



I. CONSOLIDATION OF RELATED ACTIONS

1. The parties hereby stipulate and agree that all actions identified in Schedule A of the JPML Transfer Order, any related actions and any tag-along actions filed in, removed to, or transferred to this Court are, pursuant to Rule 42(a)(2), consolidated solely for pretrial proceedings. This consolidation does not constitute a determination that the actions should be consolidated for trial. Defendants Apple Inc. (“Apple”) and AT&T Mobility LLC (“ATTM”) and all Plaintiffs reserve their respective rights to seek remand of the actions transferred by the JPML back to the original transferor jurisdictions for trial following pretrial proceedings in this Court.

2. The clerk shall establish and maintain a Master Docket and Master File for these proceedings under the caption “IN RE APPLE IPHONE 4 PRODUCTS LIABILITY LITIGATION,” Master File No. 5:10-md-02188-RMW. All orders, pleadings, motions and other documents, when filed and docketed in the Master File, will be deemed filed and docketed in each individual case.

3. Every pleading or other such document in these consolidated proceedings, which ordinarily contains a pleading caption, shall bear the following caption:

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

_____ )	
IN RE APPLE IPHONE 4 PRODUCTS )	
LIABILITY LITIGATION )	Case No. 5:10-md-02188-RMW
)	
This Document Relates To: All Actions )	
)	The Hon. Ronald M. Whyte
)	
)	
_____ )	

4. When a pleading or other captioned document is intended to be applicable to all actions which are part of these proceedings, the words “All Actions” shall appear immediately after the words “This Document Relates To:” in the caption set forth above. When a pleading or other captioned document is intended to be applicable only to some, but not all, of such actions, the last name of the first-named plaintiff in said action and that case’s individual action number shall appear immediately after the words “This Document Relates To:” in the caption set forth above.

## II. APPEARANCES IN LITIGATION

5. Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court. Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in these proceedings and the requirements of Local Rule 11-3 are waived. Association of local counsel is not required.

## III. INITIAL CASE MANAGEMENT CONFERENCE

6. An initial case management conference shall be held on January 14, 2011 at 10:30 am pst.

## IV. ORGANIZATION OF PLAINTIFFS’ COUNSEL

7. Plaintiffs propose and request that the organizational structure of plaintiffs’ counsel be established by this Order which shall bind plaintiffs’ counsel in the Consolidated Actions, including any action subsequently governed by this Order. Apple and ATTM take no position regarding leadership structure for plaintiffs’ counsel, including the appointment of lead counsel.

8. The Court appoints the following individuals to act on behalf of plaintiffs in the Consolidated Actions, including any plaintiffs subsequently governed by this Order, with the responsibilities hereinafter prescribed.

a. As Co-Lead Counsel:

- (1) IRA P. ROTHKEN of the ROTHKEN LAW FIRM
- (2) STUART A. DAVIDSON of ROBBINS GELLER RUDMAN & DOWD LLP
- (3) JENNIFER SARNELLI of GARDY & NOTIS LLP and
- (4) BEHRAM V. PAREKH of KIRTLAND & PACKARD LLP

9. Co-Lead Counsel. Co-Lead Counsel shall have day-to-day responsibility for the conduct of the consolidated litigation; shall determine how to prosecute the case and shall initiate, coordinate and supervise the efforts of plaintiffs' counsel in the consolidated action in the areas of discovery, briefing, trial and settlement.

10. Co-Lead Counsel shall designate responsibilities for specific tasks to plaintiffs' counsel in the consolidated cases in a manner to assure that pretrial preparation is conducted effectively, efficiently and economically; shall assist in maintaining communication among counsel; and shall monitor the activities of plaintiffs' counsel to assure that schedules are met and unnecessary expenditures of time and money are avoided. Co-Lead Counsel shall maintain the official service list of all plaintiffs and plaintiffs' counsel in the Consolidated Actions, including their addresses. Co-Lead Counsel shall perform whatever any additional functions that may be assigned to them by the Court. Agreements reached between defendant and Co-Lead Counsel are binding on all plaintiffs and their counsel. No discovery shall be served, and no motion shall be filed, by any plaintiff's counsel without the consent of Co-Lead Counsel, unless leave of Court is obtained.

11. Service of all papers filed with the Court shall be accomplished by e-filing, and no other type of service shall be required. Service of all papers that are not filed with the Court shall be accomplished by plaintiffs serving defendant's liaison counsel, and by defendants serving Co-Lead Counsel for plaintiffs, as applicable, by either: (i) overnight mail service or (ii) hand delivery and whenever feasible, the serving party shall send copies simultaneously via e-mail in PDF format, to defendant's counsel or to Co-Lead Counsel for Plaintiffs, as applicable.

