

# EXHIBIT 1

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

22 IN RE IPHONE APPLICATION  
23 LITIGATION

Case No. 10-cv-5878 LHK (PSG) (Lead)  
10-cv-5881-LHK  
11-cv-0407-LHK  
11-cv-0700-LHK

The Honorable Lucy H. Koh

**SCOTT A. KAMBER DECLARATION  
IN SUPPORT OF RECOMMENDATION  
OF LEADERSHIP STRUCTURE OF  
PLAINTIFFS' COUNSEL**

24 I, Scott A. Kamber, declare as follows:

25 1. I am an attorney admitted to practice in the State of New York and am the  
26 managing partner of KamberLaw, LLC (“KamberLaw”), representing Plaintiff Jonathan Lalo  
27 and the putative class in the above-captioned matter. I am over the age of 18, have personal  
28 knowledge of the matters stated herein except as otherwise noted and, if called upon to do so,  
would competently testify to the statements made herein and would attest that any exhibits  
attached hereto are true and correct copies of the documents they purport to be.

1           2.       As discussed further below, KamberLaw has an unmatched reputation and  
2 record for advancing the privacy and information security rights of consumers who face an  
3 evolving world of networked devices operated by expanding and nontransparent networks of  
4 business interests. We understand consumers concerns, class actions, the technology landscape,  
5 and the information-driven business entities involved—which include manufacturers, content-  
6 providers, application developers, advertisers, and even auctioneers of the opportunity to  
7 advertise to particular consumers. We understand how people, business values, and  
8 technologies are often aligned and in conflict at the same time, and we devote substantial  
9 resources to the factual, legal, and forensic investigations required to understand how to  
10 prosecute these cases vigorously and resolve them in way that promotes the fair and efficient  
11 administration of justice.

12           3.       Also detailed below are the efforts that I have personally expended to advance  
13 the Lalo Action and the others consolidated therewith, and to foster a consensus-building effort  
14 around a plan for self-organized leadership.

15 **I.       KamberLaw’s Unparalleled Internet Privacy and Technology Expertise**

16           4.       One member of the bench of this District recently observed: , “The attorneys of  
17 KamberLaw have made a showing that they possess experience and expertise in the areas of  
18 consumer privacy and technology matters and have professionally represented the interests of  
19 the Class in this matter.” The KamberLaw Firm Resume bears out these characteristics, listing  
20 some of the technical matters we have handled and highlighting the qualifications of our  
21 counsel, is attached hereto as Exhibit A-1.

22           **A.       Scott A. Kamber**

23           5.       This year, I was honored to be the only private plaintiffs’ lawyer from the  
24 United States to be invited to address the International Conference of Data Protection and  
25 Privacy Commissioners and address the world’s leading Internet business leaders, policy-  
26 makers, privacy advocates, and academics.

27           6.       My experience litigating Internet privacy actions began in the late-1990s. I  
28 served as class counsel in *In Re Geocities*, a case alleging a conflict between a website’s

1 privacy policy and its use of web protocols for sharing consumer information with third parties,  
2 and which was resolved through what is generally credited as the first settlement of such a case.

3 7. Since then, I have served as lead counsel and have been responsible for litigating  
4 and successfully resolving a number of noted Internet privacy and technology class actions.

5 These settlements with a number of industry leaders, including

- 6 – *Facebook*: the Beacon case, involving disclosure to other users of Facebook  
7 users’ purchases on third-party websites;
- 8 – *Sony Entertainment* (S.D.N.Y. 2006) and *ATI* (N.D. Cal. 2009), “root-kit”  
9 cases, alleging harm and security compromise to computers arising from  
10 digital rights management (DRM) software embedded in music CDs;
- 11 – *Netflix* (N.D. Cal. 2010), alleging privacy violations arising from Netflix’s  
12 release of supposedly anonymized data in a million-dollar contest where  
13 contestants designed improvements to the site’s recommendation engine.

