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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 IN RE IPHONE APPLICATION
17 LITIGATION

18) CASE NO. 5:10-cv-05878-LHK (PSG)

19)
 20) **PLAINTIFF ANTHONY CHIU'S**
 21) **RECOMMENDATION THAT**
 22) **MILBERG LLP BE APPOINTED**
 23) **INTERIM CLASS COUNSEL,**
 24) **SUBMITTED PURSUANT TO COURT**
 25) **ORDER DATED MARCH 15, 2011**

26) Date: TBA

27) Time: TBA

28) Judge: Hon. Lucy H. Koh

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1 **PRELIMINARY STATEMENT**

2 Plaintiff Anthony Chiu (“Plaintiff” or “Mr. Chiu”) respectfully submits this memorandum of
3 law and the Declaration of Jeff S. Westerman (“Westerman Decl.”) pursuant to the Court’s Order
4 issued on March 15, 2011 (Dkt. No. 36.), in support of his recommendation that Milberg be
5 appointed Interim Class Counsel in the consolidated *In re iPhone Application Litigation*.

6 Pending before this Court are several actions filed on behalf of a class of iPhone users
7 against Apple, Inc. (“Apple”) and/or various iPhone application developers, including BackFlip,
8 Dictionary.com, Pandora, Inc., The Weather Channel, Goggii, Inc., Pandora Media, Inc., Outfit7
9 Ltd., Room Candy, Inc., Sunstorm Interactive, Inc., Flurry, Inc., Medialets, Inc., Pinch Media, Inc.,
10 Quattro Wireless, Inc., and IAC/Interactive Corp. (the “App Defendants,” collectively with Apple,
11 “Defendants”). These actions allege the intentional transmission of the users’ personal information
12 to Internet tracking companies and other third parties without the users’ knowledge or consent, in
13 violation of federal and state laws, and in breach of Defendants’ respective agreements with its
14 users.¹ On March 15, 2010, the Court consolidated the actions under the caption *In re iPhone*
15 *Application Litigation*, No. CV-10-5875 LHK (PSG).²

16 After the consolidation, the Court ordered plaintiffs to “use their best efforts to self-organize
17 and recommend to the Court counsel to serve as Interim Class Counsel under FRCP 23(g).” (Dkt.
18 No. 36, p. 4, Section II, 1.) Such efforts were made, with Milberg engaging in numerous
19 conversations with Kamberlaw, LLP (“Kamberlaw”), and a related conversation with the other
20 counsel in an attempt to reach agreement on a leadership structure. As of this filing, these efforts
21 have not been successful at reaching a full agreement. Accordingly, Mr. Chiu now respectfully
22 submits that the Court should appoint Milberg as Interim Class Counsel for the following reasons:

23
24 ¹ The actions are: *Lalo v. Apple, Inc.*, No. 5:10-cv-05878 (N.D. Cal. filed Dec. 23, 2010); *Freeman*
25 *v. Apple, Inc.*, No. 5:10-cv-05881 (N.D. Cal. filed Dec. 23, 2010); *Chiu v. Apple, Inc.*, No. 5:11-cv-
00407 (N.D. Cal. filed Jan. 27, 2011); and *Rodimer v. Apple, Inc.*, No. 5:11-cv-00700 (N.D. Cal.
filed Feb. 15, 2011).

26 ² Defendant Apple moved on February 3, 2011, to have an action pending in the Western District of
27 Arkansas (*Thompson v. Apple, Inc.*, No. 11-3009 (W.D. Ark.)) removed to this court (*See* Dkt. No.
28 30).

1 (i) Milberg extensively researched this action and consulted with an industry expert before
2 filing Mr. Chiu's complaint, and has continued its development of the case in consultation with
3 industry experts and in-house professionals;

4 (ii) Milberg demonstrated leadership through the various measures detailed below that were
5 undertaken to protect the Class's interests;

6 (iii) Milberg has the extensive internal e-discovery tools and expertise that will contribute
7 materially to the effective and efficient prosecution of a data-intensive Digital Age litigation such as
8 this;

9 (iii) Milberg has a 40-year history of successfully prosecuting consumer class actions;

10 (iv) Milberg has substantial experience with privacy-related litigations such as this one;

11 (v) Milberg has had an established California office and the firm has the resources and
12 staying power required to obtain the best results for the class; and

13 (vi) Milberg otherwise meets the criteria for Rule 23(g).

