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March 6, 2013

BY E-MAIL AND HAND DELIVERY

The Honorable Denise L. Cote
 United States District Judge, S.D.N.Y.
 Daniel P. Moynihan U.S. Courthouse
 New York, NY 10007-1312

DIF
 3/15/13

Re: United States v. Apple, Inc., et al., No. 12-cv-2826 (DLC)

Dear Judge Cote:

The United States respectfully requests that the Court compel Apple to produce for deposition its CEO, Tim Cook. At Apple's request, the United States agreed to defer the dispute over Mr. Cook's deposition until now with the hope that further discovery would allow the parties to reach agreement.¹ While subsequent discovery only has confirmed the need for Mr. Cook's deposition, Apple continues to refuse to make Mr. Cook available. The United States has proposed numerous accommodations in order to minimize any burden on Mr. Cook—including limiting the length of the deposition and providing him a list of examination topics in advance—all of which have been rejected.

Mr. Cook is the only defendant CEO that has not agreed to be deposed in this matter. During the relevant time period, Mr. Cook was a member of Apple's executive team, held the position of Chief Operating Officer, and served as one of the most trusted advisors to former Apple CEO Steve Jobs.²

Both as an executive team member and as a confidant of Mr. Jobs, Mr. Cook is likely to have highly relevant information regarding Apple's decision to enter the e-books market and its related strategies that are at issue in this case. For example, executive team members were updated on developments in Apple's efforts to move the entire e-books industry to an agency

¹ Specifically, the United States agreed to Apple's request not to brief the issue until after the depositions of Apple executives Keith Moerer and Kevin Saul, which occurred late last month.

² Prior to being officially named CEO in August 2011, Mr. Cook was reportedly in charge of the day-to-day running of Apple due to Mr. Jobs's poor health. Mr. Cook also reportedly ran the day-to-day operations of Apple in 2008-09 when Mr. Jobs was also absent because of his health. *Apple boss Steve Jobs takes 'medical leave'*, BBC New Tech., Jan. 17, 2011, <http://www.bbc.co.uk/news/technology-12205173>.

model, and even received boastful e-mails from Mr. Jobs that Apple had “helped stir things up in the publishing world.” See APLEBOOK-03477828 (Exhibit A). Beyond those executive team emails, other discovery documents show that Mr. Cook had private exchanges with Mr. Jobs and Mr. Cue concerning relevant topics such as Apple’s efforts to apply pressure to force Random House to switch to an agency model, see APLEBOOK00435408 (Exhibit B), and Apple’s plans to expand the iBookstore both in the United States and abroad, see APLEBOOK-00013952 (Exhibit C), APLEBOOK-03546302 (Exhibit D). It also is likely that, given their relationship, Mr. Jobs sought Mr. Cook’s counsel on matters relating to e-books and that, as a result, the two engaged in private e-books conversations that cannot be discovered other than through Mr. Cook’s deposition.³

While Apple has not denied that Mr. Cook had private conversations with Mr. Jobs, Apple argues that those conversations are not relevant because Mr. Jobs’s statements themselves are not relevant to this action. In fact, as late as last month, Apple told the Court that Mr. Jobs played no meaningful role in the alleged price fixing at issue in this litigation. See, e.g., Apple’s Feb. 20, 2013 Ltr. to Judge Cote re Walter Isaacson discovery dispute at 1 (“Mr. Jobs himself was not significantly involved in the negotiation of Apple’s agency agreements.”). That assertion, however, is plainly contradicted by Apple’s own documents and testimony, which demonstrate that Mr. Jobs had personal knowledge of and involvement in Apple’s decision to enter into an illicit agreement with publishers to raise e-books prices. See, e.g., Deposition of Kevin Saul (Feb. 22, 2013) at 96-98 (explaining that the decision to enter into the agency model was made by Mr. Jobs) (Exhibit E); APLEBOOK-03345078 (Mr. Jobs directly communicating to an executive of a publisher’s corporate parent that rather than “going with Amazon at \$9.99” the publisher should “[t]hrow in with Apple and see if we can all make a go of this to create a real mainstream ebooks market at \$12.99 and \$14.99.”) (Exhibit F).

In order to alleviate any burden on Mr. Cook, the United States (with the agreement of the States and class plaintiffs) has offered to: (1) limit the deposition to 4 hours; (2) allow Apple to choose the location and start time for the deposition; (3) allow the deposition to take place after the close of fact discovery to accommodate Mr. Cook’s schedule; (4) preview for Apple’s counsel the topics of the deposition and the documents likely to be used as exhibits; and (5) consider other reasonable accommodations.

Respectfully Submitted,

/s/ Lawrence E. Buterman
Lawrence E. Buterman

Copy: All counsel

³ Moreover, Apple recently indicated that it plans to defend its actions in this case in part by providing testimony at trial comparing the creation and operation of the iBookstore with other core Apple businesses, including both Apple’s iTunes store and its App store. While doubting their relevance, the United States believes that Mr. Cook plainly is an appropriate witness with which to explore these Apple defenses.