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

20 In re iPhone Application Litigation

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

21 **JOINT STATUS CONFERENCE**
 22 **STATEMENT**

23 Date: April 6, 2011
 24 Time: 2:00 p.m

25 Honorable Lucy H. Koh

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 27
 28 JOINT STATUS CONFERENCE STATEMENT
 Case No. CV-10-5878 LHK (PSG)

1 For the status conference set for April 6, 2011, Plaintiffs and Defendants¹ (collectively
2 the “Parties”) hereby submit this Joint Case Management Statement pursuant to this Court’s
3 Order dated March 15, 2011 (the “March 15 Order”).

4 **Relevant Procedural Background**

5 With its March 15, 2011 Order, the Court consolidated four actions against Apple and
6 17 other defendants, all of which have been served as of the date of filing of this submission, as
7 well as Doe defendants. The March 15 Order required Plaintiffs to use their “best efforts to
8 self-organize and recommend to the Court counsel to serve as Interim Class Counsel” and to
9 file such recommendation within ten days of entry of the Order (*i.e.* by March 25, 2011). Pur-
10 suant to the Order, any plaintiff could oppose such recommendation by filing an opposition
11 within ten days of consolidation of their case or the filing of said recommendation, whichever
12 is later.

13 Plaintiffs’ counsel represent that on March 22, 2011, Plaintiffs’ counsel held a confer-
14 ence call to fulfill the Order of the Court to “use best efforts to self-organize.” All but counsel
15 for Plaintiff Chiu agreed to a leadership structure to recommend to the Court. On March 25,
16 2011, the iPhone Plaintiffs’ Group and Plaintiff Chiu each filed papers purporting to satisfy the
17 Courts’ Order to self-organize and recommend Interim Class Counsel. Dkt. Nos. 45 & 46. As
18 of this writing, the Parties are awaiting Court action to determine who will be Interim Class
19 Counsel and understand that this matter may be decided by the Court after the scheduled April
20 6, 2011 status conference.

21 At present, there is no single operative complaint in these consolidated actions. The
22 March 15 Order further provided that within 21 days of appointment by the Court, Interim
23 Class Counsel shall file an amended pleading and set forth a briefing schedule for Defendants’
24 motions to dismiss, should any be filed.

25 _____
26 ¹ “Defendants” refers to all named defendants to any of the consolidated actions who have ap-
27 peared to date: Apple Inc.; Backflip Studios; Dictionary.com/IAC Interactive Corp., LLC;
28 Flurry, Inc.; GOGII, Inc.; Groupon, Inc.; Medialets; New York Times Co.; Pandora Media,
Inc.; The Weather Channel; WebMD Health Services Group, Inc.; Yelp!, Inc.

1 **Proposed Schedule**

2 In accordance with the Court’s March 15, 2011 Order, the Parties held a telephonic
3 meeting of counsel on March 28, 2011 to confer concerning a schedule for the Initial Case
4 Management Conference and related matters. A representative of each of the two competing
5 recommendations for Interim Class Counsel, Scott A. Kamber and Peter Seidman, participated
6 along with Michael L. Charlson on behalf of Defendant Apple, Inc. but also representing the
7 views of the other Defendants.

8 The Parties agreed that it is premature to schedule either the Rule 26 disclosures or the
9 Initial Case Management Conference contemplated by Civil Local Rule 16-10 (the “Initial
10 CMC”) because, in advance of both the Court’s appointment of Interim Class Counsel and the
11 subsequent filing of a consolidated complaint, there is uncertainty regarding: (i) which firm or
12 firms will represent the alleged Class as Interim Class Counsel; (ii) the claims Interim Class
13 Counsel will ultimately assert on behalf of the alleged Class in the consolidated complaint; and
14 (iii) the parties against whom those claims will be asserted. Accordingly, the Parties agreed
15 that the Rule 26 Disclosures and Initial CMC should be deferred at least until after the filing of
16 a consolidated amended complaint.

17 However, the Parties disagreed about how soon after the filing of the consolidated
18 amended complaint the Rule 26 disclosures and Initial CMC should occur. Their respective
19 positions are set forth below.

20 **Plaintiffs’ Position:**

21 Plaintiffs would agreed to defer the Rule 26 disclosures and Initial CMC until after a
22 decision on the motion to dismiss provided Apple and the other Defendants agreed to immedi-
23 ately cease the privacy invasions alleged in the consolidated complaints. In the absence of such
24 agreement this case should be expedited so that the offending practices – which affect millions
25 of people every day – are stopped as soon as possible.

26 The Federal Rules of Civil Procedure neither necessitate nor encourage deferring case
27 management and discovery obligations until after a motion to dismiss, nor is staying the litiga-

1 tion process pending a possible motion to dismiss the accepted or ordinary practice in this Dis-
2 trict. Therefore, Plaintiffs recommend the Court adopt the following schedule:

3 1. The meet and confer obligations under Rule 26(f) shall be satisfied no later than
4 14 days after the filing of the consolidated complaint;

5 2. Mandatory initial disclosures shall be made within 21 days of filing the consoli-
6 dated complaint; and

7 3. The Initial CMC should be scheduled before this Court within 30 days of ex-
8 changing mandatory initial disclosures.

9 **Defendants' Position:**

10 Defendants appreciate Plaintiffs' agreement that Rule 26 disclosures and the Initial
11 CMC should be deferred until after their consolidated complaint is filed given the current un-
12 certainty concerning the claims Plaintiffs intend to pursue and the persons against whom Plain-
13 tiffs intend to pursue them. Defendants suggest that under the circumstances here, however,
14 defining the issues more clearly before initial disclosures is appropriate to avoid unnecessary
15 burden and expense. *See* Manual for Complex Litigation 4th § 11.31 ("The *sine qua non* of
16 managing complex litigation is defining the issues in the litigation."). In this regard, Defen-
17 dants note their denial that there is any ongoing invasion of privacy whatsoever.

18 Moreover, although it is currently uncertain what legal theories Plaintiffs may pursue,
19 those asserted in the existing pleadings are legally insufficient in ways that cannot be cured by
20 amendment. The current complaints all allege that Defendants abused supposedly personal
21 identifying information by collecting, transmitting, and using the Unique Device Identifiers
22 ("UDID") associated with each Apple device. Defendants believe that Plaintiffs' allegations
23 about these practices are legally insufficient for myriad reasons, including their failure to allege
24 standing and harm, and are vulnerable to meritorious legal defenses. Defendants suggest that it
25 is unlikely that Plaintiffs will be able to state a valid legal claim. Accordingly, Defendants ask
26 that in these circumstances, initial disclosures and the Initial CMC await the outcome of initial
27 motions to dismiss. Defendants have acted to preserve potentially relevant documents based

1 on the existing pleadings, and believe that Plaintiffs will not otherwise be prejudiced by this
2 approach.

3
4 Dated: March 30, 2011

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21 I, Michael L. Charlson, attest that the above-listed counsel have read and approved the
22 JOINT STATUS CONFERENCE STATEMENT and consent to its filing in this action.