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STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STACIE SOMERS, on Behalf of)
Herself and All Others)
Similarly Situated,)
)
Plaintiff,)
)
-vs-)
)
APPLE, INC., a California)
Corporation,)
)
Defendant.)
)

Case No.: CV 07 6507
HRL

DEPOSITION of GARY L. FRENCH, Ph.D.,
taken on behalf of Defendants at 555
California Street, 26th Floor, San
Francisco, California, on Friday, April
3, 2009, commencing at 10:09 a.m.
before LINDA VACCAREZZA, CRP, RPR, CLR,
CSR NO. 10201

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GARY L. FRENCH,

having been duly sworn, by the Certified
Shorthand Reporter, was examined and testified as
follows:

EXAMINATION

BY MR. MITTELSTAEDT:

Q Okay. If you'd state your full name for
the record, please.

A Gary Leslie French.

Q As I read your report, your opinion is
that there are two approaches for demonstrating
common proof of impact on the indirect
purchasers: One is to show impact on the direct
purchasers, and then show that they passed on
some or all of the overcharge to indirect
purchasers. And the other is to estimate the
overcharge directly at the retail level.

Do I have that right?

A Yes.

Q In this case, have you actually
undertaken either of those approaches?

A No. Not at the class certification
stage, no.

Q In any other case, have you ever
actually done either approach, as opposed to just

02:27 1 purposely to extend that market power, or to maintain
02:27 2 it, it's not necessarily illegal, is my understanding.

02:27 3 Q Do you have any understanding of why Apple
02:27 4 used DRM?

02:27 5 A Yeah. Everybody uses the DRM.

02:27 6 Q And any understanding of why?

02:27 7 A Yeah. They want to prevent piracy.

02:27 8 Q And is it your understanding that the record
02:27 9 labels, the people who own the music, require the
02:27 10 lawful on-line storage to use DRM, at least at the
02:27 11 start, up until recently?

02:27 12 A Well, it's my understanding that it came
02:27 13 about because, originally, people were doing it
02:27 14 without DRM and people avoided paying for the music.
02:27 15 And the record labels, rightfully, didn't like their
02:27 16 copyrighted products being given away. And so,
02:27 17 therefore, they would have wanted, anyway, the seller
02:27 18 -- those sellers shut down the free ones, and any
02:27 19 legitimate ones, that is people who pay a price and
02:28 20 pay them a royalty, to somehow protect their
02:28 21 intellectual property rights. And I think DRMs came
02:28 22 into play to do that.

02:28 23 Q And do you think that concern on the part of
02:28 24 the record labels is a legitimate business concern?

02:28 25 A Sure.

02:28 1 Q Do you have any problem with the labels
02:28 2 requiring the music stores to use DRM to prevent
02:28 3 piracy?

02:28 4 A I don't know that they do, but I'm sure they
02:28 5 are happy about it and would want them to.

02:28 6 Q Legitimately?

02:28 7 A Yeah.

02:28 8 Q Do you agree that the I-Tunes Music Store was
02:28 9 a technological advance at the time it was launched?

02:28 10 A Unless I'm mistaken, I think it was the first
02:28 11 one of its kind. So, yes, it was, if I'm correct that
02:28 12 it was the very first one.

02:28 13 Now, if there was one that pre-dated it but
02:28 14 just for some reason wasn't successful, maybe not.
02:29 15 But I thought it was the first one.

02:29 16 Q Have you made any study of what DRM
02:29 17 competitors used, either at that time or shortly after
02:29 18 that?

02:29 19 A What DRM competitors?

02:29 20 Q No. What DRM was used by other music stores,
02:29 21 competing music stores?

02:29 22 A I don't know if I remember all the technical
02:29 23 names. But there are other -- there are other DRM
02:29 24 software, other than FairPlay, that people use. In
02:29 25 fact, FairPlay is proprietary to Apple, as I

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA

SS.

COUNTY OF SONOMA

I, LINDA VACCAREZZA, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 10201 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.)

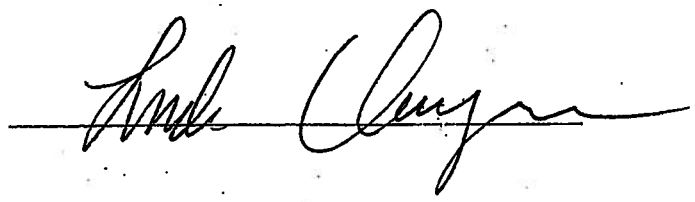
I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

/ / /

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 [XX] 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 Dated: 04/06/09,

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