

# EXHIBIT B

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NORTHERN DISTRICT OF CALIFORNIA

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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

NC

17 PATSY DIAMOND, Individually and on Behalf  
18 of All Others Similarly Situated,

Plaintiff,

v.

20  
21 APPLE INC.; HACHETTE BOOK GROUP,  
INC.; HARPERCOLLINS PUBLISHERS, INC.;  
22 MACMILLAN PUBLISHERS, INC; PENGUIN  
GROUP (USA) INC.; and SIMON &  
23 SCHUSTER, INC.,

Defendants.

No. 11 3954

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff, by and through her attorneys, based on her individual experience, the investigation  
2 of counsel, and information and belief alleges as follows:

3 **I. INTRODUCTION**

4 1. In November 2007, Amazon revolutionized the book publishing industry by releasing  
5 the Kindle, a handheld digital reader for electronic books or “eBooks.” Using proprietary “electronic  
6 ink” technology, the Kindle replicated the appearance of ink on paper and introduced numerous  
7 efficiency-enhancing characteristics, including portability and other advantages of a digital format.  
8 A major economic advantage to eBook technology is its potential to massively reduce distribution  
9 costs historically associated with brick-and-mortar publishing. But publishers quickly realized that if  
10 market forces were allowed to prevail too quickly, these efficiency enhancing characteristics would  
11 rapidly lead to lower consumer prices, improved consumer welfare, and threaten the current business  
12 model and available surplus (profit margins). So, faced with disruptive eBook technology that  
13 threatened their inefficient and antiquated business model, several major book publishers, working  
14 with Apple Inc. (“Apple”), decided free market competition should not be allowed to work – together  
15 they coordinated their activities to fight back in an effort to restrain trade and retard innovation. The  
16 largest book publishers and Apple were successful.

17 2. The original Kindle sold out in less than six hours. To gain market share, take  
18 advantage of its first-mover advantage, and capitalize on the tremendous efficiencies associated with  
19 eBooks, Amazon set eBook pricing levels significantly below prices for physical books (“paper  
20 books” or “hardcover books”). Amazon set the prices of many of the popular new released eBook  
21 titles at \$9.99. Amazon instituted this pro-consumer, discounted pricing even though on many titles  
22 publishers charged Amazon a wholesale price at or above \$9.99.

23 3. Even though publishers were reaping the benefits of Amazon’s successful efforts to  
24 vastly expand the consumer base and increase volume of units sold via Amazon’s investment in  
25 eBook sales, publishers also feared Amazon’s \$9.99 pricing. Amazon’s discount pricing threatened  
26 to disrupt the publishers’ long-established brick-and-mortar model faster than the publishers were  
27 willing to accept. Being hidebound and lacking innovation for decades, the publishers were  
28 particularly concerned that Amazon’s pro-consumer pricing of eBooks would negatively impact their

1 moribund sales model, and in particular the sale of higher priced physical copies of books. And,  
2 longer term, publishers anticipated Amazon would eventually use its market power to reduce the  
3 publishers' share of the available surplus (profit margins) from each eBook sale.

4 4. Given Amazon's first-mover advantage and ever growing installed user base,  
5 publishers knew that no single publisher could slow down Amazon and unilaterally force an increase  
6 in eBook retail prices. If one publisher acted alone to try and raise prices for its titles, that publisher  
7 would risk immediately losing a substantial (and growing) volume of sales. Not wanting to risk a  
8 significant loss of sales in the fastest growing market (eBook sales), the publishers named as  
9 defendants ("Publisher Defendants") solved this problem through coordinating between themselves  
10 (and Apple) to force Amazon to abandon its pro-consumer pricing. The Publisher Defendants  
11 worked together to force the eBook sales model to be entirely restructured. The purpose and effect  
12 of this restructuring was to halt the discounting of eBook prices and uniformly raise prices on all first  
13 release fiction and nonfiction published by these Publisher Defendants. Under the Publisher  
14 Defendants' new pricing model, known as the "Agency model", the Publisher Defendants have  
15 restrained trade by coordinating their pricing to directly set retail prices higher than had existed in the  
16 previously competitive market.

17 5. The Publisher Defendants' unlawful combination and pricing agreement would not  
18 have succeeded without the active participation of Apple. Apple facilitated changing the eBook  
19 pricing model and conspired with the Publisher Defendants to do so.

20 6. Apple had strong incentives to help the Publisher Defendants to restrain trade and  
21 increase the price of eBooks. If Amazon continued to solidify its dominant position in the sale of  
22 eBooks, strong network effects would make it difficult to dislodge Amazon. Moreover, Amazon's  
23 pro-consumer pricing meant that to enter the eBooks market Apple would likely be forced to sell at  
24 least some eBooks near or below its wholesale costs for an extended period of time. Apple did not  
25 want to enter the eBooks market subject to this margin pressure caused by Amazon's pricing. But at  
26 the same time, Apple believed that it had to enter the eBook market because the Kindle was (and is)  
27 a competitive threat to Apple's business model. Apple is competing to be – and has become – a  
28 dominant manufacturer of mobile devices, such as Apple's iPod, iPhone and iPad devices. These

1 devices are designed to distribute, store, and access digital media through Apple's iOS platform,  
2 including Apple's App Store and iTunes Store.

3 7. Apple knew that if Amazon could establish the Kindle as the dominant eBook reader  
4 by subsidizing the purchase of eBooks, Amazon could then use the Kindle platform (and its large  
5 installed user base) to distribute other digital media. Notably, Apple had successfully used a  
6 virtually identical strategy to gain a virtual monopoly on the distribution of digital music files  
7 through its iPod device and its associated iTunes store.

8 8. The Publisher Defendants and Apple implemented this unlawful agreement and  
9 combination on or before January 2010, when five of the six major book publishers of fiction and  
10 nonfiction works almost simultaneously announced that they were switching from a wholesale  
11 pricing model to an Agency model for eBook sales. This was an unprecedented industry shift in  
12 pricing (and sales model) in the book industry in the United States. The announcements to shift to  
13 the Agency model coincided with the release by Apple of the iPad tablet computer. In fact, when  
14 Apple announced the launch of the iPad on January 27, 2010, the Publisher Defendants agreed to  
15 allow Apple to use their trademarks in connection therewith.

16 9. The same day Apple announced launching the iPad, it was also announced that Apple  
17 already struck deals with Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster to  
18 switch to the Agency model for Apple's iBookstore – the application on Apple's iPad that functions  
19 as an eBook reader (thus competing directly with the Amazon Kindle).

20 10. As part of the unlawful agreements, and seeking to leverage its installed user base and  
21 dominant position via the Apple iOS platform, Apple and the Publisher Defendants agreed that prices  
22 for Publisher Defendants' eBooks that were offered through the iBookstore would be calculated by a  
23 formula tied to physical books. This eBook formula would cause current prices for eBooks to  
24 increase and, at the same time, would guarantee Apple that the Publisher Defendants would not sell  
25 eBooks at lower prices elsewhere, such as through other eBook distributors, including Amazon. The  
26 intended effect of this agreement was to force Amazon to abandon its discount pricing of eBooks and  
27 allow the Publisher Defendants to establish uniformly higher prices for new release eBooks.

1 11. The conspiracy and agreements worked as intended: (1) the Defendants increased and  
2 stabilized eBook pricing; and (2) forced Amazon to stop the discounting eBook prices on Publisher  
3 Defendants' titles.

4 12. As a direct result of this anticompetitive conduct as intended by the conspiracy, the  
5 price of eBooks has soared. The price of new bestselling eBooks increased to an average of \$12-  
6 \$15 – an increase of 33 to 50 percent. The price of an eBook in many cases now approaches – or  
7 even exceeds – the price of the same book in paper even though there are almost no incremental  
8 costs to produce each additional eBook unit. The price of the Publisher Defendants' eBooks sold on  
9 the iBookstore, facing no pricing competition from Amazon or other e-distributors for the exact same  
10 eBook titles, has remained at supra-competitive levels.

11 13. Plaintiff brings claims under federal and state antitrust laws to enjoin the illegal  
12 conduct and to obtain damages.

## 13 II. PARTIES

14 14. Plaintiff Patsy Diamond is a resident of Los Angeles, California. Plaintiff Diamond  
15 has purchased several eBooks from Publisher Defendants at a price above \$9.99 for use on her  
16 Amazon Kindle.

17 15. Plaintiff paid higher prices for her eBooks as a direct and foreseeable result of the  
18 unlawful conduct set forth below.

19 16. Defendant Apple is a California corporation having its principal place of business at 1  
20 Infinite Loop, Cupertino, CA 95014. Apple is a leading manufacturer of mobile devices designed to  
21 distribute, store, and display digital media. Examples of such devices include the Apple iPad device,  
22 a tablet computer which supports several eReader applications, including the Kindle App, and  
23 Apple's proprietary app, iBookstore.

24 17. Defendant Hachette Book Group, Inc. ("Hachette") is a leading U.S. trade publisher  
25 with its principal place of business at 237 Park Ave., New York, NY 10017. Its imprints include  
26 Little, Brown & Co. and Grand Central Publishing. On information and belief, Hachette is owned by  
27 Hachette Livre, a French company.

1 18. Defendant HarperCollins Publishers, Inc. (“HarperCollins”) is a leading U.S. trade  
2 publisher with its principal place of business at 10 East 53rd St., New York, NY 10022. Its imprints  
3 include Ecco, Harper, Harper Perennial and William Morrow. On information and belief,  
4 HarperCollins is a subsidiary of News Corporation.

5 19. Defendant Macmillan Publishers, Inc. (“Macmillan”) is a group of leading publishing  
6 companies with its principal place of business at 175 Fifth Ave., New York, NY 10010. Its U.S.  
7 publishers include Farrar Straus and Giroux, Henry Holt & Company, Picador, and St. Martin’s  
8 Press. On information and belief, Macmillan is held by Verlagsgruppe Georg von Holtzbrinck,  
9 which is based in Stuttgart, Germany.

10 20. Defendant Penguin Group (USA) Inc. (“Penguin”) is the U.S. affiliate of Penguin  
11 Group, one of the largest English-language trade book publishers in the world. Penguin’s principal  
12 place of business is at 375 Hudson St., New York, NY 10014. Its imprints include Viking,  
13 Riverhead Books, Dutton and Penguin Books.

14 21. Defendant Simon & Schuster, Inc. (“Simon & Schuster”) is a leading U.S. trade  
15 publisher with its principal place of business at 1230 Avenue of the Americas, New York, NY  
16 10019. Its imprints include Simon & Schuster, Scribner, Atria and Gallery Books. On information  
17 and belief, Simon & Schuster is part of CBS Corporation.

18 22. Defendants Hachette, HarperCollins, Macmillan, Penguin and Simon & Schuster  
19 (collectively the “Publisher Defendants” or “Agency 5”) comprise five of the country’s six largest  
20 publishers.

21 **III. JURISDICTION AND VENUE**

22 23. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 4  
23 and 15; and 28 U.S.C. §§ 1331 and 1337, in that this action arises under the federal antitrust laws.  
24 The Court has supplemental subject matter jurisdiction of the pendant state law claims under 28  
25 U.S.C. § 1367. The Court also has diversity jurisdiction over this action pursuant to 28 U.S.C.  
26 § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, and there are  
27 members of the Class who are citizens of a different state than the Defendants.  
28



1           24.     Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and Sections 4 and  
2 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22, because Defendants reside, transact business or are  
3 found within this District, and a substantial part of the events giving rise to the claims arose in this  
4 District.

