

# EXHIBIT 18

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOMTAI TROY CHAROENSAK and MARIANA )  
ROSEN, etc., et al., )  
 )  
 ) Plaintiffs, )  
 )  
 ) vs. )  
 )  
 ) APPLE COMPUTER, INC., )  
 )  
 ) Defendant. )  
 )

Case Number:  
C 05 00037 JW

DEPOSITION OF JOHN PISARKIEWICZ, Ph.D.

February 28, 2007

238775



(310) 207.8000 Los Angeles (916) 922.5777 Sacramento (818) 702.0202 San Fernando Valley  
(949) 955.0400 Orange County (408) 885.0550 San Jose (858) 455.5444 San Diego  
(415) 433.5777 San Francisco (951) 688.0606 Inland Empire (760) 322.2240 Palm Springs

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APPEARANCES

ON BEHALF OF PLAINTIFFS:

ROY A. KATRIEL, ESQUIRE  
The Katriel Law Firm  
1101 30th Street, N.W.  
Suite 500  
Washington, D.C. 20007  
(202)625-4342

ON BEHALF OF DEFENDANT:

ROBERT A. MITTELSTAEDT, ESQUIRE  
Jones Day  
555 California Street  
26th Floor  
San Francisco, California 94104  
(415)626-3939

ALSO PRESENT:

BRYAN MACKEY, Videographer

LORENZO COPPI

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P R O C E E D I N G S

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THE VIDEOGRAPHER: Here begins Tape  
No. 1 in the deposition of John Pisarkiewicz,  
Ph.D., in the matter of Sontai Troy Charoensak, et  
al v. Apple Computer, Inc., in the United States  
District Court for the Northern District of  
California, Case No. C 05 00037 JW.  
Today's date is February 28th, 2007.  
The time is 9:41 a.m.  
The video operator today is Brian  
Mackey.  
This deposition is taking place at the  
offices of Jones Day, 51 Louisiana Avenue,  
Northwest, Washington, D.C.  
Would counsel please identify  
themselves and state whom they represent.  
MR. KATRIEL: Good morning. Roy  
Katriel on behalf of the plaintiffs.  
MR. MITTELSTAEDT: Bob Mittelstaedt for  
the defendants, and with me is Lorenzo Coppi.  
THE VIDEOGRAPHER: The court reporter  
today is John Harmonson.  
Would the reporter please swear in the  
witness.

1 JOHN PISARKIEWICZ, Ph.D.,  
2 after having been first duly sworn, was examined  
3 and did testify under oath as follows:

4 EXAMINATION

09:42:10 5 BY MR. MITTELSTAEDT:

09:42:12 6 Q. If you would state your full name and  
09:42:14 7 business address, please.

09:42:16 8 A. John Pisarkiewicz. The address is  
09:42:19 9 Nathan Associates at 2101 Wilson Boulevard, Suite  
09:42:24 10 1200, Arlington, Virginia, 22201.

09:42:29 11 Q. What did you do to prepare for the  
09:42:31 12 deposition?

09:42:33 13 A. I met with Roy yesterday afternoon, and  
09:42:39 14 I reviewed my affidavit, and I obtained from Roy a  
09:42:52 15 copy of the deposition transcript of Mary Ann  
09:42:56 16 Rosen.

09:42:56 17 Q. Did you read it?

09:42:57 18 A. I got about halfway through last night.

09:43:01 19 Q. Did you draw any conclusions from it?

09:43:12 20 A. With respect to my affidavit, no.

09:43:18 21 Q. How long did you spend with Mr. Katriel  
09:43:21 22 yesterday?

09:43:24 23 A. Probably about an hour and 15 minutes.

09:43:26 24 Q. Did he point out any potential problems  
09:43:29 25 in your report?

11:20:47

1 put on the iPod as well.

11:20:48

2 Q. My question is, have you actually asked

11:20:50

3 anybody what music or what source of music they

11:20:53

4 have on their iPods or other MP3 players?

11:20:58

5 A. I have not.

11:20:58

6 Q. Do you know anybody who has an MP3

11:21:01

7 player other than an iPod?

8 (Telephone interruption.)

11:21:18

9 BY MR. MITTELSTAEDT:

11:21:22

10 Q. Anybody who has an MP3 player other

11:21:25

11 than an iPod?

12 (Telephone interruption.)

11:21:41

13 THE WITNESS: I don't.

11:21:42

14 BY MR. MITTELSTAEDT:

11:21:44

15 Q. Do you have an iPod?

11:21:45

16 A. I do.

11:21:46

17 Q. How long have you had it?

11:21:49

18 A. A year, a little over a year.

11:21:52

19 Q. Why did you buy it?

11:21:54

20 A. To impress my nephews and show them

11:21:58

21 that their Uncle John was still with it and knew

11:22:02

22 about these things.

11:22:03

23 Q. Why didn't you buy a competitor?

11:22:05

24 A. I have Apple computers. There's an

11:22:08

25 Apple store near where I work. I can walk to it

REPORTER'S CERTIFICATE

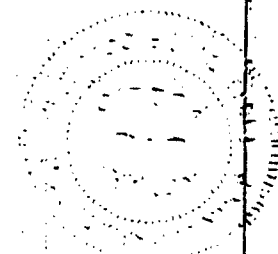
I, the undersigned Registered Professional Reporter and Notary Public, do hereby certify that JOHN PISARKIEWICZ, Ph.D., after having been first duly sworn by me to testify to the truth, did testify as set forth in the foregoing pages, that the testimony was reported by me in stenotype and transcribed under my personal direction and supervision, and is a true and correct transcript.

I further certify that I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

SUBSCRIBED AND SWORN TO under my hand and seal this 5<sup>th</sup> day of March, 2007.

*John L. Harmonson*

JOHN L. HARMONSON, RPR  
Notary Public in and for  
the District of Columbia  
My Commission Expires: 10/14/2010



# EXHIBIT 19



08:59:01

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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MELANIE TUCKER, On Behalf of	)	
Herself and All Others Similarly	)	
Situated,	)	
	)	
Plaintiff,	)	Case No. C 06
	)	4457 HRL
vs.	)	
	)	
APPLE COMPUTER, INC., a	)	
California Corporation,	)	
	)	
Defendant.	)	
	)	

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FRIDAY, OCTOBER 26, 2007

VIDEOTAPE DEPOSITION OF MELANIE TUCKER

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REPORTED BY: BALINDA DUNLAP, CSR 10710, RPR, CRR, RMR

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A P P E A R A N C E S

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FOR THE PLAINTIFF:

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.  
2901 North Central Avenue, Suite 1000  
Phoenix, Arizona 85012  
BY: TODD CARPENTER, ESQ.

COUGHLIN, STOIA, GELLER, RUDMAN & ROBBINS LLP  
655 West Broadway, Suite 1900  
San Diego, California 92101  
BY: BONNY SWEENEY, ESQ.  
GREG WESTON, ESQ.

MURRAY, FRANK & SAILER LLP  
275 Madison Avenue  
New York, New York 10016  
BY: BRIDGETT HAMILL, ESQ.

FOR THE DEFENDANT:

JONES DAY  
555 California Street, 26th Floor  
San Francisco, California 94104  
BY: BOB MITTELSTAEDT, ESQ.  
LARA KOLLIOS, ESQ.

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SAN FRANCISCO, CALIFORNIA, OCTOBER 26, 2007

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BE IT REMEMBERED that on Friday, the 26th day of October, 2007, commencing at the hour of 9:11 a.m. thereof, at 555 California Street, 26th Floor, San Francisco, California, before me, Balinda Dunlap, a Certified Shorthand Reporter in and for the County of San Francisco, State of California, personally appeared:

THE VIDEOGRAPHER: Good morning. My name is Michael Barber. I am a videographer associated with Barkley Court Reporters, located at 222 Front Street, Suite 600, San Francisco, California 94111. The date is October 26th, 2007. The time is 9:11 a.m.

