

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

J.T.COLBY & COMPANY, INC., D/B/A  
BRICK TOWER PRESS, J. BOYLSTON &  
COMPANY, PUBLISHERS LLC AND  
IPICTUREBOOKS LLC,

Plaintiffs,

-against-

APPLE INC.

Defendant.

Civil Case No.: 11-civ-4060 (DLC)

**ATTORNEY DECLARATION**

Partha P. Chatteraj, hereby declares pursuant to 28 U.S.C. § 1746 that:

1. I am a member in good standing of the Bar of this Court and New York State and am a member of the law firm Allegaert Berger & Vogel LLP, co-counsel for Plaintiffs in the above referenced matter.

2. Attached hereto are full documents and, pursuant to Rule 5.2 of the ECF Rules & Instructions for the United States District Court for the Southern District of New York, April 4, 2011 Edition, relevant excerpts of more voluminous documents. The full versions of all excerpted documents have either been produced in full in this litigation, made available to opposing counsel for inspection, or are publically available. Full versions of any excerpted documents will be made available to the Court upon request.

3. Attached hereto as Exhibit 1 is a true and correct copy of pages 1 and 320 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

4. Attached hereto as Exhibit 2 is a true and correct copy of the report submitted by Plaintiffs' expert, Dr. Susan Schwartz McDonald, on September 17, 2012.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Sur-rebuttal and Supplemental Report submitted by Plaintiffs' Expert Dr. Susan Schwartz McDonald, on December 6, 2012.

6. Attached hereto as Exhibit 4 is a true and correct copy of pages 1, 191, and 203-206 of the transcript of the deposition of Mike Shatzkin in this matter, taken on December 4, 2012.

7. Attached hereto as Exhibit 5 is a true and correct copy of pages 1 and 171-176 of the transcript of the deposition of Mike Shatzkin in this matter, taken on December 4, 2012.

8. Attached hereto as Exhibit 6 is a true and correct copy of pages 1 and 25-26 of the transcript of the deposition of Mike Shatzkin in this matter, taken on December 4, 2012.

9. Attached hereto as Exhibit 7 is a true and correct copy of pages 1 and 90-91 of the transcript of the deposition of Mike Shatzkin in this matter, taken on December 4, 2012.

10. Attached hereto as Exhibit 8 is a true and correct copy of pages 1 and 189 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

11. Attached hereto as Exhibit 9 is a true and correct copy of pages 1 and 128-133 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

12. Attached hereto as Exhibit 10 is a true and correct copy of pages 1 and 30 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

13. Attached hereto as Exhibit 11 is a true and correct copy of Plaintiffs' Responses and Objections to Defendant Apple Inc.'s Second Set of Interrogatories, dated July 16, 2012.

14. Attached hereto as Exhibit 12 is a true and correct copy of pages 1 and 124-138 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

15. Attached hereto as Exhibit 13 is a true and correct copy of a letter from David A. Shaiman to Bonnie L. Jarrett, dated August 3, 2012.

16. Attached hereto as Exhibit 14 is a true and correct copy of an Email from Partha P. Chatteraj to Bonnie L. Jarrett, et al., sent at 6:23 PM on August 20, 2012.

17. Attached hereto as Exhibit 15 is a true and correct copy of pages 1, 238, 239, 241, and 242 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

18. Attached hereto as Exhibit 16 is a true and correct copy of pages 1 and 239-240 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

19. Attached hereto as Exhibit 17 is a true and correct copy of pages 1 and 276-278 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

20. Attached hereto as Exhibit 18 is a true and correct copy of pages 1 and 261-264 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

21. Attached hereto as Exhibit 19 is a true and correct copy of pages 1 and 257 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

22. Attached hereto as Exhibit 20 is a true and correct copy of pages 1, 300, and 301 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

23. Attached hereto as Exhibit 21 are true and correct copies of six consumer advertisements provided by Plaintiffs to Defendant in Plaintiffs' Supplemental Response to Interrogatory No. 11 on September 11, 2012 as well as previously produced.

