

1 **MILBERG LLP**  
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8 *Attorneys for Plaintiff*

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

IN RE IPHONE APPLICATION  
 LITIGATION

) CASE NOS. CV-10-5878-LHK (PSG);  
 ) CV-10-5881-LHK; CV-11-0407-LHK;  
 ) CV-10-0700-LHK

) **DECLARATION OF JEFF S.**  
 ) **WESTERMAN IN FURTHER**  
 ) **SUPPORT OF PLAINTIFF ANTHONY**  
 ) **CHIU'S RECOMMENDATION THAT**  
 ) **MILBERG LLP BE APPOINTED**  
 ) **INTERIM CLASS COUNSEL**

) Date: TBA  
 ) Time: TBA  
 ) Judge: Hon. Lucy H. Koh

) Status Conference: April 6, 2011

1 I, Jeff S. Westerman, declare:

2 1. I am a member of the Bar of the State of California and this Court, and member of  
3 the law firm of Milberg LLP (“Milberg” or the “firm”). I make this declaration in further  
4 support of Plaintiff Anthony Chiu’s Recommendation That Milberg LLP Be Appointed as  
5 Interim Class Counsel.

6 2. The matters stated herein are true to my personal knowledge or information and  
7 belief and, if called upon, I would competently testify thereto.

8 3. Attached as Exhibit 1 is a true and correct copy of the Declaration of Kim  
9 Richman in support of Plaintiff Anthony Chiu’s Recommendation That Milberg LLP Be  
10 Appointed Interim Class Counsel, and the accompanying firm résumé of Reese Richman LLP.

11 4. Prior to the filing of the recommendations for Plaintiffs’ Interim Lead Counsel,  
12 Scott Kamber, of the other firm seeking appointment, and I had numerous conversations to try to  
13 work out an arrangement by agreement. During the course of those conversations, we also  
14 discussed our respective upcoming filings with the Court in the event we did not reach  
15 agreement. On several of those conversations Mr. Kamber requested, and/or asked me to  
16 confirm, that all of our conversations would be off the record and not depicted in either counsels’  
17 filings. I agreed each time.

18 Paragraphs 27-30 of Mr. Kamber’s declaration does not conform to the agreement that he  
19 requested and confirmed in those numerous discussions with me. It is also incomplete and  
20 misleading, because among other things Mr. Kamber told me in other conversations that he did  
21 not object to Milberg being co-lead counsel, and the “consensus” he describes in paragraph 29 of  
22 his declaration did not take place on the March 22nd group call that I was on. In fact, at least  
23 two of the participants on the March 22nd call, Messrs. Parisi and Audet, left the call before it  
24 was over. When that March 22nd group call ended, it was agreed that we would talk further and  
25 it was still unclear which of the several firms would actually be proposed for an executive  
26 committee, and this was not revealed to me until I saw their filing.

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1           5.       There are other inaccuracies and omissions to Mr. Kamber’s and Mr. Audet’s  
2 declarations about our discussions, but I prefer to adhere to the purpose of the “off the record  
3 agreement,” which my prior declaration objectively shows that I honored. I honor, and often  
4 propose, similar agreements with counsel in all my cases, because it promotes open  
5 communication, and the ability to get things done without the distractions of “he said – she said.”

6           6.       At Mr. Kamber’s request for “rules of engagement” to facilitate the filings and  
7 prevent someone from delaying their lead counsel filing to view the other’s filing, on March 25th  
8 we agreed to both file our papers around 9:00 p.m. Pacific. My firm adhered to the agreement.  
9 Mr. Kamber filed closer to midnight, and appears to have used that delay to confirm that I  
10 honored the off the record agreement and did not reveal the content of our discussions, before he  
11 put in his version and incorrect characterization of the discussions.

12           I declare under penalty of perjury under the laws of the United States that the foregoing is  
13 true and correct. Executed this 4th day of April, 2011, at Los Angeles, California.

