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Attorneys for Defendant
FLURRY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re iPhone Application Litigation

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

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

The Honorable Lucy H. Koh

1 Pursuant to Local Rule 3-12, Defendant Flurry, Inc. (“Flurry”) hereby submits this
2 Administrative Motion to Consider Whether Cases Should Be Related to give notice of the following
3 action: *Juliann King, Individually and on Behalf of a Class of Similarly Situated Individuals,*
4 *Plaintiff, v. Google, Inc; Flurry, Inc.; Mobclix, Inc., Defendants*, Case No. 5:11-CV-02167-PSG,
5 filed in this District on May 3, 2011.¹

6 Flurry brings the *King* filing to the Court’s attention so that the Court may determine whether
7 *King* is sufficiently related to the above-captioned consolidated action, *In re iPhone Application*
8 *Litigation*, Case No. 5:10-CV-05878, under Local Rule 3-12 such that, as a result of certain common
9 legal issues and some overlapping factual issues, some duplication of labor may be avoided if the two
10 cases are heard by the same judge.

11 Each claim for relief asserted by the *King* Plaintiffs is likewise pleaded in *In re iPhone*
12 *Litigation*.² (*In re iPhone Litigation* also alleges, in addition, violations of Negligence, the Consumer
13 Legal Remedies Act - Cal. Civ. Code § 1750, and Breach of Implied Covenant of Good Faith and
14 Fair Dealing, which are not pleaded in *King*). Moreover, the defendants in the *King* action—Flurry,
15 MobClix, Inc., and Admob, Inc. (through Google, Inc.)³—all are named defendants in *In re iPhone*
16 *Litigation*. Further, Plaintiffs’ counsel in the *King* action is Interim Plaintiffs’ Class Counsel in *In re*
17 *iPhone Litigation*.

18 The claims common to both Complaints also originate from the same core allegations
19 concerning the alleged gathering and misuse of personal information and will involve certain
20 overlapping legal and factual issues. Common core legal issues in the two Complaints include
21

22 ¹ A copy of the *King* Complaint is attached hereto as Exhibit A.

23 ² Note that the last claim in the *King* Complaint, Breach of Implied Contract, is alleged in *In re*
24 *iPhone Litigation* as Unjust Enrichment.

25 ³ Google, Inc., which is a named defendant in the *King* action, is not a named defendant in *In re*
26 *iPhone Litigation*. Similarly, Admob, Inc., which is a named defendant in *In re iPhone*
27 *Litigation*, is not a named defendant in the *King* action. However, it appears that the *King*
28 Complaint names Google as a defendant based on its ownership of AdMob. See *King*
Complaint, ¶ 6 (“Google is the owner of AdMob, a mobile advertising network”).
Accordingly, as a practical matter, there is complete overlap among the defendants in both
matters.

1 whether plaintiffs have suffered injury and loss of money or property sufficient to confer standing
2 under the United States Constitution and California’s Unfair competition Law (as amended by
3 Proposition 64) , the extent of Defendants’ disclosure obligations under the California consumer
4 protection statutes, and the meaning of statutory references to “information” and related concepts.
5 The common legal issues will be raised in motions to dismiss the claims with prejudice in both cases.
6 If such motions were to be unsuccessful, the legal issues would be addressed again in both cases in
7 motions for summary judgment, briefing on class certification, and, if the prior referenced motions
8 and opposition were to be unsuccessful, again in briefing at trial. For these reasons, the cases may be
9 deemed related under Local Rule 3-12(a)(2) because “it appears likely that there will be an unduly
10 burdensome duplication of labor and expense or conflicting results if the cases are conducted before
11 different judges.”

12 Accordingly, Flurry respectfully requests that the Court approve transfer of the *King* action to
13 this Court. In accordance with Local Rule 3-12(b), Flurry is serving a copy of this Motion on all
14 parties in the *King* action and *In re iPhone Litigation*.

15
16 DATED: May 11, 2011

GIBSON, DUNN & CRUTCHER LLP

17 By: /s/ Gail E. Lees
18 Gail E. Lees

19 Attorneys for Defendant
20 FLURRY, INC.

1 **DECLARATION OF SERVICE**

2 I, Lorraine Nishiguchi, declare that I am employed in the County of Santa Clara, State of
3 California; I am over the age of 18 years and am not a party to this action; my business address is
4 1881 Page Mill Road, Palo Alto, California 94304, in said County and State. On May 11, 2011, I
5 served the within:

6 **ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE**
7 **RELATED**

8 to all named counsel of record as follows:

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10 David A. Stampley
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Counsel for Plaintiff Juliann King



BY ECF (ELECTRONIC CASE FILING): I e-filed the above-detailed documents
utilizing the United States District Court, Northern District of California’s mandated ECF (Electronic
Case Filing) service on May 11, 2010. Counsel of record are required by the Court to be registered e-
filers, and as such are automatically e-served with a copy of the documents upon confirmation of e-
filing.

19 I certify under penalty of perjury that the foregoing is true and correct, that I am employed in
20 the office of a member of the bar of this Court at whose direction the service was made, and that this
21 declaration is executed by the undersigned on May 11, 2011, at Palo Alto, California.

22
23 /s/ Lorraine Nishiguchi
24 LORRAINE NISHIGUCHI

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