

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>ADOBE SYSTEMS, INC. <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case: 1:10-cv-01629 Assigned to: Walton, Reggie B. Assign. Date: 10/7/2010 Description: Antitrust Filed: 9/24/2010</p>
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**UNITED STATES' MOTION AND SUPPORTING MEMORANDUM TO ENTER
FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA” or “Tunney Act”), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (attached as Exhibit A) may be entered at this time without further hearing if the Court determines that entry is in the public interest.¹ The Defendants have stipulated to entry of the proposed Final Judgment without further notice to any party or other proceedings. No party or member of the public has requested a hearing. The Competitive Impact Statement (“CIS”), filed by the United States on September 24, 2010, explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance (attached as Exhibit B) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting periods have expired.

¹ The proposed Final Judgment attached to this Motion is the same as the one originally filed on September 24, 2010.

I. BACKGROUND

On September 24, 2010, the United States filed the Complaint in this matter, alleging that the Defendants entered into five bilateral no cold call agreements, which were per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which is designed to eliminate the anticompetitive effects of the agreements, and a CIS. The proposed Final Judgment is designed to preserve competition in the market for high tech workers by mandating certain conduct remedies. First, the proposed Final Judgment prevents the Defendants from entering into similar agreements in the future. Second, the proposed Final Judgment supplements this restraint on the Defendants with obligations to educate executives about the proposed Final Judgment, as well as annually report the company's compliance with the proposed Final Judgment to the United States.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS in this Court on September 24, 2010; published the proposed Final Judgment and CIS in the *Federal Register* on October 1, 2010, *see* 75 Fed. Reg. 60,820 (2010); and published a summary of the terms of the proposed Final Judgment in *The Washington Post* for seven days from October 2, 2010 through October 8, 2010. The 60-day period for public

comments ended on December 7, 2010, and no comments were received. The Certificate of Compliance filed with this Motion as Exhibit B recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS filed on September 24, 2010, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, have had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS, the proposed Final Judgment is within the range of settlements consistent with the public interest and the United States therefore requests that this Court enter the proposed Final Judgment.

IV. CONCLUSION

For the reasons set forth in this Motion and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment attached hereto be entered as soon as possible.

Dated: January 5, 2011

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/ Ryan Struve

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CERTIFICATE OF SERVICE

I, Ryan Struve, hereby certify that on January 5, 2011, I caused a copy of this Motion and the accompanying exhibits to be served on Defendants Adobe Systems, Inc., Apple, Inc., Google, Inc., Intel Corporation, Intuit, Inc., and Pixar by filing the Motion and exhibits through CM/ECF and by mailing the documents via email to the duly authorized legal representatives of the Defendants, as follows:

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