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 Apple Inc., a California Corporation

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

14
 15 In Re: iPhone/iPad Application Consumer
 Privacy Litigation,

Case No. 5:11-md-02250-LHK

16 **DECLARATION OF MARC**
 17 **ZWILLINGER IN SUPPORT OF**
 18 **APPLE INC.'S MOTION TO**
 19 **DISMISS THE FIRST AMENDED**
 20 **CONSOLIDATED CLASS ACTION**
 21 **COMPLAINT**

1 I, Marc J. Zwillinger, declare as follows:

2 1. I am an attorney at law admitted to practice *pro hac vice* before this Court, as well
3 as the Courts of the State of Illinois and the District of Columbia. I am the founder of
4 ZwillGen PLLC and counsel for Defendant Apple Inc. (“Apple”) in this litigation. I make
5 this declaration upon personal knowledge and could and would competently testify to the
6 matters below if called to do so.

7 2. Attached hereto as Exhibit A is a true and correct copy of relevant excerpts of the
8 official transcript of this Court’s May 25, 2011 hearing.

9 3. Attached hereto as Exhibit B is a true and correct copy of Apple’s Q&A on
10 Location Data, <http://www.apple.com/pr/library/04/27Apple-Q-A-on-Location-Data.html>,
11 which is referenced in Plaintiffs’ complaint at paragraph 145, note 13.

12 4. I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct and that this declaration was executed on April 5, 2012,
14 at Park City, Utah.

15
16 _____ /s/Marc J. Zwillinger

17 Marc J. Zwillinger
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EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: IPHONE) C-10-05878 LHK
APPLICATION LITIGATION)
) SAN JOSE, CALIFORNIA
)
) MAY 25, 2011
)
) PAGES 1-78
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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CERTIFICATE NUMBER 9595

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1 PENDING AT THE FIRST CASE MANAGEMENT CONFERENCE ON
2 APRIL 6TH THAT WE HAD.

3 SINCE THAT POINT IN TIME, THERE WAS A
4 CLUSTER OF CASES THAT WERE FILED IMMEDIATELY AFTER
5 A PRESS STORY BROKE ABOUT ONE PARTICULAR
6 APPLICATION, PANDORA, REVEALING IN ITS S.E.C.
7 STATEMENT THAT THERE WAS A GRAND JURY PROCEEDING
8 ASKING THEM QUESTIONS ABOUT THE APPLICATIONS.

9 FRANKLY, IN MY EXPERIENCE, YOUR HONOR, TO
10 CERTAIN ANTITRUST PLAINTIFFS' COUNSEL AND CERTAIN
11 MASS TORT PLAINTIFFS' COUNSEL, WHEN THEY SEE THE
12 WORDS "GRAND JURY" APPEAR, IT'S A LITTLE BIT LIKE
13 THE BELL FOR PAVLOV'S DOGS.

14 AND WHAT HAPPENED WAS THERE ARE -- ALMOST
15 ALL OF THE COMPLAINTS THAT WERE THEN FILED IN A
16 CLUSTER WERE VERBATIM COPIES OF THE COMPLAINTS THAT
17 WERE FILED IN THE NORTHERN DISTRICT OF CALIFORNIA.

18 SOME OF THOSE EVEN COPIED THE PLAINTIFFS'
19 ALLEGATIONS, FORGETTING TO CUT AND PASTE OUT THE
20 WORD -- FORGETTING TO TAKE OUT THE WORDS
21 "RELOCATING TO SAN JOSE FOR INTRADISTRICT
22 ASSIGNMENT."

23 SOME ACTUALLY COPIED THE PLAINTIFFS'
24 ALLEGATIONS THEMSELVES.

25 SO I DON'T MEAN TO BE, YOU KNOW, FLIP

1 ABOUT SOME OF THE OTHER CASES, BUT WHEN ONE LOOKS
2 BELOW THE SURFACE, YOU SEE THAT MOST OF THESE OTHER
3 CASES ARE, IN FACT, NOT UNIQUE CASES AT ALL, BUT
4 ARE MORE LIKE PLAYS BY PLAINTIFFS' COUNSELS TO TRY
5 TO PULL A CASE THAT ALL OF A SUDDEN, SIX MONTHS
6 AFTER IT WAS ORIGINALLY FILED, SEEMED INTERESTING
7 TO THEM.

8 THERE WAS ALSO A STORY THAT BROKE ON
9 LITERALLY THE SAME DAY THAT THE CONSOLIDATED
10 COMPLAINT WAS FILED, IT PUBLICLY BROKE, WHICH DEALT
11 WITH THE ISSUE THAT'S BEEN MENTIONED A FEW TIMES
12 TODAY REGARDING THE ISSUE OF GEO LOCATION.