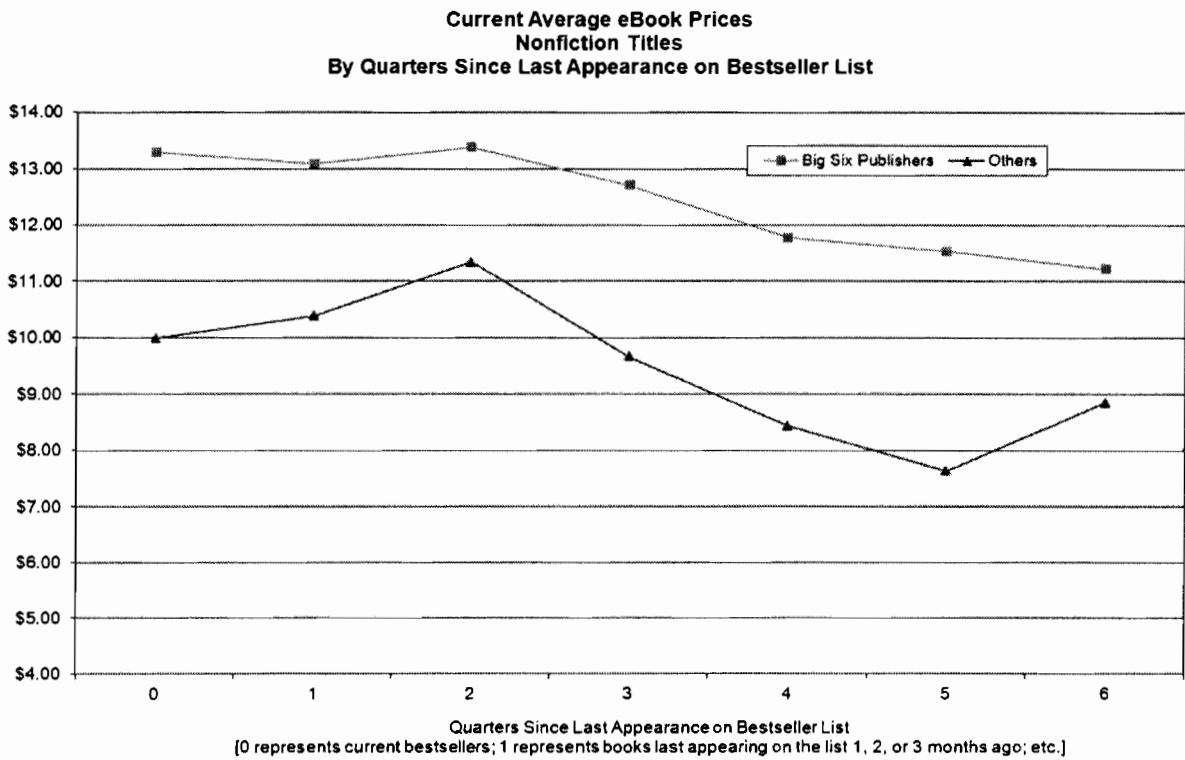
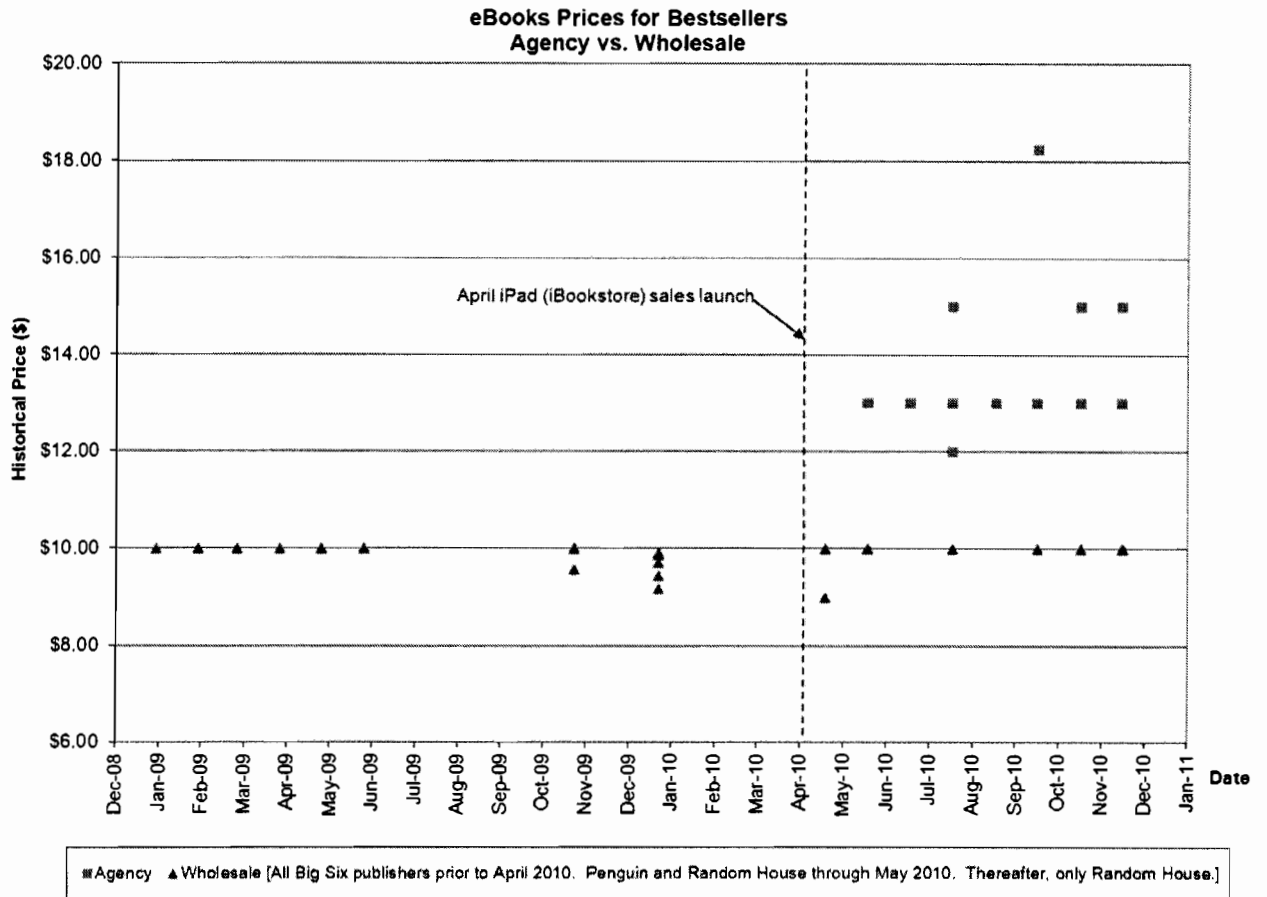
5           25.     Intradistrict Assignment: Assignment to the San Francisco or Oakland division of this  
6 Court is proper because a substantial portion of the events giving rise to the claims occurred therein.

#### 7                                   **IV.     MARKET POWER OVER EBOOK SALES**

8           26.     An eBook is an e-text that forms the digital media equivalent of a conventional print  
9 book, sometimes restricted with a digital rights management (DRM) system. eBooks represent a  
10 distinct antitrust market. The geographic market is the entire United States. No reasonable substitute  
11 exists for eBooks. Consumers who purchase eBooks value their flexibility and portability.  
12 Consumers of eBooks can carry thousands of publications with them on a single device and have the  
13 ability to immediately purchase books rather than having to go to a bookstore. In addition to saving  
14 time by not having to go to a bookstore, eBook readers need not pay shipping costs associated with  
15 online purchases of physical books. Moreover, eBooks have a highly unique distribution  
16 methodology and unique pricing. The industry also views eBooks as a separate economic segment  
17 of the more general book market.

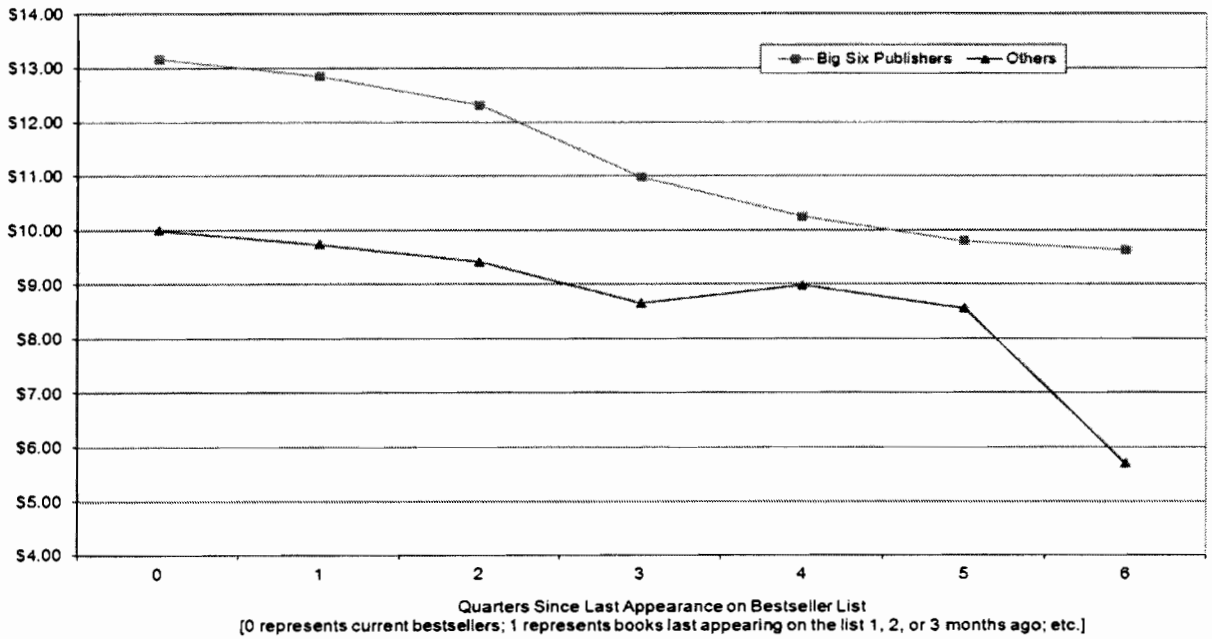
18           27.     A hypothetical monopolist that controlled the supply of eBooks would have the ability  
19 to raise the price of eBooks substantially for a significant period of time without consumers  
20 substituting another product.

21           28.     In addition, the Publisher Defendants and Apple have exerted market power over  
22 eBook sales, as directly demonstrated by the anticompetitive effects of their conduct. Here,  
23 Defendants exercised market power as evidenced by their ability to raise prices above the  
24 competitive level – by increasing prices by at least *thirty* to *fifty* percent above similar books  
25 published under the wholesale model as demonstrated below:  
26  
27  
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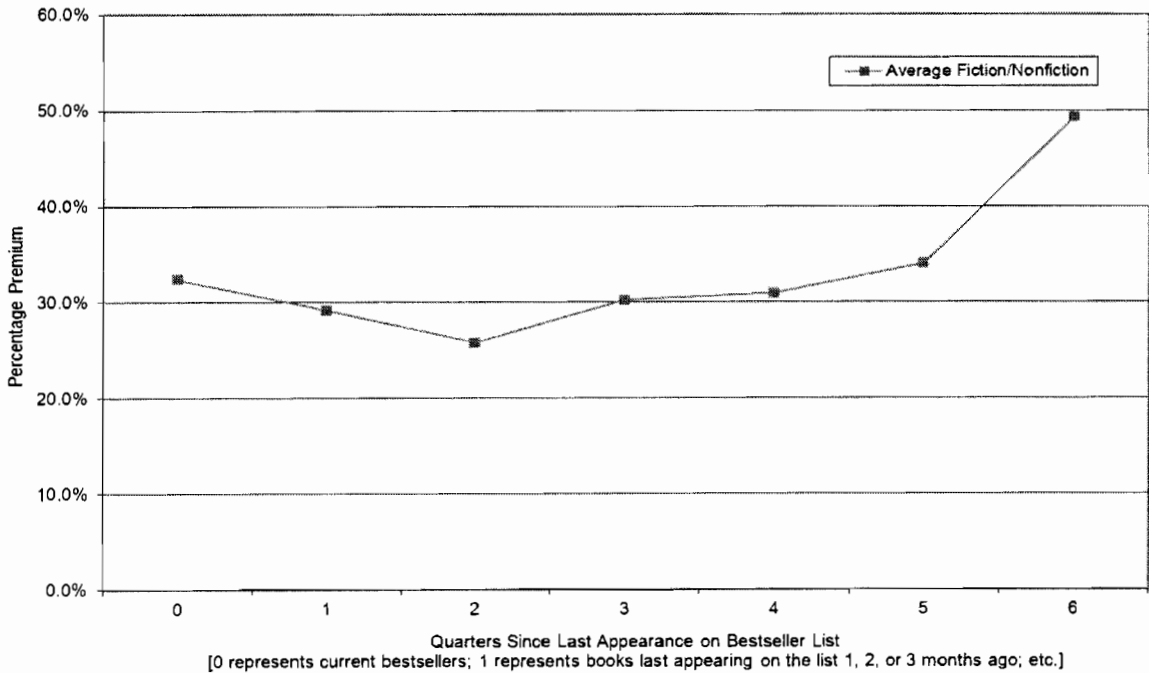


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**Current Average eBook Prices  
Fiction Titles  
By Quarters Since Last Appearance on Bestseller List**



**Percentage Price Premium  
for Big Six vs. Non-Big Six eBooks  
by Quarters Since Last Appearance on Bestseller List**



1 V. STRUCTURE OF THE INDUSTRY

2 29. eBooks are usually read on dedicated hardware devices known as eReaders. Personal  
3 computers, tablets and some cell phones can also be used to read eBooks. eBooks are sold directly  
4 through eReaders, as well as through the web.

5 30. Sony launched the first commercially successful eReader, the Sony Reader, in 2006.  
6 The following year, Amazon released the Kindle. The Kindle utilized “electronic ink” technology to  
7 replicate the look of a paper book while providing the portability associated with digital files.  
8 Amazon’s Kindle quickly became the market leader by offering a much broader selections of books  
9 than Sony and offering them at a standard pro-consumer price of \$9.99.

10 31. Amazon instituted its discounted pricing model even though in many instances the  
11 wholesale price it paid equaled or even exceeded \$9.99. Amazon was willing to establish this price  
12 level in part to grow market share. Amazon also knew that with sufficient buying power and  
13 efficiencies it could eventually reduce the surplus publishers were paid for eBooks, thereby  
14 increasing Amazon’s margins.

15 32. Amazon’s disruptive technology forced traditional booksellers to respond by  
16 introducing competing technology and pricing. In 2009, Barnes & Noble released its own eReader –  
17 the Nook – and tried to match Amazon’s pro-consumer pricing. Following Barnes & Noble’s  
18 announcement, Sony similarly announced that it would adopt the \$9.99 pricing for its Sony Reader.  
19 Nevertheless, Amazon’s eBook prices were almost always lower than that of its competitors such as  
20 Sony and Barnes & Noble. A study by the Inkmesh eBook search engine reported that Amazon had  
21 the lowest prices nearly 75 percent of the time.

22 33. Although Amazon’s \$9.99 pricing policy was near or even sometimes below the price  
23 Amazon paid to book publishers for certain mass market eBook content, its aggressive eBook pricing  
24 practices succeeded in fueling Kindle sales and increasing Amazon’s share of the eReader market.  
25 According to Credit Suisse, as of February 2010 Amazon’s Kindle eBooks occupied 90 percent of  
26 the market for eBooks.<sup>1</sup>

27  
28 <sup>1</sup> *Google Writes New Chapter in E-Book Saga*, The eMarketer Blog, <http://www.emarketer.com/blog/index.php/google-writes-chapter-ebook-saga/> (last visited Aug. 8, 2011).

