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APPLE INC.

**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.

Case No. 11-CIV-4060 (DLC)

ECF Case

**DECLARATION OF DR. STEPHEN M. NOWLIS IN OPPOSITION TO
PLAINTIFFS' MOTION TO EXCLUDE THE TESTIMONY,
INCLUDING AFFIDAVITS, DECLARATIONS, AND REPORTS, OF
(1) DEFENDANT'S EXPERT WITNESS E. DEBORAH JAY AND
(2) DEFENDANT'S REBUTTAL EXPERT STEPHEN M. NOWLIS**

I, Stephen M. Nowlis, declare as follows:

1. I am the August A. Busch Jr. Distinguished Professor of Marketing in the Olin School of Business at Washington University in St. Louis. I hold a Ph.D. in Marketing and a Master's degree in Business Administration from the University of California at Berkeley, Haas School of Business.

2. I am an expert in survey design and methodology. I review surveys on a nearly daily basis and have conducted and analyzed thousands of surveys for both litigation and non-litigation purposes.

3. As part of my Ph.D. studies, I took numerous advanced courses in statistical analysis and survey design.

4. I also taught a course in Research Methodology to Ph.D. students at Washington State University.

5. I am the Associate Editor for the *Journal of Marketing* and the *Journal of Marketing Research*. In my role as Associate Editor, I routinely review surveys conducted by others to determine whether or not the surveys have been conducted properly. In doing so, I apply the same principles of survey methodology as are used to analyze litigation surveys.

6. In the litigation context, I have been retained as an expert at least 50 times. Many of those cases involved survey design.

7. I estimate that I have conducted approximately seven to nine surveys for litigation, about half of which were likelihood of confusion surveys.

8. I also have prepared approximately 30 rebuttal reports, the majority of which involved rebutting litigation surveys.

9. My testimony and expert reports have been relied upon by numerous courts including the District of New Jersey, the Southern District of California, the District of Minnesota, and the Western District of Wisconsin. In fact, as recently as December 20, 2012, Magistrate Judge Stephen L. Crocker of the Western District of Wisconsin relied upon one of my litigation surveys to deny class certification to the plaintiffs in *Boulet v. National Presto Industries, Inc.*, No. 11 Civ. 840.

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

Executed this 25th day of January, 2013 in St. Louis, MO.

A handwritten signature in black ink, appearing to read 'S. Nowlis', written over a horizontal line.

Stephen M. Nowlis