V. APPLICATION OF THIS ORDER TO SUBSEQUENT CASES

12. This Pretrial Order No. 1 shall apply to each related case subsequently added-on or transferred to this consolidated proceeding. When an action is added-on as part of these proceedings, plaintiffs' Co-Lead Counsel shall serve a file-endorsed copy of this Pretrial Order No. 1 to the attorneys for the plaintiff(s) in the add-on case, and direct that this Pretrial Order No. 1 be served upon any new defendant(s) in the add-on case, or their counsel. A new party objecting to the application of any provision of this Order must file a request for relief from this Order within ten (10) days of service of this Order upon that party.

VI. LIAISON COUNSEL

13. The following individuals will serve as liaison counsel for Defendants:

Apple:

Penelope A. Prevolos  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482

ATTM:

Kathleen Taylor Sooy  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2595

Ira P. Rothken of the Rothken Law Firm shall be liaison counsel for Plaintiffs.

Liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such order and notices to the parties in their liaison group and perform other tasks determined by the Court. Liaison counsel shall be required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request.

14. Service of all papers filed with the Court shall be accomplished by e-filing and no other type of service shall be required. Service of all papers that are not filed with the Court shall be accomplished on liaison counsel by either: (i) overnight mail service or (ii) e-mail in PDF format.

VII. MASTER CONSOLIDATED AMENDED COMPLAINT

15. Defendants’ obligations to respond by motion or answer to the underlying complaints in the individual actions are stayed pending the entry of Pretrial Order No. 1.

16. Plaintiffs shall file and serve a Master Consolidated Complaint (“MCC”) by February 7, 2011. The Master Consolidated Complaint shall be filed for administrative convenience in these consolidated proceedings and shall not affect the parties’ substantive rights with respect to the underlying complaints in the individual actions nor waive the parties’ positions based on choice of law or other applicable principles.

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VIII. STAY AS TO ATTM PENDING *CONCEPCION* RULING

18. All proceedings as to ATTM, including its obligation to respond to the MCC, to respond to any discovery directed against ATTM, and the requirements of Rule 26(a)(1) and (f), without waiver of any arguments by plaintiffs regarding arbitrability, stay, and related issues, will be stayed pending the United States Supreme Court’s ruling in *AT & T Mobility LLC v. Concepcion*, --- U.S. ----, 130 S.Ct. 3322, 176 L.Ed.2d 1218 (2010) (No. 09-893) because ATTM intends to bring a motion to compel arbitration in this action, its motion to compel arbitration will raise the threshold issue of whether plaintiffs may pursue their claims against ATTM in this forum, and the parties agree that absent intervening precedent or changed circumstances the decision in *Concepcion* may be determinative of key issues to be decided in ATTM’s motion to compel arbitration. Within 14 days of the Supreme Court’s ruling in *Concepcion*, Plaintiffs and ATTM shall each notify this Court how they intend to proceed in this action.

IX. DISCOVERY

19. The parties disagree on whether written discovery as to claims against defendant Apple shall be allowed to proceed beginning after the initial status conference set for January 14<sup>th</sup> 2011, including proceeding with the requirements of Rule 26(a)(1) and (f) as to defendant Apple.

20. Plaintiffs believe that this Court’s ruling in *Weisblatt v. Apple, Inc., slip op.*, Case No. 10-2553-RMW, 2010 WL 4071147 (N.D. Cal. October 18, 2010), supports the notion that no stay is warranted with regards to defendant Apple and that discovery ought to move forward.

21. Apple believes that the courts' orders in *In re Apple iPhone 3G Products Liability Litig.*, N.D. California, Civil Action No. *In re Apple iPhone 3G Prods. Liab. Litig.*, N.D. Cal., Case No. C 09-02045 JW, ECF No. 238 at 2-4 (Dec. 9, 2010) (staying all proceedings as to both Apple and ATTM pending the decision in *Concepcion*) and *In re Apple iPhone 3G and 3GS MMS Mktg. and Sales Practices Litig.*, E.D. Louisiana, Case No. 09 MDL 2116, ECF No. 206 at 1-2 (Nov. 17, 2010) (extending stay to Apple and staying all proceedings pending the decision in *Concepcion*) support a stay of the present proceedings, including all discovery, as to Apple pending the decision in *Concepcion*).

