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E-FILED - 1/25/11

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

In re Apple and AT&T iPad Unlimited Data
Plan Litigation

ALL CONSOLIDATED ACTIONS

Case No. 5:10-cv-02553-RMW

**CASE MANAGEMENT
ORDER NO. 1**

This matter comes before the Court upon Plaintiffs’ Administrative Motion for Entry of Initial Case Management Order and Appointment of Interim Counsel. Upon consideration thereof, the Court hereby ORDERS as follows:

I. CONSOLIDATED PROCEEDINGS

This Order shall govern and control all procedures and proceedings in the following consolidated actions and any related actions which may be made part of these consolidated proceedings (collectively, the “Consolidated Actions”): (a) *Weisblatt et. al v. Apple Inc. et al.* (N.D. Cal. Case No. 5:10-cv-02553-RMW); (b) *Logan v. Apple Inc. et. al.* (N. D. Cal. Case No. 5:10-cv-02588-RMW); and (c) *Osetek v. Apple Inc.* (N.D. Cal. Case No. 5:10-cv-04253-RMW).

A. Master Docket and Case File

The clerk shall maintain a master docket and case file under the style “In re Apple and AT&T iPad Unlimited Data Plan Litigation,” Case No. 5:10-cv-02553-RMW (the case number for the first-filed *Weisblatt* action). All orders, pleadings, motions, and other documents filed in the Consolidated Actions shall be filed and docketed in such master case file.

		CASE NO. 5:10-cv-02553-RMW
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B. Captions

All orders, pleadings, motions, and other documents filed in the Consolidated Actions shall bear a caption similar to that of this Order.

II. ORGANIZATION OF PLAINTIFFS' COUNSEL

A. Interim Class Counsel

The Court hereby designates the following counsel to serve as Interim Class Counsel in the Consolidated Actions, pursuant to Fed. R. Civ. P. 23(g)(2)(A), until further order of the Court:

- Lieff, Cabraser, Heimann & Bernstein LLP
- The Weston Firm
- Schubert, Jonckheer & Kolbe LLP

B. Lead Plaintiffs' Counsel

The Court hereby designates Michael W. Sobol, Lieff, Cabraser, Heimann & Bernstein LLP, to serve as Lead Plaintiffs' Counsel in the Consolidated Actions.

C. Responsibilities of Designated Plaintiffs' Counsel

Lead Plaintiffs' Counsel, with the assistance of the other designated Interim Class Counsel, shall be generally responsible for coordinating the activities of Plaintiffs in the Consolidated Actions. Lead Plaintiffs' Counsel shall be responsible for delegating work responsibilities and monitoring the activities of all Plaintiffs' counsel to ensure that Plaintiffs' litigation in these proceedings is conducted effectively, efficiently, and economically, that schedules are met, and that unnecessary expenditures of time and expense are avoided. In addition, Lead Plaintiffs' Counsel, with the assistance of the other designated Interim Class Counsel, shall have the following responsibilities with respect to the Consolidated Actions during their pendency:

(a) Conduct all pre-trial, trial, and post-trial litigation on behalf of the Plaintiffs in these proceedings, provided, however, that Lead Counsel shall attempt in good faith to equitably allocate work and responsibilities among Plaintiffs' counsel;

(b) Determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by designee) to the Court and opposing parties the position of the

1 Plaintiffs on all matters arising during these proceedings;

2 (c) Coordinate, initiate and conduct discovery on behalf of Plaintiffs consistent with the
3 requirements of Fed. R. Civ. P. 26, including preparing joint interrogatories and requests for
4 production of documents and the examination of witnesses in depositions;

5 (d) Require assessments from Plaintiffs' counsel sufficient to fund the necessary and
6 appropriate costs of discovery and other common benefit efforts;

7 (e) Consult with and employ consultants or experts, as necessary;

8 (f) Coordinate settlement discussions or other ADR efforts on behalf of Plaintiffs, under
9 the supervision of the Court, if and as appropriate;

10 (g) Enter into stipulations with opposing counsel as necessary for the conduct of the
11 litigation;

12 (h) Encourage full cooperation and efficiency among all Plaintiffs' counsel;

13 (i) Present all matters of common concern to the Plaintiffs in these proceedings;

14 (j) Communicate with the Court concerning scheduling and other administrative matters;

15 and

16 (k) Perform such other duties as may be incidental to the proper coordination of Plaintiffs'
17 activities or as authorized by further Order of the Court.

18 **D. Other Provisions Relating to Plaintiffs' Counsel**

19 **1. Privileged Communications**

20 The Court recognizes that cooperation among counsel and the parties is essential for the
21 orderly and expeditious resolution of the litigation. The communication, transmission or
22 dissemination of information of common interest among Plaintiffs' counsel shall be protected by
23 the attorney-client privilege, the protections afforded by the attorney work product doctrine, the
24 protections afforded to material prepared for litigation or any other privilege or protection from
25 disclosure to which a party may otherwise be entitled. Any cooperative efforts by Plaintiffs in
26 connection with the Consolidated Actions, and any stipulations entered in the Consolidated
27 Actions in an effort to streamline the litigation or to aid in the management of the Consolidated
28 Actions, shall not in any way be used against any of the parties in this or any other action, be

1 cited as purported evidence of conspiracy, wrongful action or wrongful conduct, and shall not be
2 communicated to any jury.