1           34.     At least in part as a result of Amazon's pro-consumer practices, consumers rapidly  
2 starting adopting new book reading habits, making eBooks hugely popular. The Association of  
3 American Publishers reports that eBooks are the fastest-growing segment of the book publishing  
4 industry. In July 2010, Amazon reported sales of eBooks for its Kindle in the second quarter of 2010  
5 outnumbered sales of hardcover books for the first time. In February 2011, the New York Times  
6 added an eBook bestseller list.

7           35.     Hardcover books, specifically the sale of front list titles, form the core sales for the  
8 Agency Five (who in turn sell about 75 to 85 percent of the fiction market). Publishers have the  
9 highest margin per unit of sale from printed hardcovers which are sold to the trade (wholesalers,  
10 booksellers, etc.) at discounts of 30 to 60 percent off the list price depending on the account.

11           36.     While eBook sales provided additional incremental unit sales over physical books, in  
12 an unrestrained market the margin per unit of sale for eBooks is lower than physical books.

13           37.     Thus, publishers had the economic incentive to do two things: (a) slow down the rate  
14 of eBook adoption, and (b) protect – and even increase – the margins for eBook sales.

15           38.     By slowing down the rate of adoption and increasing prices, new entrants into the  
16 digital market will be less inclined to demand a \$9.99 price point made popular by Amazon. An  
17 article in *Psychology Today* that refers to this as anchoring:

18                     At issue is the phenomenon of "anchoring," discovered by Amos  
19                     Tversky and Daniel Kahneman. When people don't know what a  
20                     fundamentally new product should cost, they are strongly influenced  
21                     by the first price they encounter.

22           39.     Further, the Publisher Defendants knew that for the minority of consumers who in  
23 response to price increases for eBooks under the new Agency model elected to make a purchase from  
24 the print market, it would only benefit the publishers because the print margin is frequently larger  
25 than eBook margins under the Agency model.

## 26           **VI.     UNLAWFUL AGREEMENT TO RESTRAIN TRADE OR COMMERCE**

27           40.     The \$9.99 standard eBook price Amazon set threatened the economic models of many  
28 large publishers. With decreasing retail prices for eBooks, publishers feared the rapidly increasing  
movement by consumers away from physical book purchases – on which publishers had built their

1 businesses for centuries. They also anticipated that, as the popularity of eBooks grew, Amazon and  
2 other retailers would pressure publishers to reduce their wholesale prices for eBooks, thereby  
3 reducing their profit-per-unit. Publishers were used to having the ability to help establish predictable  
4 retail prices based on longstanding pricing behavior in the paper book industry. Under the decades-  
5 old model, the publishers and their supply chain partners would agree on a standard discount schedule in  
6 which the retailer would purchase the book for a percentage below the suggested retail price, and the  
7 publishers would control the speed of pricing decay by phasing in discounted pricing through later release  
8 of paperback books (“windowing”). This phenomenon, known as intertemporal price discrimination,  
9 allowed publishers to maximize their profits by charging more to early adopters.

10 41. In response to Amazon’s disruptive business model, the Publisher Defendants took  
11 steps to mitigate what they perceived to be the potential future reduced profits associated with eBook  
12 sales. For example, several major publishers, including HarperCollins, held back the release (reduced  
13 output) of eBook versions of some hardcover bestsellers by windowing the release a month or more  
14 after the hardcover release. For its part, Macmillan lowered its royalty rate for eBooks by 5 percent.

15 42. In addition to windowing techniques, Publisher Defendants also tried to pressure  
16 Amazon to raise retail prices on eBooks; but Amazon steadfastly refused. Absent coordination, the  
17 Publisher Defendants were unable to force Amazon to raise its eBooks retail prices. Given  
18 Amazon’s dominant market share for eBook sales, each publisher knew that if it tried to unilaterally  
19 insist on raising retail prices it would immediately lose eBook sales and market share to its rivals.

20 43. Amazon’s success was also causing concern in other quarters. Specifically, Apple  
21 had strong incentives to help the Publisher Defendants force Amazon to abandon its pro-consumer  
22 pricing. Apple knew that devices like the Kindle are characterized by strong network effects; that is,  
23 the value of a Kindle to an individual purchaser rises as the total number of purchasers increase.  
24 This occurs because growth in the installed base attracts additional and superior content and drives  
25 down prices. Because of these network effects, Apple knew that if Amazon were allowed to  
26 continue to solidify its dominant position in the eBook market, these network effects would make it  
27 nearly impossible to dislodge Amazon in the near-term. Apple knew the power of this strategy  
28

1 because it had used a virtually identical strategy to dominate the sale and distribution of digital music  
2 files.

3 44. Apple's interest in entering the eBooks market was not simply to profit from the sale  
4 of eBooks. Apple believed it was necessary to enter the eBooks market because it viewed Amazon  
5 and its Kindle platform as a long-term threat to its dominant position in the sale and marketing of  
6 mobile devices designed to distribute, store and access digital media, and Apple's iOS content  
7 distribution platform. These devices included the Apple iPhone, iPod, and iPad.

8 45. At the same time, Amazon's pro-consumer pricing meant that in order to enter the  
9 eBooks market, Apple would likely be forced to sell at least some eBooks near or below the input  
10 cost for an extended period of time. Indeed, to gain market share, Apple might even be forced to  
11 offer eBooks at an even lower price than Amazon offered. Apple and the Publisher Defendants thus  
12 shared a common anticompetitive interest in forcing Amazon (and the rest of the market) to raise the  
13 prices for eBooks.

14 46. Recognizing Apple's interest in protecting and expanding its dominant position in the  
15 sale and marketing of mobile devices designed to distribute, store and access digital media, Amazon  
16 had already taken steps to compete with Apple. After numerous commentators observed that  
17 Apple's popular App Store offered 70 percent of royalties to software application publishers,  
18 Amazon began a program that offered 70 percent royalties to Kindle publishers who agreed to certain  
19 conditions. In order to be eligible, authors were required to list their books for between \$2.99 and  
20 \$9.99 on the Kindle, and the price had to be at least 20 percent below the lowest list price for the  
21 print edition.

22 47. In January 2010, Apple and the Publisher Defendants agreed to a plan that would  
23 allow Apple to erode Amazon's market position and benefit Apple and the Agency 5 by raising  
24 prices on first release eBooks.

25 48. On January 23, 2010, industry newsletter *Publishers Lunch* reported that Apple had  
26 negotiated agreements with Hachette, HarperCollins, Macmillan, Penguin and Simon & Schuster to  
27 switch from a wholesaler-retailer model to an "Agency model" for eBook sales.

1           49.     Four days later, on January 27, 2010, Apple announced a multi-function tablet device  
2 called the iPad. One of the functions of the iPad was the ability to read eBooks. This put Apple into  
3 direct competition with Amazon, who at the time of the iPad's release, had an overwhelming share of  
4 the markets for eBooks and eReaders.

5           50.     When Apple announced the iPad's debut in January 2010, its CEO Steve Jobs  
6 indicated that Apple had agreements in place with five of the six largest publishing houses –  
7 Hachette Book Group, HarperCollins, Macmillan, Penguin, and Simon & Schuster – to provide  
8 eBook content for the new device.<sup>2</sup> Those agreements were based on a so called “Agency model”  
9 which gives publishers the ability to set eBook prices and makes Apple a distribution agent for sales  
10 to consumers.<sup>3</sup> Apple receives a thirty-percent commission from each eBook sale through Apple's  
11 online bookstore, with the remaining seventy percent going to publishers (who in turn then  
12 compensate the authors pursuant to whatever arrangement exists between the publisher and author).<sup>4</sup>  
13 The publishers' authority to price under their agreements with Apple, however, is restrained as the  
14 contracts contain a formula that ties eBook prices to the list prices of comparable print editions. This  
15 common formula agreed to by the Publisher Defendants and Apple operates to increase, standardize,  
16 and stabilize most first-release general fiction and nonfiction titles. The effect of this term will  
17 increase and stabilize eBook prices to a range of \$12.99 to \$14.99 for most general fiction and  
18 nonfiction titles.<sup>5</sup> Apple and the Publisher Defendants also agreed that the Publisher Defendants  
19 would not set prices of eBooks offered through other distribution channels (e.g., Amazon's Kindle  
20 store) below the prices the Publisher Defendants sold through the iBookstore (the “MFN Clause”).<sup>6</sup>  
21

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22           <sup>2</sup> Motoko Rich, *Books on iPad Offer Publishers a Pricing Edge*, N.Y. Times, Jan. 28, 2010, at  
23 B6.

24           <sup>3</sup> Motoko Rich, *Apple's Prices for E-Books May Be Lower Than Expected*, N.Y. Times,  
25 Feb. 18, 2010, at B10.

26           <sup>4</sup> *Id.*; Motoko Rich & Brad Stone, *Publisher Wins Fight on E-Books*, N.Y. Times, Feb. 1, 2010,  
27 at B1.

28           <sup>5</sup> Rich, *supra* note 3; *see also* Jeffrey Trachtenberg & Geoffrey A. Fowler, *E-Books Pricing  
Put Into Turmoil*, Wall St. J., Feb. 1, 2010, at A.

<sup>6</sup> Rich, *supra* note 3. The agreement also reportedly contains language allowing Apple to  
obligate publishers to discount eBook prices on bestsellers below the \$12.99 to \$14.99 range in order  
to compete with brick-and-mortar bookstores and competing online sites. *Id.*



1           51.     The effect of the MFN Clause, combined with the pricing formula tied to physical  
2 book prices, was to increase prices and reduce competition for the eBooks of the Publisher  
3 Defendants, specifically for the price of most newly released adult fiction and nonfiction eBooks;  
4 this resulted in increasing and stabilizing eBook prices and eliminated competitive pricing. Apple  
5 coordinated these agreements with the Agency 5. On information and belief, in the course of  
6 entering into agreements with Apple, Apple and the Agency 5 communicated the terms of the  
7 agreements and pricing information with each other, including signaling to each other that they  
8 would agree to the MFN Clause and price formula that would increase and standardize pricing to a  
9 range between \$12.99 to \$14.99.

10           52.     It was well understood and intended by the Publishing Defendants and Apple that  
11 their agreements would raise prices for consumers of eBooks. For example, on February 2, 2010,  
12 Rupert Murdoch, News Corp. CEO, indicated he was unhappy with Amazon's prices and that the  
13 agreement with Apple would help to achieve "higher prices."

14           53.     In contrast to the Agency model, under the wholesale distribution model that  
15 traditionally has governed their relationships with brick-and-mortar bookstores and other online  
16 sellers like Amazon, publishers essentially "sold" their products to retailers for a fixed (wholesale)  
17 price – typically half the list price of the print edition – and surrendered control over the final price  
18 ultimately charged to consumers.<sup>7</sup> In order to spur demand for eBooks (as well as for its own  
19 eReader, the Kindle), Amazon set \$9.99 as the standard price for most new releases, even though at  
20 times Amazon purchased the content near or above \$9.99.<sup>8</sup> Notwithstanding Amazon's pricing has  
21 driven rapid adoption of eBook sales, publishers have disapproved of Amazon's discount model,  
22

23           <sup>7</sup> Donald Marron, *How Should We Price E-books*, CHRISTIAN SCI. MONITOR, Aug. 23, 2010,  
24 <http://www.csmonitor.com/Business/Donald-Marron/2010/0805/How-should-we-price-e-books>; Paul  
25 Biba, *Why Smashwords Moved to "Agency Pricing" – Explained by Mark Coker*,  
26 <http://teleread.com/paul-biba/why-smashwords-moved-to-agency-pricing-explained-by-markcoker/>,  
27 Dec. 2, 2010 (reviewing traditional wholesale model for pricing and distributing books and  
28 chronology of shift to agency arrangements).

<sup>8</sup> Rich & Stone, *supra* note 4; Erica Naone, *iPad Rattles the e-Bookshelves*, Tech. Rev., Feb. 2,  
2010, <http://www.technologyreview.com/computing/24443/?a=f> ("Under its existing model, Amazon  
buys books from publishers for a set fee in bulk [and] reportedly often pays publishers more than  
\$9.99 for some books, selling them at a discount in order to drive adoption of the Kindle").

1 fearing it would lead to lower sales of hardcover books and, in the long term, it would condition  
2 consumers to expect lower price points for all books.<sup>9</sup>

3 54. Once the Publisher Defendants and Apple agreed to the radical switch to the Agency  
4 model, the Publisher Defendants approached Amazon to require it to switch to a similar structure.  
5 The showdown between Amazon and Macmillan in particular was widely chronicled in the press.

6 55. Macmillan reportedly proposed that Amazon agree to sell Kindle editions of  
7 Macmillan's books as an agent, on the same 70/30 terms contained in the Publisher Defendants'  
8 agreement with Apple.<sup>10</sup> Alternatively, Macmillan offered to permit Amazon to keep purchasing  
9 eBooks under the existing wholesale model, but warned that it would begin delaying release of those  
10 eBook editions (reducing output) until seven months after publication of the hardcover edition.<sup>11</sup>  
11 The latter offer would have crippled Amazon's competitive position against Apple.

12 56. Macmillan was able to threaten Amazon with this ultimatum even though Amazon at  
13 the time possessed ninety-percent of the market share for eBook sales, because, on information and  
14 belief, Macmillan knew each of the other Publishing Defendants had reached similar agreements  
15 with Apple. Like Macmillan, the other Publisher Defendants and Apple had agreed to a pricing  
16 formulae and MFN clauses, assuring themselves that Amazon would be closed out of the market for  
17 the Publisher Defendants' eBook titles unless Amazon agreed to allow the Publisher Defendants to  
18 raise prices.