This deposition is taking place at Jones Day, 555 California Street, San Francisco, California 94104 in the matter of the Apple iPod iTunes antitrust litigation appearing in the U.S. District Court for the Northern District of California, San Jose Division, Case Numbers C050037 JW and C0604457 JW.

This is the videotape deposition of Melanie Tucker being taken on behalf of the defense.

Counsel, would you please identify yourselves for the record and state whom you represent.

MR. MITTELSTAEDT: I'm Bob Mittelstaedt for the defendant.

09:11:52 1 MS. KOLLIOS: Lara Kollios for the defendant.

09:11:54 2 MS. HAMILL: Bridget Hamill, Murray, Frank & Sailer

09:11:58 3 for plaintiff Mary Ann Arusen.

09:12:01 4 MR. WESTON: Greg Weston from Coughlin Stoia

09:12:05 5 representing the class.

09:12:06 6 MS. SWEENEY: Bonny Sweeney.

09:12:09 7 MR. CARPENTER: Todd Carpenter from Bonnett,

09:12:13 8 Fairbourn, Friedman & Balint representing the plaintiffs.

09:12:14 9 THE VIDEOGRAPHER: Thank you. Would the court

09:12:16 10 reporter please swear in the witness.

09:12:24 11 MELANIE TUCKER

12 called as a witness by the Defense, having been sworn to tell

13 the truth, the whole truth, and nothing but the truth, was

14 examined and testified as follows:

09:12:26 15 ---o0o---

09:12:26 16 EXAMINATION BY MR. MITTELSTAEDT

09:12:27 17 Q. If you would state your full name and address for the

09:12:29 18 record, please.

09:12:29 19 A. Melanie Christine Tucker, 4431 Cleveland Avenue, No.

09:12:36 20 2, San Diego, California 92116.

09:12:40 21 Q. Have you ever had your deposition taken before?

09:12:43 22 A. No, I have not.

09:12:44 23 Q. What have you done to prepare for the deposition?

09:12:48 24 A. I met with my counsel briefly.

09:12:50 25 Q. For how long?

09:13:52 1 A. I believe it was in April 2004.

09:13:59 2 Q. Are you sure about the year?

09:14:00 3 A. Fairly sure about the year.

09:14:04 4 Q. Okay. Why did you buy that iPod?

09:14:08 5 A. Because I wanted to be able to consolidate my music  
09:14:11 6 and carry it with me.

09:14:13 7 Q. And what music did you have at that point?

09:14:18 8 A. I had a couple hundred CDs.

09:14:27 9 Q. And what else?

09:14:29 10 A. That was it.

09:14:31 11 Q. Just so we get off on the right footing here, your  
09:14:35 12 complaint says that on or about April 2005 you purchased a 20  
09:14:44 13 gig iPod. Does that refresh your recollection that your  
09:14:48 14 iPod -- your first iPod was April of 2005?

09:14:56 15 A. Yes.

09:14:57 16 Q. Where did you buy that iPod?

09:14:58 17 A. I bought it on line through the Apple store.

09:15:04 18 Q. How much did you pay for it?

09:15:05 19 A. I don't recall.

09:15:07 20 Q. Approximately?

09:15:11 21 A. Approximately 250 to 300.

09:15:14 22 Q. And how did you choose an iPod?

09:15:17 23 MR. CARPENTER: Objection. Vague and ambiguous.

09:15:20 24 Go ahead.

09:15:22 25 THE WITNESS: I had friends that had iPods and had

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09:16:26

1 seen advertisements.  
2 Q. BY MR. MITTELSTAEDT: Do you remember the names of  
3 any of the friends in particular?  
4 A. Yes.  
5 Q. Who?  
6 A. Travis Duke, Sean Thompson.  
7 Q. And do you recall anything either of them told you  
8 about their iPods?  
9 A. Just that they liked them.  
10 Q. Did they say what they liked about them?  
11 A. That all their music was in one place and easy to  
12 access.  
13 Q. Anything else?  
14 A. That's it.  
15 Q. Did you shop around for other brands, other types of  
16 digital music players?  
17 A. I briefly looked at one other.  
18 Q. What was the other one that you looked at?  
19 A. I believe it was called an iRiver.  
20 Q. iRiver?  
21 A. I believe so. Not sure.  
22 Q. Where did you look at an iRiver, or whatever it was  
23 called?  
24 A. I was browsing online.  
25 Q. Do you remember what website?

09:17:31 1 A. I thought there were others, but I didn't look into  
09:17:34 2 them.  
09:17:35 3 Q. And why didn't you look into them?  
09:17:36 4 A. Because I had friends that had the iPod and were  
09:17:41 5 satisfied.  
09:17:42 6 Q. Okay. At that time did you think the price that you  
09:17:44 7 paid for the iPod was a fair price?  
09:17:47 8 MR. CARPENTER: Objection. Vague and ambiguous as to  
09:17:49 9 "fair."  
09:17:50 10 THE WITNESS: I thought it was highly priced.  
09:17:53 11 Q. BY MR. MITTELSTAEDT: More than you wanted to pay?  
09:17:55 12 A. More than I wanted to pay.  
09:17:57 13 Q. But why did you buy it anyway?  
09:17:59 14 A. More than I could afford. Because I wanted it. I  
09:18:09 15 had decided I wanted it.  
09:18:10 16 Q. Did I hear you right to say that it was more than you  
09:18:13 17 could afford?  
09:18:14 18 A. Yes.  
09:18:15 19 Q. Where did you get the money?  
09:18:17 20 A. I had to save extra for it.  
09:18:21 21 Q. But at the end of the day, you thought it was  
09:18:24 22 worthwhile paying the price that you paid?  
09:18:26 23 MR. CARPENTER: Objection. That misstates her  
09:18:28 24 testimony.  
09:18:31 25 THE WITNESS: Can you reask the question?

10:10:24 1 A. I have been there. I don't know when.

10:10:27 2 Q. Why did you go there?

10:10:32 3 A. I was looking at an iPod. I don't remember if that's

10:10:40 4 the store I took my broken iPod to or not.

10:10:42 5 Q. And why did you look at iPods when you went to the

10:10:45 6 Fashion Valley store?

10:10:52 7 A. Most likely to replace the other one, the broken one.

10:10:56 8 Q. When did your first iPod break?

10:10:58 9 A. I don't remember when it broke.

10:11:00 10 Q. Was it 2006?

10:11:06 11 A. Yes.

10:11:07 12 Q. Was it first half or second half of that year?

10:11:10 13 A. I don't remember.

10:11:13 14 Q. Do you remember, was it the summer?

10:11:15 15 A. I don't remember.

10:11:17 16 Q. How long was it before you replaced it?

10:11:23 17 A. I really don't remember.

10:11:25 18 Q. Do you remember whether it was a matter of weeks or a

10:11:29 19 matter of months?

10:11:31 20 A. It may have been a month or two maybe.

10:11:36 21 Q. Is that a guess or do you have a recollection of

10:11:39 22 that?

10:11:39 23 A. That's a guess.

10:11:42 24 Q. How did it break?

10:11:45 25 A. I dropped it, and the screen went blank and stopped



10:11:56

1

working.

10:11:57

2

Q. What did you do when that happened?

10:11:58

3

A. I was upset.

10:11:59

4

Q. And after you were upset, what did you do?

10:12:03

5

MR. CARPENTER: Objection to form. Vague and

10:12:15

6

ambiguous.