14 Other defendants have included Microsoft, Google, and Yahoo!

15 8. Currently pending cases including matters involving mobile devices and  
16 allegations of intrusions by advertisers; “Flash cookie” cases, involving allegations of  
17 advertisers’ using consumers’ of Adobe Flash to create “pseudo-cookies” that bypass privacy  
18 and security controls in consumers’ browsers; ISP wiretapping cases, involving allegations of  
19 ISPs installation of third-party advertisers’ consumer tracking and profiling network devices in  
20 the heart of the ISP infrastructure; and social network cases involving unauthorized uses of  
21 consumers’ email address books to conduct “viral” campaigns to recruit new members. Many  
22 of these cases include legal claims and concepts of first impression.

23 9. KamberLaw’s unique approach to litigation contributes to our consistent pattern  
24 of reaching agreements with defendants to terminate the complained-of conduct and, in  
25 addition, provide meaningful benefits to the class.

26 10. Timeliness is an important objective in our settlement efforts. I base this on the  
27 likelihood of continuing or even escalating harm to the class, especially given the rapid pace of  
28 technology changes. To meet this challenge, I have applied creative litigation and dispute

1 resolution techniques, including a commitment to creative ADR processes that include a  
2 substantial element of the parties educating each other to facilitate resolution. An key factor in  
3 our being able to approach settlement sooner rather than later is the intelligence we gain  
4 through pre-complaint and continuing investigation, discussed in paragraphs 17 and 18, below.

5 **B. Other KamberLaw Attorneys; Approaches to Case Development**

6 11. Another of the firm's partners, David A. Stampley, led New York and multistate  
7 attorney general enforcement actions as an Assistant Attorney General in New York. These  
8 included *In the Matter of DoubleClick*, a ten-state coalition involving notice and choice  
9 standards for third-party data collection; *In the Matter of Netscape*, the Smartdownload  
10 spyware case; *In the Matter of Ziff Davis Media*, a seminal security breach matter in which  
11 monetary compensation was paid to consumers' whose online credit card payments for  
12 magazine subscriptions were exposed; *In the Matter of Eli Lilly*, the prozac.com email breach  
13 involving application programming practices.

14 12. As a privacy officer at a Fortune 1000 technology company, Mr. Stampley  
15 participated as an active member of development teams for multi-party, Internet-based  
16 applications involving the collection and transfer of sensitive consumer information. He  
17 participated in the development of online and electronic interchange systems designed to help  
18 business maintain compliance with the Gramm-Leach-Bliley Act, the CAN-SPAM Act,  
19 California's S.B. 1 security breach notice law, the Drivers License Privacy Protection Act, and  
20 the Canadian Personal Information Protection and Electronic Documents Act.

21 13. Mr. Stampley participated as an Invited Expert in authoring the Platform for  
22 Privacy Preferences (P3P) specification issued by the Worldwide Web Consortium (W3C), a  
23 tool for automating the reading of website privacy policies that has been a key component of  
24 the privacy controls in Windows Internet Explorer for almost nine years. He has written articles  
25 addressed to an audience of information security professionals, explaining the nexus of  
26 information security, privacy, and compliance requirements. He was quoted and cited in  
27 academic papers as well as by Ann Cavoukian, Ph.D., Information And Privacy Commissioner  
28 of Ontario in *20/20: Access & Privacy Excellence... 20 Years In The Making* (2007). Mr.

1 Stampley maintains strong ties to the privacy advocacy and information security communities  
2 both in the public and private sectors.

3 14. In addition to complex litigation experience, all of KamberLaw's attorneys bring  
4 valuable educational, business, and legal *experience to bear in the firm's cases, ranging from*  
5 *government* prosecution, mediation of consumer complaints of online fraud, consumer and  
6 workers' rights in offline contexts. KamberLaw attorneys recognize the importance of fostering  
7 and maintaining strong ties to the privacy advocacy, academic, and technology communities  
8 both in the public and private sectors.

9 15. The KamberLaw attorneys have also advised clients on managing, mitigating,  
10 and remediating compliance risk associated with information security and privacy practices in  
11 the context of e-commerce businesses and major corporate information technology programs.  
12 They have also developed Internet applications, performed information security audits and have  
13 been responsible for defining and reviewing the criteria and terms of engagement for  
14 application code audit and information security audit engagements and been invited to speak  
15 and quoted by privacy commissioners and other senior privacy officials in the United States  
16 and abroad.

