



U.S. Department of Justice

Antitrust Division

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May 14, 2013

BY E-MAIL

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

MEMO ENDORSED

Re: United States v. Apple, Inc., et al., No. 12-cv-2826 (DLC)  
States of Texas v. Penguin Group (USA), Inc., No. 12-cv-3394 (DLC)

Dear Judge Cote:

Consistent with our May 13 letter to the Court, after conferring with Defendants and all third parties whose documents or data are referenced in Plaintiffs' pretrial papers, Plaintiffs have been informed that there are no confidentiality issues with respect to the following documents:

- The Joint Pretrial Order, dated April 26, 2013;
- Plaintiffs' Pretrial Memorandum of Law, dated April 26, 2013;
- Plaintiff States' Supplemental Memorandum of Law, dated April 26, 2013;
- Plaintiffs' Proposed Findings of Fact, dated April 26, 2013;
- Plaintiffs' Proposed Conclusions of Law, dated April 26, 2013;
- Plaintiffs' Motion in Limine to Preclude Dr. Kevin Murphy From Offering at Trial Testimony on His Opinions #1-#3, dated April 26, 2013;
- Plaintiffs' Motion in Limine to Preclude Dr. Michelle Burtis From Offering at Trial Any Opinion on Competitive Effects, dated April 26, 2013;<sup>1</sup>
- Plaintiffs' Response to Apple's Pretrial Memorandum of Law, dated May 3, 2013;
- Plaintiff States' Response to Penguin's Memorandum of Law, dated May 3, 2013;

<sup>1</sup> Plaintiffs' Motions in Limine regarding Drs. Murphy and Burtis included as exhibits their respective deposition testimony and expert reports. During the May 8 conference, Your Honor noted that the expert reports were not being submitted into evidence and, therefore, need not be filed with the Clerk of the Court. Accordingly, Plaintiffs do not intend on filing the exhibits to those motions.

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- Plaintiffs' Opposition to Defendants' Motion in Limine to Exclude Certain Anticipated Testimony Regarding the "Appropriateness" of Communications, dated May 3, 2013;
- United States' Opposition to Apple Inc.'s Motion in Limine to Exclude Certain Expert Testimony of Professor Richard Gilbert, dated May 3, 2013;
- Plaintiff States' Response to Apple Inc.'s Motion in Limine to Exclude the Expert Testimony of Professors Baker and Ashenfelter, dated May 3, 2013;
- Plaintiffs' Reply Memorandum in Support of Their Motion in Limine to Preclude Dr. Kevin Murphy From Offering at Trial Testimony on His Opinions #1-#3, dated May 8, 2013; and
- Plaintiffs' Reply Memorandum in Support of Their Motion in Limine to Preclude Dr. Michelle Burtis From Offering at Trial Any Opinion on Competitive Effects, dated May 8, 2013.

Accordingly, Plaintiffs are prepared to immediately file the aforementioned documents on ECF, and respectfully request permission from the Court to do so.

Respectfully Submitted,

/s/ Lawrence E. Buterman  
Lawrence E. Buterman

*Granted.*  
*Denise Cote*  
*May 14, 2013*