24. Attached hereto as Exhibit 22 is a true and correct copy of a letter from Bonnie L. Jarrett to David A. Shaiman, dated August 9, 2012.

25. Attached hereto as Exhibit 23 is a true and correct copy of pages 1 and 271-273 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

26. Attached hereto as Exhibit 24 is true and correct of an article by Matt Brady, titled “Preiss’ iBooks Launches GN Line”, and published on [www.Newsarama.com](http://www.Newsarama.com) on November 15, 2002. This article was provided by Plaintiffs to Defendant in Plaintiffs’ Supplemental Response to Interrogatory No. 11 on September 11, 2012 as well as previously produced.

27. Attached hereto as Exhibit 25 is a true and correct copy of a Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 & 9 filed January 17, 2012 for Registration No. 2,470,147.

28. Attached hereto as Exhibit 26 is a true and correct copy of the Answer and Affirmative Defenses of Defendant Apple Inc. (without exhibits), filed on May 25, 2012.

29. Attached hereto as Exhibit 27 is a true and correct copy of pages 1, 76, and 77 of the transcript of the deposition of Dr. Richard S. Goldhor in this matter, taken on January 31, 2012.

30. Attached hereto as Exhibit 28 is a true and correct copy of pages 1, 40, 41, and 81 of the transcript of the deposition of Dr. Richard S. Goldhor in this matter, taken on January 31, 2012.

31. Attached hereto as Exhibit 29 is a true and correct copy of pages 1 and 78-80 of the transcript of the deposition of Dr. Richard S. Goldhor in this matter, taken on January 31, 2012.

32. Attached hereto as Exhibit 30 is a true and correct copy of pages 1 and 147 of the transcript of the deposition of Robert Scherer in this matter, taken November 16, 2012.

33. Attached hereto as Exhibit 31 is a true and correct copy of a printout of the website displayed at <http://www.apple.com/itunes/what-is/#store> on January 17, 2013.

34. Attached hereto as Exhibit 32 is a true and correct copy of pages 1, 262, and 263 of the transcript of the deposition of Dr. Jacob Jacoby in this matter, taken on December 6, 2012.

35. Attached hereto as Exhibit 33 is a true and correct copy of pages 1 and 281 of the transcript of the deposition of Susan Schwartz McDonald in this matter, taken on December 12, 2012.

36. Attached hereto as Exhibit 34 is a true and correct copy of pages 1, 108, 109, 110, 130, 131, and 170 of the transcript of the deposition of Hal Borden in this matter, taken on October 2, 2012.

37. Attached hereto as Exhibit 35 is a true and correct copy of pages 1, 132, and 136-139 of the transcript of the deposition of Philip G. Hampton, II in this matter, taken on November 29, 2012.

38. Attached hereto as Exhibit 36 is a true and correct copy of pages 1 and 360-361 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

39. Attached hereto as Exhibit 37 is a true and correct copy of two photographs taken of the spines of Imperial Earth by Arthur C. Clark and Redemolished by Alfred Bester, two of Plaintiffs' iBooks imprint books.

40. Attached hereto as Exhibit 38 is a true and correct copy of pages 1 and 251-253 of the transcript of the deposition of John T. Colby in this matter, taken July 20, 2012.

41. Attached hereto as Exhibit 39 is a true and correct copy of pages 1 and 253-255 of the transcript of the deposition of John T. Colby in this matter, taken July 20, 2012.

42. Attached hereto as Exhibit 40 is a true and correct copy of pages 1 and 294 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

43. Attached hereto as Exhibit 41 is a true and correct copy of pages 1 and 189 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

44. Attached hereto as Exhibit 42 is a true and correct copy of pages 1 and 185 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

45. Attached hereto as Exhibit 43 is a true and correct copy of pages 1 and 266 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

46. Attached hereto as Exhibit 44 is a true and correct copy of pages 1, 269-270, and 297 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

47. Attached hereto as Exhibit 45 is true and correct of a document previously produced by Plaintiffs as Defendant in Plaintiffs' Supplemental Response to Interrogatory No. 11 on September 11, 2012.