14 As the alternative to appointing Milberg as sole-interim counsel, the Court should appoint
15 the firms Milberg and Kamberlaw as Co-Interim Class Counsel. We are willing to form an
16 executive committee as lead counsel, or in consultation with Mr. Kamber as Co-Lead counsel.

17 ARGUMENT

18 **I. MILBERG SHOULD BE APPOINTED INTERIM CLASS COUNSEL**

19 **A. Legal Standards for Appointment Under Rule 23(g)**

20 Appointment of Interim Class Counsel is governed by Rule 23(g)(3). While neither Rule
21 23(g) nor the Advisory Committee Notes to the Rule explicitly set forth the standards to be applied
22 in choosing Interim Class Counsel, courts have held that the same factors that apply in choosing
23 class counsel at the class certification stage apply in choosing interim class counsel. *See Four in*
24 *One Co. v. SK Foods, L.P.*, No. 2:08-cv-03017, 2009 U.S. Dist. LEXIS 28657, at *7-8 (E.D. Cal.
25 Mar. 19, 2009) ("Courts have held that the same standards applicable to choosing class counsel at
26 the time of class certification apply in choosing interim class counsel.") (quoting *In re Air Cargo*
27 *Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006)); *see also Waudby v. Verizon*
28 *Wireless Servs., LLC*, 248 F.R.D. 173, 175 (D.N.J. 2008); *Parkinson v. Hyundai Motor Am.*, No.

1 SACV 06-345, 2006 U.S. Dist. LEXIS 59055, at *6 (C.D. Cal. Aug. 7, 2006) (“Rule 23(g) provides
2 criteria to consider when appointing class counsel, without distinguishing interim counsel.
3 Presumably the same factors apply, however”).

4 Fed. R. Civ. P. 23(g)(1)(A) specifies that in appointing class counsel the court must
5 consider:

- 6 (i) the work counsel has done in identifying or investigating potential claims in
7 the action;
- 8 (ii) counsel’s experience in handling class actions, other complex litigation, and
9 the types of claims asserted in the action;
- 10 (iii) counsel’s knowledge of the applicable law; and
- 11 (iv) the resources that counsel will commit to representing the class.

12 **B. Milberg Meets The Requirements of Rule 23(g)(1)(A)**

13 Milberg satisfies the requirements of Rule 23(g), and its experience in leading consumer
14 class action lawsuits, including actions that involve privacy matters, renders it particularly well
15 suited for the role of interim class counsel under the four Rule 23(g)(1)(A) factors. In addition, it
16 has extensively investigated this case and has already consulted with industry expert Peter
17 Eckersley of the Electronic Freedom Foundation, a leading consumer privacy rights watchdog to
18 analyze the devices that are the subject of the consolidated action.

19 **1. Milberg Has Taken Steps to Expedite the Action**

20 Milberg has been at the forefront of this litigation from the outset, aggressively identifying
21 and developing the factual and legal predicates required to achieve the best result for the class. *See*
22 Fed. R. Civ. P. 23(g)(1)(A)(i). Milberg has accomplished a great deal even at this early stage of the
23 litigation:

24 **a. Retained and Consulted with Leading Experts in the Field to
25 Fully Investigate and Develop the Facts and Issues**

26 Before filing Mr. Chiu’s complaint, Milberg worked with Peter Eckersley, a top expert in
27 the Internet privacy field, who analyzed the mechanisms through which Apple unlawfully disclosed
28 to third parties the personally identifiable information at issue in this litigation. (Westerman
Decl. ¶ 3.) Mr. Eckersley is Senior Staff Technologist for the Electronic Frontier Foundation, a

1 pioneering public interest non-profit foundation dedicated to defending digital rights. (Westerman
2 Decl. Ex. A: Curriculum Vitae of Peter Eckersley.)