## 17 **II. KamberLaw's Efforts in Advancing the iPhone Application Litigation**

18 16. KamberLaw's *efforts in these cases demonstrate the appropriateness of its*  
19 *appointment to a lead counsel role under Rule 23.*

20 17. In preparing and filing the first-filed action, KamberLaw conducted significant  
21 legal and factual research, including research into defenses and an analysis of the business  
22 relationships and conditions that might affect each defendant's stake in the matter and incentive  
23 to seek resolution. KamberLaw also conferred with necessary experts in investigating the  
24 claims made in the Action. Disclosure of the identity of experts and their specific work  
25 protocols here, in a filing reviewable by defendants would, in my judgment, unnecessarily  
26 compromise our efforts.

27 18. KamberLaw's preparation efforts included expert forensic analysis of devices,  
28 including user-facing functions, user communication functions, capability of providing third-

1 party access to device identifier and geolocation data, and user privacy controls. In addition, we  
2 conducted tests that included analysis of active communications flows from mobile devices in  
3 the context of various applications and device configurations.

4 19. In addition, KamberLaw has invested significant resources in developing the  
5 expert testimony necessary to validate, from an economics perspective, and quantify the  
6 economic value—to consumers— of their personal information at issue in these cases. Based  
7 on these preliminary and ongoing investigative efforts, KamberLaw has acquired valuable  
8 information in the nature of confirmatory discovery that, as in all our cases, positions us to  
9 engage in assertive litigation with an economy of discovery effort or, on the other hand, well-  
10 informed mediation.

11 20. I personally contacted plaintiffs' counsel in each of the three subsequently filed  
12 actions shortly after their respective filing and service of their complaints in order to informally  
13 coordinate efforts prior to the determination of leadership. To that end, I personally coordinated  
14 communications with defendants, including discussions regarding extensions of time to  
15 respond to the complaints. These efforts served the efficient administration of justice by not  
16 requiring responses from any defendant to the outstanding four complaints.

17 21. My firm also suggested to other counsel and subsequently prepared the initial  
18 draft of the proposed consolidation and case management order that was eventually entered by  
19 the Court on March 15, 2011. KamberLaw obtained all plaintiffs' counsel's consent to the  
20 language and then worked to shepherd the documents through a review by all defendants that  
21 had been served in any of the three actions. My firm was able to accomplish this without  
22 incurring duplication of effort by the different plaintiffs' firms. We believe the entry of this  
23 order established the operative timeframe for the progression of this matter through the  
24 pleadings phase and insured the timely recommendation of interim class counsel by requiring  
25 all Plaintiffs' counsel to seek to self-organize and put forward a single interim class counsel  
26 recommendation.

27 22. In the wake of the Courts' entry of the March 15, 2011 Order, I have engaged in  
28 extensive discussions with the proposed members of the Executive Committee as to threshold

1 issues regarding the consolidated amended complaint so that if the Court follows the  
2 recommendation submitted herewith, the plaintiffs will be able to comply with the dates for  
3 filing ordered by the Court. Much of our work with experts for this matter as well as our  
4 internal firm forensic efforts will greatly enhance our ability to complete the drafting of the  
5 consolidated complaint prior to the court-ordered due date. Each of the firms that support  
6 KamberLaw's appointment has acceded voluntarily to our efforts to coordinate prior to  
7 appointment of lead so that we can limit duplication of efforts. In my experience, plaintiffs'  
8 firms all too often engage in wasteful and duplicative expenditures of time and money in order  
9 to impress the Court with the efforts that have been undertaken prior to appointment of  
10 leadership. Here, I believe that my firm has reduced such duplication, at least among the  
11 iPhone Plaintiffs' Counsel Group.

12 23. If appointed by this Court as lead counsel, KamberLaw will continue to commit  
13 the resources necessary to advance this litigation and obtain relief for the putative class and  
14 assign work equitably among all plaintiffs counsel and in a manner that maximizes litigation  
15 advantages at the lowest possible cost.