19  
20  
21  
22 <sup>9</sup> See, e.g., Jack Shafer, *Does the Book Industry Want to Get Napstered?*, Slate, July 15, 2009,  
23 <http://www.slate.com/of/2222941/>; Stone & Rich, *supra* note 1 (explaining that the attraction of the  
24 agency model to publishers is driven by their "fear that Amazon has accustomed buyers to  
unreasonably low prices" and their conviction that "if Kindle were to maintain its dominant position  
[in eBook sales], it could force publishers to lower their wholesale prices").

25 <sup>10</sup> Brad Stone & Motoko Rich, *Amazon Removes Macmillan Books*, N.Y. Times, Jan. 30, 2010,  
26 at B4. See also Letter from John Sargent to All Macmillan authors/illustrators and the literary agent  
community (Jan. 30, 2010) (Sargent Letter), available at  
[http://www.publishersmarketplace.com/lunch/macmillan\\_30jan10.html](http://www.publishersmarketplace.com/lunch/macmillan_30jan10.html).

27 <sup>11</sup> See Stone & Rich, *supra* note 10 (quoting Sargent as saying "I told [Amazon] that they could  
28 stay with their old terms of sale, but that this would involve extensive and deep windowing of  
titles"); Sargent Letter, *supra* note 10.

1           57. Amazon made an initial effort to fight by pulling all Macmillan titles off both the  
2 Kindle site and Amazon.com.<sup>12</sup>

3           58. Amazon briefly ceased sales of Macmillan titles; however, by the end of the weekend,  
4 the books were back for sale and Amazon had bowed to Macmillan's demands.<sup>13</sup> In a strongly  
5 worded message on its website, Amazon stated, "We have expressed our strong disagreement and the  
6 seriousness of our disagreement by temporarily ceasing the sale of all Macmillan titles. We want  
7 you to know that ultimately, however, we will have to capitulate and accept Macmillan's terms  
8 because Macmillan has a monopoly over their own titles, and we will want to offer them to you even  
9 at prices we believe are needlessly high for e-books." Very soon after, Amazon entered into agency  
10 agreements with each of the four other major publishers that had signed on with Apple.<sup>14</sup>

11           59. Hachette also forced Amazon to switch to the Agency model. On April 1, 2010,  
12 Amazon posted the following message on its website: "[Hachette] has disallowed the sale of ebooks  
13 except on agency terms effective as of 12:01 am this morning. We came to terms late last night but  
14 we cannot be operationally ready to sell their ebooks on agency terms until two days from now –  
15 April 3 – when we will also cut over for the other publishers that are switching to agency. If we can  
16 get a two day extension from Hachette to continue selling their ebooks under the prior terms, we can  
17 have the Hachette ebooks promptly back for sale today. If not, then they will be back on April 3."

18 <sup>12</sup> Stone & Rich, *supra* note 10. Amazon did, however, permit the continued sale of Macmillan  
19 books by third parties on Amazon.com. See Sargent Letter, *supra* note 10.

20 <sup>13</sup> See *Whose Move? Amazon and Macmillan Vie for Position*, L.A. Times,  
21 <http://latimesblogs.latimes.com/jacketcopy/2010/oz/amazon-macmillanconflict.html> (quoting  
22 Amazon letter to Kindle customers indicating that "despite its strong disagreement" Amazon was  
23 giving in to Macmillan's terms because "Macmillan has a monopoly over their own titles, and we  
24 will want to offer them to you even at prices we believe are needlessly high for e-books");  
25 Trachtenberg & Fowler, *supra* note 5. Shortly thereafter, Sony reportedly also switched over to the  
26 agency model. John Timmer, *E-book Prices to Rise as Amazon, Sony Adopt Agency Model*,  
27 Apr. 2010, [http://www.arstechnica.com/gadgets/news/2010/04/e-book-prices-to-rise-asamazon-sony-  
28 adopt-agency-model.ars](http://www.arstechnica.com/gadgets/news/2010/04/e-book-prices-to-rise-asamazon-sony-adopt-agency-model.ars). Google has apparently also given in to publishers' demands and is offering  
29 them agency agreements to participate in its recently launched Google e-books store. Murad Ahmed,  
30 *E-books: Publishers Poised for Victory in Latest Battle*, The Times (London), Feb. 15, 2010; Samo  
31 & Kellogg, *Google to Take on Amazon, Apple, Barnes & Noble with New e-book Store*, L.A. Times,  
32 Dec. 6, 2010, [http://latimesblogs.latimes.com/technology/2010/12/google-amazon-apple-barnes-  
33 noble-with-new-e-book-store-kindle.html](http://latimesblogs.latimes.com/technology/2010/12/google-amazon-apple-barnes-noble-with-new-e-book-store-kindle.html).

34 <sup>14</sup> At that point Random House was the only one of the six major U.S. publishers to stick with  
35 the wholesale distribution model. See Jeffrey A. Trachtenberg, *Random House Balks at Apple's  
36 Book Pricing*, Wall St. J., Apr. 5, 2010, at B4; Marron, *supra* note 7.

1           60. Penguin also forced Amazon to adopt the Agency model. On April 1, 2010, Penguin  
2 sent a letter to its agents and authors that read, in part: “In recent weeks we have been in discussion  
3 with our retail partners who sell eBooks, including Amazon, to discuss our new terms of sale for  
4 eBooks in the U.S. At the moment, we have reached an agreement with many of them, but  
5 unfortunately not Amazon – of course, we hope to in the future. Your newly released eBook is  
6 currently not available on Amazon, but all of your eBooks released prior to April 1st are still for sale  
7 on their site. . . . Our conversations with Amazon are ongoing and we do hope to continue our long-  
8 term relationship with them.”

9           61. On information and belief, HarperCollins and Simon & Schuster similarly pressured  
10 Amazon to adopt the Agency model in the same time period.

11           62. As a result of the coordinated and unlawful conduct of the Defendants, Sony and  
12 Barnes & Noble have also been forced to adopt the Agency model for eBook pricing.

13           63. Consumers were clearly angered by the switch to the Agency model and the  
14 anticipated rise in eBook prices that it would engender. In March 2010, after the switch was  
15 announced but before it was effectuated, eBook sales increased 184 percent. Some Kindle users  
16 posting in various online communities attributed the sudden spike in eBook sales to a last ditch effort  
17 by readers to stock up on eBooks before the switch to the Agency model. One such user stated:  
18 “Myself and another kindle owner definitely bought more books before Agency model, perhaps 8  
19 each.”

20           64. On information and belief, the Publisher Defendants’ increase in prices resulted in a  
21 short-term reduction in eBook sales revenues under the Agency model. The Publisher Defendants  
22 accepted this short-term reduction in sales and profits in exchange for the ability to raise retail prices  
23 and extra supra-competitive profits in the long term.

24           65. Collusion was a necessary ingredient of the Publisher Defendants’ anticompetitive  
25 plan to gain direct control over eBook pricing. If they had not all conspired to force retailers like  
26 Amazon to adopt the Agency model under the same terms and at the same time, consumers would  
27 have simply reacted to rising eBook prices by choosing to purchase their eBooks from publishers or  
28 retailers who did not participate in the Agency model.

1           66.     Indeed, this is exactly what happened in the case of Random House, the only big six  
2 publisher who did not conspire with Apple to adopt the Agency model in early 2010. Random  
3 House continued to use the wholesale model, allowing Amazon and other eBook distributors to price  
4 eBooks below the Agency 5. In 2010, Random House saw a 250 percent increase in eBook sales in  
5 the United States in 2010 and an 800 percent increase in the United Kingdom.

6           67.     As a result of Random House being willing to allow price competition, Apple – per its  
7 agreements with the Agency 5 – refused to allow Random House to sell its books through Apple’s  
8 iBookstore. Absent the anticompetitive restraints agreed to by Apple and the Publisher Defendants,  
9 Apple would not have an economic incentive to force Random House to utilize the Agency model.  
10 Instead, Apple would seek the widest possible selection of eBooks whether or not sold directly or  
11 through the Agency model. In banning Random House books from its iBook store, Apple acted  
12 pursuant to the conspiracy outlined above and with the purpose and intent of forcing Random House  
13 to join the cartel it had helped to create and raise prices. Random House switched to the Agency  
14 model effective March 1, 2011.

15           68.     The fact that Apple brokered the simultaneous switch to the Agency model, and the  
16 Publisher Defendants agreed to standardize higher eBook prices, is amply demonstrated by a January  
17 2010 interview in which Apple CEO Steve Jobs told Walt Mossberg of the Wall Street Journal that  
18 Amazon’s \$9.99 pricing for eBooks was about to end:

19                   Mossberg:     Why should [a consumer] buy a book for \$14.99 on  
20 your device when she can buy one for \$9.99 from  
Amazon or Barnes & Noble?

21                   Jobs:             That won’t be the case.

22                   Mossberg:     You won’t be \$14.99 or they won’t be \$9.99?

23                   Jobs:             *The prices will be the same . . . Publishers are actually*  
24 *withholding their books from Amazon because they’re*  
*not happy.* (Emphasis added.)

25           69.     Absent Apple’s knowledge of and participation in the unlawful conspiracy, Steve Jobs  
26 would not have been able to predict future eBook pricing with such startling accuracy.

27           70.     The Publisher Defendants and Apple could not have switched to the Agency model  
28 without a coordinated effort because eBooks are substitutes for each other. For example, if a

1 consumer saw that a title listed through Apple's iBookstore was \$14.99, and was also available at  
2 \$9.99 if purchased through Amazon's Kindle App, the consumer could simply just load the least  
3 expensive version of the eBook title onto his eReader device. Moreover, if one publisher's eBook  
4 title was priced at \$14.99, versus a comparative title available through Amazon at \$9.99, there is a  
5 risk that the consumer would forego the more expensive title and choose to purchase the less  
6 expensive, differently titled eBook. Thus, no single major publisher would risk such loss of sales  
7 and insist on the Agency model by itself. Thus, as a matter of economics, the Agency model works  
8 only if there is an agreement by a significant number of publishers to the new pricing model.  
9 Moreover, the shift to the Agency model occurred simultaneously and almost overnight – under any  
10 definition this shift constitutes a radical, structural change to a business model that has been in  
11 existence for decades.

12 71. The anticompetitive nature of this conspiracy, and the Publisher Defendants'  
13 motivation to control eBook pricing, is also revealed by the fact that certain eBooks are now priced  
14 the same as – or even higher than – the price for the same titled physical book. Yet, the printing and  
15 distribution costs of hardcover books are greater. Thus, absent anticompetitive motivation and  
16 conduct, the difference in prices between hardcover books and eBooks would be greater. However,  
17 this is often not the case as publishers are motivated to raise eBook prices to levels close to  
18 hardcover books. The Amazon model was a direct threat to accelerating the decay of hardcover book  
19 sales (and margins).

20 72. Jobs and Apple would not have agreed to go to the Agency model unless they knew  
21 the Publisher Defendants would not sell their eBooks through other distribution channels at lower  
22 prices. Absent such an agreement, Apple could not have competed at the higher prices for eBooks if  
23 it did not coordinate with the Publisher Defendants to ensure Apple was not the only eReader  
24 platform agreeing to the Agency model and higher, standardized prices.

25 73. Apple conspired with the Publisher Defendants to switch to the Agency model and  
26 artificially inflate the price range of eBooks in order to cut into Amazon's substantial share of the  
27 markets for eBooks and to prevent Amazon from emerging as a serious competitor to its mobile  
28 platforms for the distribution, storage and access of digital media.

1           74.     Apple's strategy for gaining market share at the expense of Amazon was successful.  
2 According to a 2010 survey conducted by ChangeWave, between August and December 2010, the  
3 iPad's share of the U.S. eReader market rose 16 percentage points and the Kindle's fell 15  
4 percentage points.

5           75.     The trend of Apple's increasing market share and Amazon's declining share is  
6 predicted to continue. Of the respondents in the ChangeWave survey planning on buying an eReader  
7 in the next 90 days, 42 percent said they'd like an iPad, while only 33 percent said they'd opt for a  
8 Kindle.

9           76.     In addition, a Credit Suisse analyst announced in February 2010 that, as a result of the  
10 switch to the agency pricing model, he expected Amazon's share of the eBooks market to fall from  
11 90 percent to 35 percent over the next five years.

12           77.     The Publisher Defendants have used the pricing formula contained in the agency  
13 agreements to coordinate pricing for eBooks across retailers and to restrain competition in the  
14 market. For example, the prices of the following current or former bestselling eBooks are identical  
15 at Amazon, Sony, Apple and Barnes & Noble: *Don't Blink* (Hachette, \$14.99); *The Kite Runner*  
16 (Penguin, \$12.99); *Heart of the Matter* (St. Martin's Press/Macmillan, \$9.99); and *Best Friends*  
17 *Forever* (Simon & Schuster, \$11.99).

18           78.     As a result of the unlawful anticompetitive actions alleged above, the price of eBooks  
19 has soared. eBooks now often cost more than their print counterparts. For example, at Amazon.com  
20 the price of *The Kite Runner* (Penguin) costs \$12.99 in Kindle version and \$8.82 as a paperback.  
21 Other examples of this price discrepancy among current and former bestselling titles on  
22 Amazon.com include: *Don't Blink* (Hachette, \$14.99 digital and \$14.74 hardcover); *Best Friends*  
23 *Forever* (Simon & Schuster, \$11.99 digital and \$10.79 paperback); *Heart of the Matter* (St. Martin's  
24 Press/Macmillan, \$9.99 digital and \$8.03 paperback); and *The Art of Racing in the Rain*  
25 (HarperCollins, \$9.99 digital and \$7.99 paperback).

26           79.     In addition, because the price of eBooks is no longer set by the retailer, promotional  
27 discounts and customer reward programs have effectively ended as to eBook sales.