3 **2. Time Records and Expenses**

4 All Plaintiffs' counsel shall keep contemporaneous records of their time and expenses
5 devoted to this matter in a uniform manner. Those records shall reflect the date the legal service is
6 rendered, the nature of the service rendered, and the number of hours expended.

7 **III. SERVICE OF DOCUMENTS**

8 Within ten (10) days of the date of this Order, counsel for any party desiring to receive
9 service of documents filed with the Court in the Consolidated Actions shall register for
10 participation in the Court's Internet-based Electronic Case Files (ECF) system. Unless otherwise
11 directed by the Court, all documents required to be filed with the Court shall be filed and served
12 exclusively through the ECF system, in accordance with the Court's Electronic Case Filing
13 Administrative Procedures. Except as the parties may otherwise agree among themselves, paper
14 copies of documents filed with the Court need not be served on any party. Discovery requests,
15 responses thereto, and other pleadings not required to be filed with the Court shall be served on
16 Defendants' counsel and Interim Class Counsel by overnight delivery, or such other method(s) of
17 service as the affected parties may agree among themselves.

18 **IV. MASTER PLEADINGS**

19 Plaintiffs shall file a consolidated Master Complaint, and Defendants shall file their
20 responses thereto, pursuant to the schedule set forth below. Except for the Master Complaint, and
21 any proper amendments thereto, Defendants need not answer or respond to any complaint or
22 amended complaint filed in any of the Consolidated Actions.

23 For all subsequently filed cases which are made part of these consolidated proceedings,
24 the plaintiffs filing such actions shall file a pleading styled Notice of Adoption adopting the then-
25 operative Master Complaint. Any Answer by Defendants to the then-operative Master Complaint
26 shall be deemed responsive to all actions filed subsequent to such Answer.

27 **V. LATER FILED CASES**

28 The terms of this Order will apply to actions later made part of these consolidated

1 proceedings. When an action is added on as part of these proceedings, Lead Plaintiffs' Counsel
 2 shall serve a file-endorsed copy of this Order on the attorneys for the plaintiff(s) in such action
 3 and any new defendant in such action or their counsel. A new party objecting to the application of
 4 any provision of this Order must file a request for relief from this Order within ten (10) days of
 5 service of this Order upon that party, with copies served on Interim Cass Counsel and
 6 Defendants' counsel.

7 **VI. LITIGATION SCHEDULE**

8 The Court hereby adopts the following litigation schedule for the Consolidated Actions,
 9 which was previously agreed to by the parties pursuant to stipulation (*see, e.g., Weisblatt Docket*
 10 No. 64), subject to further modification by the Court:

- 11 1. Plaintiffs shall file a consolidated Master Complaint ("Master Complaint") by no
 12 later than December 10, 2010.
- 13 2. Defendants Apple Inc. ("Apple") and AT&T Mobility LLC ("AT&T Mobility")
 14 shall file their responses to the Master Complaint by no later than January 14,
 15 2011. To the extent Apple and/or AT&T Mobility move to dismiss one or more of
 16 the claims alleged in the Master Complaint: (a) Plaintiffs shall file their
 17 opposition(s) to any such motion(s) by no later than February 11, 2011; and (b)
 18 defendant(s) shall file their replies by no later March 4, 2011. Any such motions
 19 shall be heard by the Court on March 18, 2011 at 9:00 a.m.
- 20 3. The Initial Case Management Conference shall be held on March 18, 2011, at
 21 10:30 am.

22 **VII. DISCOVERY**

23 Discovery shall be coordinated among the Consolidated Actions. The parties shall
 24 promptly meet and confer regarding the entry of a suitable protective order, to protect such
 25 confidential information as may be produced in the Consolidated Actions.

26 The Court hereby adopts the following schedule for discovery for the Consolidated
 27 Actions, subject to further modification by the Court:

- 28 1. Apple and plaintiffs shall serve their initial disclosures, pursuant to Fed. R. Civ. P.

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26(a), by no later than January 28, 2011. Pursuant to the Court’s Order on Defendant AT&T Mobility’s Motion to Compel Arbitration, or in the Alternative, to Stay the Case, entered in the *Weisblatt* action on October 18, 2010 (Weisblatt Dkt. No. 50), AT&T Mobility’s obligation to serve initial disclosures is deferred pending a decision by the U.S. Supreme Court in *AT&T Mobility LLC v. Concepcion* and this Court’s further order on case management.

2. As of the date of this Order, written discovery is open, subject to the limitation set forth in 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).

IT IS SO ORDERED.

Date: 1/25/11



Hon. Judge Ronald M. Whyte
United States District Judge