48. Attached hereto as Exhibit 46 is a true and correct copy of pages 1, 79, and 80 of the transcript of the deposition of Mike Shatzkin in this matter, taken on December 4, 2012.

49. Attached hereto as Exhibit 47 is a true and correct copy of pages 1 and 26-29 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

50. Attached hereto as Exhibit 48 is a true and correct copy of pages 1 and 40-43 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

51. Attached hereto as Exhibit 49 is a true and correct copy of pages 1 and 48-49 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

52. Attached hereto as Exhibit 50 is a true and correct copy of pages 1 and 85-87 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

53. Attached hereto as Exhibit 51 is a true and correct copy of pages 1 and 92 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

54. Attached hereto as Exhibit 52 is a true and correct copy of pages 1 and 99 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012

55. Attached hereto as Exhibit 53 is a true and correct copy of pages 1 and 194 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

56. Attached hereto as Exhibit 54 is a true and correct copy of pages 1 and 23-24 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

57. Attached hereto as Exhibit 55 is a true and correct copy of pages 1 and 43-55 of the transcript of the 30(b)(6) deposition of John T. Colby in this matter, taken July 18, 2012.

58. Attached hereto as Exhibit 56 is a true and correct copy of a letter from John Colby to Lisa Barelli, dated May 11, 2007, attaching the Bill of Sale, dated December 13, 2006, signed by Kenneth P. Silverman as Chapter 7 Trustee of the jointly administered debtors Byron Preiss Visual Publications, Inc., and Ibooks, Inc. and the Amended Terms and Conditions relating to Purchase and sale of the Assets of Byron Preiss Visual and Ibooks, dated November 29, 2006. Exhibit 56 was produced by Plaintiffs in this litigation and bears Bates number COLBYHD0233074.

59. Attached hereto as Exhibit 57 is a true and correct copy of pages 1, 262, and 263 from the transcript of the deposition of John T. Colby in this matter, taken on July 20, 2012.

60. Attached hereto as Exhibit 58 is a true and correct copy of a Certificate of Assumed name awarded to J. Boylston & Company, Publishers LLC and dated December 12, 2006 indicating that they were using the assumed name "ibooks".

61. Attached hereto as Exhibit 59 is a true and correct copy of an email sent by Thomas La Perle to Glenn Gundersen on January 29, 2010 at 6:44 PM forwarding an email from John T. Colby to Steven Dowling that same day at 2:26 PM.

62. Attached hereto as Exhibit 60 is a true and correct copy of the Intent to Use Application filed by Family Systems Ltd. (“FS”) on October 8, 1996 with the United States Patent and Trademark Office (the “PTO”) for the mark “IBOOK” in connection with “computer hardware and software used to create interactive, user modifiable electronic books” in International Class 9. Exhibit 60 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0000035-42.

63. Attached hereto as Exhibit 61 is a true and correct copy of Trademark Registration No. 2,446,634 (the “634 Registration”) as published by the PTO on April 24, 2001. Exhibit 61 was produced by Defendant in this litigation and bears Bates number APPLE-IBOOKS0000006.

64. Attached hereto as Exhibit 62 is a true and correct copy of U.S. Patent No. 7,447,748.

65. Attached hereto as Exhibit 63 is a true and correct copy of U.S. Patent No, 7,571, 212, awarded August 4, 2009 to Reynolds and Mark J. Conway.

66. Attached hereto as Exhibit 64 is a true and correct copy of pages 1 and 20 from the transcript of the deposition of Richard S. Goldhor, taken in this matter on January 31, 2012.