X. MODIFICATION OF THIS ORDER

22. This Order may be modified or supplemented by the Court or on motion by any party for good cause shown.

Dated: December 14, 2010

MORRISON & FOERSTER LLP

By: /s/ Penelope A. Preovolos  
PENELOPE A. PREOVOLOS

MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522  
Email: [ppreovolos@mof.com](mailto:ppreovolos@mof.com)

*Attorneys for Defendant*  
APPLE INC.



Dated: December 14, 2010

CROWELL & MORING LLP

By: /s/ Kathleen T. Sooy  
KATHLEEN T. SOOY

*Attorneys for Defendant*  
AT&T MOBILITY LLC

CROWELL & MORING LLP  
1001 Pennsylvania, Avenue, N.W.  
Washington, DC 20004  
Telephone: (202) 624-2500  
Facsimile: (202) 628-5116  
Email: [ksooy@crowell.com](mailto:ksooy@crowell.com)

Dated: December 14, 2010

KERSHAW CUTTER & RATINOFF LLP

By: /s/ William A. Kershaw  
William A. Kershaw

*Attorney for Plaintiffs*  
MICHAEL JAMES GOODGLICK, ET  
AL.

KERSHAW CUTTER & RATINOFF LLP  
401 Watt Avenue Sacramento, CA 95684  
Tel: 916-448-9800  
Fax: 916-669-4499  
Email: [wkershaw@kcrlegal.com](mailto:wkershaw@kcrlegal.com)

Dated: December 14, 2010

GARDY & NOTIS LLP

By: /s/ Jennifer Sarnelli  
Jennifer Sarnelli

*Attorney for Plaintiffs*  
ALAN BENVENISTY, ET AL.

GARDY & NORIS LLP  
560 Sylvan Avenue  
Englewood Cliffs, NJ 07632  
Tel: 201-567-7377  
Fax: 201-567-7337  
Email: [jsarnelli@gardylaw.com](mailto:jsarnelli@gardylaw.com)

Dated: December 14, 2010

RAM & OLSON LLP

By: /s/ Michael Ram  
Michael Ram  
*Attorney for Plaintiff*  
CHRISTOPHER DYDYK

RAM & OLSON  
555 Montgomery Street, Suite 820  
San Francisco, CA 94111  
Tel: 415-433-4949  
Fax: 415-433-7311  
Email: [mram@ramolson.com](mailto:mram@ramolson.com)

Dated: December 14, 2010

SHUBLAW LLC

By: /s/ Jonathan Shub  
Jonathan Shub

*Attorney for Plaintiff*  
JEFFREY RODGERS

SHUBLAW LLC  
1818 Market Street, 13<sup>th</sup> Floor  
Philadelphia, PA 19106  
Tel: 610-453-6551  
Fax: 215-569-1606  
Email: [jshub@shublawn.com](mailto:jshub@shublawn.com)

Dated: December 14, 2010

KIRTLAND & PACKARD LLP

By: /s/ Behram V. Parekh  
Behram V. Parekh

*Attorney for Plaintiff*  
DAVID POPIK

KIRTLAND & PACKARD LLP  
2361 Rosecrans Avenue, Fourth Floor  
El Segundo, CA 90245  
Tel: 310-536-1000  
Fax: 310-536-1001  
Email: [bvp@kirtlandpackard.com](mailto:bvp@kirtlandpackard.com)

Dated: December 14, 2010

ROTHKEN LAW FIRM

By: /s/ Ira P. Rothken  
IRA P. ROTHKEN

*Attorney for Plaintiff*  
STEVE TIETZE

ROTHKEN LAW FIRM  
3 Hamilton Landing Ste 280  
Novato, CA 94949  
Tel: 415-924-4250  
Fax: 415-924-2905  
Email: [ira@techfirm.com](mailto:ira@techfirm.com)

Dated: December 14, 2010

FARUQI & FARUQI LLP

By: /s/ Vahn Alexander  
Vahn Alexander

*Attorney for Plaintiff*  
CHARLES FASANO

FARUQI & FARUQI LLP  
1901 Avenue of the Stars, Second Floor  
Los Angeles, CA 90067  
Tel: 310-461-1426  
Fax: 310-461-1427  
Email: [valexander@faruqilaw.com](mailto:valexander@faruqilaw.com)