1 80. By coordinating and entering into the above agreements, Apple and the Publisher  
 2 Defendants have raised, stabilized, and standardized eBook prices. Absent this anticompetitive  
 3 conduct, eBook prices would be lower and there would be price competition.

4 81. The Publisher Defendants have not required an Agency model for internet sales of  
 5 physical books. One can see the effect of the conspiracy was to increase and standardize pricing for  
 6 eBooks, compared to the diverse competitive pricing for internet sales of the physical book for the  
 7 same title under the wholesale model.

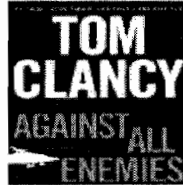
8 (a) The following is a screen capture from Amazon.com displaying standardized higher  
 9 prices for eBooks sold by the Publisher Defendants:

10 **New York Times® Bestsellers**  
 Fiction, Nonfiction, and Advice & How-To

11 **New York Times® Bestsellers: Fiction**



12 Smokin' Seventeen: A  
 13 Stephanie Plum...  
 > Janet Evanovich  
 List Price: ~~\$26.00~~  
 Kindle Price: **\$12.99**



14 Against All Enemies  
 Tom Clancy, Peter Telep  
 Kindle Price: **\$12.99**



15 Maine  
 > J. Courtney Sullivan  
 List Price: ~~\$25.95~~  
 Kindle Price: **\$12.99**



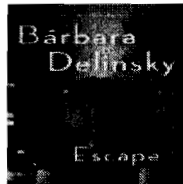
16 The Girl Who Kicked  
 17 the Hornet's Nest  
 Stieg Larsson, Reg  
 Keeland  
 List Price: ~~\$27.95~~  
 Kindle Price: **\$12.99**



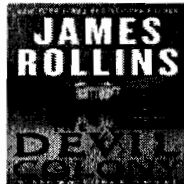
18 Betrayal of Trust: A J.  
 19 P. Beaumont...  
 > J. A. Jance  
 List Price: ~~\$25.99~~  
 Kindle Price: **\$12.99**



20 Silver Girl: A Novel  
 > Elin Hilderbrand  
 List Price: ~~\$26.99~~  
 Kindle Price: **\$12.99**



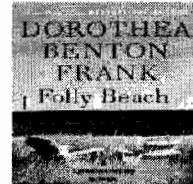
21 Escape  
 > Barbara Delinsky  
 List Price: ~~\$25.95~~  
 Kindle Price: **\$12.99**



22 The Devil Colony: A  
 23 Sigma Force Novel  
 > James Rollins  
 List Price: ~~\$27.99~~  
 Kindle Price: **\$12.99**



24 The Paris Wife: A  
 25 Novel  
 > Paula McLain  
 List Price: ~~\$25.00~~  
 Kindle Price: **\$12.99**



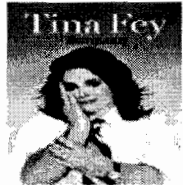
26 Folly Beach: A  
 27 Lowcountry Tale  
 Dorothea Benton Frank  
 List Price: ~~\$25.99~~  
 Kindle Price: **\$12.99**

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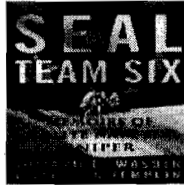
**New York Times® Bestsellers: Nonfiction**



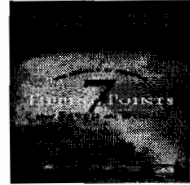
29 The Greater Journey  
 > David G. McCullough  
 List Price: ~~\$37.50~~  
 Kindle Price: **\$19.99**



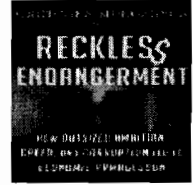
30 Bossypants  
 > Tina Fey  
 List Price: ~~\$26.99~~  
 Kindle Price: **\$12.99**



31 SEAL Team Six:  
 32 Memoirs of an Elite...  
 > Howard E. Wasdin,  
 Stephen A. Templin,  
 Stephen Templin  
 List Price: ~~\$26.99~~  
 Kindle Price: **\$12.99**



33 The Miracle of  
 34 Freedom: 7 Tipping...  
 > Chris Stewart, Ted  
 Stewart  
 List Price: ~~\$28.99~~  
 Kindle Price: **\$9.99**



35 Reckless  
 36 Endangerment: How  
 Outsized...  
 Gretchen Morgenson,  
 Joshua Rosner  
 List Price: ~~\$30.00~~  
 Kindle Price: **\$12.99**



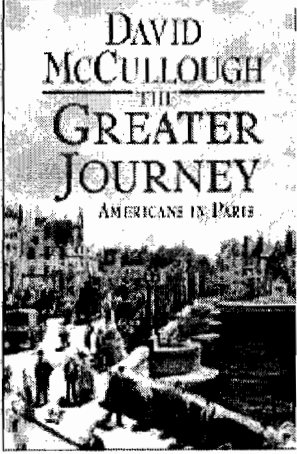
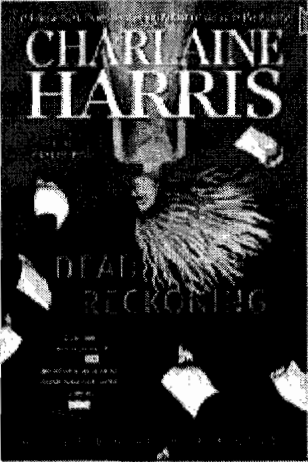
(b) The following chart further details the standardization of supra-competitive pricing effectuated by the conspiracy:

Current Amazon Prices for New York Times Bestsellers (Hardcovers, Fiction and Nonfiction) Bestseller List Week of August 7, 2011					
Genre	Title	Author	Publisher	NYT Rank	Current Amazon Price
Nonfiction	BOSSYPANTS	Tina Fey	Hachette	4	\$12.99
Fiction	NOW YOU SEE HER	James Patterson and Michael Ledwidge	Hachette	5	\$12.99
Nonfiction	LIES THAT CHELSEA HANDLER TOLD ME	Chelsea Handler	Hachette	8	\$11.99
Fiction	THE BOURNE DOMINION	Eric Van Lustbader	Hachette	9	\$12.99
Fiction	ONE SUMMER	David Baldacci	Hachette	11	\$12.99
Fiction	BURNT MOUNTAIN	Anne Rivers Siddons	Hachette	12	\$12.99
Nonfiction	THOSE GUYS HAVE ALL THE FUN	James Andrew Miller and Tom Shales	Hachette	15	\$12.99
Nonfiction	AREA 51	Annie Jacobsen	Hachette	18	\$14.99
Fiction	SILVER GIRL	Elin Hilderbrand	Hachette	22	\$12.99
Fiction	10TH ANNIVERSARY	James Patterson and Maxine Paetro	Hachette	31	\$14.99
Nonfiction	CHELSEA CHELSEA BANG BANG	Chelsea Handler	Hachette	34	\$12.99
Average Hachette Price					\$13.26
Fiction	PORTRAIT OF A SPY	Daniel Silva	HarperCollins	2	\$12.99
Fiction	STATE OF WONDER	Ann Patchett	HarperCollins	8	\$12.99
Nonfiction	THROUGH MY EYES	Tim Tebow	HarperCollins	10	\$12.99
Nonfiction	LOST IN SHANGRI-LA	Mitchell Zuckoff	HarperCollins	11	\$12.99
Nonfiction	DOES THE NOISE IN MY HEAD BOTHER YOU?	Steven Tyler	HarperCollins	13	\$12.99
Fiction	BEFORE I GO TO SLEEP	S. J. Watson	HarperCollins	16	\$12.99
Fiction	THE DEVIL COLONY	James Rollins	HarperCollins	23	\$12.99
Nonfiction	MY DAD SAYS*	Justin Halpern	HarperCollins	24	\$9.99
Fiction	FOLLY BEACH	Dorothea Benton Frank	HarperCollins	32	\$12.99
Average HarperCollins Price					\$12.66
Nonfiction	SEAL TEAM SIX	Howard E Wasdin and Stephen Templin	Macmillan	7	\$12.99
Nonfiction	RECKLESS ENDANGERMENT	Gretchen Morgenson and Joshua Rosner	Macmillan	9	\$12.99
Nonfiction	STORIES I ONLY TELL MY FRIENDS	Rob Lowe	Macmillan	18	\$12.99
Fiction	QUINN	Inis Johansen	Macmillan	18	\$12.99
Fiction	IRON HOUSE	John Hart	Macmillan	19	\$12.99
Fiction	SUMMER RENTAL	Mary Kay Andrews	Macmillan	28	\$12.99
Nonfiction	THE BELEIVING BRAIN	Michael Shemer	Macmillan	33	\$14.99
Average Macmillan Price					\$13.28
Fiction	SPLIT SECOND	Catherine Coulter	Penguin	4	\$12.99
Fiction	AGAINST ALL ENEMIES	Tom Clancy	Penguin	10	\$12.99
Fiction	DEAD RECKONING	Charlaiane Harris	Penguin	21	\$14.99
Nonfiction	CAR GUYS VS. BEAN COUNTERS	Bob Lutz	Penguin	25	\$12.99
Nonfiction	THE PSYCHOPATH TEST	Jon Ronson	Penguin	26	\$12.99
Nonfiction	ON CHINA	Henry Kissinger	Penguin	27	\$19.99
Nonfiction	THE SECRET KNOWLEDGE	David Mamet	Penguin	29	\$14.99
Fiction	THE HELP*	Kathryn Stockett	Penguin	29	\$9.99
Nonfiction	MOONWALKING WITH EINSTEIN	Joshua Foer	Penguin	31	\$12.99
Nonfiction	IF YOU ASK ME	Betty White	Penguin	32	\$12.99
Fiction	CALEB'S CROSSING	Geraldine Brooks	Penguin	34	\$12.99
Average Penguin Price					\$13.72
Fiction	A DANCE WITH DRAGONS	George R. R. Martin	Random House	1	\$14.99
Nonfiction	UNBROKEN	Laura Hillenbrand	Random House	2	\$12.99
Nonfiction	IN THE GARDEN OF BEASTS	Erik Larson	Random House	3	\$12.99
Fiction	HAPPY BIRTHDAY	Danielle Steel	Random House	3	\$12.99
Fiction	SMOKIN' SEVENTEEN	Janet Evanovich	Random House	6	\$12.99
Nonfiction	INCOGNITO	David Eagleman	Random House	12	\$12.99
Fiction	THE GIRL WHO KICKED THE HORNET'S NEST	Stieg Larsson	Random House	13	\$12.99
Nonfiction	DEMONIC	Ann Coulter	Random House	14	\$12.99
Fiction	MAINE	J. Courtney Sullivan	Random House	14	\$12.99
Fiction	THE PARIS WIFE	Paula McLain	Random House	15	\$12.99
Fiction	STAR WARS-CHOICES OF ONE	Timothy Zahn	Random House	17	\$13.99
Nonfiction	THE SOCIAL ANIMAL	David Brooks	Random House	17	\$12.99
Nonfiction	THE TRIPLE AGENT	Joby Warrick	Random House	19	\$13.99
Fiction	THE SILENT GIRL	Tess Gerritsen	Random House	20	\$12.99
Nonfiction	ABSOLUTE MONARCHS	John Julius Norwich	Random House	20	\$12.99
Nonfiction	SUPERGODS	Grant Morrison	Random House	22	\$13.99
Nonfiction	SEX ON THE MOON	Ben Mezrich	Random House	23	\$12.99
Fiction	SISTERHOOD EVERLASTING	Ann Brashares	Random House	24	\$12.99
Fiction	THE LAST WEREWOLF	Glen Duncan	Random House	25	\$12.99
Fiction	CONQUISTADORA	Esmeralda Santiago	Random House	27	\$12.99
Fiction	DREAMS OF JOY	Lisa See	Random House	30	\$12.99
Fiction	THE LAND OF PAINTED CAVES	Jean M. Auel	Random House	33	\$14.99
Average Random House Price					\$13.31
Nonfiction	A STOLEN LIFE	Jaycee Dugard	Simon & Schuster	1	\$11.99
Nonfiction	THE GREATER JOURNEY	David McCullough	Simon & Schuster	5	\$19.99
Nonfiction	OF THEE I ZING	Laura Ingraham	Simon & Schuster	6	\$11.99
Fiction	THEN CAME YOU	Jennifer Weiner	Simon & Schuster	7	\$12.99
Fiction	WORLD OF WARCRAFT: THRALL	Christie Golden	Simon & Schuster	26	\$12.99
Nonfiction	A LOVE THAT MULTIPLIES	Michelle and Jim Bob Duggar	Simon & Schuster	28	\$9.99
Nonfiction	NOTHING DAUNTED	Dorothy Wickenden	Simon & Schuster	35	\$12.99
Average Simon & Schuster Price					\$13.28
Nonfiction	THE SEVEN DEADLY SINS	Corey Taylor	Non-Big Six	21	\$9.99
Nonfiction	THE MIRACLE OF FREEDOM	Chris Stewart and Ted Stewart	Non-Big Six	30	\$9.99
Fiction	TURN OF MIND	Alice LaPlante	Non-Big Six	35	\$9.99
Average Non-Big Six Price					\$9.98

\*The titles *The Help* and *My Dad Says* are long-term bestsellers. *The Help* first made the list in March 2009, *My Dad Says* in May 2010.