3 **b. Initiated and Participated in Communications with All Counsel,**
4 **including Counsel for Defendant Apple, and Counsel for Other**
5 **Plaintiffs in an Effort to Work Cooperatively and Efficiently**

6 Even prior to the Court's Order, Milberg reached out, responded, and built constructive
7 relationships among all plaintiffs' counsel, as well as with Apple's counsel, in an effort to expedite
8 the coordination and consolidation of these cases. Such efforts include working with counsel for all
9 parties, including Defendant Apple, to agree upon and draft the stipulation and order consolidating
10 the related cases, and adopting a preliminary case management order setting forth guidelines as to
11 organization of plaintiffs' counsel, filing of pleadings, and status conference, which the Court
12 approved and so ordered on March 15, 2011. Milberg also communicated with counsel for Apple to
13 discuss the parties' document preservation obligations in an effort to ensure that relevant documents
14 are properly preserved during the litigation. (*See* Westerman Decl. Ex. B: Milberg Correspondence
15 with counsel for Apple.)

16 **c. Took Proactive Measures to Establish**
17 **Document Management Protocols**

18 In a case in which the main allegations concern the misuse of electronic data, taking
19 forward-looking measures to establish appropriate protocols for the handling of such evidence is of
20 utmost importance to achieving a benefit for putative Class members.

21 To prepare for discovery, Milberg's attorneys and the firm's in-house litigation support
22 professionals have already met and conferred to discuss which software programs and litigation
23 support tools would be best-suited for litigation against a large technologically advanced company
24 such as Apple, Inc. and the other Defendants, utilizing its in-house e-discovery capabilities to the
25 benefit of the Class. Milberg's exceptional internal resources with respect to litigation support tools
26 and management systems will add a significant benefit to the e-discovery of this litigation.
(Westerman Decl. ¶ 4.)

27 Milberg is a recognized leader in the field of e-discovery. (*See* Westerman Decl. Ex. C:
28 Milberg e-discovery brochure.) The firm's in-house Litigation Support Department (established

1 about a decade ago) has enabled the firm to go toe-to-toe with its adversaries when tackling
2 challenges presented by the evolution of electronically stored information, also known as ESI.
3 Milberg's well-established e-discovery infrastructure allows the firm to rapidly adapt to the
4 expanding work in the field, often leading the industry in e-discovery advancements. Milberg's
5 internal capabilities include access to an experienced team of litigation support professionals who
6 offer a wide array of services such as: developing legal strategies and plans for pursuing and
7 responding to discovery, shaping data preservation, spoliation and data collection issues, controlling
8 data, managing data, and conducting computer forensic analysis. Milberg also has a state-of-the-art
9 e-discovery infrastructure that supports the firm's rapidly expanding work in the field, allowing it to
10 host innovative document review tools such as Relativity™ and cutting edge document hold
11 management systems such as Method; and the capability to run advanced software such as
12 analytical document review software Cataphora; analytic index engine Content Analyst (which
13 allows grouping of documents and predictive coding); deposition digest program LiveNote; case
14 analysis and complex litigation organization tool Casemap; and other more traditional document
15 review programs such as Summation and Concordance; among many others.

16 Milberg's in-house e-discovery team is headed by Milberg partner Ariana J. Tadler, who
17 serves on the Sedona Conference's® Business Advisory Board, and is also Co-Chair of the Steering
18 Committee for Working Group I on Electronic Document Retention and Production, the leading
19 "think tank" on e-discovery. Ms. Tadler is also on the Advisory Board of Georgetown University
20 Law Center's Advanced E-Discovery Institute. Among the first plaintiffs' firms in the country to
21 assemble and train a dedicated team of lawyers and litigation support professionals to meet the e-
22 discovery demands of major national litigation, Milberg has developed e-discovery capabilities
23 exceptional among U.S. law firms. The firm's e-discovery team has been retained even in actions
24 in which Milberg is not directly involved as counsel, including assisting in the management of
25 international discovery in Colombia on behalf of many Departments of the Colombian government.

