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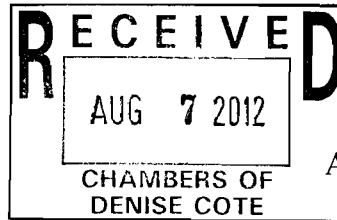
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**MEMO ENDORSED**

August 6, 2012

**BY HAND**

The Honorable Denise L. Cote  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1610  
New York, New York 10007

RECEIVED  
AUG 10 2012  
CLERK OF COURT  
SOUTHERN DISTRICT OF NEW YORK  
e/7/2012

RE: J.T. Colby & Co. et al. v. Apple Inc., No. 11-cv-4060 (DLC) (S.D.N.Y.)

Dear Judge Cote:

This firm is co-counsel to Plaintiffs in the above-referenced action. In order to avoid any misimpression on the Court or prejudice to the parties, I write to explain Plaintiffs' intended course of action in response to the Court's endorsement order entered on Wednesday, August 1, 2012, denying Plaintiffs' request for an informal conference concerning various substantial discovery disputes in this matter, and also denying the substantive relief sought by Plaintiffs.

Although we respectfully disagree with the Court's decision, we understand that the Court has effectively ruled that the parties' two-page submissions, with exhibits, pursuant to Section 2(C) of Your Honor's Individual Practices, provided sufficient grounds for denial of Plaintiffs' requests for both the informal conference and the relief sought therein with respect to these discovery disputes.

Pursuant to Local Civil Rule 37.2, "No motion under Rules 26 through 37 inclusive of the Federal Rules of Civil Procedure shall be heard unless counsel for the moving party has first requested an informal conference with the Court by letter and such request has either been denied or the discovery dispute has not been resolved as a consequence of such a conference." Insofar as the Court has denied Plaintiffs' request for an informal conference, and the discovery disputes between the parties were not resolved "as a consequence of such a conference," as no informal conference took place pursuant to the Court's order, Plaintiffs currently intend to file a fully-briefed motion to compel production and discovery responses by Defendant – the relief sought in my July 27 letter to the Court, including its references to Defendant's objections to Plaintiffs' interrogatories and requests for admission – by Wednesday, August 15, 2012. Although we are hopeful that the Court will revisit its decision based on a fully-briefed motion, we also wish to file this motion for purposes of the appellate record, which we believe is incomplete with the docketing of my necessarily truncated two-page letter and the Court's endorsement order.

The Honorable Denise L. Cote  
United States District Judge  
August 6, 2012  
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I write to confirm that, in filing this motion, Plaintiffs have no intention to contemn the Court's order disposing of these issues. I am also aware of and sensitive to the fact that Your Honor and Defendant's counsel may have vacation plans for August. In order to avoid inconvenience, waste of resources, unnecessary cost or other prejudice to Defendant, Defendant's counsel, or this Court, we understand that the Court may order that Defendant need not file papers in opposition to Plaintiffs' motion unless so directed by the Court. Our notice of motion would simply state that the timing for Defendant's opposition brief shall be on a date to be determined by the Court. We also intend to adhere to the fact discovery cut-off and other deadlines set forth in the scheduling orders governing this action, regardless of the pendency of this motion.

Needless to say, if the Court expressly orders Plaintiffs not to file the contemplated motion papers, we will obey that order, and we understand that we will continue to be governed by the applicable federal rules and statutes, including any opportunity for relief thereunder, if Plaintiffs are so advised.

Respectfully submitted,



Partha P. Chattoraj

cc: All counsel of record (by hand and email)

*In the event plaintiffs believe  
that their requests for this discovery  
information remain valid following  
a ruling on the December 21  
motions, they shall meet and  
confer with defense counsel  
and if there is no consent  
write the Court a letter no  
longer than 2 pages at  
that time. No motion to  
compel should be filed at  
this time. Denise Cote  
August 7, 2012*