CLASS ACTION COMPLAINT

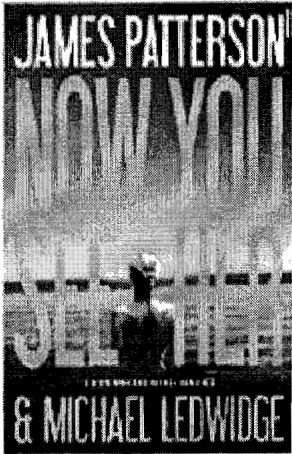
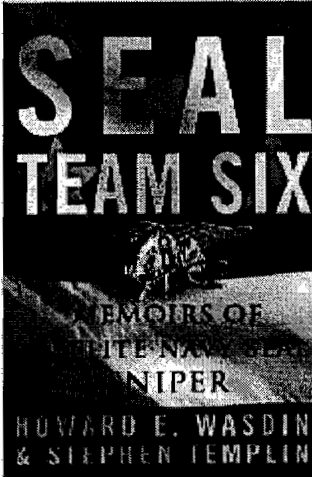
(c) The following are screen captures from the internet displaying examples of various price levels for the same titled physical books contained in ¶ 80(a):

BOOK	PRICE RANGES
	<p>67 total offers. Range: \$172.70. New hardcover edition.</p> <p>Low:  <b>\$14.95</b> New Seller: <b>janet wolfe</b>            + \$3.99 shipping Seller Rating: <b>★★★★☆ 94% positive</b>            over the past 12 months. (174 total ratings)            In Stock. Ships from PA, United States.  <u>Domestic shipping rates and return policy.</u></p> <p>Median:  <b>\$99.99</b> New Seller: <b>Dexter's Book Cellar</b>            + \$3.99 shipping Seller Rating: <b>★★★☆☆ 33% positive</b>            over the past 12 months. (3 total ratings)            In Stock. Ships from CT, United States.            Expedited shipping available.  <u>International &amp; domestic shipping rates and return policy.</u></p> <p>High:  <b>\$187.65</b> New Seller: <b>Origin</b>            + \$3.99 shipping Seller Rating: <b>★★★★★ 99% positive</b>            over the past 12 months. (250 total ratings)            In Stock. Ships from NH, United States.  <u>International &amp; domestic shipping rates and return policy.</u>            NEW! The Greater Journey: Americans in Paris. Pages: 558. Good service!</p>
	<p>Total offers: 97. Range: \$26.94. New hardcover edition.</p> <p>Low:  <b>\$12.95</b> New Seller: <b>THE BOOK SHACK</b>            + \$3.99 shipping Seller Rating: <b>★★★★★ 98% positive</b>            over the past 12 months. (7,262 total ratings)            In Stock. Ships from PA, United States.  <u>Domestic shipping rates and return policy.</u>            ITEM IS BRAND NEW. SHIPPING TIME CAN RANGE FROM 5 TO 14 DAYS. I STRIVE FOR 100% CUSTOMER SATISFACTION. IF YOU HAVE A PROBLEM ... <a href="#">Read more</a></p>

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BOOK	PRICE RANGES		
	<p>Median: <b>\$26.31</b> + \$3.99 shipping</p>	<p>New</p>	<p>Seller: <b>squirreledawaybooks</b>                      Seller Rating: <b>★★★★ 98% positive</b> over the past 12 months. (2,121 total ratings)                      In Stock. Ships from MI, United States. Expedited shipping available.  <a href="#">International &amp; domestic shipping rates and return policy.</a>                      Email us for a photo! -- Binding: Hard Cover -- Book Condition: NEW -- Dust Jacket: NOT ISSUED -- Series: Southern Vampire My...                      » <a href="#">Read more</a></p>
	<p>High: <b>\$39.89</b> + \$3.99 shipping</p>	<p>New</p>	<p>Seller: <b>most_lovely_books</b>                      Seller Rating: <b>★★★★ 91% positive</b> over the past 12 months. (43 total ratings)                      In Stock. Ships from WA, United States. Expedited shipping available.  <a href="#">Domestic shipping rates and return policy.</a>                      Brand New! In stock!</p>
	<p>Total Offers: 44. Range: \$18.04. New hardcover edition.</p>		
	<p>Low: <b>\$7.95</b> + \$3.99 shipping</p>	<p>New</p>	<p>Seller: <b>cseereader</b>                      Seller Rating: <b>★★★★ 97% positive</b> over the past 12 months. (53,971 total ratings)                      In Stock. Ships from GA, United States. Expedited shipping available.  <a href="#">Domestic shipping rates and return policy.</a>                      BRAND NEW FULL SIZE RETAIL EDITION - NOT A BOOK CLUB EDITION - BOOKSTORE QUALITY - EXCELLENT BUY!!!</p>
	<p>Median: <b>\$16.58</b> + \$3.99 shipping</p>	<p>New</p>	<p>Seller: <b>indoobestsellers</b>                      Seller Rating: <b>★★★★ 87% positive</b> over the past 12 months. (118,999 total ratings)                      In Stock. Ships from NJ, United States.  <a href="#">Domestic shipping rates and return policy.</a>                      BRAND NEW</p>
<p>High: <b>\$25.99</b> + \$3.99 shipping</p>	<p>New</p>	<p>Seller: <b>powells_books</b>                      Seller Rating: <b>★★★★ 97% positive</b> over the past 12 months. (341,468 total ratings)                      In Stock. Ships from OR, United States. Expedited shipping available.  <a href="#">International &amp; domestic shipping rates and return policy.</a>                      Legendary independent bookstore online since 1994. Reliable customer service and no-hassle return policy.</p>	

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BOOK	PRICE RANGES
	<p>Total offers: 58. Range: \$39.74. New hardcover edition.</p> <p>Low:  <b>\$10.25</b>      New                      + \$3.99 shipping                      Seller: <b>Anne Tracey</b>                      Seller Rating: ★★★★★ <b>98% positive</b>                      over the past 12 months. (61 total ratings)                      In Stock.  <a href="#">Domestic shipping rates</a> and <a href="#">return policy</a>.                      BRAND NEW AND IN PERFECT CONDITION</p> <p>Median:  <b>\$27.99</b>      New                      + \$3.99 shipping                      Seller: <b>powells_books</b>                      Seller Rating: ★★★★★ <b>97% positive</b>                      over the past 12 months. (341,464 total ratings)                      In Stock. Ships from OR, United States.                      Expedited shipping available.  <a href="#">International &amp; domestic shipping rates</a> and <a href="#">return policy</a>.                      Legendary independent bookstore online since 1994. Reliable customer service and no-hassle return policy.</p> <p>High:  <b>\$49.99</b>      New                      + \$3.99 shipping                      Seller: <b>Kwik Ship</b>                      Seller Rating: ★★★★★ <b>99% positive</b>                      over the past 12 months. (473 total ratings)                      In Stock. Ships from CA, United States.  <a href="#">Domestic shipping rates</a> and <a href="#">return policy</a>.                      Amazon Inventory in that this item ships direct from Amazon Warehouse with a 100% money back guarantee from Kwik Ship for any... » <a href="#">Read more</a></p>
	<p>71 total offers. Range: \$19.97. New hardcover edition.</p> <p>Low:  <b>\$12.35</b>      New                      + \$3.99 shipping                      Seller: <b>cseereader</b>                      Seller Rating: ★★★★★ <b>97% positive</b>                      over the past 12 months. (53,969 total ratings)                      In Stock. Ships from GA, United States.                      Expedited shipping available.  <a href="#">Domestic shipping rates</a> and <a href="#">return policy</a>.                      BRAND NEW FULL SIZE RETAIL EDITION - NOT A BOOK CLUB EDITION - BOOKSTORE QUALITY - EXCELLENT BUY!!!</p> <p>Median:</p>

BOOK	PRICE RANGES	
	<b>\$22.04</b> + \$3.99 shipping	New Seller: <b>AbeBooks Marketplace 2</b> Seller Rating: <b>★★★★ 94% positive</b> over the past 12 months. (1,055 total ratings) In Stock. Expedited shipping available. <u>Domestic shipping rates and return policy.</u> This book is sold by Book Lovers USA, shipping from Woodstock, GA - Seller on AbeBooks Marketplace. Binding: HARDCOVER // The... » <a href="#">Read more</a>
	High: <b>\$32.22</b> + \$3.99 shipping	New Seller: <b>charlestonsoon</b> Seller Rating: <b>★★★★ 94% positive</b> over the past 12 months. (9,005 total ratings) In Stock. Ships from SC, United States. <u>Domestic shipping rates and return policy.</u>

82. The simultaneous switch by the “Agency Five” publishers to the Agency model, timed with the release of the Apple iPad, has prompted antitrust scrutiny by several sovereigns.

83. In March 2011, European Union antitrust regulators, working closely with Britain’s Office of Fair Trading, made unannounced raids on several eBook publishers in several countries. According to the Associated Press, the European Commission had “reason to believe that the companies concerned may have violated EU antitrust rules that prohibit cartels and other restrictive business practices.”

84. According to industry newsletter *Publishers Lunch*, the Texas Attorney General has launched an inquiry that “appears to focus on pricing practices for eBooks and Apple’s entrance into the [e-book] market in particular.”

85. The Wall Street Journal reported that at least two major publishers, Hachette and HarperCollins, were under scrutiny by the Texas Attorney General.

86. Connecticut’s Attorney General has also launched an inquiry. After a preliminary review, Attorney General Richard Blumenthal commented, “These agreements among publishers, Amazon and Apple appear to have already resulted in uniform prices for many of the most popular eBooks – potentially depriving consumers of competitive prices.”

1 87. Blumenthal also said, “Amazon and Apple combined will likely command the  
2 greatest share of the retail eBook market, allowing their most-favored-nation clauses to effectively  
3 set the floor prices for the most popular eBooks. Such agreements – especially when offered to two  
4 of the largest eBook retail competitors in the United States – threaten to encourage coordinated  
5 pricing and discourage discounting.”

6 88. On information and belief, all of these antitrust inquiries are ongoing.

## 7 VII. ANTITRUST INJURY

8 89. But for Defendants’ conspiracy to restrict the price range of eBooks through the  
9 switch to the Agency model of eBook pricing, the price of eBooks would be substantially lower than  
10 their current price. Moreover, consumers would have enjoyed additional features such as  
11 promotional discounts and rewards programs traditionally offered by retailers.

12 90. As a direct result of Defendants’ anticompetitive actions, competition in the market  
13 for eBooks has been restrained.

## 14 VIII. NATIONWIDE FEDERAL DIRECT PURCHASER CLASS

15 91. Prior to the adoption of the Agency model, Apple, Amazon, Barnes & Noble and  
16 Sony acted as resellers of eBooks through their eReaders, and they set retail prices in response to  
17 unrestrained market forces. John Sargent, the CEO of Macmillan, explained this “retail model” of  
18 selling e-books on his corporate blog as follows: “publishers sell to retailers, who then sell to readers  
19 at a price that the retailer determines.”

20 92. Under the Agency model, publishers set the retail prices of eBooks consumers  
21 purchase and the publishers pay Amazon, Apple, Barnes & Noble and Sony a fixed commission of  
22 30 percent of the retail price. John Sargent, the CEO of Macmillan explained this Agency model as  
23 follows: “**publishers set the price**, and retailers take a commission on the sale to readers.”  
24 (emphasis added).

25 93. Under the Agency model, the “agents” – e.g., Amazon or Apple – do not set or  
26 modify retail pricing. Rather under the Agency model, the Publisher Defendants are deemed to  
27 control the retail sales price offered to consumers.

1           94. Under the Agency model, consumers purchase directly from the Publisher Defendants  
2 a license for limited use (i.e., reading) of the eBook content. The Publisher Defendants do not sell  
3 the “eBook” to Amazon or Apple, and these platforms (Apple and Amazon) do not hold title to  
4 eBook content. Moreover, a physical product is not transferred from publisher to retailer or from  
5 retailer to consumer. Rather, in the context of eBook “sales” under the Agency model, the Publisher  
6 Defendants are selling access to the publishers’ copyrighted works directly to consumers.

7           95. Apple’s user agreement for its iBookstore expressly acknowledges that consumers  
8 directly purchased from publishers under the “Agency model,” which it has forced on all other  
9 distributors of eBooks. Specifically, Apple’s user agreement states as follows:

10           Apple is acting as agent for the Publisher in providing each such  
11 iBookstore Product to you; Apple is not a party to the transaction  
12 between you and the Publisher with respect to that iBookstore Product;  
13 and the Publisher of each iBookstore Product reserves the right to  
14 enforce the terms of use relating to that iBookstore Product. The  
15 Publisher of each iBookstore Product is solely responsible for that  
16 iBookstore Product, the content therein, any warranties to the extent  
17 that such warranties have not been disclaimed, and any claims that you  
18 or any other party may have relating to that iBookstore Product or your  
19 use of that iBookstore Product.<sup>15</sup>

20           96. Amazon likewise makes clear in its terms and conditions that the publishers are the  
21 entities who are selling use of the content to consumers:

22           For the purposes of this Agreement:

23           “Content Provider” means the party offering Digital Content in the  
24 Kindle Store, which may be us or a third party; however, for Digital  
25 Content designated as active content in the Kindle Store, “Content  
26 Provider” means the publisher of the Digital Content.