26
27 **d. Continued Research and Preparation for Filing of the
Consolidated Amended Complaint.**

28 Milberg has commenced preparation of a consolidated amended complaint with the

1 understanding that once the Court appoints Interim Class Counsel, a Consolidated Amended
2 Complaint is to be filed within twenty-one (21) days of these cases being the appointment of
3 Interim Class Counsel (*see* Dkt. No. 36, March 15 Order at Section III). Proposed Interim Class
4 Counsel is undertaking these efforts now so that this litigation will be positioned to move forward
5 on the merits as quickly as practicable. Westerman Decl. ¶ 5.

6 These above actions demonstrate Milberg’s continued commitment to investigating and
7 aggressively prosecuting this class action on behalf of Plaintiff Chiu and the other class members.

8 **2. Milberg Has Extensive Consumer and Other** 9 **Complex Class Action Experience**

10 Milberg has for decades represented plaintiffs in class actions and complex litigation in the
11 fields of consumer protection, privacy, securities, shareholder rights, and mass torts, achieving
12 recoveries of more than \$55 billion since the firm’s inception. *See* Westerman Decl., Ex. ~~—D~~ (firm
13 résumé). The legal community has long recognized Milberg’s outstanding results in these areas.

14 In both 2010 and 2009, the *National Law Journal* acknowledged Milberg’s “exemplary,
15 cutting-edge work” by including the firm in its prestigious 2010 Plaintiffs’ Hot List. (*See*
16 Westerman Decl. Ex. D: Plaintiffs’ Hot List 2010 and 2009.) Milberg is consistently ranked at the
17 top of the field of securities litigation by RiskMetrics Group’s Securities Class Action Services
18 (“SCAS”). On March 21, 2011, SCAS ranked Milberg as one of the top firms with settlements
19 totaling approximately \$137.5 million achieved in 2010, and also recognized Milberg as one of the
20 top-five firms in the nation for number of settlements achieved (nine), in its “Top SCAS 50 for
21 2010” list. Milberg had previously been recognized by SCAS for top lead counsel participation
22 with 28 total settlements in the top 100 securities class action settlements of all time. The previous
23 SCAS report for 2009 ranked Milberg as one of the top-50 plaintiffs’ firms with settlements totaling
24 \$1.44 billion and averaging \$144 million per settlement, and also recognized Milberg as one of the
25 top-five firms in the nation for number of settlements achieved (ten). (*See* Westerman Decl. Ex. F:
26 SCAS Reports.) In 2010, *Law360* selected Milberg as one of its “plaintiff-side securities firms of
27 the year,” citing the firm’s \$586 million recovery in the Initial Public Offering litigation, among
28 other significant accomplishments. (*See* Westerman Decl. Ex. G: “Plaintiffs Securities Firms Of

1 The Year,” *Law360*, Jan. 1, 2010.)

2 As reported by *Law360* in September 2010, Milberg was one of the few plaintiffs’ law firms
3 recognized as an “awesome opponent” in a survey of corporate counsel conducted for BTI
4 Consulting Group’s 2011 Litigation Outlook report. The survey, which questioned 240 corporate
5 counsel about which firms they feel are the most formidable litigation opponents, revealed that
6 corporate counsel view Milberg as “[one of the law firms] they prefer to steer clear of in litigation.”

7 Milberg has successfully prosecuted a number of consumer class actions in this District and
8 other California courts, including: *In re NVIDIA GPU Litigation*, No. C 08-04312 (N.D. Cal. 2010)
9 (settlement for repair or replacement of computers); *Messick v. Pioneer Electronics (USA), Inc.*, No.
10 BC 323499 (Cal. Super. Ct. Los Angeles Cnty. 2007.) (settlement for new firmware upgrade or
11 refund of monies previously paid for said upgrades); and *Mikhail v. Toshiba America Information*
12 *Systems, Inc.*, No. BC 278163 (Cal. Super. Ct., Los Angeles Cnty. 2005) (settlement for payment or
13 voucher for defective laptop computer).