16 24. Technology lawsuits have a different focus from other major class action  
17 litigation. Whereas in antitrust, securities, and mass tort cases, the principal objective is  
18 monetary relief, the thrust of a technology lawsuit is to achieve a meaningful solution to the  
19 Defendant's offending business practice. KamberLaw recognizes that protecting the putative  
20 class in this case requires a mechanism through which it can be assured that Apple has ceased  
21 improperly collecting the class members' personal information, and that such conduct, to the  
22 extent already cured, will not resume in the future. KamberLaw intends to work with the  
23 members of the proposed Executive Committee to formulate a litigation strategy aimed at  
24 bringing about the necessary revisions to Apple's business practices.

25 **III. Scott A. Kamber's Efforts to Build Consensus for Interim Class Counsel in**  
26 **Compliance with Court Order**

27 25. In accordance with this Court's March 15, 2011 order (Docket No. 36), I  
28 expended significant effort seeking to build a consensus among plaintiffs' counsel for a plan of

1 Interim Class Counsel self-organization under FRCP 23(g) that plaintiffs' counsel could  
2 recommend to the Court.

3         26.     Upon entry of the March 15, 2011 Order, I personally spoke to Plaintiffs'  
4 Counsel in each of the three subsequently filed cases in order to begin working toward a  
5 consensus for a leadership structure. These calls led me to believe that each of the firms wanted  
6 to serve as co-lead counsel, along with my firm. Recognizing that more work would be  
7 necessary to self-organize the case in a manner that made sense, I requested that plaintiffs'  
8 counsel representing each of the four filed cases participate in a conference call to seek a  
9 consensus on leadership.

10         27.     On March 22, 2011, the above-referenced call was held. The conference call  
11 lasted for approximately one hour. At least one firm from each of the consolidated actions  
12 participated. Initially, each firm wanted to serve as co-lead counsel with my firm. Specifically  
13 David Parisi of Parisi & Havens, LLP, William Audet of Audet & Partners, LLP, and Jeff  
14 Westerman of Milberg each made an argument of why their firms were the appropriate firm to  
15 serve as co-lead counsel with my firm. Each of the participating counsel seemed to agree that,  
16 based upon its known leadership and expertise in Internet privacy and its efforts thus far in this,  
17 that KamberLaw should serve as lead. The focus of the discussion was whether there should be  
18 a co-lead and, if so, which firm it should be..

19         28.     Over the course of the discussion, it was suggested by Mr. Parisi that if everyone  
20 wanted to be co-lead we would never be able to reach a recommendation, so it was suggested  
21 that I should serve as sole lead counsel and one lawyer from each of the other three cases  
22 should serve on an executive committee. Eventually, almost everyone voiced agreement to that  
23 proposal, accepting that it would benefit the Class by providing the most effective mechanism  
24 for decision-making while making the most efficient use of firms' resources.

25         29.     The group's consensus was to add Robert K. Shelquist from the law firm of  
26 Lockridge Grindal Nauen P.L.L.P. and Jeremy R. Wilson of Wilson Trosclair & Lovins to the  
27 executive committee. A copy of the firm and personal CV of Mr. Shelquist in support of this  
28 request are attached hereto as Exhibit A-2. A copy of the firm resume of Wilson Trosclair &

1 Lovins is attached hereto as Exhibit A-3.

2 30. Jeff Westerman of Milberg was the only dissent from the Parisi proposal. Mr.  
3 Westerman took the position that while he was willing to work together with everyone on the  
4 case, he was unwilling to agree to any structure that did not include Milberg as the co-lead  
5 counsel. In an effort to resolve this issue with a unanimous recommendation to the Court and  
6 because the majority engaged in a reasonable and fair processing in arriving at a structure, I  
7 spoke to with Mr. Westerman no less than a half dozen times in an effort to break the impasse.

8 31. In summary, three of four firms have agreed to the recommendation proposed  
9 here, believing it to be a fair and equitable structure and consistent with the Court's Order.  
10 Therefore seven of the nine Plaintiffs' firms representing three of the four cases and 15 of 16  
11 consolidated Plaintiffs agree to the structure here proposed. The proponents, including myself,  
12 remain ready, willing and able to work with all counsel in these actions and carry out the  
13 Court's instructions regarding leadership and administration of the action.

14 I declare under penalty of perjury under the laws of the United States of  
15 America that the foregoing is true and correct.

16  
17 Executed on March 25, 2011 at Essex County, New Jersey.

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19 

20 \_\_\_\_\_  
SCOTT A. KAMBER