GIBSON, DUNN & CRUTCHER LLP 1 GAIL E. LEES, SBN 90363 2 GLees@gibsondunn.com S. ASHLIE BERINGER, SBN 263977 3 ABeringer@gibsondunn.com JOSHUA A. JESSEN, SBN 222831 4 JJessen@gibsondunn.com 1881 Page Mill Road 5 Palo Alto, California 94304 Telephone: (650) 849-5300 6 Facsimile: (650) 849-5333 7 Attorneys for Defendants FLURRY, INC. and 8 PINCH MEDIA, INC. 9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA 11 SAN JOSE DIVISION 12 13 In re iPhone Application Litigation Case No. 10-CV-05878 LHK (PSG) 14 CLASS ACTION 15 DECLARATION OF S. ASHLIE BERINGER IN SUPPORT OF MOBILE INDUSTRY 16 **DEFENDANTS' NOTICE OF MOTION AND** 17 MOTION TO DISMISS FIRST CONSOLIDATED CLASS ACTION 18 **COMPLAINT** 19 20 21 22 23 24 25 26 27 28 Gibson, Dunn & Crutcher LLP DECLARATION OF S. ASHLIE BERINGER IN SUPPORT OF MOBILE INDUSTRY CASE No. 10-CV-05878 LHK DEFENDANTS' MOTION TO DISMISS

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Lalo v. Apple, Inc et al

I.	S.	Ashlie	Beringer.	declare	as follows:
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- 1. I am an attorney at law admitted to practice before all of the Courts of the State of California and this Court. I am a partner at Gibson, Dunn and Crutcher LLP and counsel for Defendants Flurry, Inc. ("Flurry") and Pinch Media, Inc. ("Pinch Media") in this litigation. I make this declaration upon personal knowledge and could and would competently testify to the matters below if called to do so.
- 2. Attached hereto as Exhibit A is a true and correct copy of Apple's iTunes Terms and Conditions, which includes Apple's App Store Terms and Conditions and Apple's Privacy Policy, and is available at http://www.apple.com/legal/itunes/us/terms.html.
- 3. Attached hereto as Exhibit B is a true and correct copy of a June 15, 2011 Order issued by Chief Judge James Ware in *In Re Zynga Privacy Litigation*, Case No. C-10-04680 JW (N.D. Cal.).
- 4. Attached hereto as Exhibit C is a true and correct copy of a March 22, 2011 Order issued by Judge Marilyn H. Patel in *Levitt v. Yelp! Inc.*, Case No. C-10-1321 MHP (N.D. Cal.).
- 5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on June 20, 2011, at Washington, D.C.

/s/ *S. Ashlie Beringer* S. ASHLIE BERINGER