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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

ECF Case

**DECLARATION OF BONNIE L.
JARRETT IN SUPPORT OF APPLE
INC.'S OPPOSITION TO MOTION TO
WITHDRAW AS COUNSEL OF
RECORD FOR PLAINTIFFS**

I, Bonnie L. Jarrett, hereby declare as follows:

1. I am an associate at the law firm Kirkland & Ellis LLP, and am one of the attorneys representing the Defendant, Apple Inc. ("Apple"), in this matter. I submit this declaration in support of Apple's Opposition to Motion to Withdraw as Counsel of Record for Plaintiffs, filed contemporaneously herewith. The following facts are within my personal knowledge.

2. I reviewed the hard copy documents Plaintiffs produced on March 7, 2012. That production included 74 hard copy documents consisting primarily of (1) media reports and press releases related to Byron Preiss, the founder of certain publishing companies allegedly acquired by Mr. Colby in 2006; (2) documents that purport to show that "ibooks" books are available for

sale; and (3) advanced Google search results that appear to have been run in 2011 for the terms “ibooks” and either “publishers,” “publisher” or “publishing” — none of which such results include a link to Plaintiffs’ website.

3. Plaintiffs’ March 7th production did not include any *bona fide* business records, including, *inter alia*, documents related to (1) actual sales of books bearing the “ibooks” imprint; (2) advertisements for “ibooks” books, if any; (3) the brick and mortar channels through which “ibooks” books are sold, if any; (4) the target market for “ibooks” books; (5) samples of Plaintiffs’ and their predecessors’ products; (6) U.S. Patent & Trademark Office (“PTO”) records related to Plaintiffs’ predecessor’s abandoned trademark application for IBOOKS; and (7) Mr. Colby’s acquisition of the “ibooks” business.

4. On March 20, 2012, I participated in a meet and confer call with Dale Cendali, the lead counsel on this matter, and counsel for Plaintiffs.

5. During the March 20th call, Plaintiffs’ counsel refused to agree to a schedule for the exchange of expert witness reports, purportedly because they did not want to bind successor counsel.

6. During the March 20th call, Ms. Cendali and I also sought confirmation that the deposition of John Colby would take place on March 27, 2012, as set forth in Apple’s March 7, 2012 deposition notice. Plaintiffs’ counsel did not seem to realize that Mr. Colby’s deposition had been noticed, and responded by cancelling the deposition.

7. Plaintiffs’ counsel did not raise any concerns regarding Apple’s discovery responses, insisting that they were unwilling to address any substantive issues at that time.

8. On the morning of March 28, 2012, I left a voicemail message for Plaintiffs’ counsel, Nicole German, asking for the street address of Plaintiffs’ Shelter Island warehouse.

9. Attached hereto as Exhibit A is a true and correct copy of a letter from Ms. German to Dale Cendali, dated March 22, 2012.

10. Attached hereto as Exhibit B is a true and correct copy of a letter from Ms. Cendali to Thomas Morrison, dated March 26, 2012.

11. Attached hereto as Exhibit C is a true and correct copy of a letter, with cover e-mail, from Mr. Morrison to Ms. Cendali, dated March 28, 2012. As of the date of this declaration, Plaintiffs have not responded to that letter.


12. Attached hereto as Exhibit D is a true and correct copy of a letter from Ms. Cendali to Mr. Morrison, dated March 30, 2012. As of the date of this declaration, Plaintiffs have not responded to that letter.

13. Attached hereto as Exhibit E is a true and correct copy of an e-mail exchange between and among counsel for the parties, dated March 16-19, 2012.

14. Attached hereto as Exhibit F is a true and correct copy of an e-mail exchange between and among counsel for the parties, dated February 28-29, 2012.

15. Attached hereto as Exhibit G is a true and correct copy of an e-mail exchange between me and Ms. German, dated March 21-23, 2012.

Dated: New York, New York
April 4, 2012


Bonnie L. Jarrett