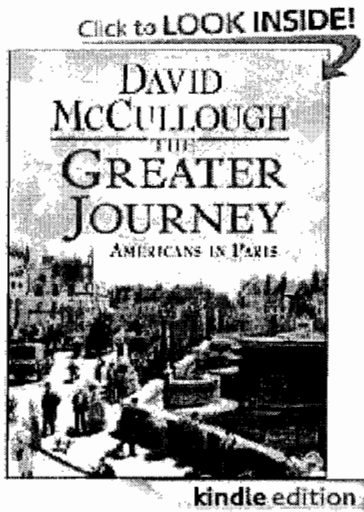
27           **Use of Digital Content.** Upon your download of Digital Content and  
28 payment of any applicable fees (including applicable taxes), the  
Content Provider grants you a non-exclusive right to view, use, and  
display such Digital Content an unlimited number of times, solely on  
the Kindle or a Reading Application or as otherwise permitted as part  
of the Service, solely on the number of Kindles or Other Devices  
specified in the Kindle Store, and solely for your personal, non-  
commercial use. Unless otherwise specified, Digital Content is  
licensed, not sold, to you by the Content Provider. The Content  
Provider may include additional terms for use within its Digital  
Content. Those terms will also apply, but this Agreement will govern

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<sup>15</sup> Additional iBookstore Terms and Conditions; Purchase of iBookstore Products, <http://www.apple.com/legal/itunes/us/terms.html#APPS> (last visited Aug. 8, 2011).

in the event of a conflict. Some Digital Content, such as Periodicals, may not be available to you through Reading Applications.<sup>16</sup>

97. When a consumer purchases an eBook for use on his or her Kindle or Kindle App, Amazon displays that the price is set by the publisher if an agency agreement is in place. The following screen captures demonstrate this and compares pricing between eBooks and physical books:



**The Greater Journey [Kindle Edition]**

David McCullough (Author)

★★★★★ (87 customer reviews) | Like (86)

Print List Price: ~~\$37.50~~

Kindle Price: **\$19.99** includes free wireless delivery via **Amazon Whispernet**

You Save: \$17.51 (47%)

**Sold by:** Simon and Schuster Digital Sales Inc  
*This price was set by the publisher*

- Text-to-Speech:  Not enabled
- Don't have a Kindle? [Get your Kindle here.](#)

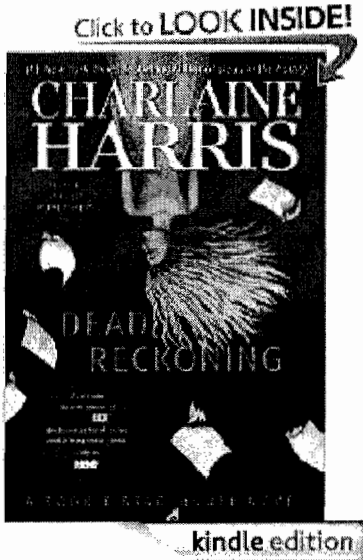
Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$19.99	--
<input checked="" type="checkbox"/> Hardcover, Deckle Edge	\$20.85	\$14.95	\$19.84
<input checked="" type="checkbox"/> Audio, CD, Audiobook, Unabridged	\$31.49	\$28.69	\$27.00
<input checked="" type="checkbox"/> Audible Audio Edition, Unabridged	\$29.95	or Free with Audible 30-day free trial	
<input checked="" type="checkbox"/> <a href="#">Show 3 more formats</a>			

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<sup>16</sup> Kindle License Agreement and Terms of Use, [http://www.amazon.com/gp/help/customer/display.html/ref=hp\\_rel\\_topic?ie=UTF8&nodeId=200506200](http://www.amazon.com/gp/help/customer/display.html/ref=hp_rel_topic?ie=UTF8&nodeId=200506200) (last visited Aug. 8, 2011).



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### Dead Reckoning: A Sookie Stackhouse Novel [Kindle Edition]

Charlaine Harris  (Author)

★★★★★  (687 customer reviews) | Like (486)

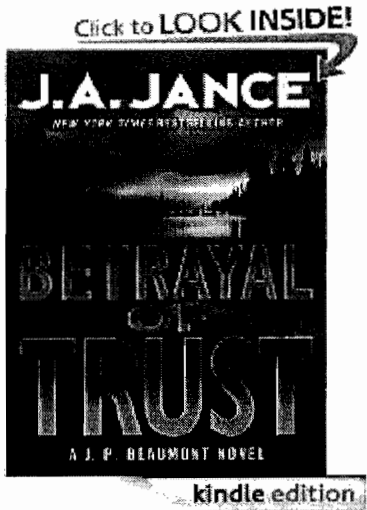
Kindle Price: **\$14.99** includes free wireless delivery via **Amazon Whispernet**

**Sold by:** Penguin Publishing  
*This price was set by the publisher*

- Text-to-Speech:  Enabled
- Don't have a Kindle? [Get your Kindle here.](#)

Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$14.99	--
<input checked="" type="checkbox"/> Hardcover	\$16.65	\$12.95	\$12.94
Paperback	\$7.99	\$7.99	--
<input checked="" type="checkbox"/> Audio, CD, Audiobook, Unabridged	\$23.09	\$18.35	\$19.75
Audible Audio Edition, Unabridged	\$23.95	or Free with Audible 30-day free trial	

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### Betrayal of Trust: A J. P. Beaumont Novel [Kindle Edition]

J. A. Jance  (Author)

★★★★★  (15 customer reviews) | Like (39)

Print List Price: ~~\$25.99~~

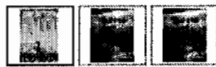
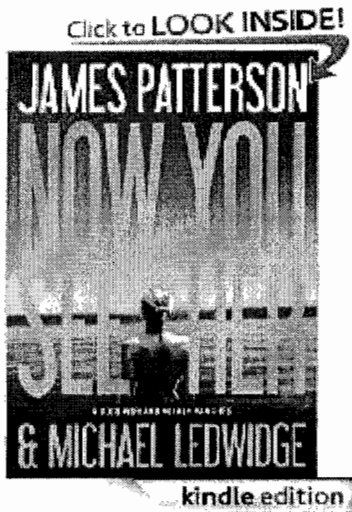
Kindle Price: **\$12.99** includes free wireless delivery via **Amazon Whispernet**

You Save: \$13.00 (50%)

**Sold by:** HarperCollins Publishers  
*This price was set by the publisher*

- Text-to-Speech:  Enabled
- Don't have a Kindle? [Get your Kindle here.](#)

Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$12.99	--
Hardcover	\$16.92	\$7.95	\$7.50
Paperback, Large Print	\$16.37	\$15.20	\$15.43
Audio, CD, Audiobook, Unabridged	\$26.39	\$24.00	\$17.55
Audible Audio Edition, Unabridged	\$23.95	or Free with Audible 30-day free trial	



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**Now You See Her [Kindle Edition]**

James Patterson  (Author), Michael Ledwidge (Author)

★★★★★  (120 customer reviews) | Like (406)

Print List Price: ~~\$27.99~~

Kindle Price: **\$12.99** includes free wireless delivery via **Amazon Whispernet**

You Save: \$15.00 (54%)

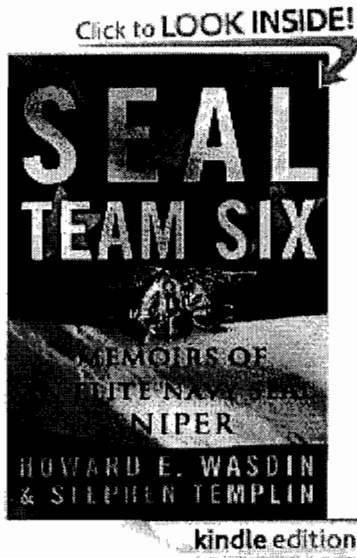
**Sold by:** Hachette Book Group

*This price was set by the publisher*

- Text-to-Speech: Not enabled
- Don't have a Kindle? [Get your Kindle here.](#)

Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$12.99	--
<input checked="" type="checkbox"/> Hardcover	\$15.30	\$9.00	\$7.99
<input checked="" type="checkbox"/> Paperback	\$10.19	\$10.19	--
<input checked="" type="checkbox"/> Audio, CD, Audiobook	\$13.59	\$13.59	--
Audible Audio Edition, Unabridged	\$21.95	or Free with Audible 30-day free trial	

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[Share your own customer images](#)

**SEAL Team Six: Memoirs of an Elite Navy SEAL Sniper [Kindle Edition]**

Stephen Templin  (Author), Howard E. Wasdin  (Author)

★★★★★  (142 customer reviews) | Like (100)

Print List Price: ~~\$26.99~~

Kindle Price: **\$12.99** includes free wireless delivery via **Amazon Whispernet**

You Save: \$14.00 (52%)

**Sold by:** Macmillan

*This price was set by the publisher*

- Text-to-Speech: Enabled
- Don't have a Kindle? [Get your Kindle here.](#)

Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$12.99	--
<input checked="" type="checkbox"/> Hardcover	\$15.19	\$12.35	\$13.45
<input checked="" type="checkbox"/> MP3 CD, Audiobook, Unabridged	\$19.77	\$18.57	\$18.00
Audible Audio Edition, Unabridged	\$16.95	or Free with Audible 30-day free trial	

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1           98. In addition, after purchasing an eBook from a publisher selling an eBook pursuant to  
2 the Agency model, the confirmation of sale shows that the publisher is the entity selling the eBook  
3 to the purchaser:

4 **Order Summary:**

5 **Details:**

6 **Order #:** D01-2220747-7578556  
7 Subtotal of items: \$11.99  
8 Total before tax: \$11.99  
9 Tax Collected: \$0.00  
10 **Total for this Order: \$11.99**

11 The following item is auto-delivered to your Kindle or other device. You can view more information about  
12 this order by clicking on the title on the Manage Your Kindle page at [Amazon.com](http://Amazon.com).

13 **The Next 100 Years: A Forecast for the 21st Century** [Kindle Edition] \$11.99  
14 Sold By: Random House Digital, Inc.

15           99. Because “the price” that Plaintiff and consumers “have paid directly is the one that  
16 was unlawfully fixed,” *In re ATM Fee Antitrust Litig.*, No. C 04-02676, 2010 U.S. Dist. LEXIS  
17 97009, at \*24 (N.D. Cal. Sept. 16, 2010), Plaintiff and eBook consumers are direct purchasers of  
18 eBooks.

19           100. Because the simultaneous adoption of the Agency model represents a “conspiracy  
20 among horizontal competitors at the retail level to fix retail prices,” the Supreme Court’s decision in  
21 *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) “does not prevent this garden variety price-fixing  
22 claim.” *State of Ariz. v. Shamrock Foods Co.*, 729 F.2d 1208, 1211 (9th Cir. 1984).

23           101. Plaintiff sues on behalf of a class of persons pursuant to Federal Rule of Civil  
24 Procedure 23 under federal law. The Federal Class consists of all persons in the United States who  
25 purchased eBooks published by one of the Agency 5 directly from a Publisher Defendant after the  
26 adoption of the Agency model by that publisher. Excluded from the Federal Class are Defendants,  
27 their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and  
28 wholly or partly owned subsidiaries of affiliated companies.

1           102. The persons in the Class are so numerous that individual joinder of all members is  
2 impracticable under the circumstances of this case. Although the precise number of such persons is  
3 unknown, the exact size of the Class is easily ascertainable, as each Class member can be identified  
4 by using Defendants' records and/or the records of its distributors or retailers. Plaintiff is informed  
5 and believes that there are many thousands of Class members.

6           103. There are common questions of law and fact specific to the Class that predominate  
7 over any questions affecting individual members, including:

- 8                   (a) Whether Defendants unlawfully contracted, combined and conspired to  
9 unreasonably restrain trade in violation of section 1 of the Sherman Act by agreeing to switch to the  
10 Agency model of eBook pricing and by agreeing to restrict the price range of eBooks;
- 11                   (b) Whether Defendants' actions in entering the agency agreements alleged above  
12 violated California law;
- 13                   (c) Whether consumers and Class members have been damaged by Defendants'  
14 conduct;
- 15                   (d) Whether punitive damages are appropriate;
- 16                   (e) Whether Defendants should disgorge unlawful profits;
- 17                   (f) The amount of any damages; and
- 18                   (g) The nature and scope of injunctive relief necessary to restore a competitive  
19 market.

20           104. Plaintiff's claims are typical of the Class' claims, as they arise out of the same course  
21 of conduct and the same legal theories as the rest of the Class, and Plaintiff challenges the practices  
22 and course of conduct engaged in by Defendants with respect to the Class as a whole.

23           105. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has  
24 retained Class Counsel who are able and experienced class action litigators.

25           106. Resolution of this action on a class-wide basis is superior to other available methods  
26 and is a fair and efficient adjudication of the controversy because in the context of this litigation, no  
27 individual class member can justify the commitment of the large financial resources to vigorously  
28 prosecute a lawsuit against Defendants. Separate actions by individual class members would also

1 create a risk of inconsistent or varying judgments, which could establish incompatible standards of  
2 conduct for Defendants and substantially impede or impair the ability of Class Members to pursue  
3 their claims. A class action also makes sense because Defendants have acted and refused to take  
4 steps that are, upon information and belief, generally applicable to thousands of individuals, thereby  
5 making injunctive relief appropriate with respect to the Class as a whole.

6 **IX. NATIONWIDE CALIFORNIA LAW CLASS**

7 107. Upon information and belief, the unlawful course of conduct alleged above was  
8 created, adopted, ratified and/or implemented at the corporate headquarters of Apple located in  
9 Cupertino, California and a substantial part of the anticompetitive conduct took place in California.

10 108. Communications between publishers were conducted utilizing Apple, a California  
11 corporation, as an intermediary.

12 109. One of the chief architects of the unlawful conspiracy, Steve Jobs, is a resident of  
13 California and the CEO of Apple computers.

14 110. Apple has acknowledged that California law applies to it nationwide with respect to  
15 the sale and purchase of eBooks. Specifically, Apple's iBookstore terms and condition provide that  
16 "[a]ll transactions on the App and Book Services are governed by California law, without giving  
17 effect to its conflict of law provisions." Apple's iBookstore terms and conditions also provide that  
18 "any claim or dispute with Apple or relating in any way to your use of the App and Book Services  
19 resides in the courts in the State of California."

