

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DANIEL E. OWENS and BARBARA S.	)	
OWENS, <i>individually and on behalf of</i>	)	
<i>themselves and others similarly situated,</i>	)	
	)	
Plaintiffs,	)	Case No. 3:09-cv-479-MJR
	)	
v.	)	
	)	
APPLE, INC.,	)	
	)	
Defendant.	)	

**SCHEDULING AND DISCOVERY ORDER  
(CLASS ACTION)**

Depositions upon oral examination, interrogatories, request for documents, and answers and responses thereto shall not be filed unless on order of the Court. Disclosures or discovery under Federal Rule Civil Procedure 26(a) and SDIL-LR 26.1 are to be filed with the Court only to the extent required by the final pretrial order, other order of the Court, of if a dispute arises over the disclosure or discovery.

Having reviewed the Report of the Parties and finding that the parties have complied with the requirements of Federal Rule of Civil Procedure 26(f), SDIL-LR 26.1, and SDIL-LR 23.1, the Court hereby approves and enters the Proposed Scheduling and Discovery Order as submitted by the parties at the Pretrial Scheduling and Discovery Conference.

- A. A settlement conference is set before Magistrate Judge Donald G. Wilkerson in accordance with SDIL-LR 16.3(b) on **August 25, 2010, at 9:00 a.m.** in the East St. Louis Federal Courthouse. The parties may contact chambers for a different settlement conference date if they believe that settlement negotiations would be more beneficial at an earlier or later time.

- B. A Class Certification hearing will be set before the trial judge.
- C. A final pretrial conference is set before United States District Judge Michael J. Reagan on **July 8, 2011, at 10:00 a.m.** in the East St. Louis Federal Courthouse.
- D. A jury trial is set for **July 25, 2011, at 9:00 a.m.**

**DATED: March 8, 2010**

*s/ Donald G. Wilkerson*  
**DONALD G. WILKERSON**  
**United States Magistrate Judge**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DANIEL E. OWENS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 3:09-cv-00479-MJR-DGW
	)	
APPLE INC.,	)	
	)	
Defendant.	)	

**JOINT REPORT OF THE PARTIES AND PROPOSED  
SCHEDULING AND DISCOVERY ORDER  
(CLASS ACTION)**

Pursuant to Federal Rule of Civil Procedure 26(f), SDIL-LR 26.1, and SDIL-LR 23.1, an initial conference of the parties was held on February 12, 2010, with attorneys James G. Onder, Gayle L. Douglas, and William L. Garrison, Jr. for Plaintiffs, and attorneys Kathy Wisniewski, John W. Rogers, and Andrew Muhlbach for Defendant Apple Inc., participating.

SCHEDULING AND DISCOVERY PLANS WERE DISCUSSED AND AGREED TO AS FOLLOWS:

1. The parties agreed that initial priority should be given to discovery on class issues. During the conference, the parties discussed, at length, the production of electronic discovery. During that discussion it became evident that discovery, including class discovery, could be complicated by several factors, including the following facts: almost all of the anticipated document discovery is in electronic format and in decentralized locations; the defendant Apple's electronic files are not, in the normal course of business, kept in a format that would be readily-readable to an opposing counsel; conversion of documents by Apple to a more

readily usable format will take considerable time; and some of the class certification discovery overlaps with merits issues.

Based on these factors, the parties agreed that a realistic deadline for class discovery is November 1, 2010, and that this Court should enter a second scheduling and discovery order after it decides whether this case may proceed as a class action.

2. Initial interrogatories and requests to produce, pursuant to Federal Rules of Civil Procedure 33 and 34 and SDIL-LR 33.1, shall be served on opposing parties promptly, within 15 days of this Court's entry of a scheduling order.

Due to the nature of this case, the parties are exempted from compliance with Federal Rules of Civil Procedure 30(a)(2)(A) (10 deposition limit) and 33(a) (25 interrogatory limit).

3. Plaintiffs' depositions on class certification issues shall be taken by **November 1, 2010**.

4. Defendant's depositions on class certification issues shall be taken by **November 1, 2010**.

5. Third Party actions must be commenced by **May 14, 2010**.

6. During the conference, the parties agreed that it would be most efficient to allow disclosure of expert witnesses on class certification issues on a time-table that coincides with the filing of each party's opening brief on class certification. Thus, the parties agreed that Plaintiffs' expert witnesses on class certification issues (and production of their reports) shall be disclosed at the time Plaintiffs file their motion for class certification, and Defendant's expert witnesses on class certification issues (and production of their reports) shall be disclosed at the time that

Defendant files its opposition to the motion for class certification. Depositions of the experts will take place after disclosure, but in advance of the opponent's next briefing deadline. Thus, the deadlines for expert witness disclosures would be as follows:

Plaintiffs' Class Certification Experts: **November 30, 2010**

Defendant's Class Certification Experts: **February 4, 2011**

7. Depositions of Class Certification expert witnesses must be taken by:

Plaintiffs' expert(s): **January 10, 2011.**

Defendant's expert(s): **February 25, 2011.**

8. Plaintiffs' Motion for Class Certification and Memorandum in Support shall be filed by **November 30, 2010**, and shall not exceed 25 pages.

9. Defendant's Memorandum in Opposition to Class Certification shall be filed by **February 4, 2011**, and shall not exceed 25 pages.

10. Plaintiffs' Reply Memorandum, if any, shall be filed by **March 7, 2011**, and shall not exceed 20 pages.

11. The Class Certification hearing will be set by separate notice.

12. Due to the importance of the class certification decision and its impact on the conduct of the proceedings, the parties agree that this Court should enter a second scheduling and discovery order after it decides whether this case may proceed as a class action. The second scheduling and discovery order should set deadlines for disclosure of remaining expert witnesses, expert depositions, discovery related to the merits, and the filing of dispositive motions.

DATED: February 26, 2010

/s/ James G. Onder (with consent)

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