

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

_____)	
IN RE ELECTRONIC BOOKS)	
ANTITRUST LITIGATION)	Civil Action No. 11-md-02293
)	(DLC)
)	
_____)	
This document relates to:)	<u>CLASS ACTION</u>
)	
ALL ACTIONS)	
_____)	

**SIMON & SCHUSTER, INC.’S AND SIMON & SCHUSTER DIGITAL SALES, INC.’S
ANSWER TO THE CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendants Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc. (collectively, “S&S”) hereby answer the Consolidated Amended Class Action Complaint (“Complaint”) as follows. Except as specifically admitted, S&S denies the allegations in the Complaint. Unless otherwise noted, all references to a specified paragraph refer to the numbered paragraphs in the Complaint.

1. S&S admits that Amazon’s Kindle is “a handheld digital reader for electronic books,” which was released in November 2007. S&S denies the allegations in paragraph 1 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 1, and on that basis denies them.

2. S&S admits that Amazon set the prices of certain new ebook titles at or below \$9.99 after their release. S&S further admits that it charged Amazon a wholesale price at or above \$9.99 for certain ebook titles. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 2, and on that basis denies them.

3. S&S denies the allegations in paragraph 3 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 3, and on that basis denies them.

4. S&S denies the allegations in paragraph 4 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 4, and on that basis denies them.

5. S&S admits that plaintiffs purport to quote a news article in paragraph 5 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 5, and on that basis denies them.

6. S&S denies the allegations in paragraph 6 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 6, and on that basis denies them.

7. S&S denies the allegations in paragraph 7 to the extent that they relate to S&S, except admits that S&S decided to window the Steven King book "Under the Dome" in the fall of 2009, and then in December 2009 announced a plan to window additional titles. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 7, and on that basis denies them.

8. S&S admits that Apple announced the launch of the iPad in January 2010. S&S denies the allegations in paragraph 8 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 8, and on that basis denies them.

9. S&S denies the allegations in paragraph 9 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 9, and on that basis denies them.

10. S&S denies the allegations in paragraph 10 to the extent that they relate to S&S, except admits that S&S entered into an agency agreement with Apple regarding ebooks in January 2010. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 10, and on that basis denies them.

11. S&S denies the allegations in paragraph 11 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 11, and on that basis denies them.

12. S&S admits that plaintiffs purport to quote a news article in paragraph 12 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 12, and on that basis denies them.

13. S&S denies the allegations in paragraph 13 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 13, and on that basis denies them.

14. S&S admits that Amazon possessed a high share of ebook sales volumes as of January 2010. S&S denies the allegations in paragraph 14 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 14, and on that basis denies them.

15. S&S admits that plaintiffs purport to quote a news article in paragraph 15 and refers to the article for a true and complete statement of its contents. S&S denies the allegations

in paragraph 15 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 15, and on that basis denies them.

16. S&S admits that it entered into an agency agreement for ebooks with Apple and that this agreement was announced along with Apple's announcement of the launch of the iPad. S&S further admits that under the agency model, S&S is the seller of record and sets prices for ebooks. S&S denies the remaining allegations in paragraph 16 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 16, and on that basis denies them.

17. S&S admits that plaintiffs purport to quote statements made by Steve Jobs to Walt Mossberg without citation to any publication or document. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 17, and on that basis denies them.

18. S&S admits that plaintiffs purport to quote excerpts from a book in paragraph 18 and refers to the book for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 18, and on that basis denies them.

19. S&S denies the allegations in paragraph 19 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 19, and on that basis denies them.

20. S&S denies the allegations in paragraph 20 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 20, and on that basis denies them.

21. S&S admits that plaintiffs purport to bring claims and seek damages. S&S otherwise denies the allegations in paragraph 21.

22. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 22, and on that basis denies them.

23. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 23, and on that basis denies them.

24. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 24, and on that basis denies them.

25. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 25, and on that basis denies them.

26. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 26, and on that basis denies them.

27. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 27, and on that basis denies them.

28. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 28, and on that basis denies them.

29. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 29, and

on that basis denies them.

30. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 30, and on that basis denies them.

31. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 31, and on that basis denies them.

32. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 32, and on that basis denies them.

33. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 33, and on that basis denies them.

34. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 34, and on that basis denies them.

35. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 35, and on that basis denies them.

36. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 36, and on that basis denies them.

37. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 37, and on that basis denies them.

38. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 38, and on that basis denies them.

39. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 39, and on that basis denies them.

40. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 40, and on that basis denies them.

41. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 41, and on that basis denies them.

42. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 42, and on that basis denies them.

43. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 43, and on that basis denies them.

44. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 44, and

on that basis denies them.

45. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 45, and on that basis denies them.

46. S&S denies that its conduct caused any injury. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 46, and on that basis denies them.

47. S&S denies the allegations in paragraph 47.

48. S&S admits that Apple is a manufacturer of mobile devices, including the iPad. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 48, and on that basis denies them.

49. S&S admits that Hachette is a publisher. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 49, and on that basis denies them.

50. S&S admits that HarperCollins is a publisher. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 50, and on that basis denies them.