67. Attached hereto as Exhibit 65 is a true and correct copy of pages 1, 113, and 114 of Exhibit 5 from the deposition of Richard S. Goldhor, taken in this matter on January 31, 2012. The excerpt at pages 113-114 is a press release, dated March 12, 2002, titled *Family Systems launches the ibook® Family of Software Products for a Better Way of Working Together*.

68. Attached hereto as Exhibit 66 is a true and correct copy of an email from Brian Reynolds (“Reynolds”) to Ross Panko, sent at 4:01 PM on October 1, 2008. Exhibit 66 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0020321-22.



69. Attached hereto as Exhibit 67 is a true and correct copy of pages 1, 108, and 109 from the transcript of the deposition of Thomas La Perle in this matter, taken on September 19, 2012.

70. Attached hereto as Exhibit 68 is a true and correct copy of an email conversation between Reynolds, Brewster Taylor (“Taylor”), and Anthony Lupo (“Lupo”) which took place from January 13 through January 23, 2010. Exhibit 68 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0022057-69.

71. Attached hereto as Exhibit 69 is a true and correct copy of an email from Lupo to Reynolds, et al., sent at 11:14 PM on January 25, 2010. Exhibit 69 was produced by Defendant in this litigation and bears Bates number APPLE-IBOOKS0023658.

72. Attached hereto as Exhibit 70 is a true and correct copy of pages 1, 117, 118, 119, and 120 of Exhibit 5 from the deposition of Richard S. Goldhor, taken in this matter on January 31, 2012. The excerpt at pages 117-118 is a press release, dated August 21, 2001, titled, *Family Systems and Tong McCandless Group Sign Business Development Agreement: Silicon Valley Consultants to Provide Marketing and Sales Services for International Web-Based Collaboration Tools Developer*. The excerpt at pages 119-120 is a press release titled dated June 4, 2001, *Family Systems Offers Radiant Communications Hosting Services for ibooks®*

73. Attached hereto as Exhibit 71 is a true and correct copy of pages 1 and 153 of the transcript of the deposition of Glenn A. Gundersen in this matter, taken on October 3, 2012.

74. Attached hereto as Exhibit 72 is a true and correct copy of the Trademark and Domain Name Assignment Agreement made between Apple and FS and dated as of January 26, 2010 along with an internal invoice from Apple. Exhibit 72 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0033421-32.

75. Attached hereto as Exhibit 73 is a true and correct copy of an email conversation between Reynolds, Taylor, Lupo, and Grace Applefeld which took place between January 27 and February 5, 2010. Exhibit 73 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0023912-15.

76. Attached hereto as Exhibit 74 is a true and correct copy of pages 1, 125, and 126 from the transcript of the deposition of Thomas La Perle in this matter, taken on September 19, 2012.

77. Attached hereto as Exhibit 75 is a true and correct copy of the page displayed when one types in the following URLs: www.ibook.com; www.ibook.net; www.ibook.org; www.i-book.com; www.i-book.net; www.i-book.org. The actual page attached hereto was reached by typing in the URL www.ibook.com.

78. Attached hereto as Exhibit 76 is a true and correct copy of an Amendment to Allege Use pursuant to 15 U.S.C. § 1051(c) filed by Apple on March 13, 2012. Exhibit 76 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0000185, APPLE-IBOOKS0000205-231.

79. Attached hereto as Exhibit 77 is a true and correct copy of an email from Bonnie L. Jarrett to Thomas Morrison, sent at 2:23 PM on March 14, 2012.

80. Attached hereto as Exhibit 78 is a true and correct copy of a press release, dated June 7, 2010 and titled, *Apple Presents iPhone 4*. Exhibit 78 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0021100-03.

81. Attached hereto as Exhibit 79 is a true and correct copy of pages 1 and 110 of the transcript of the deposition of Steve Gedikian in this matter, taken on September 27, 2012.

82. Attached hereto as Exhibit 80 is a true and correct copy of pages 1 and 106-109 of the transcript of the deposition of Steve Gedikian in this matter, taken on September 27, 2012.

