

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AVI KOSCHITZKI, On Behalf Of Himself
and all Others Similarly Situated,

Plaintiff,

v.

APPLE, INC. and AT&T MOBILITY INC.

Defendants.

Civil Action No. 08 Civ. 4451 (JBW) (VVP)

**DEFENDANT APPLE INC.'S NOTICE OF WITHDRAWAL OF ITS
MOTIONS TO DISMISS AND TO STRIKE WITHOUT PREJUDICE**

PLEASE TAKE NOTICE that Defendant Apple Inc. (“Apple”) hereby withdraws without prejudice its Motion to Dismiss Plaintiff’s Amended Class Action Complaint (“Motion to Dismiss”) and Motion to Strike, which were originally filed on November 24, 2008.

On March 5, 2009, Apple moved the Judicial Panel for Multidistrict Litigation’s (the “MDL Panel”) pursuant to 28 U.S.C. § 1407 for transfer and consolidation of this action with eleven similar putative class actions currently pending in four other judicial districts. To promote efficiency, conserve judicial resources, and avoid the risk of conflicting decisions and in accordance with the policies underlying the MDL procedure, Apple is voluntarily withdrawing its Motion to Dismiss and its Motion to Strike pending the MDL Panel’s resolution of its motion for transfer and consolidation.

Pursuant to this Court's March 11, 2009 ruling, Apple's withdrawal is made without prejudice to its right to later refile its Motion to Dismiss and Motion to Strike in this action or in any action transferred and consolidated by the MDL Panel in this District or any other judicial district. Apple's withdrawal of its motions is not a waiver of its right to respond to Plaintiff's Amended Class Action Complaint. Apple will comply with applicable deadlines set by the Court for renewing its motions in this action.

Dated: New York, New York
March 12, 2009

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