Dated: December 14, 2010

SHEPARD, FINKELMAN, MILLER & SHAH  
LLP

By: /s/ Rosemary Farrales Luzon  
ROSEMARY FARRALES LUZON

*Attorney for Plaintiff*  
A. TODD MAYO

SHEPARD, FINKELMAN, MILLER & SHAH  
LLP

401 West A Street, Suite 2350  
San Diego, CA 92101  
Tel: 619-235-2416  
Fax: 619-234-7334  
Email: [rluzon@sfmslaw.com](mailto:rluzon@sfmslaw.com)

Dated: December 14, 2010

WEXLER WALLACE LLP

By: /s/ Mark J. Tamblyn  
Mark J. Tamblyn

*Attorney for Plaintiff*  
GREG AGUILERA, II

WEXLER WALLACE LLP  
455 Capitol Mall, Suite 231  
Sacramento, CA 95814  
Tel: 916-492-1100  
Fax: 916-492-1124  
Email: [mjt@wexlerwallace.com](mailto:mjt@wexlerwallace.com)

Dated: December 14, 2010

ROBBINS GELLER RUDMAN & DOWD  
LLP

By: /s/ Stuart A. Davidson  
Stuart A. Davidson

*Attorney for Plaintiff*  
CHRISTOPHER DEROSE AND  
STACY MILROT

ROBBINS GELLER RUDMAN & DOWD  
LLP

120 E. Palmetto Road, Suite 500  
Boca Raton, FL 33432  
Tel: 561-750-3000  
Fax: 561-750-3364  
Email: [sdavidson@rgrdlaw.com](mailto:sdavidson@rgrdlaw.com)

Dated: December 14, 2010

WARD AND WARD PLLC

By: /s/ Daniel Sage Ward  
Daniel Sage Ward

*Attorney for Plaintiff*  
KEVIN MCCAFFREY and LINDA  
WRINN

WARD AND WARD PLLC  
2020 N St, N.W.  
Washington, DC 20036  
Tel: (202) 331-8160  
Fax: (202) 331-9069  
Email: [Dan@wardlawdc.com](mailto:Dan@wardlawdc.com)

Dated: December 14, 2010

CARPLAW OFFICES, LLC

By: /s/ Robert H. Carp  
ROBERT H. CARP

*Attorney for Plaintiff*  
DR. THOMAS GIONIS

CARPLAW OFFICES, LLC  
100 Needham Street, 2nd Floor  
Newton, MA 02464  
Tel: (617) 861-4529  
Fax: (866) 723-8737  
Email: [rcarp@carplawoffices.com](mailto:rcarp@carplawoffices.com)

Dated: December 14, 2010

THE SHEENA LAW FIRM

By: /s/ Danny M. Sheena  
DANNY M. SHEENA

*Attorney for Plaintiff*  
HUNG MICHAEL NGUYEN

THE SHEENA LAW FIRM  
1001 Texas Ave, Suite 240  
Houston, TX 77002  
Tel: (713) 224 6508  
Fax: (713) 225 1560  
Email: [Danny@Sheenalawfirm.com](mailto:Danny@Sheenalawfirm.com)

Dated: December 14, 2010

MCCALLUM, HOAGLUND, COOK & IRBY,  
LLP

By: /s/ Robert B. Irby  
Robert B. Irby

*Attorney for Plaintiff*  
DAVID C. PURDUE

MCCALLUM, HOAGLUND, COOK & IRBY,  
LLP

905 Montgomery HWY, Suite 201  
Vestavia Hills, AL 35216  
Tel: (205) 824-7767  
Fax: (205) 824-7768  
Email: [birby@mhcilaw.com](mailto:birby@mhcilaw.com)

Dated: December 14, 2010

AMAMGBO & ASSOCIATES

By: /s/ Donald Amamgbo  
Donald Amamgbo

*Attorney for Plaintiff*  
ZETHA NOBLE

AMAMGBO & ASSOCIATES  
7901 Oakport, Suite 4900  
Oakland, CA 94621  
Tel: 510-615-6000  
Fax: 510-615-6025  
Email: [Donald@amamgolaw.com](mailto:Donald@amamgolaw.com)

I, Ira P. Rothken, hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: December 14, 2010

By: /s/ Ira P. Rothken  
IRA P. ROTHKEN

**IT IS SO ORDERED.**

Dated: 1/14/11

  
\_\_\_\_\_

Honorable Ronald M. Whyte  
UNITED STATES DISTRICT JUDGE



EXHIBIT 1

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**IN RE: APPLE IPHONE 4 PRODUCTS  
LIABILITY LITIGATION**

MDL No. 2188

**TRANSFER ORDER**

**Before the entire Panel\***: Plaintiffs in three Northern District of California actions have each moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of actions listed on Schedule A in the Northern District of California. The plaintiffs' motions together encompass ten actions in the Northern District of California and one action each in the District of Maryland, District of Massachusetts, Middle District of Tennessee and Southern District of Texas.<sup>1</sup>

Plaintiffs in two other Northern District of California actions support the motion. Plaintiff in the action filed in the Southern District of Florida initially proposed centralization in the Southern District of Florida, but now also supports centralization in the Northern District of California.