10:12:15

7

THE WITNESS: I think that's when I took it to an

10:12:17

8

Apple store.

10:12:23

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Q. BY MR. MITTELSTAEDT: How long after you dropped it

10:12:25

10

did you go to the Apple store?

10:12:32

11

A. A few days to a week maybe.

10:12:35

12

Q. And when you got to the Apple store, you think it was

10:12:39

13

the Fashion Valley one; is that correct?

10:12:41

14

A. I don't remember which store it was.

10:12:43

15

Q. Well, if it wasn't the Fashion Valley one, what one

10:12:46

16

was it?

10:12:46

17

A. It would have been the one at the UTC Mall in La

10:12:50

18

Jolla.

10:12:50

19

Q. And that's where you bought the second iPod?

10:12:53

20

A. Correct.

10:12:54

21

Q. So whichever store you went to a few days to a week

10:13:00

22

after you dropped your iPod, what happened when you got to

10:13:06

23

the store?

10:13:08

24

A. I walked up to -- I think it is called the help bar,

10:13:13

25

the help desk and asked if there was anything they could do

10:13:17 1 to fix it, and they told me -- they quoted me a price to  
10:13:22 2 replace the screen or told me I could turn it in and get a  
10:13:27 3 discount on a new iPod.  
10:13:31 4 Q. Did you have any other discussion with anyone at the  
10:13:34 5 Apple store?  
10:13:37 6 A. Not --  
10:13:38 7 Q. At that point?  
10:13:39 8 A. Not that I recall.  
10:13:40 9 Q. Did you make a decision then and there?  
10:13:44 10 A. No.  
10:13:46 11 Q. What happened next?  
10:13:48 12 A. I took it home and thought about it.  
10:13:53 13 Q. And did you eventually come to a conclusion?  
10:13:57 14 A. Yes.  
10:13:57 15 Q. What was your conclusion?  
10:14:01 16 A. To buy another iPod.  
10:14:03 17 Q. And that's when you bought the 40 gigabyte iPod?  
10:14:13 18 A. Yes.  
10:14:16 19 Q. During the time after you dropped the iPod and before  
10:14:24 20 you bought the next one, what did you do to listen to music?  
10:14:26 21 A. CDs.  
10:14:29 22 Q. And you played the CDs on what?  
10:14:29 23 A. In my car. Maybe on my laptop. I don't remember.  
10:14:35 24 Q. Your laptop at home?  
10:14:37 25 A. Uh-huh.

10:15:54 1 history.

10:15:54 2 Q. Approximately when was that?

10:16:07 3 A. Maybe two or three months ago.

10:16:09 4 Q. Is that your best recollection?

10:16:10 5 A. Yes.

10:16:10 6 Q. What was the problem with the song?

10:16:12 7 A. It skipped at certain points in the song or stopped,

10:16:18 8 paused, skipped.

10:16:19 9 Q. Do you remember what song it was?

10:16:27 10 A. I know the artist. I don't remember the name of the

10:16:30 11 song.

10:16:30 12 Q. I'll settle for the artist, then.

10:16:32 13 A. Brian Adams.

10:16:34 14 Q. Did you get a response from Apple?

10:16:36 15 A. No.

10:16:41 16 Q. Do you remember actually reporting the problem?

10:16:43 17 A. I remember pushing "report a problem." I don't

10:16:49 18 remember if I sent it or not.

10:17:19 19 Q. Okay. Other than what you have told us about now, do

10:17:22 20 you remember any communication to or from Apple written or

10:17:25 21 oral, email, electronic, smoke signals, anything else?

10:17:31 22 A. I don't remember.

10:17:33 23 Q. Actually, smoke signals was probably not a good

10:17:36 24 comment, given what you all have been through recently.

10:17:46 25 Okay. You said at the time you bought the first

10:17:49 1 iPod, your plan was to put your CD collection on your iPod;  
10:17:54 2 is that right?  
10:17:55 3 A. That is correct.  
10:17:56 4 Q. How many CDs did you have at that time,  
10:17:59 5 approximately?  
10:17:59 6 A. Approximately maybe 200.  
10:18:07 7 Q. And did you, in fact, put those 200 CDs on your iPod?  
10:18:14 8 A. I put a lot of them on my iPod.  
10:18:16 9 Q. Approximately how many of them did you put on your  
10:18:19 10 iPod?  
10:18:19 11 A. Most of them.  
10:18:21 12 Q. How did you go about doing that?  
10:18:25 13 A. I inserted the CD and pressed "import" and waited for  
10:18:30 14 the songs to download -- upload.  
10:18:32 15 Q. You imported the CD to your laptop?  
10:18:38 16 A. Correct.  
10:18:39 17 Q. And then what program did you use to import?  
10:18:42 18 A. I used iTunes.  
10:18:44 19 Q. Where did you get iTunes?  
10:18:47 20 A. It came with my iPod.  
10:18:49 21 Q. So you loaded the iTunes software application onto  
10:18:53 22 your computer?  
10:18:54 23 A. Yes.  
10:18:54 24 Q. Do you know if your Dell computer had any other  
10:19:00 25 jukebox application?

10:21:54 1 after you bought your first iPod?

10:22:00 2 A. Can you clarify what you're trying to ask. Sorry.

10:22:03 3 Q. You say you bought the iPod to load your CD  
10:22:05 4 collection, right?

10:22:06 5 A. Yes.

10:22:06 6 Q. When did you do that?

10:22:09 7 A. I got my iPod right around the same time that I got  
10:22:12 8 my laptop. So right around that same time.

10:22:17 9 Q. And how long was it after you got your first iPod  
10:22:20 10 that you started loading your CD collection onto your laptop  
10:22:24 11 and then onto your iPod?

10:22:27 12 A. Immediately when I got iTunes, I started uploading my  
10:22:31 13 CDs into iTunes.

10:22:34 14 Q. How long did it take to do that?

10:22:38 15 A. Weeks, long time.

10:22:43 16 Q. Did you do it yourself?

10:22:45 17 A. Yes.

10:22:46 18 Q. And your process was to put one CD at a time into  
10:22:51 19 your laptop, import it into your iTunes library?

10:22:56 20 A. Yes.

10:22:56 21 Q. When that was complete, you put another CD in and you  
10:22:59 22 go through the same process?

10:23:01 23 A. Yes.

10:23:01 24 Q. Did you make any play list at that time?

10:23:07 25 A. I don't remember if I did at that time.

10:23:09 1 Q. Have you ever made any play lists?  
10:23:11 2 A. Yes.  
10:23:12 3 Q. Approximately how many play lists do you have?  
10:23:23 4 A. Approximately 15.  
10:23:25 5 Q. Have you ever made a play list and then deleted it?  
10:23:28 6 A. Yes.  
10:23:28 7 Q. How many play lists all together do you think you've  
10:23:32 8 had?  
10:23:36 9 A. Maybe 25, 30.  
10:23:42 10 Q. When you bought the first iPod, do you remember  
10:23:46 11 reading any of the materials that came with it?  
10:23:48 12 A. I remember browsing through them.  
10:23:54 13 Q. And do you remember anything in particular that you  
10:23:56 14 read during this browsing?  
10:23:59 15 A. No.  
10:24:01 16 Q. Did you learn anything from the materials you read  
10:24:03 17 about how the iPod worked?  
10:24:09 18 A. I learned how to maneuver through the iPod.  
10:24:12 19 Q. Anything else?  
10:24:16 20 A. Not that I recall.  
10:24:21 21 Q. At the time you bought the iPod, did you know that  
10:24:26 22 Apple had an online music store?  
10:24:29 23 A. I don't remember if I knew that or not.  
10:24:38 24 Q. Have you -- when you load it -- when you uploaded  
10:24:43 25 your CDs onto your laptop into the iTunes music library, did

10:26:00 1 makes what format is used to import the CDs?

