

EXHIBIT B

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March 26, 2012

By E-mail

Thomas C. Morrison
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036

Re: *J.T. Colby & Co., Inc., et al. v. Apple Inc.*, No. 11 CIV 4060

Dear Mr. Morrison:

I am writing regarding the hard drive belonging to John Colby and John T. Colby and Company (the "Hard Drive") that you produced to Apple Inc. ("Apple") on March 23, 2012.

As a preliminary matter, please explain whether the Hard Drive includes electronically stored information ("ESI") of all the Plaintiffs, or only that of Plaintiff John T. Colby & Co. If the Hard Drive does not contain J. Boylston & Co., Publishers LLC and ipicturebooks LLC's ESI, please produce such ESI immediately.

It appears that the Hard Drive contains 950 GB of data. Based on our prior experiences, we believe that it may cost approximately \$19,000 for an electronic discovery vendor to process the Hard Drive and run search terms.

As you know, "the presumption is that the responding party must bear the expense of complying with discovery requests." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 358 (1978); *see also Quinby v. WestLB AG*, 245 F.R.D. 94, 101 (S.D.N.Y. 2006); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 283 (S.D.N.Y. 2003). The costs of complying with discovery requests may be shifted to the requesting party "only upon motion of the responding party to a discovery request, and 'for good cause shown.'" *Zubulake*, 216 F.R.D. at 283. Plaintiffs have made no such motion, nor is there good cause for cost-shifting in this case.

Specifically, cost-shifting is only appropriate when ESI is inaccessible. *See Fed. R. Civ. P. 26(b)(2)(B)*; *see also Zubulake*, 216 F.R.D. at 291 (noting that if UBS's ESI had "always been accessible, there is no question that UBS would have had to produce the data at its own cost"). In their responses to Apple's requests for production, Plaintiffs never asserted that the requests

KIRKLAND & ELLIS LLP

Thomas C. Morrison, Esq.
March 26, 2012
Page 2

sought inaccessible ESI. Because the Hard Drive contains accessible ESI, Plaintiffs must bear the costs of producing that ESI.

In addition, Plaintiffs' apparent inability to pay for this litigation is not a reason for requiring Apple to shoulder the costs of producing Plaintiffs' own documents, a cost that Plaintiffs knew they would have to incur in order to prosecute their claims. Even plaintiffs who have been granted *in forma pauperis* status are required to pay the costs of discovery. *See, e.g., Koehl v. Greene*, No. 9:06-CV-0478, 2007 WL 4299992, at *3 (N.D.N.Y. Dec. 6, 2007).

We understand that the Plaintiffs have had some difficulty in retaining an electronic discovery vendor. As the Court instructed on February 27, 2012, Apple will "manage [the] process" of reviewing the Hard Drive. We will invoice you for the costs of that review, which we expect to be at least \$19,000.

* * *

The foregoing is not intended to be a full and complete recitation of Apple's position, and Apple hereby expressly reserves, and does not waive, all of its rights and remedies in connection with the issues discussed herein.

Sincerely,

Dale M. Cendali