Common defendant Apple Inc. (Apple) supports the motion for centralization in the Northern District of California. AT&T Mobility LLC (AT&T Mobility), which is named as a defendant in several actions, supports centralization but proposes the District of Maryland or the District of Massachusetts as appropriate choices for transferee forum, while acknowledging that the Northern District of California also would be an appropriate transferee forum.

On the basis of the papers filed and hearing session held, we find that these fourteen actions involve common questions of fact, and that centralization under Section 1407 in the Northern District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions involve common factual questions arising from the performance of the iPhone 4, manufactured by Apple, on the AT&T Mobility network. Specifically, the actions

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\* Judge Heyburn took no part in the decision of this matter.

<sup>1</sup> The motions initially encompassed an action filed in the Southern District of Florida; however, that action has since been transferred, pursuant to 28 U.S.C. § 1404, to the Northern District of California. Also, the parties have notified the Panel of two related actions pending in the Northern District of California and another related action pending in the Central District of California. These actions will be treated as potential tag-along actions in accordance with Panel Rules 7.1 and 7.2.

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share allegations that Apple's iPhone 4 experiences signal degradation during normal use, which causes connectivity problems and results in dropped calls and data unavailability. Plaintiffs also allege that Apple and AT&T Mobility made misrepresentations regarding the performance of the iPhone 4. Plaintiffs in all actions bring similar claims against Apple, and in most instances AT&T Mobility, on behalf of overlapping classes of iPhone 4 purchasers. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, particularly with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

The Northern District of California stands out as an appropriate transferee forum. The headquarters, witnesses and documents of the common defendant, Apple, are located within the Northern District of California, and over two-thirds of the pending actions are already in this district before a single judge. All moving and responding plaintiffs now support centralization in the district, and both defendants support centralization in the Northern District of California, either primarily or in the alternative, as well. Centralization in this district also permits the Panel to assign the litigation to an experienced transferee judge who is already presiding over twelve actions in the Northern District of California.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Northern District of California are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Ronald M. Whyte for coordinated or consolidated pretrial proceedings with the actions listed on Schedule A and pending in that district.

PANEL ON MULTIDISTRICT LITIGATION



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Robert L. Miller, Jr.  
Acting Chairman

John G. Heyburn II, Chairman\*  
David R. Hansen  
Frank C. Damrell, Jr.

Kathryn H. Vratil  
W. Royal Furgeson, Jr.  
Barbara S. Jones

**IN RE: APPLE INC. IPHONE 4 MARKETING,  
SALES PRACTICES, AND PRODUCTS LIABILITY  
LITIGATION**

MDL No. 2188

**SCHEDULE A**

Northern District of California

Michael James Goodlick, et al. v. Apple, Inc., et al., C.A. No. 5:10-2862  
Alan Benvenisty v. Apple, Inc., C.A. No. 5:10-2885  
Christopher Dydyk v. Apple, Inc., C.A. No. 5:10-2897  
Jeffrey Rodgers v. Apple, Inc., C.A. No. 5:10-2916  
David Popik v. Apple, Inc., et al., C.A. No. 5:10-2928  
Steve Tietze v. Apple Inc., C.A. No. 5:10-2929  
Charles Pasano v. Apple, Inc., et al., C.A. No. 5:10-3010  
A. Todd Mayo v. Apple, Inc., et al., C.A. No. 5:10-3017  
Greg Aguilera, II v. Apple, Inc., et al., C.A. No. 5:10-3056  
Stacy Milrot v. Apple Inc., et al., C.A. No. 5:10-4117

District of Massachusetts

Dr. Thomas Gionis v. Apple, Inc., et al., C.A. No. 1:10-11110

District of Maryland

Kevin McCaffrey, et al. v. Apple, Inc., et al., C.A. No. 1:10-1776

Middle District of Tennessee

David C. Purdue v. Apple, Inc., et al., C.A. No. 3:10-687

Southern District of Texas

Hung Michael Nguyen v. Apple, Inc., C.A. No. 3:10-252