10:26:04 2 MR. CARPENTER: Objection to form. Maybe you can

10:26:08 3 clarify. You talking about the difference between AAC format

10:26:12 4 or MP3? There's in no way a foundation for that.

10:26:17 5 Q. BY MR. MITTELSTAEDT: Go ahead.

10:26:19 6 A. Can you reask the question?

10:26:21 7 Q. Does it make any difference to you whether you're

10:26:23 8 importing CDs in the AAC or the MP3 format?

10:26:31 9 MR. CARPENTER: Same objection to the extent that you

10:26:33 10 know what an AAC format is.

10:26:37 11 THE WITNESS: I don't know the difference between

10:26:39 12 them, so no.

10:26:40 13 Q. BY MR. MITTELSTAEDT: And for that reason do you have

10:26:42 14 a preference which format is used?

10:26:44 15 A. No.

10:26:47 16 Q. Do you have any information about what difference it

10:26:49 17 makes to use one format versus the other?

10:27:06 18 A. No.

10:27:06 19 Q. When did you first buy a song from Apple's online

10:27:11 20 music store?

10:27:11 21 A. I don't remember when that was.

10:27:13 22 Q. Approximately how long after buying your first iPod?

10:27:23 23 A. I really don't remember when I bought my first song

10:27:26 24 on iTunes.

10:27:27 25 Q. Do you remember whether it was a matter of days,

10:27:30 1 matter of weeks, matter of months, matter of years?

10:27:33 2 A. It was probably months.

10:27:35 3 Q. And what led you to buy -- strike that.

10:27:38 4 Do you remember the first song?

10:27:40 5 A. I do not.

10:27:41 6 Q. What led you to buy it?

10:27:49 7 A. I don't remember.

10:27:51 8 Q. How did you hear about the iTunes music store?

10:28:07 9 A. I don't remember how I heard about it.

10:28:09 10 Q. Can you give us any information on how you decided to

10:28:15 11 go to the iTunes music store when you did that for the

10:28:18 12 purpose of buying a song?

10:28:24 13 A. There was probably a fact that there was an icon for

10:28:29 14 it in my iTunes so I clicked on it.

10:28:31 15 Q. Is that your best recollection?

10:28:33 16 A. That is my best recollection.

10:28:34 17 Q. Do you remember clicking on that icon, the iTunes

10:28:37 18 music store icon, before actually buying your first music?

10:28:43 19 What I'm asking is did you buy that first song the first time

10:28:46 20 you clicked on that, or did you go to the music store and

10:28:50 21 browse and explore and then go back to it sometime later to

10:28:53 22 buy your first song?

10:28:54 23 A. I really don't remember.

10:29:00 24 Q. At the time you bought your first song from Apple,

10:29:02 25 did you know whether there were any other online music stores



10:31:36 1 THE WITNESS: No, no one forced me to buy anything.

10:31:42 2 Q. BY MR. MITTELSTAEDT: You bought your iPod  
10:31:44 3 voluntarily; is that correct?

10:31:45 4 A. Yes.

10:31:46 5 Q. And you bought music from the music store  
10:31:49 6 voluntarily; is that correct?

10:31:49 7 A. Yes.

10:31:53 8 Q. Now, when you bought the music from Apple's music  
10:32:01 9 store -- strike that.

10:32:02 10 Have you ever gone to an online website for another  
10:32:07 11 music store other than Apple's?

10:32:10 12 A. No.

10:32:13 13 Q. Have you ever researched whether there are any online  
10:32:18 14 digital music stores other than Apple's?

10:32:21 15 A. I have heard that there are others.

10:32:26 16 Q. Where did you hear that?

10:32:27 17 A. Advertisements.

10:32:28 18 Q. What other stores have you heard or seen  
10:32:32 19 advertisements for?

10:32:38 20 A. Wal-mart pops into my mind.

10:32:45 21 Q. Do you have any information about how Wal-Mart's  
10:32:48 22 store is different from Apple's?

10:32:50 23 A. No.

10:32:52 24 Q. Is there any reason in particular you haven't gone to  
10:32:55 25 Wal-Mart's store, online store?

10:32:58 1 A. Because iTunes is right there and compatible with my  
10:33:01 2 iPod.  
10:33:02 3 Q. And you're happy with iTunes's music store; is that  
10:33:06 4 right?  
10:33:06 5 A. Yes.  
10:33:12 6 Q. When you buy music from Apple's online music store,  
10:33:16 7 what have you done with it?  
10:33:17 8 A. Listen to it.  
10:33:22 9 Q. Let's take it step by step. First you download it to  
10:33:26 10 your Dell computer; is that right?  
10:33:28 11 A. Into my iTunes library, yes.  
10:33:31 12 Q. Then what did you do with it once it gets into your  
10:33:34 13 iTunes library?  
10:33:40 14 A. I play it.  
10:33:41 15 Q. And how do you play it?  
10:33:43 16 A. On my iPod or through my iTunes.  
10:33:46 17 Q. When you say through your iTunes, you mean on the  
10:33:49 18 speakers connected to your laptop?  
10:33:51 19 A. Yes.  
10:33:51 20 Q. Do you ever make a copy of that music in a CD? In  
10:33:56 21 other words, burn a CD?  
10:33:57 22 A. Yes.  
10:33:58 23 Q. What is -- just so we are on the same page here, what  
10:34:02 24 does burning a CD mean?  
10:34:04 25 A. From my understanding, it means putting files onto a

10:34:08 1 CD to play.

10:34:10 2 Q. And have you burned a CD with most of the -- most, if

10:34:14 3 not all, of the songs that you have bought from Apple?

10:34:19 4 A. No, not all.

10:34:23 5 Q. What percentage?

10:34:30 6 A. Maybe 25 percent, 30 percent.

10:34:36 7 Q. And are you adept at doing that?

10:34:40 8 A. I know how to do it, yes.

10:34:42 9 Q. How long does it take you to burn a CD?

10:34:46 10 A. Maybe ten minutes.

10:34:48 11 Q. Would you walk through the process that you used to

10:34:50 12 burn a CD with music that you've downloaded from Apple's

10:34:55 13 music store?

10:34:56 14 A. I highlighted the songs that I wanted to burn. I

10:35:01 15 believe I right click.

10:35:02 16 Q. You're in the iTunes music library on your computer,

10:35:07 17 right?

10:35:08 18 A. Yes, correct.

10:35:09 19 Q. And then you highlight the songs?

10:35:11 20 A. That I want on the CD. I believe I right click and

10:35:17 21 choose the option "burn to disk." Inserted a blank disk and

10:35:23 22 hit the "burn" button. I think it says "burn."

10:35:33 23 Q. How long does it take you to do that up until the

10:35:36 24 time that you hit the burn button?

10:35:39 25 A. Not long.

10:35:40 1 Q. A minute?

10:35:41 2 A. Depends on how many songs I am looking for.

10:35:43 3 Q. If the songs are right there, you know where they

10:35:48 4 are? Actually, do you sometimes put the songs into a play

10:35:51 5 list first?

10:35:52 6 A. Sometimes.

10:35:52 7 Q. So if you wanted to burn a CD from a play list, how

10:35:55 8 long does it take you up until the time you hit the "burn"

10:36:00 9 button?

10:36:00 10 A. Under a minute.