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*/s/ Jeff S. Westerman*  
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Jeff S. Westerman

# **EXHIBIT 1**

1 **RICHMAN LLP**  
MICHAEL R. REESE (SBN 206773)  
2 **KIM RICHMAN**  
875 Avenue of the Americas, 18th Floor  
3 New York, NY 10001  
Telephone: (212) 579-4625  
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5 krichman@reaserichman.com

6 *Attorneys for Plaintiff*

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8 UNITED STATES DISTRICT COURT  
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10 NORTHERN DISTRICT OF CALIFORNIA  
11  
12 SAN JOSE DIVISION

13 IN RE IPHONE APPLICATION  
14 LITIGATION

11 )  
12 ) CASE NO. CV-10-5878 LHK (PSG)  
13 )

13 ) **DECLARATION OF KIM RICHMAN**  
14 ) **IN SUPPORT OF PLAINTIFF**  
15 ) **ANTHONY CHIU'S**  
16 ) **RECOMMENDATION THAT**  
17 ) **MILBERG LLP BE APPOINTED**  
18 ) **INTERIM CLASS COUNSEL**

17 ) Date: TBA

18 ) Time: TBA

19 ) Judge: Hon. Lucy H. Koh  
20 )  
21 )

1 I, Kim Richman, declare:

2 1. I am a member of the Bar of the State of New York and a founding partner of the  
3 law firm of Reese Richman LLP (“Reese Richman”). I make this declaration in support of  
4 Plaintiff Anthony Chiu’s Recommendation That Milberg LLP (“Milberg”) Be Appointed Interim  
5 Class Counsel, Submitted Pursuant to Court Order Dated March 15, 2011 (ECF No. 36).

6 2. The matters stated herein are true to my personal knowledge or information and  
7 belief and, if called upon, I would competently testify thereto.

8 3. My firm is additional counsel for Plaintiff Anthony Chiu in *Chiu v. Apple, Inc.*,  
9 CV-11-0407-LHK.

10 4. My firm represents investors, consumers, and employees in a wide-array of class  
11 action litigation throughout the nation.

12 5. During my legal career, I have worked at both a small think tank in San Francisco  
13 and a large class action firm. I have handled cases ranging from the protection of the privacy  
14 rights of consumers and the protection of fair use rights of the public, to the prosecution of  
15 corporate fraud and insider trading.

16 6. Milberg has all of the qualifications required by Rule 23(g) (1)(A): (i) Milberg  
17 has worked diligently to identify and investigate the potential claims in the *Chiu* action; (ii)  
18 Milberg has significant experience in handling class actions, other complex litigation, and the  
19 types of privacy claims asserted in the *Chiu* action; (iii) Milberg has superior knowledge of the  
20 applicable laws; and (iv) Milberg has extensive resources and has a proven record of litigating its  
21 cases to conclusion.

22 7. For the reasons stated above, I support the appointment of Milberg as sole Interim  
23 Class Counsel, and my firm is prepared to work under the leadership of Milberg to vigorously  
24 prosecute this case under the terms set forth in the Court’s March 15 Order (ECF No. 36).

25 8. Attached as Exhibit A is the firm résumé of Reese Richman LLP.  
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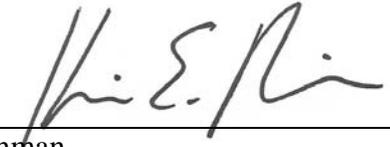
1 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
2 and correct.

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4 Executed this 4<sup>th</sup> day of April, 2011, at New York, New York.

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Kim Richman

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# **EXHIBIT A**

## REESE RICHMAN LLP

Reese Richman LLP represents investors, consumers and employees in a wide-array of class action litigation throughout the nation. The attorneys of Reese Richman LLP are skilled litigators with years of experience in federal and state court. Reese Richman LLP is based in New York, New York with attorneys also in Austin, Texas and San Francisco, California.

Recent and current cases litigated by the attorneys of Reese Richman LLP on behalf of investors and consumers include the following:

