

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

)	Case No.: 10-CV-05878-LHK
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IN RE IPHONE APPLICATION LITIG.)	ORDER DENYING MOTION TO STAY
)	(re: dkt. #72)
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Defendant Apple Inc. (“Apple”), joined by Defendants AdMob, Inc. and Flurry, Inc., moves to stay this consolidated action pending resolution of its motion with the Judicial Panel on Multidistrict Litigation (the “MDL motion”) to transfer related actions for coordinated or consolidated pretrial treatment pursuant to 28 U.S.C. § 1407. *See* Dkt. #72. Plaintiffs oppose the motion to stay, arguing that a stay of these proceedings would not further judicial economy, but would only delay resolution of their breach of privacy-related claims. The Court heard argument on Apple’s motion on May 25, 2011. The Court does not find a stay warranted, and thus Apple’s motion to stay is DENIED. However, the Court finds that discovery in this action should only proceed on a limited basis as specified below.

I. BACKGROUND

Plaintiffs in these consolidated actions (“In Re iPhone Application Litigation”) allege that Defendants have committed, and are continuing to commit, privacy violations by illegally collecting, using, and distributing iPhone, iPad, and App Store users’ personal information. *See*

1 generally Consol. Compl. [dkt. #71]. The first two of these consolidated actions were filed on
2 December 23, 2010. See *Lalo v. Apple, Inc., et al.*, 10-cv-05878-LHK (the “Lalo Action”) and
3 *Freeman v. Apple, Inc., et al.*, 10-cv05881-LHK (the “Freeman Action”). Other actions in this
4 District have followed.¹ Moreover, and as most relevant here, other actions, with substantially
5 similar allegations against Apple and other Defendants, have been filed in the District of Puerto
6 Rico and the Northern District of Alabama.

7 With respect to the cases consolidated under the caption *In Re iPhone Application*
8 *Litigation*, the undersigned has: (1) issued a stipulated Consolidation Order on March 15, 2011,
9 setting an expedited schedule triggered by Plaintiffs’ filing of a Consolidated Complaint; (2) held a
10 status conference and appointed interim Plaintiffs’ counsel and leadership on April 6, 2011; (3)
11 extended Apple’s deadline for initial disclosures to June 22, 2011 and other Defendants’ deadline
12 to July 6, 2011; and (4) held an initial case management conference on May 25, 2011. In addition,
13 Plaintiffs filed the Consolidated Complaint on April 21, 2011, which, under the Consolidation
14 Order, would have given Apple 30 days to respond. However, the Court granted Apple’s request
15 to extend its deadline to respond to the Consolidated Complaint until June 13, 2011, the same
16 response deadline for other Defendants pursuant to stipulation with Plaintiffs. See May 19, 2011
17 Order Granting Apple’s Motion for Extension of Time to File Response to Consolidated Complaint
18 [dkt. #109].

19 Apple filed its MDL motion with the Judicial Panel on Multidistrict Litigation (the “Panel”)
20 on April 19, 2011. Apple expects the Panel to hear the MDL motion at the Panel’s July 28, 2011
21 meeting and to decide the MDL motion soon thereafter. In its MDL motion, Apple seeks to
22 transfer the actions in Puerto Rico, Alabama, and any other District to the United States District
23 Court for the Northern District of California. In the instant motion to stay, Apple submits that a
24

25 ¹ The other, currently consolidated actions are: *Chiu v. Apple, Inc.*, 11-cv-00407-LHK
26 (filed on January 27, 2011) and *Rodimer v. Apple, Inc., et al.*, 11-cv-00700-LHK (filed on
27 February 15, 2011). Three other actions have recently been related to the *In Re iPhone Application*
28 *Litigation*: *Gupta v. Apple, Inc.*, 11-cv-02110-LHK (filed on April 28, 2011); *Velez-Colon v.*
Apple, Inc., 11-cv-02270-LHK (filed on May 9, 2011); and *Normand v. Apple, Inc.*, 11-cv-02317-
LHK (filed on May 10, 2011). Finally, one other action is currently related, but has not yet been
consolidated because of a pending motion to remand: *Jenkins v. Apple, Inc.*, 11-cv-01828-LHK
(removed on April 14, 2011).

1 stay of these consolidated actions pending resolution of its MDL motion would promote judicial
2 economy and avoid prejudice to the parties.

3 **II. ANALYSIS**

4 **A. A Stay is Not Warranted**

5 The power to grant a temporary stay “is incidental to the power inherent in every court to
6 control the disposition of the causes on its docket with economy of time and effort for itself, for
7 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The Panel’s rules do
8 not require that an action be stayed by a district court while a motion with the Panel for transfer is
9 pending. The stay decision is a discretionary one. As the Panel’s rules state:

10 The pendency of a motion, order to show cause, conditional transfer order or
11 conditional remand order before the Panel concerning transfer or remand of an action
12 pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings
13 in the district court in which the action is pending and does not in any way limit the
pretrial jurisdiction of that court.

14 J.P.M.L. Rule 1.5. When considering whether to stay proceedings pending a motion before the
15 Panel, factors to consider include: (1) conserving judicial resources and avoiding duplicative
16 litigation; (2) hardship and inequity to the moving party if the action is not stayed; and (3) potential
17 prejudice to the non-moving party. *See Falk v. GMC*, 2007 U.S. Dist. LEXIS 80864, *6 (N.D. Cal.
18 Oct. 22, 2007).

