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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN JOSE DIVISION

20 In re iPhone Application Litigation

Case No. CV-10-5878 LHK (PSG)

**DECLARATION OF JAMES F.  
 MCCABE IN SUPPORT OF  
 DEFENDANT APPLE INC.'S  
 MOTION TO DISMISS FIRST  
 CONSOLIDATED CLASS  
 ACTION COMPLAINT  
 PURSUANT TO RULES 12(b)(1),  
 12(b)(6) AND 12(b)(7)**

Date: September 1, 2011  
 Time: 1:30 p.m.  
 Ctrm: 4, 5<sup>th</sup> Floor  
 Judge: Honorable Lucy H. Koh

1 I, James F. McCabe, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court and a partner with the  
3 law firm of Morrison & Foerster LLP, attorneys of record for Defendant Apple Inc. (“Apple). I  
4 make this declaration based upon matters within my own personal knowledge and, if called as a  
5 witness, I could and would testify competently to the facts stated herein.

6 2. In the First Consolidated Class Action Complaint (Doc. 71) (“Complaint”),  
7 plaintiffs reference the software license agreements for the iOS devices at issue – Apple’s iPad,  
8 iPhone, and iPod Touch – in paragraph 2, 27 and 110.

9 3. Attached hereto as Exhibit A is a true and correct copy of the Software License  
10 Agreement (“SLA”) applicable to Apple’s iPad mobile device.

11 4. Attached hereto as Exhibit B is a true and correct copy of the Software License  
12 Agreement (“SLA”) applicable to Apple’s iPad 2 mobile device.

13 5. Attached hereto as Exhibit C is a true and correct copy of the Software License  
14 Agreement (“SLA”) applicable to Apple’s iPhone 4 mobile device.

15 6. Attached hereto as Exhibit D is a true and correct copy of the Software License  
16 Agreement (“SLA”) applicable to Apple’s iPhone mobile device.

17 7. Attached hereto as Exhibit E is a true and correct copy of the Software License  
18 Agreement (“SLA”) applicable to Apple’s iPod touch mobile device.

19 8. Plaintiffs reference the terms and conditions governing Apple’s App Store in  
20 paragraphs 36, 59, 110, 197, 201 and 202 of the Complaint.

21 9. Attached hereto as Exhibit F is a true and correct copy of Apple’s integrated  
22 Terms and Conditions for the iTunes Store, the Mac App Store, App Store and iBookstore.

23 10. Plaintiffs reference Apple’s privacy policy in paragraphs 110, 197, 201, and 202 of  
24 the Complaint.

25 11. Attached hereto as Exhibit G is a true and correct copy of Apple’s Privacy Policy.

26 12. Each of the documents attached to this declaration as Exhibits A-G is available to  
27 the public on Apple’s website, through the following URL: <http://www.apple.com/legal>.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20, 2011, at Chico, California.

/s/ James F. McCabe  
JAMES F. MCCABE