

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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BRIAN JOHNSTON and NILE CHARLES,

Plaintiffs,

-against-

APPLE INC. & OMNISCIENT INVESTIGATION CORP.,

Defendants.

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**11-CV-3321 (JSR)**

**DECLARATION OF  
COUNSEL IN  
OPPOSITION TO  
DEFENDANT  
OMNISCIENT'S  
MOTION TO DISMISS**

**WILLIAM K. PHILLIPS, ESQ.**, declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am an attorney duly admitted to practice in the Courts of the State of New York, and in the United States District Court for the Southern District of New York. I represent the plaintiffs in the above-captioned action. As such, I am fully familiar with the facts and circumstances of this action, the basis of my knowledge being the files maintained by my office.
2. I submit this Declaration in Opposition to Defendant Omniscient's Motion to Dismiss and for such other and further relief as this Court deems just and proper.
3. A copy of Plaintiffs' Second Amended Complaint is attached hereto as Exhibit "A."
4. No prior application for the relief herein requested has been made to this Court.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter an Order:

- (i) Denying Defendant Omniscient's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; and
- (ii) For such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
August 18, 2011

**DEREK T. SMITH LAW GROUP, P.C.**  
*Attorneys for Plaintiff*

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