

# EXHIBIT A

## Walter, Derek

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**From:** Walter, Derek  
**Sent:** Thursday, July 14, 2011 7:05 PM  
**To:** Bu, Jane  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Motion to compel Apple iOS apps financial data and motion for leave to shorten response time

Jane:

There is no basis for a shortened briefing schedule on Elan's proposed motion to compel.

As an initial matter, it is clear that there is no urgency associated with Elan's request for discovery related to iOS Apps, which are not accused in this case and undisputedly do not carry out the accused functionality. Indeed, although this action has been pending for over two years, it was not until April 12, 2011 that Elan first propounded discovery requests related to iOS Apps. After Apple initially declined to provide discovery into this topic on May 12, 2011, Elan waited until June 10, 2011 to follow up on the issue in any way. After this, it was not until June 22, 2011 that Elan articulated for the first time a theory as to why it believed discovery into iOS Apps might be relevant. Thus, after years of delay, Elan decided to pursue discovery into iOS Apps only within the last few months, wasting weeks of additional time in the process. Given this delay, there is no basis for Elan to ask both Apple and the Court to process your proposed motion to compel on an expedited basis.

The only possible basis you identify for a shortened briefing schedule is the August 12 fact discovery cutoff. In identifying this basis, you appear to assume that any motion to compel must be heard prior to the fact discovery cutoff. However, Local Rule 37-3 permits Elan to file a fully noticed motion to compel on a normal 35 day briefing schedule seven days after the fact discovery cutoff. There is no requirement that your proposed motion to compel be heard prior to the completion of the fact discovery cutoff. Moreover, having your motion heard after the fact discovery cutoff will in no way prejudice Elan's other discovery efforts. The issue of iOS Apps ostensibly relates only to one aspect of Elan's damages case; it is unrelated to the other discovery issues Elan is pursuing. To the extent this issue requires deposition testimony, it will involve different witnesses than for the other issues Elan is pursuing. Thus, putting aside Elan's delay in seeking discovery related to iOS Apps, there simply is no genuine need for a shortened briefing schedule here, and no possibility of meaningful efficiency gains that would otherwise justify a compressed briefing schedule.

Finally, below you state that you "do not see any prejudice for Apple for this shortened schedule." However, lack of prejudice to an opposing party does not justify shortening time on an otherwise standard motion to compel. More importantly, the inequitable briefing schedule you propose plainly imposes a substantial prejudice on Apple. Indeed, your schedule reduces Apple's time for opposition to seven days, yet allows Elan six days for a reply. Thus, Elan proposes to reduce Apple's time for opposition by seven days, yet reduce Elan's time for a reply by just one day. We do not view this as a good faith effort to propose an acceptable shortened briefing schedule.

In short, your proposal for a shortened briefing schedule on your motion to compel is unreasonable on multiple levels and without basis. Apple will oppose any motion to shorten time.

Thanks,

Derek

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**From:** Bu, Jane [mailto:Jane.Bu@alston.com]  
**Sent:** Thursday, July 14, 2011 5:05 PM  
**To:** Walter, Derek

**Cc:** Elan Apple Team; Apple Elan WGM Service

**Subject:** Motion to compel Apple iOS apps financial data and motion for leave to shorten response time

Derek:

As discussed yesterday, Elan will be filing a motion to compel Apple's iOS App financial data. However, we have just confirmed with Judge Grewal's clerk that the judge will be unavailable from Tuesday, July 19 to Friday, July 22 and Tuesday, August 9 to Thursday, August 11. Given the fact-discovery cutoff is on August 12th and Judge Grewal's unavailability, we will file the motion to compel tomorrow and will also file a motion to shorten hearing schedule at the same time. We will propose that Apple's opposition to be filed on July 22rd (Friday), Elan's Reply to be filed on July 28th (Thursday) and request that the hearing be scheduled on **August 2nd (Tuesday)**. Given that we have discussed this issue for weeks, we do not see any prejudice for Apple for this shortened schedule. Please let us know whether Apple will oppose Elan's motion for shortened hearing time for its motion to compel tomorrow.

Thanks,

Jane

*Jane H. Bu*

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