10:36:03 11 Q. And then from the time you hit the "burn" button

10:36:06 12 until the time that the process is done, that's just how fast

10:36:11 13 your computer is?

10:36:12 14 A. Correct.

10:36:13 15 Q. And you don't have to do anything there with the

10:36:16 16 computer during the time that the computer is burning?

10:36:19 17 A. Correct.

10:36:24 18 Q. Have you also heard the term "rip" or "ripping"?

10:36:28 19 A. I have heard the term.

10:36:30 20 Q. What does it mean to you?

10:36:31 21 A. I don't know what that means.

10:36:33 22 Q. Have you heard it used in the context of importing a

10:36:36 23 CD back into your computer?

10:36:41 24 A. I have heard the term, but I really don't know what

10:36:45 25 it means.

11:20:40

1

Q. And what was it that led you to go see a lawyer?

11:20:45

2

MR. CARPENTER: I think it also assumes facts not in

11:20:50

3

evidence.

11:21:02

4

THE WITNESS: I wanted to stop the conduct of Apple

11:21:07

5

and sue them for the conduct for the class.

11:21:12

6

Q. BY MR. MITTELSTAEDT: What conduct of Apple were you

11:21:14

7

concerned about that?

11:21:15

8

MR. CARPENTER: Objection to form. Vague and

11:21:16

9

ambiguous as to what point you're referring to.

11:21:18

10

Q. BY MR. MITTELSTAEDT: At the point you say you went

11:21:20

11

to look for a lawyer to file a lawsuit?

11:21:30

12

A. Can you repeat the question, please.

11:21:32

13

Q. Where did you hear about the possibility of bringing

11:21:34

14

a lawsuit against Apple? How did that thought first come to

11:21:41

15

your mind?

11:21:43

16

MR. CARPENTER: Objection to form. Which question

11:21:46

17

are you asking?

11:21:52

18

Q. BY MR. MITTELSTAEDT: When did you first hear about

11:21:54

19

the possibility of bringing a lawsuit against Apple?

11:22:05

20

A. I ran into Todd, and we were just discussing -- we

11:22:09

21

were talking -- we were just discussing how his work was

11:22:13

22

going and what was going on. Apple came up.

11:22:19

23

Q. Did he bring up Apple?

11:22:20

24

MR. CARPENTER: That's attorney-client privilege.

11:22:22

25

Q. BY MR. MITTELSTAEDT: Was he your lawyer at that

11:22:26 1 point?

11:22:26 2 A. Yes.

11:22:27 3 Q. When did he become your lawyer?

11:22:29 4 A. Early July 2006.

11:22:31 5 Q. What was the occasion?

11:22:33 6 MR. CARPENTER: Objection. Vague and ambiguous.

11:22:34 7 This might tread in the attorney-client privilege as well.

11:22:38 8 Q. BY MR. MITTELSTAEDT: Where were you when you said

11:22:39 9 that he became your lawyer, physically?

11:22:45 10 A. I was at my workplace.

11:22:50 11 Q. Which workplace?

11:22:51 12 A. Stingaree.

11:22:52 13 Q. What time of day was it?

11:22:54 14 A. It was in the evening.

11:22:55 15 Q. And Mr. Carpenter came in?

11:23:00 16 A. Yes.

11:23:01 17 Q. Have you ever seen him before?

11:23:03 18 A. Yes.

11:23:04 19 Q. When was the first time?

11:23:12 20 A. That I had seen him there?

11:23:14 21 Q. Seen him any place.

11:23:16 22 A. In 2002.

11:23:17 23 Q. And how did you meet him?

11:23:19 24 A. I met him at my workplace.

11:23:20 25 Q. Did he work at your workplace?

11:23:22 1 A. No.

11:23:25 2 Q. What workplace did you meet him at?

11:23:28 3 A. Moondoggies.

11:23:36 4 Q. How did you meet him there?

11:23:37 5 A. I was waiting on him.

11:23:39 6 Q. And how many times did you see him from 2002 until

11:23:45 7 early July 2006?

11:23:48 8 A. I don't know.

11:23:49 9 Q. More than a dozen?

11:23:52 10 A. Yes.

11:23:52 11 Q. More than 50?

11:24:00 12 A. I don't know.

11:24:00 13 Q. Was he your lawyer at any point during that time

11:24:08 14 period from 2002 until early July 2006?

11:24:12 15 A. No.

11:24:12 16 Q. How would you describe your relationship with him

11:24:15 17 during that period?

11:24:15 18 A. We dated briefly in the spring of 2002 until the

11:24:17 19 summer of 2002.

11:24:25 20 Q. And what was your relationship in July 2002?

11:24:30 21 A. We were friends, acquaintances.

11:24:32 22 Q. And how often would you see each other during that

11:24:35 23 time period?

11:24:36 24 A. Not very often.

11:24:47 25 Q. Did you ever see if Mr. Carpenter had an iPod?

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1 A. No, I don't remember.

2 Q. And in early July 2006 when you saw him at your place  
3 of business -- who brought up the issue of an iPod?

4 MR. CARPENTER: I am going to object. I think this  
5 is also attorney-client privilege.

6 MR. MITTELSTAEDT: Are you instructing her not to  
7 answer?

8 MR. CARPENTER: Yes.

9 Q. BY MR. MITTELSTAEDT: When you first saw  
10 Mr. Carpenter in early July 2006 at your place of business,  
11 did you ask him to be your lawyer before you said anything to  
12 him?

13 A. Before I said anything to him?

14 Q. Well, let's do it this way: What was the first thing  
15 you said to Mr. Carpenter when you saw him that evening early  
16 July 2006 when the subject of Apple and iPod came up?

17 MR. CARPENTER: Well, I am going to object again and  
18 insert the attorney-client privilege with respect to the  
19 conversation about the iPod.

20 Q. BY MR. MITTELSTAEDT: Well, when you saw him, were  
21 you waiting on him?

22 A. No.

23 Q. So did you have an appointment for him to meet you at  
24 your place of business?

25 A. No.



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11:27:45

1 Q. Did he come in to eat or drink, as far as you were  
2 concerned?  
3 A. Yes.  
4 Q. And did -- who spoke first?  
5 A. I don't remember.  
6 Q. Do you remember anything about the conversation?  
7 A. Not verbatim, no.  
8 Q. How long did the conversation last?  
9 A. I don't know.  
10 Q. Five minutes?  
11 MR. CARPENTER: Don't speculate.  
12 THE WITNESS: I don't know.  
13 Q. BY MR. MITTELSTAEDT: Do you remember if it was more  
14 or less than five minutes?  
15 A. More.  
16 Q. Was it more or less than 15 minutes?  
17 A. Probably around 15 minutes. I don't know.  
18 Q. And was it in that conversation that you first  
19 learned that you couldn't play -- as you say at least, you  
20 couldn't play any digital music on your iPod other than what  
21 you purchased from Apple?  
22 A. I don't remember.  
23 Q. What do you remember about that conversation? You  
24 say you don't remember it verbatim, but what do you remember?  
25 MR. CARPENTER: We are going to have to object as