83. Attached hereto as Exhibit 81 is a true and correct copy of pages 1 and 114-115 of the transcript of the deposition of Steve Gedikian in this matter, taken on September 27, 2012.

84. Attached hereto as Exhibit 82 is a true and correct copy of pages 1 and 221 of the transcript of the deposition of Steve Gedikian in this matter, taken on September 27, 2012.

85. Attached hereto as Exhibit 83 is a true and correct copy of pages 1 and 219-220 of the transcript of the deposition of Steve Gedikian in this matter, taken on September 27, 2012.

86. Attached hereto as Exhibit 84 is a true and correct copy of pages 1, 110, and 111 of the transcript of the deposition of Steve Gedikian in this matter, taken September 27, 2012.

87. Attached hereto as Exhibit 85 is a true and correct copy of the iBooks Software License Agreement currently available through Apple via their website at <http://images.apple.com/legal/sla/docs/iBooks.pdf>.

88. Attached hereto as Exhibit 86 is a true and correct copy of pages 1 and 45 of the transcript of the deposition of Grace Kvamme in this matter, taken on September 25, 2012.

89. Attached hereto as Exhibit 87 is a true and correct copy of pages 1, 30, and 204 of the transcript of the deposition of Steve Gedikian in this matter, taken on September 27, 2012.

90. Attached hereto as Exhibit 88 is a true and correct copy of pages 1, 246, 164, and 168 of the transcript of the deposition of Thomas La Perle in this matter, taken on September 19, 2012.

91. Attached hereto as Exhibit 89 is a true and correct copy of pages 1, 72, and 73 of the transcript of the deposition of Lisa Widup in this matter, taken on September 21, 2012.

92. Attached hereto as Exhibit 90 is a true and correct copy of pages 1 and 60 of the transcript of the deposition of Linda Taylor in this matter, taken October 9, 2012.

93. Attached hereto as Exhibit 91 is a true and correct copy of pages 1, 61, and 62 of the transcript of the deposition of Grace Kvamme in this matter, taken on September 25, 2012.

94. Attached hereto as Exhibit 92 is a true and correct copy of pages 1, 140, and 141 of the transcript of the deposition of Hal E. Borden in this matter, taken October 2, 2012.

95. Attached hereto as Exhibit 93 is a true and correct copy of pages 1, 144, and 145 of the transcript of Glenn A. Gundersen in this matter, taken on October 3, 2012.

96. Attached hereto as Exhibit 94 is a true and correct copy of pages 1 and 330-332 of the transcript of Glenn A. Gundersen in this matter, taken on October 3, 2012.

97. Attached hereto as Exhibit 95 is a true and correct copy of pages 1, 59, and 60 of the transcript of the deposition of Thomas La Perle in this matter, taken on September 19, 2012.

98. Attached hereto as Exhibit 96 is a true and correct copy of Defendant's Updated Privilege Log, produced to Plaintiffs on September 21, 2012.

99. Attached hereto as Exhibit 97 is a true and correct copy of pages 1 and 209-212 of the transcript of the deposition of Hal E. Borden in this matter, taken October 2, 2012.

100. Attached hereto as Exhibit 98 is a true and correct copy of pages 1 and 350-351 of the transcript of Glenn A. Gundersen in this matter, taken on October 3, 2012.

101. Attached hereto as Exhibit 99 is a true and correct copy of pages 1 and 343 of the transcript of Glenn A. Gundersen in this matter, taken on October 3, 2012.

102. Attached hereto as Exhibit 100 is a true and correct copy of pages 1 and 347 of the transcript of Glenn A. Gundersen in this matter, taken on October 3, 2012.

103. Attached hereto as Exhibit 101 is a true and correct copy of the report of Plaintiffs' Expert, Dr. Susan Schwartz McDonald, served on September 17, 2012.