*Yoo v. Wendy's International, Inc.*, 07-cv-04515 FMC (C.D. Cal.): class action for violation of California's consumer protection laws; *Ackerman v. The Coca-Cola Co. et al.*, 09-cv-0395 (JG) (RML) (E.D.N.Y.): class action for violation of California and New York's consumer protection laws; *Chin v. RCN Corporation*, 08-cv-7349 RJS (S.D.N.Y.): class action for violation of Virginia's consumer protection law; *Gaines v. Home Loan Center Inc.*, 08-cv-667 DOC (C.D. Cal.): class action for violation of the Racketeer Influenced and Corrupt Organizations Act; *Bodoin v. Impeccable L.L.C.*, Index No. 601801/08 (N.Y. Sup. Ct.): individual action for conspiracy and fraud; *Tan v. Comcast Corp.*, 2:08-cv-02735 LDD (E.D. Pa.): class action for violation of the federal Computer Abuse and Fraud Act; *Young v. Wells Fargo & Co. et al.*, 08-cv-507 (S.D. Iowa): class action for violation of the Racketeer Influenced and Corrupt Organizations Act; *Murphy v. DirecTV, Inc.*, 07-cv-06545 FMC (C.D. Cal.): class action for violation of California's consumer protection laws; *Bain v. Silver Point Capital Partnership LLP*, Index No. 114284/06 (N.Y. Sup. Ct.): individual action for breach of contract and fraud; *Siemers v. Wells Fargo & Co. et al.*, No. C-05-4518 WHA (N.D. Cal.): class action for violation of §10(b) of the Securities Exchange Act of 1934; *Kastin v. AMR Corp. et al.*, 06-CV-5726 (S.D.N.Y.): class action for violation of the Sherman Antitrust Act; *In re Orbitz Taxes and Fees Litigation*, No 05 CH 00442 (Cook County, Illinois): class action for violation of Illinois' consumer protection laws; *In re Korean Air Antitrust Litigation*, 07-cv-01891 SJO (C.D. Cal.): class action for violation of the Sherman Antitrust Act; *Dover Capital Ltd. v. Galvex Estonia OU*, Index No. 113485/06 (N.Y. Sup. Ct.): individual action for breach of contract involving an Eastern European steel company; *All-Star Carts and Vehicles Inc. v. BFI Canada Income Fund et al.*, 2:08-cv-1816 LDW (E.D.N.Y.): class action for violation of the Sherman Antitrust Act; *In re American Funds Securities Litigation*, CV-06-7815-GAF (C.D. Cal.): class action for violations of §12(a)(2) of the Securities Act of 1933 and §10(b) of the Securities Exchange Act of 1934; *Fink v. Time Warner Cable*, 08-cv-9628 LTS (S.D.N.Y.): class action for violation of New York's consumer protection law; *Serrano v. Cablevision Systems Corporation*, 09-cv-1056 DI (E.D.N.Y.): class action for violation of the Computer Abuse and Fraud Act and New York's consumer protection law; *S.K. v. General Nutrition Corporation*, 08-cv-9263 LAK (S.D.N.Y.): class action for violation of New York's consumer protection laws; *Kreek v. Wells Fargo Securities*, 08-cv-1830 WHA (N.D. Cal.): class action for violation of §10(b) of the Securities Exchange Act of 1934; *Petlack v. S.C. Johnson & Son, Inc.*, 08-cv-00820 CNC (E.D. Wisconsin): class action for violation of Wisconsin consumer protection law; *Hill v. Roll International Corp.*, CGC-09-487547 (San Francisco County Superior Court): class action for violation of California's consumer protection laws; and *L'Ottavo Ristorante v. Ingomar Packing Co. et al.*, 09-cv-01427 (E.D. Cal.): class action for violation of the Sherman Antitrust Act.

## The Attorneys of Reese Richman LLP

### Michael R. Reese

Mr. Reese litigates securities, consumer and antitrust cases as class actions and on behalf of individual clients. Prior to joining private practice in 2000, Mr. Reese served as an assistant district attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting both violent and white-collar crime. Mr. Reese has extensive trial experience.

Achievements by Mr. Reese on behalf of consumers span a wide array of actions. For example, in *Yoo v. Wendy's International Inc.*, 07-cv-04515 FMC (C.D. Cal.) Mr. Reese was appointed class counsel by the court and commended on achieving a settlement that eliminated trans-fats from a popular food source. *See Yoo v. Wendy's International Inc.* CV-04515-FMC (JCx) (C.D. Cal. 2007) (stating that counsel “**has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy**”). In *Chin v. RCN Corp.*, 08-cv-7349 RJS (S.D.N.Y.), Mr. Reese was appointed class counsel and commended by the court for stopping RCN's practice of throttling its internet customers through adverse network management practices. *Chin v. RCN Corp.*, 08-cv-7349 RJS, 2010 U.S. Dist. LEXIS 96302 (S.D.N.Y. Sept. 8, 2010) (stating that “**class counsel is qualified, experienced, and able to conduct the litigation**”).

Victories by Mr. Reese on behalf of investors include *Siemers v. Wells Fargo, Inc.* CV05-4518 (WHA) (N.D. Cal.) that resulted in settlement soon after the class was certified; *In re Sears Roebuck and Co. Securities Litigation*, No. 02 C 07527 (N.D. Ill.) which resulted in a \$215 million recovery for shareholders; *In re American Express Financial Services Securities Litigation*, No. 04 Civ. 1773 (S.D.N.Y.) and *Spahn v. Edward D. Jones & Co. L.P.*, 04-cv-0086-HEA (E.D. Mo.), both of which were actions against brokerages for alleged receipt of kickbacks from mutual fund companies that resulted in settlements of \$100 million and \$127.5 million, respectively.