13 THAT GEO LOCATION ISSUE DOES EXIST IN THE
14 CONSOLIDATED COMPLAINT AND IT IS RELATED AND GROWS
15 OUT OF THE SAME --

16 THE COURT: I'M SORRY TO INTERRUPT YOU,
17 BUT HOW DO YOU SEE IT PLAYING OUT? ARE YOU GOING
18 TO THEN HAVE ONE COUNSEL FROM EACH OF THE CASES
19 SERVE ON THE EXECUTIVE COMMITTEE? WHAT DO YOU
20 THINK YOUR --

21 MR. KAMBER: IT WOULD BE -- THE WAY I
22 WOULD ENVISION IT, YOUR HONOR, WOULD BE THAT YOU
23 WOULD NOT HAVE THAT, BECAUSE OBVIOUSLY IF YOU HAD
24 18 MEMBERS OF THE EXECUTIVE COMMITTEE, YOU WOULD DO
25 EXACTLY WHAT THIS COURT WAS CONCERNED ABOUT WHEN WE

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

EXHIBIT B

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April 27, 2011

Apple Q&A on Location Data

Apple would like to respond to the questions we have recently received about the gathering and use of location information by our devices.

1. Why is Apple tracking the location of my iPhone?

Apple is not tracking the location of your iPhone. Apple has never done so and has no plans to ever do so.

2. Then why is everyone so concerned about this?

Providing mobile users with fast and accurate location information while preserving their security and privacy has raised some very complex technical issues which are hard to communicate in a soundbite. Users are confused, partly because the creators of this new technology (including Apple) have not provided enough education about these issues to date.

3. Why is my iPhone logging my location?

The iPhone is not logging your location. Rather, it's maintaining a database of Wi-Fi hotspots and cell towers around your current location, some of which may be located more than one hundred miles away from your iPhone, to help your iPhone rapidly and accurately calculate its location when requested. Calculating a phone's location using just GPS satellite data can take up to several minutes. iPhone can reduce this time to just a few seconds by using Wi-Fi hotspot and cell tower data to quickly find GPS satellites, and even triangulate its location using just Wi-Fi hotspot and cell tower data when GPS is not available (such as indoors or in basements). These calculations are performed live on the iPhone using a crowd-sourced database of Wi-Fi hotspot and cell tower data that is generated by tens of millions of iPhones sending the geo-tagged locations of nearby Wi-Fi hotspots and cell towers in an anonymous and encrypted form to Apple.

4. Is this crowd-sourced database stored on the iPhone?

The entire crowd-sourced database is too big to store on an iPhone, so we download an appropriate subset (cache) onto each iPhone. This cache is protected but not encrypted, and is backed up in iTunes whenever you back up your iPhone. The backup is encrypted or not, depending on the user settings in iTunes. The location data that researchers are seeing on the iPhone is not the past or present location of the iPhone, but rather the locations of Wi-Fi hotspots and cell towers surrounding the iPhone's location, which can be more than one hundred miles away from the iPhone. We plan to cease backing up this cache in a software update coming soon (see Software Update section below).

5. Can Apple locate me based on my geo-tagged Wi-Fi hotspot and cell tower data?

No. This data is sent to Apple in an anonymous and encrypted form. Apple cannot identify the source of this data.

6. People have identified up to a year's worth of location data being stored on the iPhone. Why does my iPhone need so much data in order to assist it in finding my location today?

This data is not the iPhone's location data—it is a subset (cache) of the crowd-sourced Wi-Fi hotspot and cell tower database which is downloaded from Apple into the iPhone to assist the iPhone in rapidly and accurately calculating location. The reason the iPhone stores so much data is a bug we uncovered and plan to fix shortly (see Software Update section below). We don't think the iPhone needs to store more than seven days of this data.

7. When I turn off Location Services, why does my iPhone sometimes continue updating its Wi-Fi and cell tower data from Apple's crowd-sourced database?

It shouldn't. This is a bug, which we plan to fix shortly (see Software Update section below).

8. What other location data is Apple collecting from the iPhone besides crowd-sourced Wi-Fi hotspot and cell tower data?

Apple is now collecting anonymous traffic data to build a crowd-sourced traffic database with the goal of providing iPhone users an improved traffic service in the next couple of years.

9. Does Apple currently provide any data collected from iPhones to third parties?

We provide anonymous crash logs from users that have opted in to third-party developers to help them debug their apps. Our iAds advertising system can use location as a factor in targeting ads. Location is not shared with any third party or ad unless the user explicitly approves giving the current location to the current ad (for example, to request the ad locate the Target store nearest them).

10. Does Apple believe that personal information security and privacy are important?

Yes, we strongly do. For example, iPhone was the first to ask users to give their permission for each and every app that wanted to use location. Apple will continue to be one of the leaders in strengthening personal information security and privacy.

Software Update

Sometime in the next few weeks Apple will release a free iOS software update that:

Apple - Press Info - Apple Q&A on Location Data

- reduces the size of the crowd-sourced Wi-Fi hotspot and cell tower database cached on the iPhone,
- ceases backing up this cache, and
- deletes this cache entirely when Location Services is turned off.

In the next major iOS software release the cache will also be encrypted on the iPhone.

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