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1 attorney-client privilege.  
2 Q. BY MR. MITTELSTAEDT: Go --  
3 MR. CARPENTER: Sorry. To further my objection, I  
4 think it also calls for a legal conclusion as to whether or  
5 when she was actually retained. She might -- we were  
6 retained. I'm sorry.  
7 Q. BY MR. MITTELSTAEDT: Before that evening in early  
8 July 2006, have you ever talked to Mr. Carpenter or any other  
9 lawyer about Apple or the iPod?  
10 A. No.  
11 Q. Before you talked to Mr. Carpenter that evening,  
12 early July 2006, did you have any complaint about the iPod or  
13 the iTunes music store?  
14 A. I don't remember.  
15 Q. After you talked to Mr. Carpenter that evening, did  
16 you have any complaint about the iPod or the iTunes music  
17 store?  
18 A. Yes.  
19 Q. And what was your complaint after that point, after  
20 you talked to him?  
21 A. I don't know.  
22 MR. CARPENTER: Again, I think we are treading close  
23 to the attorney-client privilege here if it is a result of  
24 our conversation.  
25 Q. BY MR. MITTELSTAEDT: So am I right that before you

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13:35:55

1 A. Yes.  
2 Q. Correct?  
3 A. Yes.  
4 Q. Do you have any information on how long it would take  
5 you to do that?  
6 A. No, I don't know how long it would take.  
7 MR. CARPENTER: Objection. It is assuming facts that  
8 it can actually be done, also.  
9 Q. BY MR. MITTELSTAEDT: As of the time that you bought  
10 your second iPod in December 2006, can you tell me  
11 approximately how much money you had invested in music you  
12 had bought from Apple?  
13 A. I don't know.  
14 Q. Was it less than \$25?  
15 A. No.  
16 Q. Okay. If you take a look at the purchase history,  
17 when I add up the purchases up until the end of 2006, I come  
18 up with 22.86. Would you tell me if that appears to be  
19 correct?  
20 MR. CARPENTER: Objection. You want her to add up  
21 each song as we sit here?  
22 Q. BY MR. MITTELSTAEDT: Well, let's just do it  
23 together. You see the first one, the first one is 99 cents?  
24 Yes?  
25 A. Yes.

13:35:55 1 Q. Second one is 99 cents?  
13:35:58 2 A. Yes.  
13:35:59 3 Q. Third one is 9.99?  
13:36:02 4 A. Yes.  
13:36:03 5 Q. Fourth one is 9.90?  
13:36:05 6 A. Yes.  
13:36:05 7 Q. And the fifth one, and this one's dated May of '05,  
13:36:10 8 is 99 cents?  
13:36:12 9 A. Yes.  
13:36:12 10 Q. And then you don't have any other purchases until  
13:36:17 11 2007, correct?  
13:36:19 12 A. Yes.  
13:36:24 13 Q. So the total of the numbers that we have read off is  
13:36:27 14 22.86, approximately?  
13:36:31 15 A. Okay.  
13:36:36 16 Q. Your complaint, if you would look at -- strike that.  
13:36:48 17 Did you ever make any price comparison between an  
13:36:51 18 iPod and what a competing MP3 player would cost?  
13:36:58 19 A. In the very beginning before I purchased my first  
13:37:01 20 one.  
13:37:04 21 Q. And how much difference was there?  
13:37:06 22 A. I don't remember.  
13:37:07 23 Q. More than \$50?  
13:37:10 24 A. I don't remember.  
13:37:14 25 Q. Did it seem like a sizable amount to you, given your

13:51:26 1 and listened to music?

13:51:31 2 A. There might be something else they needed instead.

13:51:37 3 Q. You know you can play music from Apple's online music

13:51:41 4 store without having an iPod, correct?

13:51:44 5 A. I never really thought about it because I have always

13:51:47 6 had the two together.

13:51:48 7 Q. But now that you think about it, you understand that

13:51:51 8 you can play music from iTunes's music store on a computer,

13:51:56 9 right?

13:51:57 10 A. Okay.

13:51:58 11 Q. I mean you know that?

13:51:59 12 A. Okay. Yes.

13:52:00 13 Q. And you also know that you can burn it to a CD and

13:52:03 14 play it any place you can play a CD, correct?

13:52:06 15 A. Yes.

13:52:06 16 Q. And you've known that from the start?

13:52:08 17 A. I have known that you can burn CDs from the iTunes

13:52:12 18 library, yes.

13:52:14 19 Q. Did you ever think there was any rule against burning

13:52:16 20 CDs from music you bought from Apple that was in your

13:52:22 21 iTunes's library?

13:52:24 22 A. Not that I was aware of.

13:52:32 23 Q. Have you ever wanted to do something with your iPod

13:52:35 24 and you didn't know how to do it?

13:52:39 25 A. Yes.

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA            }  
  }     ss.  
COUNTY OF SAN FRANCISCO       }

I, Balinda Dunlap, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 10710 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

1 of the testimony given by the witness. (Fed. R. Civ. P.  
2 30(f)(1)).

3 Before completion of the deposition, review of  
4 the transcript [] was [] was not requested. If  
5 requested, any changes made by the deponent (and  
6 provided to the reporter) during the period allowed, are  
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

NOV 08 2007

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Dated: \_\_\_\_\_

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*Balinda Haren*

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**EXHIBIT 20**



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UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

---000---

STACIE SOMERS, on behalf of herself  
and all others similarly situated,

COPY

Plaintiff,

vs.

No. CV 076507JW

APPLE, INC., a California  
corporation,

Defendants.

\_\_\_\_\_ /

VIDEOTAPED  
DEPOSITION OF STACIE SOMERS

Taken before EARLY K. LANGLEY, RMR

CSR No. 3537

June 17, 2008



One Kaiser Plaza, Suite 505  
Oakland, California 94612  
Ph 510-451-1580  
Fax 510-451-3797  
www.aikenwelch.com

DEPOSITION OF STACIE SOMERS

1  
2  
3 BE IT REMEMBERED, that pursuant to Notice, and on  
4 the 17th day of June 2008, commencing at the hour of  
5 10:36 a.m., in the offices of Jones Day, 555 California  
6 Street, 26th Floor, San Francisco, California, before  
7 me, EARLY K. LANGLEY, a Certified Shorthand Reporter,  
8 personally appeared STACIE SOMERS, produced as a  
9 witness in said action, and being by me first duly  
10 sworn, was thereupon examined as a witness in said  
11 cause.

12  
13 ---o0o---

14  
15 CRAIG L. BRISKIN, Mehri & Skalet PLLC, 1250  
16 Connecticut Avenue NW Suite 300, Washington, DC 20036,  
17 appeared on behalf of the Plaintiffs.

18  
19 PAULA ROACH, Coughlin, Stoia, Gellar, Rudman &  
20 Robbins LLP, 655 West Broadway, Suite 1900, San Diego,  
21 California 92101, appeared on behalf of the Plaintiffs.

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ROBERT A. MITTELSTAEDT, MICHAEL T. SCOTT, Jones Day, 555 California Street, 26th Floor, San Francisco, California 94104, appeared on behalf of the Defendant Apple, Inc.

ALSO PRESENT: Nick Silva, Videographer, Aiken & Welch.

1 --o0o--

2 P R O C E E D I N G S

3 --o0o--

4 THE VIDEOGRAPHER: Stand by.

5 On the record. My name is Nick Silva. 10:36

6 I'm a qualified video technician and a notary  
7 public for the County of Alameda, State of  
8 California.

9 I'm videotaping on behalf of Aiken & Welch  
10 Court Reporters at One Kaiser Plaza, 5th Floor in 10:36  
11 Oakland, California 94162.

12 Today's date is June 17th, 2008, and the  
13 present time is 10:36. The location of this  
14 deposition is the Jones Day Law Firm at 555  
15 California Street, 26th floor, San Francisco, 10:36  
16 California 94104.

17 Today's witness is Stacie Somers in the  
18 case of Stacie Somers on behalf of herself and All  
19 Others Similarly Situated vs. Apple, Incorporated,  
20 a California corporation, Case No. CV 076507 JW, 10:36  
21 filed in the United States District Court Northern  
22 District of California San Jose Division.