14 Milberg’s California partners on this case, Jeff S. Westerman and Sabrina S. Kim, are well-
15 qualified to lead it. Mr. Westerman oversees the *Nvidia GPU Litigation* which received final
16 settlement approval in December 2010, and as reflected in his accompanying biography, is active in
17 complex litigation in California and moderates and speaks on panels of lawyers and judges on the
18 topic as the Chair of the Complex Court Symposium Program. (See Westerman Decl. Ex. H:
19 Complex Court Symposium.) Ms. Kim is a former California Deputy Attorney General for the
20 Consumer Law Section and has extensive experience in public and private prosecution of consumer
21 actions. Ms. Kim, along with Mr. Westerman, were two of the principal attorneys responsible for
22 two major California Supreme Court cases (both 7-0) involving consumer rights and class action
23 procedure: *Pioneer Electronics (USA) v. Superior Court (Olmstead)*, 40 Cal. 4th 360 (Cal. 2007);
24 *Branick v. Downey Savings & Loan Association*, 39 Cal. 4th 235 (Cal. 2006).

25 With more than 40 years of experience litigating hundreds of complex litigation actions,
26 Milberg is well qualified to serve as Interim Class Counsel.

27 3. Milberg’s Knowledge of the Applicable Laws

28 Many courts consider this component as the most important Rule 23(g) factor. *See, e.g., In*

1 *re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 702 (S.D. Fla. 2004) (the “most
2 persuasive” factor in choosing lead counsel pursuant to Rule 23(g) is proposed counsel’s
3 “experience in, and knowledge of, the applicable law in [the] field”). Milberg has successfully
4 litigated many cases involving claims that are alleged here, including SCA, 18 U.S.C. § 2701 *et*
5 *seq.*; California Business and Professions Code §§ 17200 *et seq.*, 17500 *et seq.*; Consumer Legal
6 Remedies Act, California Civil Code § 1750; Conversion; Unjust Enrichment; Breach of Contract;
7 Breach of Implied Covenant of Good Faith and Fair Dealing; and Common Law Invasion of
8 Privacy.

9 Milberg has contributed significantly to the development and progression of Internet privacy
10 litigation. Milberg served as Co-Lead Settlement Counsel in an early privacy class action against
11 DoubleClick in 2000, which alleged that the company had placed web cookies on computer hard
12 drives of Internet users who accessed DoubleClick-affiliated web sites, in violation of three federal
13 laws: the Stored Communications Act (“SCA”), the Wiretap Statute, and the Computer Fraud and
14 Abuse Act. *In re DoubleClick Inc. Privacy Litigation*, Master File No. 00-CIV-0641 (NRB)
15 (S.D.N.Y.). The case settled, and as a part of the settlement agreement negotiated by Milberg and
16 other plaintiffs’ counsel, DoubleClick agreed to explain its privacy policy in “easy-to-read”
17 language; conduct a public information campaign consisting of 300 million banner ads inviting
18 consumers to learn more about protecting their privacy; and institute data purging and opt-in
19 procedures among other requirements. Milberg was instrumental in settling that privacy class
20 action and coordinated with 31 plaintiffs’ law firms that represented plaintiffs. Messrs. Sanford P.
21 Dumain and Peter E. Seidman are also litigating a similar privacy case relating to the unauthorized
22 transmission of personal identifiable information (“PII”) to third parties against MySpace, Inc.