51. S&S admits that MacMillan is a publisher. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 51, and on that basis denies them.

52. S&S admits that Penguin is a publisher. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 52, and on that basis denies them.

53. S&S admits the allegations contained in paragraph 53.

54. S&S avers that paragraph 54 purports to state a legal conclusion, and therefore no response is required.

55. S&S avers that paragraph 55 purports to state a legal conclusion, and therefore no response is required.

56. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 56, and on that basis denies them. S&S avers that to the extent the allegations in paragraph 56 purport to state a legal conclusion, no response is required.

57. S&S admits that it has sold hardcover books for many years, including hardcover books appearing on the New York Times Bestseller list. S&S otherwise denies the allegations in paragraph 57 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 57, and on that basis denies them.

58. S&S admits that printed hardcover books are often sold to the trade at discounts off the list price. S&S otherwise denies the allegations in paragraph 58 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 58, and on that basis denies them.

59. S&S admits that it has used a wholesale distribution model for print books. S&S denies the remaining allegations in paragraph 59 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 59, and on that basis denies them.

60. S&S admits that it has used a wholesale distribution model for print books. S&S denies the remaining allegations in paragraph 60 to the extent that they relate to S&S. S&S lacks

sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 60, and on that basis denies them.

61. S&S admits that ebooks can be read on “dedicated hardware devices known as eReaders,” as well as personal computers, tablets, and some mobile phones, and that ebooks can be purchased through some of these devices or through the Internet. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 61, and on that basis denies them.

62. S&S denies the allegations in paragraph 62 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 62, and on that basis denies them.

63. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 63, and on that basis denies them.

64. S&S admits that Amazon set the prices of certain ebook titles at or below \$9.99 after the launch of the Kindle. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 64, and on that basis denies them.

65. S&S admits that Amazon sold certain S&S ebooks at a retail price below its wholesale cost. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 65, and on that basis denies them.

66. S&S admits that ebooks and print books each have costs regardless of the book’s format. S&S otherwise denies the allegations in paragraph 66 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 66, and on that basis denies them.

67. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 67, and on that basis denies them.

68. S&S admits that Amazon sold certain S&S ebooks at a retail price below its wholesale cost. S&S further admits that plaintiffs purport to cite an article in paragraph 68 and refers to the article for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 68 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 68, and on that basis denies them.

69. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 69, and on that basis denies them.

70. S&S admits that it has sold hardcover books for many years, including hardcover books appearing on the New York Times Bestseller list. S&S otherwise denies the allegations in paragraph 70 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 70, and on that basis denies them.

71. S&S admits that printed hardcover books are often sold to the trade at discounts off the list price. S&S otherwise denies the allegations in paragraph 71 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 71, and on that basis denies them.

72. S&S denies the allegations in paragraph 72 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 72, and on that basis denies them.

73. S&S denies the allegations in paragraph 73 to the extent that they relate to S&S.

S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 73, and on that basis denies them.

74. S&S denies the allegations in paragraph 74 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 74, and on that basis denies them.

75. S&S admits that plaintiffs purport to quote an article in paragraph 75 and refers to the article for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 75 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 75, and on that basis denies them.

76. S&S admits that Apple entered the ebook retail business. S&S otherwise denies the allegations in paragraph 76 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 76, and on that basis denies them.

77. S&S denies the allegations in paragraph 77 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 77, and on that basis denies them.

78. S&S denies the allegations in paragraph 78 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 78, and on that basis denies them.

79. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 79, and on that basis denies them.

80. S&S admits that plaintiffs purport to quote a statement from a News Corp. earnings call and refers to the transcript of the call for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 80, and on that basis denies them.

81. S&S denies the allegations in paragraph 81 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 81, and on that basis denies them.

82. S&S admits that plaintiffs purport to quote a blog in paragraph 82 and refers to the blog for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 82, and on that basis denies them.

83. S&S denies the allegations in paragraph 83 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 83, and on that basis denies them.

84. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 84, and on that basis denies them.

85. S&S denies the allegations in paragraph 85 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 85, and on that basis denies them.

86. S&S admits that ebooks and print books each have costs regardless of the book's format. S&S otherwise denies the allegations in paragraph 86 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 86, and on that basis denies them.

87. S&S admits that under the agency model, the retailer is paid a percentage of the retail price as a commission. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 87, and on that basis denies them.

88. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 88, and on that basis denies them.

89. S&S denies the allegations in paragraph 89 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 89, and on that basis denies them.

90. S&S denies the allegations in paragraph 90 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 90, and on that basis denies them.

91. S&S admits that plaintiffs purport to quote an article in paragraph 91 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 91, and on that basis denies them.

92. S&S admits that it sells print books to Amazon under a wholesale model and Amazon remains the seller of record. S&S further admits that for ebooks sold under the agency model, S&S sets the prices for its ebooks and remains the seller of record. S&S otherwise denies the allegations in paragraph 92 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 92, and on that basis denies them.

93. S&S admits that it sets the price of ebooks under the agency model. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations

in paragraph 93, and on that basis denies them.