23 This deposition was noticed by Robert A.  
24 Mittelstaedt for the defendant.

25 Would the counsel for the parties please 10:37

1 identify themselves and for whom they are  
2 appearing.

3 MR. BRISKIN: Craig Briskin of the firm  
4 Mehri & Skalet representing plaintiff.

5 MS. ROACH: Paula Roach from Coughlin 10:37  
6 Stoia, and I represent Tucker, plaintiff.

7 MR. MITTELSTAEDT: And Bob Mittelstaedt  
8 and Michael Scott from Jones Day for the  
9 Defendant.

10 THE VIDEOGRAPHER: Would the counsel 10:37  
11 please state any stipulation or statement they  
12 would like on the record at this time.

13 MR. MITTELSTAEDT: There are none.

14 THE VIDEOGRAPHER: The court reporter may  
15 now swear the witness. 10:37

16 STACIE SOMERS,  
17 sworn as a witness,  
18 testified as follows:

19 EXAMINATION BY MR. MITTELSTAEDT:

20 Q. Would you state your name and address, 10:37  
21 please?

22 A. Sure. Stacie Somers. And I live at 1551  
23 Felspar Street, San Diego, California 92109.

24 Q. Have you been through this process before  
25 with the deposition? 10:38

1 Q. When did you graduate?

2 A. In 1997.

3 Q. And then what did you do?

4 A. And then I worked for a year on Capitol  
5 Hill for a senator and then I went to law school. 10:39

6 Q. At Harvard?

7 A. At Harvard, yes.

8 Q. And when did you graduate from Harvard Law  
9 School?

10 A. 2001. 10:39

11 Q. What did you do then job-wise?

12 A. I clerked for a judge in the Southern  
13 District of California.

14 Q. Who was that?

15 A. Marilyn Huff. 10:39

16 Q. And then what?

17 A. And then I went to work at the law firm  
18 formerly known as Milberg Weiss.

19 Q. In San Diego?

20 A. In San Diego, yes. 10:39

21 Q. When did you start with Milberg Weiss?

22 A. I started in the fall of 2002, as I  
23 recall.

24 Q. Did you have a summer clerk position when  
25 you were at Harvard law with any firm? 10:40

1 A. Yes.

2 Q. At what firm?

3 A. Heller Ehrman here in San Francisco.

4 Q. And that would have been the summer of  
5 2003? No?

10:40

6 A. No. 2000. I'm trying to work backwards.

7 Q. Yeah. If you graduated in 2001 --

8 A. 2001. Yeah. So I believe summer of 2000.

9 Q. And how long did you work at Milberg  
10 Weiss?

10:40

11 A. Approximately a year and a half.

12 Q. What kind of work did you do during that  
13 period?

14 A. Plaintiff's class action work. I worked  
15 primarily in our consumer group doing false  
16 advertising cases. I also worked on one  
17 anti-trust lawsuit.

10:40

18 Q. Which case was that?

19 A. I don't remember the name. It was a case  
20 about gas stations. And I believe it was in  
21 Florida, but I don't remember. It wasn't a big  
22 case.

10:41

23 Q. Were you counsel of record in that case?

24 A. My name might have been on some pleadings.  
25 But I don't remember.

10:41

1 A. Yes.

2 Q. Why did you buy it at Target?

3 A. I go to Target a lot, and it was  
4 accessible.

5 Q. Meaning you were in the Target store? 11:03

6 A. Yeah.

7 Q. What do you mean by "accessible"?

8 A. Yes. That I go to Target a lot, and it  
9 was easy.

10 Q. How did you decide to buy that iPod? 11:04

11 A. I looked at the prices for the iPods and  
12 that seemed comparison-wise what I would get the  
13 most for how much I was spending.

14 Q. How much did you spend?

15 A. I don't remember now. 11:04

16 Q. Did you think it was a discount off what  
17 you would get if you had bought it directly from  
18 Apple?

19 A. No. All the prices were the same.

20 Q. Did Target have any MP3 players other than 11:04  
21 iPods?

22 A. I don't know.

23 Q. Did you look at any competing MP3 players?

24 A. No.

25 Q. Why did you only look at Apple iPods? 11:04



1 seemed like a turbulent time that -- that -- I  
2 didn't know what was going to be around later, and  
3 more people I knew had iPods and I knew where you  
4 could get the music online for -- for iPods.

5 Q. So, one reason you bought the iPod is you 11:16  
6 knew you could get music online from Apple's music  
7 store?

8 A. Yes.

9 Q. But your main purpose in buying the iPod  
10 at that time was to put your CD collection onto 11:16  
11 it?

12 A. Yes.

13 Q. Thinking back on it at the time, did you  
14 give some thought to whether there were  
15 competitors who made MP3 players, or were you just 11:16  
16 happy with Apple based on what you had heard from  
17 your friends and so you didn't give it any  
18 thought?

19 MR. BRISKIN: Objection. Misrepresents  
20 testimony. 11:16

21 THE WITNESS: I -- I gave it some thought  
22 in that I probably thought, oh, there are other  
23 music players. I didn't really know how music  
24 players worked. And I wasn't sure how hard or  
25 easy it was going to be. I already knew someone 11:17

1 who had an iPod who could help me.

2 So I guess I did give some thought to  
3 competitors.

4 BY MR. MITTELSTAEDT:

5 Q. So you thought at the time that there were 11:17  
6 probably other choices you had, other competitors;  
7 right?

8 A. I thought --

9 MR. BRISKIN: Objection. Misstates prior  
10 testimony. 11:17

11 THE WITNESS: I thought -- can you repeat  
12 that?

13 BY MR. MITTELSTAEDT:

14 Q. Yeah. At the time you bought this -- the  
15 iPod you kept for yourself, did you believe that 11:17  
16 there were other competitive choices if you had  
17 wanted to go with a brand other than Apple?

18 A. I believed that there were other music,  
19 that someone had made other music players. I  
20 didn't know who specifically. 11:18

21 Q. And when you were at Target, you didn't  
22 look around to see if there were other MP3  
23 players; is that right?

24 A. I had already decided to purchase the  
25 iPod. 11:18

1 Q. Part of the reason you decided to purchase  
2 the iPod was you were -- you had heard from Heidi  
3 that it was easy to use?

4 A. Yes.

5 Q. When you bought the first iPod for Heidi, 11:18  
6 did you feel that you had been forced or coerced  
7 in any way to buy that for her?

8 MR. BRISKIN: Objection. To the extent it  
9 calls for a legal conclusion.

10 THE WITNESS: I do not believe anyone 11:18  
11 forced or coerced me to buy the iPod for Heidi.

12 BY MR. MITTELSTAEDT:

13 Q. When you bought the iPod that you kept for  
14 yourself, did you feel that you were forced or  
15 coerced in any way to buy that iPod? 11:19

16 MR. BRISKIN: Same objection.

17 THE WITNESS: I chose to purchase the  
18 iPod.

19 BY MR. MITTELSTAEDT:

20 Q. Did you feel that you were forced or 11:19  
21 coerced to do it in any way?

22 MR. BRISKIN: Same objection.

23 THE WITNESS: No.

24 BY MR. MITTELSTAEDT:

25 Q. If you had wanted to, you could have 11:19

1 A. Thank you. I'm not great with dates.

2 Q. What model did you buy her?

3 A. The same as mine.

4 Q. And how did you decide to buy that for  
5 your mother?

11:24

6 A. I knew what it was. I could show her how  
7 to use it. It was more memory, but it wasn't the  
8 highest-priced one.

