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17 *Co-Lead Counsel for Plaintiffs and the Class*

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

21 In re APPLE iPHONE 4 PRODUCTS)
LIABILITY LITIGATION)

Master File No. 5:10-md-02188-RMW

22 _____)
23 This Document Relates To:)

24 ALL ACTIONS.)
25 _____)

**NOTICE OF SUPPLEMENTAL
SUBMISSION IN SUPPORT OF
COUNSEL’S MOTION FOR AWARD OF
ATTORNEYS’ FEES TO NON-LEAD
PLAINTIFFS’ COUNSEL OR IN THE
ALTERNATIVE MOTION FOR LEAVE
TO FILE A MOTION FOR PARTIAL
RECONSIDERATION**

26 DATE: July 13, 2012
27 TIME: 9:00 A.M.
CTRM: 6 - 4th Floor
28 Judge: Hon. Ronald M. Whyte

1 PLEASE TAKE NOTICE THAT, Plaintiffs' Co-Lead Counsel, pursuant to the Court's
2 Order dated September 13, 2012 (Dkt. No 80) ("Order"), hereby respectfully submit the attached
3 supplemental declarations of non-lead plaintiffs' counsel received by Plaintiffs' Co-Lead Counsel
4 as of September 21, 2012, in support of an award of attorneys' fees to non-lead plaintiffs' counsel.
5 Alternatively, should the Court determine that this supplemental submission is insufficient,
6 Plaintiffs' Co-Lead Counsel respectfully move that this Court grant leave to reconsider, in part, its
7 September 13, 2012 Order wherein the Court denied certain non-lead plaintiffs' counsels'
8 application for fees in connection with the Settlement of the above reference matter, pursuant to
9 Rule 60 of the Federal Rules of Civil Procedure and Local Rule 7-9.

10 The Order held that "Where a law firm's declaration includes an itemized bill showing
11 when expenses were incurred, the court will award fees and costs to the extent that they either
12 accrued before the appointment of lead counsel or accrued after the appointment of lead counsel but
13 appear to be reasonable and non-duplicative (i.e. a short amount of time reviewing joint filings or
14 communicating with the non-lead counsel's own client)." In accordance with this mandate, non-
15 lead plaintiffs' counsel who have not previously provided the court with "an itemized bill" herein
16 seek to provide that additional information for the Court's consideration.

17 Acceptance of these supplemental declarations is warranted because it was only after the
18 Court issued its September 13, 2012 Order that counsel learned that the Court was seeking itemized
19 billing records. The Court's prior Orders did not provide counsel with notice that a declaration
20 providing summary time records would be considered insufficient by the Court. Therefore,
21 Plaintiffs' Co-Lead Counsel respectfully request that the Court amend its Order, in part, and
22 consider the attached supplemental declarations of non-lead plaintiffs' counsel which include
23 itemized billing records.

24 **In the Alternative, Reconsideration is Appropriate to Prevent Manifest Injustice**

25 Pursuant to Fed R. Civ. P. 60(b)(2) and L.R. 7-9(b)(2), reconsideration of the Court's Order
26 is appropriate based upon the emergence of material facts and evidence occurring in connection
27 with the Court's decision. This Court has held that the "major grounds that justify reconsideration
28

1 involve an intervening change of controlling law, the availability of new evidence, or the need to
2 correct a clear error or prevent manifest injustice.” *In re Ramin Yeganeh*, No. C 06-2788 CW,
3 2006 WL 2642532, at *2 (N.D. Cal. Sept. 14, 2006) (quoting *Pyramid Lake Paiute Tribe of Indians*
4 *v. Hodel*, 882 F.2d 364, 369 n.5 (9th Cir. 1989); *U.S. v. Desert Gold Mining Co.*, 433 F.2d 713, 715
5 (9th Cir. 1970)). Here, in order to prevent manifest injustice to non-lead plaintiffs’ counsel, new
6 material facts and evidence, not previously requested by the Court, should be considered.

7 To be sure, in its Order, the Court relied on itemized billing records of certain non-lead
8 plaintiffs’ counsel. Non-lead plaintiffs’ counsel that did not submit itemized billing records were
9 not granted their request for fees. The Court’s Order was the first time any plaintiffs’ counsel were
10 made aware that the Court required itemized billing records and of the specific criteria that would
11 be used by the Court in making its decision regarding granting fees and expenses. Thus, Plaintiffs’
12 Co-Lead Counsel now seek, on behalf of plaintiffs’ non-lead counsel, to provide the Court with
13 new material facts, *i.e.*, the itemized billing records of plaintiffs’ non-lead counsel.

14 Given this new information, Plaintiffs’ Co-Lead Counsel respectfully request this Court
15 reconsider its Order, in part, and consider the supplemental declarations and detailed time and
16 billing information provided by non-lead plaintiffs’ counsel.

17 **Conclusion**

18 Based on the foregoing reasons, Plaintiffs’ Co-Lead Counsel respectfully request that this
19 Court consider the supplemental declarations of non-lead plaintiffs’ counsel submitted herewith and
20 issue an order granting additional fees to non-lead plaintiffs’ counsel or, in the alternative, grant
21 leave to file a motion for partial reconsideration of the Court’s September 13, 2012 Order awarding
22 non-lead plaintiffs’ counsel fees and costs.

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Respectfully Submitted,

Dated: September 24, 2012

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Liaison Counsel in the California JCCP Actions (pending in the Superior Court of the State of California)

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 24, 2012.

/s/ Jennifer Sarnelli
JENNIFER SARNELLI