19 In consideration of these factors, the Court concludes that a stay is not warranted. First,
20 with respect to conservation of judicial resources, the Court does not agree with Apple that
21 proceeding with this action will lead to “duplicative pretrial proceedings and needless expenditure
22 of the Court’s resources.” *See Apple Mot. to Stay* at 4. As Apple itself concedes, the actions
23 outside of this District have either been stayed or not progressed beyond the filing of a complaint.
24 In these consolidated actions, however, the Court has set an initial schedule for a response to the
25 Consolidated Complaint and for initial disclosures. As in the *Falk* decision denying a motion to
26 stay, “[a]t this time, this action is the only one going forward. Moreover, any harm from
27 inconsistent rulings would be minimal.” *See Falk*, 2007 U.S. Dist. LEXIS 80864, *7.

1 Apple has also taken the position that Plaintiffs’ allegations “are legally insufficient in ways
2 that cannot be cured by amendment,” and that Plaintiffs’ claims are “legally insufficient for myriad
3 reasons, including their failure to allege standing and harm, and are vulnerable to meritorious legal
4 defenses.” See March 30, 2011 Joint Status Conference Statement at 3 [dkt. #54]. Thus, Apple
5 essentially contends that *no matter the allegations* made by Plaintiffs, various legal arguments (i.e.,
6 no Article III standing / injury) will dispose of the Consolidated Complaint as a matter of law in a
7 motion to dismiss. If Apple is correct, then judicial economy and Plaintiffs’ and Defendants’
8 interests in an efficient and timely resolution of the claims at issue will be best served by starting
9 the motion practice sooner rather than later.

10 Second, with respect to potential prejudice to the moving party, Apple argues that it may
11 have to respond to “similar discovery requests for documents, other written discovery, and
12 depositions,” and that its witnesses should not have to “appear for multiple depositions in the
13 various Actions.” *Id.* at 5. The Court agrees that discovery in these actions may be (likely will be)
14 extensive and potentially burdensome. However, staying these actions will not change that burden,
15 but would instead only delay discovery’s commencement. Apple, whether it is on the timeline set
16 by the undersigned or by another judge, will still have to turn over the same documents and make
17 available the same witnesses for deposition. The Court notes, moreover, that Apple: (1) stipulated
18 to the Consolidation Order, which would have required Apple to respond to the April 21, 2011
19 Consolidated Complaint on an even faster timeline (i.e., within 30 days); (2) sought and received a
20 deferral of initial disclosures until the filing of a Consolidated Complaint; and (3) sought and
21 received another extension of its initial disclosures until June 22, 2011. Finally, as explained
22 further below, the Court will limit discovery in this action to help streamline document production
23 and avoid burdensome requests while Apple’s MDL motion is pending before the Panel.

24 The Court finds the third factor, potential prejudice to Plaintiffs, also weighs in favor of
25 denying a stay. Plaintiffs, at least in the Lalo and Freeman Actions, filed their initial complaints in
26 December 2010. Under the Federal Rules of Civil Procedure, Apple, which has been a Defendant
27 in these actions all along, would have been required to respond to the original complaints by
28 January 2011. Instead, with the filing of a stipulated Consolidation Order, a Consolidated

1 Complaint (which Plaintiffs filed on an expedited basis), and an Order by the undersigned granting
2 an extension, Apple and the other Defendants now have until June 13, 2011 to file a response to the
3 Consolidated Complaint. Further delay, especially where Plaintiffs have acted on an expedited
4 basis to help these consolidated actions move forward and allege on-going privacy violations, is
5 clearly prejudicial to Plaintiffs' interests in a timely resolution of their claims.

6 In sum, the relevant factors do not favor staying this action.

7 **B. Limited Discovery is Appropriate**

8 Although the undersigned does not agree that a total stay is appropriate, the Court does find
9 that discovery in these consolidated actions should proceed on a more narrow basis while Apple's
10 MDL motion is pending before the Panel. At oral argument on May 25, 2011, counsel for
11 Plaintiffs narrowed discovery requests to contracts and related documents between: (1) Apple and
12 the current advertising network and/or analytics Defendants; and (2) Apple and any other
13 advertising network and/or analytics entities that are not currently Defendants. Counsel for Apple
14 represented that Apple did not need any discovery in advance of its June 13, 2011 response
15 deadline or in advance of the Panel's July 28, 2011 hearing date.

16 Accordingly, while Apple's MDL motion is pending before the Panel, no depositions shall
17 be taken and written discovery shall be limited to the two areas identified above. The initial
18 disclosures deadline set at the April 6, 2011 and confirmed in the April 7, 2011 Order Regarding
19 Case Schedule and Case Management [dkt. #66] remain as set.

20 **III. CONCLUSION**

21 For the reasons explained above, Apple's motion to stay is DENIED. Discovery may
22 proceed on the limited basis specified by the Court. Defendants must respond to the Consolidated
23 Complaint by June 13, 2011. If, as anticipated, Defendants respond with a motion to dismiss,
24 Plaintiffs' opposition is due by July 11, 2011, and Defendants' reply is due by July 25, 2011.² A
25 hearing on any such motion will be set for Thursday, September 1, 2011 at 1:30 p.m.

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27 ² The Court's Consolidation Order, to which the parties stipulated, required Plaintiffs to file
28 an opposition 21 days after any potential motion to dismiss, but with the new June 13, 2011
Defendants' response deadline, Plaintiffs' opposition would be due on July 4, 2011. Accordingly,
the Court is granting Plaintiffs an extra week to file an opposition, with Defendants' reply still due
two weeks later.

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A further case management conference is set for Wednesday, August 10, 2011 at 2:00 p.m., with a supplemental case management statement due by August 3, 2011. By August 5, 2011, the parties shall inform the undersigned of the Panel's decision, if any, on Apple's MDL motion. If the Panel has not issued its decision by August 5, 2011, the parties may request a continuance of the August 10, 2011 case management conference to August 24, 2011.

IT IS SO ORDERED.

Dated: May 31, 2011



LUCY H. KOH
United States District Judge