9 Q. Did you have any understanding of what  
10 sources of music she was going to use?

11:24

11 A. My understanding was that she would upload  
12 the music from a very large CD collection that she  
13 has.

14 Q. Did you feel forced or coerced in any way  
15 to buy the iPod for your mother?

11:24

16 MR. BRISKIN: Objection to the extent it  
17 calls for a legal conclusion.

18 THE WITNESS: I don't -- no. I don't  
19 believe anyone forced me or coerced me to purchase  
20 it.

11:25

21 BY MR. MITTELSTAEDT:

22 Q. How do you like your iPod?

23 A. I like it.

24 Q. What do you like about it?

25 A. I like that I can have a large amount of 11:25

1 way.

2 Q. When -- after you bought the iPod for  
3 yourself when you downloaded your CD collection or  
4 you started to download a CD, can you describe to  
5 us how you physically did that? 11:33

6 A. Yes. You put the CD in the CD drive. If  
7 iTunes isn't already opened -- I can't remember if  
8 it's different on a PC, on a Mac. So this  
9 recollection is from a Mac. That brings iTunes up  
10 if it's not already opened. 11:34

11 Q. When you put the CD into the computer?

12 A. Yes. And it asks you, "Do you want to" --  
13 I don't know exactly what the question is,  
14 basically, "Do you want to import this CD into  
15 iTunes?" And I click "yes," and then it starts 11:34  
16 doing something.

17 Q. Do you find that easy to do?

18 A. Yes.

19 Q. Are you familiar with the term "ripping"?

20 A. Yes. 11:34

21 Q. And ripping describes the process that  
22 you're talking about?

23 A. I believe so.

24 Q. Can you estimate for us approximately how  
25 many times you've ripped a CD to your computer? 11:34

1 A. Approximately 50 times.

2 Q. How long does the process take?

3 A. It depends on the quality of the CD.

4 There have been times when it's been a few minutes  
5 and other times when it's been half an hour. 11:35

6 Q. And with the half-hour ones, you're  
7 talking about how long it takes the computer to  
8 actually do it?

9 A. Yes.

10 Q. How long does it take you to do what you 11:35  
11 have to do to rip the CD?

12 A. Less than -- less than a minute. I'm  
13 sorry.

14 Q. From -- as of November of 2005, what  
15 computers were you using for music? 11:35

16 A. I used -- I had a Dell desktop computer  
17 and a McIntosh laptop later.

18 Q. When did you get the Mac laptop?

19 A. My recollection is that I got that in  
20 around March of 2007. 11:36

21 Q. Where did you buy that?

22 A. From Apple online.

23 Q. Why did you buy that?

24 A. I'm really interested in photography, and  
25 I've become more interested, and I've taken 11:36

1 Q. Okay? And now you want to burn a CD of  
2 the music on that playlist. What do you do?

3 A. I -- I think you -- there's something in  
4 the menu, drop-down menu somewhere that allows you  
5 to do that, is my best recollection. 11:45

6 Q. Do you put a blank CD in the CD drive?

7 A. Yes. That would be helpful.

8 Q. And then there's a little icon that  
9 says "burn"?

10 A. Could be. I don't know. 11:45

11 Q. How many times have you burned a CD?

12 A. In my life?

13 Q. Yes.

14 A. I'd say from -- from a computer?

15 Q. Let's start there. 11:46

16 A. I guess -- I don't know all these...

17 I would say no more than 50 times but I  
18 think that's a high guess.

19 Q. Would your best recollection be that you  
20 burned a CD 40 or 50 times, something in that 11:46  
21 range?

22 A. I was thinking more close to 30, but I  
23 really don't know.

24 Q. And what would be the -- I know I've asked  
25 you this before but let's just make sure. What 11:46

1 Q. So if you really wanted to get a competing  
2 MP3 player rather than an iPod, at some point, it  
3 would be worth your time to burn and rip the music  
4 to a CD; right?

5 A. I --

13:37

6 MR. BRISKIN: Objection. Compound.

7 BY MR. MITTELSTAEDT:

8 Q. At some point.

9 A. At some point, if I -- it would probably  
10 depend on how badly I wanted the other thing. I  
11 mean certain variables, but I'm sure there would  
12 be a point at some point. I'm not sure when that  
13 is.

13:38

14 Q. So it would depend in part on whether  
15 there was a competing MP3 player that you wanted  
16 more than an iPod. That would be one thing it  
17 would depend on?

13:38

18 MR. BRISKIN: Objection. Misstates prior  
19 testimony.

20 THE WITNESS: It would depend on a number  
21 of things, one being what player I wanted to play  
22 on, yes.

13:38

23 BY MR. MITTELSTAEDT:

24 Q. And how much you wanted -- how much you  
25 preferred the other player over the iPod?

13:38



1 A. That would be one part of the equation.

2 Q. And another part of the equation would be  
3 how long it would take to transfer this music;  
4 correct?

5 A. That would be another part of the  
6 equation, probably, yes.

13:39

7 Q. And what I wanted to do is just focus in  
8 on that part of the equation.

9 A. Okay.

10 Q. And if you could burn and rip all of this 13:39  
11 music that you bought from Apple in, say, 30  
12 minutes, would you then go ahead and feel free to  
13 buy the competing MP3 player rather than an iPod?

14 A. I don't know.

15 Q. Let's say it only took 12 minutes to burn 13:39  
16 all of this.

17 A. I don't know, because I don't think that I  
18 can isolate the time from the other parts of what  
19 my decision would be.

20 Q. Is there a competing MP3 player that you 13:39  
21 would prefer over the iPod if today you could  
22 transfer this music in ten minutes?

23 A. I don't know.

24 Q. And that's because you haven't shopped  
25 around for other i- -- for competitors to iPods; 13:40

1 Q. Can you estimate that, you know, for every  
2 time you bought music you probably went to the  
3 site five times without buying music, something  
4 like that?

5 A. My estimate would be more like for every 14:02  
6 time I bought I went on once or twice. There were  
7 times I would look for podcasts more, I guess,  
8 than music necessarily.

[ 9 Q. The majority of the files you downloaded  
10 from Apple were podcasts, right? 14:02

11 A. I think so.

12 Q. Do you have any of information about  
13 whether those podcasts will play on competing MP3  
14 players?

15 A. I have no idea. 14:02

16 Q. So, another reason that if something  
17 happens to your iPod you might get a replacement  
18 iPod rather than a competing MP3 player is because  
19 of all the podcasts you have in your library; is  
20 that right?

21 A. I don't know. I hadn't thought about that  
22 really.

23 Q. But that's one of the factors you would  
24 have to take into account is the ease of  
25 transferring the podcasts? 14:03

1 STATE OF CALIFORNIA )  
 2 ) ss.  
 3 COUNTY OF ALAMEDA )  
 4  
 5

6 I, EARLY LANGLEY, a Shorthand Reporter, State  
 7 of California, do hereby certify:

8 That STACIE SOMERS, in the foregoing deposition  
 9 named, was present and by me sworn as a witness in the  
 10 above-entitled action at the time and place therein  
 11 specified;

12 That said deposition was taken before me at  
 13 said time and place, and was taken down in shorthand by  
 14 me, a Certified Shorthand Reporter of the State of  
 15 California, and was thereafter transcribed into  
 16 typewriting, and that the foregoing transcript  
 17 constitutes a full, true and correct report of said  
 18 deposition and of the proceedings that took place;

19 IN WITNESS WHEREOF, I have hereunder subscribed my hand  
 20 this 6th day of July 2008.

21  
 22   
 23 EARLY LANGLEY, CSR NO. 5793  
 24 State of California  
 25