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May 14, 2013

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

Re: United States v. Apple Inc. 12 Civ. 2826 (DLC), Texas v. Penguin Group (USA) Inc.,
12 Civ. 3394 (DLC)

Dear Judge Cote:

We write on behalf of Apple. After conferring with all third parties whose documents or data are referenced in Apple's pre-trial papers, we have been informed that there are no confidentiality issues with respect to the following documents:

- Joint Pre-Trial Order (Apr. 26, 2013);
- Apple Inc.'s Opposition to Plaintiffs' Pre-Trial Memorandum of Law (May 3, 2013);
- Apple Inc.'s Proposed Conclusions of Law (Apr. 26, 2013);
- Apple Inc.'s Motion in Limine to Exclude Certain Expert Testimony of Professor Richard Gilbert (Apr. 26, 2013);
- Apple Inc.'s Motion in Limine to Exclude the Expert Testimony of Professors Baker and Ashenfelter (Apr. 26, 2013);
- Apple Inc.'s Opposition to Plaintiffs' Motion in Limine to Preclude Dr. Michelle Burtis from Offering at Trial Any Opinion on Competitive Effects (May 3, 2013);
- Apple Inc.'s Opposition to Plaintiffs' Motion in Limine to Preclude Professor Kevin M. Murphy from Offering at Trial Testimony on His Opinions 1 to 3 (May 3, 2013);

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- Apple Inc.'s Reply in Support of its Motion in Limine to Exclude Certain Expert Testimony of Professor Richard Gilbert (May 8, 2013); and
- Apple Inc.'s Reply in Support of its Motion in Limine to Exclude the Testimony of Professors Baker and Ashenfelter (May 8, 2013).

This list, however, does not include Apple's Proposed Findings of Fact or Apple's Pre-Trial Memorandum of Law, because Amazon informed us last night that it was seeking significant redactions from those submissions purportedly to protect its confidential information. Amazon's proposed redactions would cover 26 paragraphs of Apple's Proposed Findings of Fact and six pages of Apple's Pre-Trial Memorandum. Amazon seeks to redact information that should be made public in light of the issues to be tried in this case and the three affidavits Amazon has submitted on behalf of Plaintiffs. It is striking that Amazon did not propose to redact a single sentence of any of Plaintiffs' pre-trial papers.


Amazon's proposed redactions to Apple's papers are attached for the Court's consideration. Apple believes that its entire pre-trial submissions should be made public.

Amazon also informed us last night that its proposed redactions to our pre-trial papers implicated 48 Amazon documents on Apple's exhibit list. Amazon sent us proposed redactions to those 48 documents—which included redactions to approximately 304 pages. We are reviewing these materials to determine which portions, if any, need not be submitted to the Court for review. Amazon did not, however, send us proposed redactions to the approximately 100 additional Amazon documents on Apple's exhibit list that were not cited in our pre-trial papers. We informed Amazon last night that we believe that its failure to do so is inconsistent with the Court's instructions during the May 8 conference call. *See* Tr. at 40:24-41:3 (“Okay. Actually, Mr. Kipling, I think I am going to insist on Monday. It's just 140 documents. You got them identified last week and I know this is of importance to you, but there's a countervailing issue here of importance as well to the public.”); 47:13-21 (“Third parties are providing their redaction requests on the schedule they've identified here which is for the most part Friday, but for Amazon on Monday, identifying those requests to the trial parties. The trial parties will . . . also know whether any of those requests or identifications bleed into the trial memo or the findings of fact . . .”) We therefore respectfully request an Order instructing Amazon to provide us promptly with the remainder of its proposed redactions to our trial exhibits. We expect that Amazon may request a large number of redactions (given its heavy redactions to the first 48 exhibits), which we need to begin reviewing to determine which redactions must be submitted to the Court.

Plaintiffs were able to file their pre-trial papers because Amazon did not propose to redact any portions of those papers. Apple believes that its pre-trial papers should be made public as soon as possible, and also that both sides' pre-trial papers should be made public at the same time. We request permission to file the nine documents listed above, which are unaffected by Amazon's redactions, and await the Court's direction with respect to the filing of Apple's Proposed Findings of Fact and Pre-Trial Memorandum. We are prepared to file those two submissions with or without the Amazon redactions. We also are available for an immediate conference with the Court.

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Apple may file the pre-trial papers as to which there have been no redaction requests. It may file the 2 documents as to which there are redaction requests in redacted form. The Court shall promptly review the requests. *Amara Cox*

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Howard E. Heiss".

Howard E. Heiss

O'MELVENY & MYERS LLP

cc: Michael Kipling, Esq.