

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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 BRIAN JOHNSTON and NILE CHARLES, :
 :
 Plaintiffs, :
 v. :
 APPLE INC. and OMNISCIENT INVESTIGATION :
 CORPORATION, :
 :
 Defendants. :

1:11-cv-03321-JSR

**DECLARATION OF
THOMAS M. CRISPI**

**DECLARATION OF THOMAS M. CRISPI IN SUPPORT OF MOTION TO DISMISS
THE AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 12(B)(6) OR FOR JUDGMENT PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 12(D)**

I, Thomas M. Crispi, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to practice before the United States District Court for the Southern District of New York. I am a Partner with the law firm of Schiff Hardin LLP, attorneys for defendant. I make this Declaration in support of Apple Inc.’s Motion to Dismiss the Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) or for Judgment Pursuant to Federal Rule of Civil Procedure 12(d) (the “Motion to Dismiss the Amended Complaint”).
2. On February 10, 2011, Plaintiffs Brian Johnston and Nile Charles filed a Verified Complaint (the “Original Complaint”), Index No. 101706/11, in the Supreme Court for the State of New York, County of New York. The sole defendant named in the Original Complaint was Apple Inc.
3. Apple Inc. removed this action to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§ 1331, 1332.

4. Pursuant to the scheduling Order set forth by this Court, Apple Inc. timely filed its Motion for Judgment Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Rule 12(D) (the "June 2, 2011 Motion") on June 2, 2011.
5. On June 8, 2011, Plaintiffs amended the Complaint (the "Amended Complaint") to add defendant Omniscient Investigation Corporation. Plaintiffs aver that the Amended Complaint contains no material change to the nature or substance of the allegations.
6. In the absence of any such material change, Apple Inc. hereby renews the arguments set forth in its June 2, 2011 Motion with the instant Motion to Dismiss the Amended Complaint.
7. Plaintiffs and Apple Inc. have agreed to proceed pursuant to the original briefing schedule set forth by this Court. Thus, Plaintiffs' answering papers, if any, are due on June 15, 2011, and Apple Inc.'s reply papers, if any, are due on June 22, 2011.
8. In support of its Motion to Dismiss the Amended Complaint, Apple Inc. submits a true and correct copy of Plaintiffs' June 8, 2011 Amended Complaint, attached hereto as Exhibit C.

Executed on June 10, 2011
New York, New York



Thomas M. Crispi

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