Mr. Reese also has had great success at the appellate level advocating for consumers and investors. For example, in *Olmstead v. Pioneer Electronics (USA), Inc.*, No. BC257222 (Los Angeles Superior Court), Mr. Reese successfully litigated before the Supreme Court of California on behalf of consumers in a ground breaking case that gave named plaintiffs the right to obtain unredacted records of similarly situated consumers who had complained to defendants about deceptive practices. *See Pioneer Electronics (USA), Inc., v. the Superior Court of Los Angeles County*, 40 Cal. 4th 360 (2005). Likewise, in *Masters v. DirecTV, Inc.*, Mr. Reese successfully litigated before the Ninth Circuit that California laws can apply to consumers nationwide when the defendant corporation is headquartered within the state. *See Masters v. DirecTV, Inc.* 08-55825, 2009 U.S. App. LEXIS 25479 (9<sup>th</sup> Cir. 2009).

Mr. Reese is a member of the state bars of New York and California as well as numerous federal courts. Mr. Reese received his juris doctorate from the University of Virginia in 1996 and his bachelor's degree from New College in 1993.

### **Kim E. Richman**

Mr. Richman is with the New York offices of Reese Richman LLP from where he litigates consumer and securities fraud class actions. Mr. Richman also specializes in civil rights litigation. Mr. Richman is an accomplished trial attorney with experience both in federal and state courts.

Mr. Richman draws his class action expertise from previously working at both a small think tank in San Francisco and a large class action firm. His experience includes litigating cases ranging from protecting the privacy rights of consumers and fair use rights of the public to corporate fraud and insider trading.

Mr. Richman is experienced in handling both state and federal matters and has litigated dozens of trials to verdict.

Mr. Richman has also handled various federal civil rights claims, representing clients both individually and on a class-wide basis. These matters have spanned from protecting the wrongfully accused and victims of excessive force to the human rights of factory laborers and civil liberties of hundreds of protestors arrested at a political march.

Mr. Richman is a member of the state bar of New York and the federal bars of the Southern and Eastern Districts of New York. Mr. Richman received his juris doctorate from Brooklyn Law School in 2001 and his bachelor's degree from the University of Massachusetts in 1996, from where he graduated *summa cum laude*.

### **Belinda L. Williams**

Ms. Williams is based in New York from where she focuses her practice on class actions on behalf of defrauded consumers and investors. Ms. Williams has extensive experience in litigating complex commercial cases.

Ms. Williams is admitted to the bars of several federal courts as well as the state bars of New York and Maryland. Ms. Williams received her juris doctorate from the University of Virginia School of Law in 1986 and her undergraduate degree from Harvard University in 1982.

### **Kate J. Stoia**

Ms. Stoia is based in San Francisco from where she litigates securities and consumer class actions. Ms. Stoia previously worked at the law firms of Brobeck Phleger & Harrison LLP and Gibson Dunn & Crutcher LLP. Prior to her work as a civil litigator, Ms. Stoia clerked for the Hon. Charles A. Legge of the Northern District of California.

Ms. Stoia is a member of the state bar of California and several federal courts. Ms. Stoia received her juris doctorate from Boalt Hall School of Law, University of California at Berkeley and her bachelor's degree from Columbia University.

**Lance N. Stott**

Mr. Stott is based in Austin, Texas from where he litigates consumer class actions. Previous and current consumer fraud class actions litigated by Mr. Stott include *Davis v. Toshiba America Consumer Products* for allegedly defective DVD players; *Bennight v. Pioneer Electronics (USA) Inc. et al.* for allegedly defective television sets; *Spencer v. Pioneer Electronics (USA) Inc. et al.* for allegedly defective DVD players; and, *Okland v. Travelocity.com, Inc.*, for deceptive pricing for online hotel reservations.

Mr. Stott is a member of the state bar of Texas. Mr. Stott received his juris doctorate from the University of Texas in 1996 and his bachelor's degree from New College in 1993.

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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 April 4, 2011, declarant served the DECLARATION OF JEFF S. WESTERMAN IN FURTHER SUPPORT OF PLAINTIFF ANTHONY CHIU’S RECOMMENDATION THAT MILBERG LLP BE APPOINTED AS INTERIM CLASS COUNSEL 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.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of April, 2011, at Los Angeles, California.

*Cecille Chaffins*



CECILLE CHAFFINS