104. Attached hereto as Exhibit 102 is a true and correct copy of the Sur-Rebuttal and Supplemental Report of Plaintiffs' Expert, Dr. Susan Schwartz McDonald, served on December 6, 2012.

105. Attached hereto as Exhibit 103 is a true and correct copy of the Expert Report of Mike Shatzkin, served in this matter on October 26, 2012.

106. Attached hereto as Exhibit 104 is a true and correct copy of the Expert Report of Plaintiffs' Expert Robert T. Scherer, served in this matter on September 17, 2012.

107. Attached hereto as Exhibit 105 is a true and correct copy of the Rebuttal Report of Robert T. Scherer, served in this matter on October 26, 2012.

108. Attached hereto as Exhibit 106 is a true and correct copy of the Rebuttal Report of Plaintiffs' Expert Dr. Jacob Jacoby, served in this matter on October 26, 2012.

109. Attached hereto as Exhibit 107 is a true and correct copy of an email from Serena Kim to Grace Kvamme, et al., sent on October 11, 2011 at 12:47 PM. Exhibit 107 was produced by Defendant in this litigation and bears Bates number APPLE-IBOOKS0017702-03.

110. Attached hereto as Exhibit 108 is a true and correct copy of a document entitled "iBooks Survey Results." This document was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0024447-503.

111. Attached hereto as Exhibit 109 is a true and correct copy of an email from Tom Neumayr to Randi Wolfson, sent on September 11, 2010 at 2:10 PM. Exhibit 109 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0029529-30.

112. Attached hereto as Exhibit 110 is a true and correct copy of pages 1, 90, 91, and 96 of the transcript of the deposition of Grace Kvamme in this matter, taken on September 25, 2012.

113. Attached hereto as Exhibit 111 is a true and correct copy of an email from Jennifer Robbins to Jacob Bronstein, et al., sent on March 1, 2012 at 10:24 PM. Exhibit 111 was produced by Defendant in this litigation and bears Bates numbers APPLE-IBOOKS0019480-82.

114. Attached hereto as Exhibit 112 is a true and correct copy of the front and back of a Gift Card, sold by Apple Inc. for use in purchasing books through Apple's iBookstore.

115. Attached hereto as Exhibit 113 is a true and correct copy of Front Cover, Copyright Page, and pages 211-213 of iPad for Dummies, 4<sup>th</sup> Edition by Edward C. Baig and Bob "Dr. Mac" LeVitus.

116. Attached hereto as Exhibit 114 is a true and correct copy of the Front Cover, Copyright Page, and page 129 of iPad: The Missing Manual by J.D. Biersdorf.

117. Attached hereto as Exhibit 115 is a true and correct copy of a Publishers Weekly article dated December 14, 2006, and titled "J. Boylston Buys Preiss Assets."

118. Attached hereto as Exhibit 116 is a true and correct copy of pages 1 and 96 of the transcript of the deposition of Richard Freese in this matter, taken on September 25, 2012.

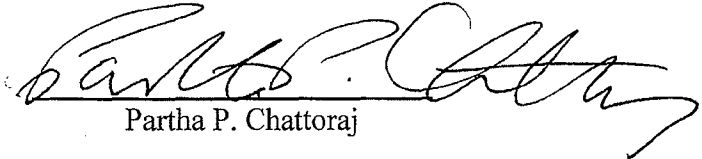
119. Attached hereto as Exhibit 117 is a true and correct copy of a press release issued by J. Boylston & Company, Publishers on December 13, 2006.

120. Attached hereto as Exhibit 118 is a true and correct copy of an email from Reynolds to Lupo, et al., sent at 5:13 AM on January 24, 2010. Exhibit 118 was produced by Defendant in this litigation and bears Bates number APPLE-IBOOKS0023745.

121. Attached hereto as Exhibit 119 is a true and correct copy of pages 1 and 117-119 of the transcript of the deposition of Anthony Lupo in this matter, taken on September 26, 2012.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: New York, New York  
January 25, 2013



Partha P. Chattoraj