23 Milberg has also been involved in the following Digital Age consumer class actions:

- 24 • ***In re NVIDIA GPU Litigation***, No. 08-04312-JW (N.D. Cal.) Milberg served
25 as Lead Interim Counsel in this consumer class action on behalf of purchasers of
26 notebook computers containing defective NVIDIA GPUs. The complaint alleged
27 that NVIDIA GPUs were fundamentally flawed in their design and/or
28 manufacture, causing them to crack and rendering the notebooks inoperable. On

1 December 20, 2010, the Honorable James Ware of this District entered a final
2 judgment approving the settlement providing for repair or replacement of the
3 notebooks. The case was resolved efficiently, with only two motion-to-dismiss
4 hearings (the second of which included the class certification hearing); a couple
5 of status conferences; and discovery was completed with only one motion to
6 compel defendant's documents, which related to privilege and work product
7 issues, and was resolved in plaintiffs' favor.

- 8 • ***Pioneer Electronics (USA), Inc. v. Superior Court***, No. S133794 (2006) (Chin,
9 J.). Milberg was responsible for successfully petitioning the California Supreme
10 Court and drafted all briefing on behalf of petitioner in this consumer class action
11 brought on behalf of purchasers of allegedly defective DVD players. Because
12 the implications of the appellate court decision were so far-reaching -- potentially
13 limiting discovery of witness contact information in a wide variety of cases,
14 whether they be civil or criminal, individual or class actions, and regardless of
15 whether such information is sought by prosecutors, plaintiffs, or defendants --
16 numerous amici curiae weighed in, including the California Attorney General (in
17 support of review), the California District Attorneys Association, the Consumer
18 Attorneys of California, the Impact Fund on behalf of several, leading non-profit
19 organizations in California, and the (plaintiff) Employment Lawyers Association.
20 In this consumer class action, Pioneer had produced complaints from several
21 hundred customers, but redacted the customers' contact information. Plaintiff
22 moved to compel the customer contact information and Pioneer opposed,
23 asserting that the contact information was protected from discovery by the
24 privacy rights of class members. The trial court ordered Pioneer to send a letter
25 to the customers, advising them of the litigation, and notifying them that their
26 contact information would be disclosed to plaintiff unless they affirmatively
27 requested otherwise. The Supreme Court upheld the trial court's order, finding
28 that Pioneer had not demonstrated either that its customers entertained a

1 reasonable expectation of privacy in their contact information or that release of
2 the contact information would be a serious invasion of privacy. Even if Pioneer
3 had made that showing, the Court continued, the trial court could reasonably
4 conclude that plaintiff's interest in obtaining contact information about
5 prospective class members outweighed those privacy interests. This is the first
6 case in California, if not the country, to recognize that victimized consumers
7 "might reasonably expect, and even hope, that their names and addresses would
8 be given to any such class action plaintiff." Jeff Westerman argued the case
9 before the California Supreme Court. Sabrina Kim was on the brief.

- 10 • ***Fink v. Time Warner Cable***, No. 08 Civ. 9628 (S.D.N.Y.). Milberg initiated this
11 action in the Southern District of New York, alleging that wireless Internet
12 service provider, Time Warner Cable, made false statements about the speed and
13 capacity of its Internet service, promising consumers an "always-on connection"
14 at a "blazing speed" that is the "fastest, easiest way to get online," but then
15 "throttling," or limiting, its subscribers' Internet access and engaging in other
16 practices to delay and/or block altogether certain Internet communications,
17 thereby improperly preventing the free flow of online information otherwise
18 accessible to subscribers. This case is in active litigation.
- 19 • ***Bobowski v. Clearwire, Corp.***, No. C10-1859 JLR (W.D. Wash.). Milberg
20 initiated litigation in the Western District of Washington alleging that wireless
21 Internet service provider, Clearwire, made false statements about the speed and
22 capacity of its Internet service, promising consumers "unlimited, high speed"
23 Internet, but subsequently imposing a hidden "cap" on usage. The complaint
24 alleges that once users exceed the undisclosed cap, Clearwire deliberately slows
25 their Internet speeds, depriving them of the high-speed Internet access for which
26 they paid. In addition, Clearwire imposes an early termination fee, such that
27 users who have been "capped" cannot cancel their service without paying an
28 additional fee. This case is in active litigation.

1 As a result of Milberg's experience in a broad array of privacy and technology cases,
2 Milberg has an excellent command of the underlying technology, claims, and legal theories at issue.

