction hearing on October 13, 2011 and
2 present oral argument regarding T-Mobile's interests in the outcome of Apple's P.I. Motion. Counsel
3 for *amicus curiae* contacted the parties on September 27 and 28, 2011, prior to filing this motion to
4 determine whether the parties would oppose this Motion for Leave and the concurrently-filed Motion
5 to Shorten Time, which requests that the Court shorten the briefing schedule for this Motion for
6 Leave so as to allow T-Mobile's *amicus* brief to be considered with respect to Apple's P.I. Motion.
7 Counsel for Apple indicated that Apple opposes and referred T-Mobile to Apple's Opposition to
8 Cellco/Verizon Wireless's Motion for Leave to File Amicus Curiae Brief Regarding Apple's Motion
9 for a Preliminary Injunction (Dkt. No. 262). Counsel for Samsung indicated that it does not oppose
10 the Motion for Leave or Motion to Shorten Time.

11 "District courts frequently welcome amicus briefs from non-parties concerning legal issues
12 that have potential ramifications beyond the parties directly involved or if the amicus has unique
13 information or perspective that can help the court beyond the help that the lawyers for the parties are
14 able to provide." *Sonoma Falls Devs., LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919,
15 925 (N.D. Cal. 2003). In this case, the potential effects of a preliminary injunction would go far
16 beyond Apple and Samsung. As a wireless carrier that has traditionally invested heavily in Samsung
17 handheld devices and has already prepared its 2011 holiday sales season campaign prominently
18 featuring the accused Samsung Galaxy S 4G and Galaxy Tab 10.1 products, T-Mobile is uniquely
19 positioned to describe the harms likely to befall it, its business, and U.S. consumers should the
20 requested injunction be granted. T-Mobile thus has a direct and substantial interest in the outcome of
21 this P.I. Motion, yet is not party to this litigation, and without an *amicus* brief from T-Mobile and
22 appearance at the preliminary injunction hearing, its interests and concerns are unlikely to be fully
23 explained to the Court. For these reasons, T-Mobile respectfully requests that this Court exercise its
24 discretion and grant T-Mobile's Motion for Leave.

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1 Dated: September 28, 2011

Respectfully submitted,

2 K&L GATES LLP

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4 By: /s/ Michael J. Bettinger
5 MICHAEL J. BETTINGER (SBN 122196)
6 Attorneys for *Amicus Curiae*
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