

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-61395 CIV ZLOCH/SNOW

FREDRICK BLACK,

Plaintiff

v.

APPLE, INC., a  
foreign corporation,

Defendant.

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**AGREED MOTION AND MEMORANDUM OF LAW OF DEFENDANT, APPLE INC.,  
FOR LEAVE TO FILE ITS MOTION TO DISMISS AFTER NOON ON OCTOBER 12,  
2007 AND TO ACCEPT THE MOTION TO DISMISS AS TIMELY FILED**

Defendant, Apple Inc. (“Defendant”), moves pursuant to Federal Rule of Civil Procedure, 6(b), for leave to file its Motion to Dismiss **41 minutes** after the noon deadline set by the Court in its October 3, 2007 Order, and to accept the Motion to Dismiss as timely filed. This is an agreed motion. The filing of the Motion to Dismiss slightly after the Court’s noon deadline was a mistake of counsel, Janet Munn, who was out of her office during the past week to attend a family funeral out-of-state. The grounds supporting this agreed motion are set forth below in the accompanying memorandum of law.

**MEMORANDUM OF LAW**

As set forth above, undersigned counsel, Janet Munn, was out of her office during the week of October 8, to assist her brother whose wife died and to attend the funeral of her sister-in-law out-of-state. Upon her return to the office on October 12, 2007, she recollected the due date of October 12, for the response to the Complaint, but failed to recollect that the Court had extended the deadline for filing only until noon on that day, rather than an extension through the

end of the business day. *See* Order of October 3, 2007, granting Defendant's motion to extend time. As soon as counsel realized her error, which was just after the noon hour, she completed as quickly as possible, the work necessary to file the Motion to Dismiss and promptly filed the motion. Counsel had the Motion to Dismiss ready for filing and was attempting to file within a few minutes after the noon hour, but due to a problem with either the internet connection at her law office or at the Court, the filing was delayed a few more minutes. Even with the delay, the filing of the motion to dismiss was accomplished only slightly after the noon deadline set by the Court and made only **41 minutes** late.

Undersigned counsel apologizes to the Court for her error and humbly pleads with the Court to accept the filing as timely. This mistake was not the fault of the Defendant, but solely of its counsel and Defendant should not be prejudiced by the small error of counsel which was made due to the exigent circumstances of a death of a close family member that necessitated that counsel be out of town. No prejudice to the Plaintiff occurred, and Plaintiff has agreed to the motion. In addition, Plaintiff had earlier agreed to an extension through October 15, 2007. *See* Agreed Motion of Defendant, Apple Inc. for Enlargement of Time to Serve a Response to the Complaint. The Court has authority to grant extensions pursuant to Rule 6(b), when as here, justice so requires and the mistake in not filing by noon, but only 41 minutes later was due to excusable neglect owing to the death in counsel's family.

Prior to filing this motion, undersigned counsel, Janet Munn, telephoned counsel for Plaintiff, William Cotterall, Esq., in a good faith effort to obtain his agreement to this motion, and was advised that Mr. Cotterall agreed to this motion.

**CONCLUSION**

On the basis of the foregoing, Defendant respectfully requests that the Court grant its agreed motion for leave to file Defendant's Motion to Dismiss after the Court's noon deadline on October 12, 2007, and treat the Motion to Dismiss as timely filed.

**s/ Janet T. Munn**  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of October, 2007, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record identified below the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of

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