3
4 **4. Milberg Has Committed, and Will Continue to Commit, Significant
Resources on Behalf of the Class.**

5 As noted, Milberg has already expended resources to benefit the litigation. It will continue
6 to do so. Complex litigation often hinges on obtaining pre-discovery facts to support allegations of
7 wrongdoing, or to correctly analyze and organize discovery materials. From the firm's experience,
8 outsourcing of these services, which numerous other firms do in whole or in part, is less efficient
9 and more expensive, to the detriment of the client. Milberg's non-attorney, in-house professionals
10 have been critical to the firm's ability to achieve excellent results for its clients. Such professionals
11 include seven in-house investigators (who are managed by a 27-year veteran of the Federal Bureau
12 of Investigation), two forensic accountants, two financial analysts, four litigation support analysts
13 and eleven information technology technicians and engineers. Milberg has the capital and human
14 resources necessary to prosecute this complex litigation for as long as it takes to achieve the best
15 recovery for the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(ii).

16 The firm's recent trial victory in *In re Vivendi Securities, S.A. Litigation* in the Southern
17 District of New York exemplifies Milberg's commitment to its clients and ability to match the
18 resources of well-heeled defendants for as long as necessary. (*See* Westerman Decl. Ex. I:
19 Vivendi.) In early 2010, Milberg, as trial counsel in the four-month *Vivendi* jury trial, won a
20 plaintiffs' verdict in a securities class action against French media conglomerate Vivendi, S.A.
21 Milberg, with co-counsel, had litigated the case since 2002. The litigation involved a review of
22 more than 4 million pages of documents, many of which had to be translated from French, and
23 depositions of over 60 witnesses, many of which occurred overseas. Milberg is ready to commit the
24 similar resources of capital, personnel, and time to this litigation.

25 **5. Support for Milberg's Leadership and the Resulting Proposed
26 Leadership Structure Are Additional Pertinent Facts Favoring Its
Appointment Under Rule 23(g)(1)(B).**

27 The proposed leadership structure has the support of consumer class action law firm, Reese
28 Richman LLP. Reese Richman LLP is prepared to work under the leadership of Milberg to comply

1 with the duties and responsibilities of other counsel set forth in Section I of the March 15 Order.

2 In the alternative to appointing Milberg as sole Interim Class Counsel, the Court should
3 appoint the firms Milberg and Kamberlaw as Co-Interim Class Counsel.

4 **CONCLUSION**

5 The proposed leadership of Milberg brings nationwide complex litigation experience with
6 knowledge on issues involved in electronic privacy and technology litigation in particular to
7 successfully prosecute and resolve the *In re iPhone Application Litigation*. As a result, Milberg
8 represents the best law firm to lead these actions and to protect the interests of the Class.

9 For the foregoing reasons, Plaintiff respectfully requests that the Court enter the Proposed
10 Order appointing Milberg as Interim Class Counsel.

11 DATED: March 25, 2011

12 **Respectfully Submitted,**

13 */s/ Jeff S. Westerman*
14 _____
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DECLARATION OF SERVICE BY CM/ECF AND/OR MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. Declarant hereby certifies that on March 25, 2011, declarant served PLAINTIFF CHIU'S RECOMMENDATION THAT MILBERG LLP BE APPOINTED AS INTERIM CLASS COUNSEL, SUBMITTED PURSUANT TO COURT ORDER DATED MARCH 15, 2011, by electronically filing the foregoing document listed above by using the Case Management/ Electronic Case filing system.

3. Declarant further certifies:

All participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system

Participants in the case who are registered CM/ECF users will be served by the court's CM/ECF system. Participants in the case that are not registered CM/ECF users will be served by First-Class Mail, postage pre-paid or have dispatched to a third-party commercial carrier for delivery to the non-CM/ECF participants as addressed and listed below:

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4. That there is a regular communication by mail between the place of mailing and the places so addressed.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th
2 day of March, 2011, at Los Angeles, California.

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6 CECILLE CHAFFINS
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