20 111. Plaintiff sues on behalf of a nationwide California law class of persons pursuant to  
21 Federal Rule of Civil Procedure 23. The California Law Class consists of all persons in the United  
22 States who purchased eBooks published by one of the "Agency Five" publishers after the adoption of  
23 the Agency Model by that publisher. Excluded from the California Law Class are Defendants, their  
24 employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or  
25 partly owned subsidiaries of affiliated companies.

26 **X. INDIRECT PURCHASER CLASS ACTION ALLEGATIONS**

27 112. In the event Plaintiff is not a direct purchaser and the Court determines that California  
28 law does not apply nationwide, Plaintiff brings the following class allegations.

CLASS ACTION COMPLAINT

1           113. Plaintiff also brings this action on her own behalf and as a class action pursuant to  
 2 Rule 23 of the Federal Rules of Civil Procedure and/or respective state statute(s), on behalf of all  
 3 members of the following classes (collectively, the “State Classes”) with respect to claims under the  
 4 antitrust statutes of each of the following jurisdictions:<sup>17</sup>

- 5           (a) **Arizona**: All persons who purchased an eBook published by a Publisher  
 6 Defendant after the Agency model pricing was adopted.
- 7           (b) **California**: All persons who purchased an eBook published by a Publisher  
 8 Defendant after the Agency model pricing was adopted.
- 9           (c) **District of Columbia**: All persons who purchased an eBook published by a  
 10 Publisher Defendant after the Agency model pricing was adopted.
- 11           (d) **Florida**: All persons who purchase an eBook published by a Publisher  
 12 Defendant after the Agency model pricing was adopted.
- 13           (e) **Hawaii**: All persons who purchased an eBook published by a Publisher  
 14 Defendant after the Agency model pricing was adopted.
- 15           (f) **Illinois**: All persons who purchased an eBook published by a Publisher  
 16 Defendant after the Agency model pricing was adopted.
- 17           (g) **Iowa**: All persons who purchased an eBook published by a Publisher  
 18 Defendant after the Agency model pricing was adopted.
- 19           (h) **Kansas**: All persons who purchased an eBook published by a Publisher  
 20 Defendant after the Agency model pricing was adopted.
- 21           (i) **Maine**: All persons who purchased an eBook published by a Publisher  
 22 Defendant after the Agency model pricing was adopted.
- 23           (j) **Michigan**: All persons who purchased an eBook published by a Publisher  
 24 Defendant after the Agency model pricing was adopted.
- 25           (k) **Minnesota**: All persons who purchased an eBook published by a Publisher  
 26 Defendant after the Agency model pricing was adopted.

27           <sup>17</sup> A demand letter will be sent under Massachusetts law and an amendment adding claims  
 28 under Massachusetts law will be made in 30 days if necessary.

- 1 (l) **Mississippi**: All persons who purchased an eBook published by a Publisher  
2 Defendant after the Agency model pricing was adopted.
- 3 (m) **Montana**: All persons who purchased an eBook published by a Publisher  
4 Defendant after the Agency model pricing was adopted.
- 5 (n) **Nebraska**: All persons who purchased an eBook published by a Publisher  
6 Defendant after the Agency model pricing was adopted.
- 7 (o) **Nevada**: All persons who purchased an eBook published by a Publisher  
8 Defendant after the Agency model pricing was adopted.
- 9 (p) **New Hampshire**: All persons who purchased an eBook published by a  
10 Publisher Defendant after the Agency model pricing was adopted.
- 11 (q) **New Mexico**: All persons who purchased an eBook published by a Publisher  
12 Defendant after the Agency model pricing was adopted.
- 13 (r) **New York**: All persons who purchased an eBook published by a Publisher  
14 Defendant after the Agency model pricing was adopted.
- 15 (s) **North Carolina**: All persons who purchased an eBook published by a  
16 Publisher Defendant after the Agency model pricing was adopted.
- 17 (t) **North Dakota**: All persons who purchased an eBook published by a  
18 Publisher Defendant after the Agency model pricing was adopted.
- 19 (u) **Oregon**: All persons who purchased an eBook published by a Publisher  
20 Defendant after the Agency model pricing was adopted.
- 21 (v) **South Carolina**: All persons who purchased an eBook published by a  
22 Publisher Defendant after the Agency model pricing was adopted.
- 23 (w) **South Dakota**: All persons who purchased an eBook published by a  
24 Publisher Defendant after the Agency model pricing was adopted.
- 25 (x) **Tennessee**: All persons who purchased an eBook published by a Publisher  
26 Defendant after the Agency model pricing was adopted.
- 27 (y) **Utah**: All persons who purchased an eBook published by a Publisher  
28 Defendant after the Agency model pricing was adopted.

- 1 (z) **Vermont:** All persons who purchased an eBook published by a Publisher  
2 Defendant after the Agency model pricing was adopted.
- 3 (aa) **West Virginia:** All persons who purchased an eBook published by a  
4 Publisher Defendant after the Agency model pricing was adopted.
- 5 (bb) **Wisconsin:** All persons who purchased an eBook published by a Publisher  
6 Defendant after the Agency model pricing was adopted.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE SHERMAN ACT**  
9 **(15 U.S.C. § 1)**

10 114. Each of the foregoing allegations is incorporated in this claim for relief.

11 115. Plaintiff does not believe it is necessary to prove a relevant market. To the extent one  
12 is required, the relevant product market is eBooks.

13 116. To the extent required the relevant geographic market is the entire United States.

14 117. Defendants by and through their officers, directors, employees, agents and other  
15 representatives have entered into an unlawful agreement, combination and conspiracy in restraint of  
16 trade. Specifically, Defendants have unlawfully agreed to artificially inflate the retail price range of  
17 eBooks by switching to an Agency model in which eBook prices are determined using a common  
18 formula across individual books and publishers. These unlawful agreements have unreasonably  
19 restrained price competition among retailers for eBook sales.

20 118. Plaintiff and the Class members have been injured and will continue to be injured in  
21 their businesses and property by paying more for eBooks than they would have paid or would pay in  
22 the future in the absence of Defendants' unlawful acts.

23 119. Plaintiff and Class members are direct purchasers because the Publisher Defendants  
24 set the retail price for eBooks, and Amazon, Apple and other eBook distributors are acting only as  
25 agents.

26 120. Plaintiff and the Class are entitled to an injunction that terminates the ongoing  
27 violations alleged in this Complaint.



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**SECOND CAUSE OF ACTION**

**VIOLATION OF THE CARTWRIGHT ACT  
(California Business & Professions Code §§ 16720, *et seq.*)**

121. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein. This claim is asserted by the nationwide California class and/or as a subclass if the Court rules California law does not apply nationwide.

122. Since 2010 and up to the present time, Defendants conspired, and agreed and continue to combine, conspire and agree to unreasonably restrain the market for eBooks, in violation of California Business and Professions Code sections 16720, *et seq.*, by signing the agency agreements as alleged above.

123. As a direct consequence of the agreements, competition in the market eBooks has been restrained, suppressed and eliminated. Class members have been deprived of the benefit of a free, competitive marketplace for eBooks.

**THIRD CAUSE OF ACTION**

**VIOLATIONS OF STATE ANTITRUST AND RESTRAINT OF TRADE LAWS AND  
CONSUMER PROTECTION STATUTES**

124. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

125. For each of the states set forth below, a significant volume of intrastate commerce was impacted by Defendants' illegal conduct as alleged above. That is, purchases of eBooks occurred in each of the states at supra-competitive prices due to Defendants' illegal conduct.

126. By reason of the foregoing, Defendants have violated Arizona Revised Statutes, §§ 44-1401, *et seq.*

127. By reason of the foregoing, Defendants have violated California Business and Professions Code, §§ 16700, *et seq.*

128. By reason of the foregoing, Defendants have violated District of Columbia Code Annotated §§ 28-4501, *et seq.*

129. By reason of the foregoing, Defendants have violated the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

CLASS ACTION COMPLAINT

1           130. By reason of the foregoing, Defendants have violated Hawaii Revised Statutes  
2 Annotated §§ 480-1, *et seq.*

3           131. By reason of the foregoing, Defendants have violated the Illinois Antitrust Act,  
4 Illinois Compiled Statutes, §§ 740 Ill. Comp. Stat. 10/1, *et seq.*

5           132. By reason of the foregoing, Defendants have violated Iowa Code §§ 553.1, *et seq.*

6           133. By reason of the foregoing, Defendants have violated Kansas Statutes Annotated,  
7 §§ 50-101, *et seq.*

8           134. By reason of the foregoing, Defendants have violated the Maine Revised Statutes, 10  
9 M.R.S. §§ 1101, *et seq.*

10           135. By reason of the foregoing, Defendants have violated Michigan Compiled Laws  
11 Annotated §§ 445.773, *et seq.*

12           136. By reason of the foregoing, Defendants have violated Minnesota Annotated Statutes  
13 §§ 325D.49, *et seq.*

14           137. By reason of the foregoing, Defendants have violated Mississippi Code Annotated  
15 §§ 75-21-1, *et seq.*

16           138. By reason of the foregoing, Defendants have violated Montana's Unfair Trade  
17 Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103, *et seq.*

18           139. By reason of the foregoing, Defendants have violated Nebraska Revised Statutes  
19 §§ 59-801, *et seq.*

20           140. By reason of the foregoing, Defendants have violated Nevada Revised Statutes  
21 Annotated §§ 598A.010, *et seq.*

22           141. By reason of the foregoing, Defendants have violated New Mexico Statutes  
23 Annotated §§ 57-1-1, *et seq.*

24           142. By reason of the foregoing, Defendants have violated New Hampshire Revised  
25 Statutes §§ 356:1, *et seq.*

26           143. By reason of the foregoing, Defendants have violated New York General Business  
27 Laws §§ 340, *et seq.*

1 144. By reason of the foregoing, Defendants have violated North Carolina General Statutes  
2 §§ 75-1, *et seq.*

3 145. By reason of the foregoing, Defendants have violated North Dakota Century Code  
4 §§ 51-08.1-01, *et seq.*

5 146. By reason of the foregoing, Defendants have violated Oregon Revised Statutes  
6 §§ 646.705, *et seq.*

7 147. By reason of the foregoing, Defendants have violated South Carolina's Unfair Trade  
8 Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

9 148. By reason of the foregoing, Defendants have violated South Dakota Codified Laws  
10 §§ 37-1-3.1, *et seq.*

11 149. By reason of the foregoing, Defendants have violated Tennessee Code Annotated  
12 §§ 47-25-101, *et seq.*

13 150. By reason of the foregoing, Defendants have violated Utah Code Annotated §§ 76-10-  
14 911, *et seq.*

15 151. By reason of the foregoing, Defendants have violated Vermont Stat. Ann. 9 §§ 2453,  
16 *et seq.*

17 152. By reason of the foregoing, Defendants have violated West Virginia Code §§ 47-18-1,  
18 *et seq.*

19 153. By reason of the foregoing, Defendants have violated Wisconsin Statutes §§ 133.01,  
20 *et seq.*

21 154. As a direct and proximate result of Defendants' unlawful conduct, Class Members in  
22 each of these states have been injured in their businesses and property in that they paid more for  
23 eBooks than they would have paid absent the Defendants' unlawful conduct.

24 **FOURTH CAUSE OF ACTION**

25 **VIOLATION OF THE UNFAIR COMPETITION ACT**  
26 **(California Business & Professions Code §§ 17200, *et seq.*)**

27 155. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully  
28 set forth herein.

1 156. Defendants have engaged in and are still engaged in acts of unfair competition, as  
2 defined in California Business and Professions Code sections 17200, *et seq.*, including but not  
3 limited to violation of California Business and Professions Code sections 16720, *et seq.*, as alleged  
4 above.

5 **FIFTH CAUSE OF ACTION**

6 **UNJUST ENRICHMENT**

7 157. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully  
8 set forth herein.

9 158. To the detriment of Plaintiff and members of the Class, Defendants have been and  
10 continue to be unjustly enriched as a result of the unlawful and/or wrongful conduct. Defendants  
11 have unjustly benefited through the sale of eBooks at an inflated, anticompetitive monopoly price to  
12 consumers.

13 159. Between the parties, it would be unjust for Defendants to retain the benefits attained  
14 by their actions. Accordingly, Plaintiff and members of the Class seek full restitution of Defendants'  
15 enrichment, benefits and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct  
16 alleged herein.

17 **JURY TRIAL DEMANDED**

18 160. Plaintiff hereby demands a trial by jury of all the claims asserted in this Complaint.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

21 A. Certification of the action as a Class Action pursuant to the Federal Rule of Civil  
22 Procedure 23, and appointment of Plaintiff as Class Representative and her counsel of record as  
23 Class Counsel;

24 B. A declaration that Defendants' conduct constituted a conspiracy and that Defendants  
25 are liable for the conduct or damage inflicted by any other co-conspirator;

26 C. A declaration that the pricing formula contained in the agency agreements described  
27 above is unlawful;

28 D. Restitution and/or damages to Class members for the purchase of eBooks;

CLASS ACTION COMPLAINT

1 E. Actual damages, statutory damages, punitive or treble damages, and such other relief  
2 as provided by the statutes cited herein;

3 F. Pre-judgment and post-judgment interest on such monetary relief;

4 G. Equitable relief in the form of restitution and/or disgorgement of all unlawful or  
5 illegal profits received by Defendants as a result of the anticompetitive conduct alleged in herein;

6 H. Equitable relief enjoining the Publisher Defendants from pricing eBooks using the  
7 pricing formula contained in the agency agreements;

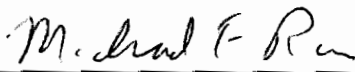
8 I. The costs of bringing this suit, including reasonable attorneys' fees; and

9 J. All other relief to which Plaintiff and members of the Class may be entitled at law or  
10 in equity.

11 DATED: August 11, 2011

RAM, OLSON, CEREGHINO  
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12  
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