94. S&S denies the allegations in paragraph 94 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 94, and on that basis denies them.

95. S&S denies the allegations in paragraph 95 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 95, and on that basis denies them.

96. S&S denies the allegations in paragraph 96 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 96, and on that basis denies them.

97. S&S denies the allegations in paragraph 97 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 97, and on that basis denies them.

98. S&S denies the allegations in paragraph 98 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 98, and on that basis denies them.

99. S&S denies the allegations in paragraph 99 to the extent that they relate to S&S, except admits that S&S decided to window the Steven King book “Under the Dome” in the fall of 2009, and then in December 2009 announced a plan to window additional titles. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 99, and on that basis denies them.

100. S&S denies the allegations in paragraph 100 to the extent that they relate to S&S, except admits that S&S decided to window the Steven King book “Under the Dome” in the fall

of 2009. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 100, and on that basis denies them.

101. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 101, and on that basis denies them.

102. S&S denies the allegations in paragraph 102 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 102, and on that basis denies them.

103. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 103, and on that basis denies them.

104. S&S admits that in December 2009 S&S announced a plan to window a number of titles. S&S also admits that Michael Selleck had a telephone conversation with Amazon in December 2009. S&S denies the remaining allegations in paragraph 104 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 104, and on that basis denies them.

105. S&S admits that plaintiffs purport to quote an article in paragraph 105 and refers to the article for a true and complete statement of its contents. S&S denies the remaining allegations in paragraph 105 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 105, and on that basis denies them.

106. S&S admits that plaintiffs purport to cite an article in paragraph 106 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 106, and on that basis denies them.

107. S&S admits that plaintiffs purport to cite an article in paragraph 107 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 107, and on that basis denies them.

108. S&S denies the allegations in paragraph 108 to the extent that they relate to S&S, except admits that in December 2009 S&S announced a plan to window a number of titles. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 108, and on that basis denies them.

109. S&S denies the allegations in paragraph 109 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 109, and on that basis denies them.

110. S&S denies the allegations in paragraph 110 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 110, and on that basis denies them.

111. S&S denies the allegations in paragraph 111 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 111, and on that basis denies them.

112. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 112, and on that basis denies them.

113. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 113, and on that basis denies them.

114. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 114, and on that basis denies them.

115. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 115, and on that basis denies them.

116. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 116, and on that basis denies them.

117. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 117, and on that basis denies them.

118. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 118, and on that basis denies them.

119. S&S denies the allegations in paragraph 119 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 119, and on that basis denies them.

120. S&S denies the allegations in paragraph 120 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 120, and on that basis denies them.

121. S&S denies the allegations in paragraph 121 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 121, and on that basis denies them.

122. S&S denies the allegations in paragraph 122 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 122, and on that basis denies them.

123. S&S admits that plaintiffs purport to cite an article in paragraph 123 and refers to the article for a true and complete statement of its contents. S&S further admits that it allowed Apple to use certain trademarks in connection with its sales of ebooks. S&S denies that it is a

member of the “Agency 5,” which is a characterization by plaintiffs, but otherwise admits that it entered into an agency agreement with Apple for ebooks. S&S denies the remaining allegations in paragraph 123 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 123, and on that basis denies them.

124. S&S admits that plaintiffs purport to cite an article in paragraph 124 and refers to the article for a true and complete statement of its contents. S&S admits that it entered into an agency agreement with Apple for ebooks, that it subsequently reached an agency agreement for ebooks with other ebook retailers. S&S admits that under that agency agreement, Apple functioned as an agent for S&S and received a 30% commission, and that S&S paid authors out of its share. S&S denies the remaining allegations in paragraph 124 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 124, and on that basis denies them.

125. S&S admits that plaintiffs purport to cite an article in paragraph 125 and refers to the article for a true and complete statement of its contents. S&S admits that it has used a wholesale distribution model for both ebooks and print books, in which a retailer can set its own retail price and that it sold certain ebooks for \$9.99 or above to Amazon, which subsequently sold such book for \$9.99. S&S denies the remaining allegations in paragraph 125 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 125, and on that basis denies them.

126. S&S denies the allegations in paragraph 126 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 126, and on that basis denies them.

127. S&S admits that its agency agreement with Apple contained maximum prices for ebooks in tiers that referred to the list price of the corresponding physical book. S&S denies the remaining allegations in paragraph 127 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 127, and on that basis denies them.

128. S&S admits that plaintiffs purport to cite an article in paragraph 128 and refers to the article for a true and complete statement of its contents. S&S denies the allegations in paragraph 128 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 128, and on that basis denies them.

129. S&S admits that plaintiffs purport to cite an article in paragraph 129 and refers to the article for a true and complete statement of its contents. S&S admits that its agency agreement with Apple contained a MFN clause and refers to that contract for a true and complete statement of its contents. S&S denies the remaining allegations in paragraph 129 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 129, and on that basis denies them.

130. S&S admits that its agency agreement with Apple contained a MFN clause and refers to that contract for a true and complete statement of its contents. S&S denies the remaining allegations in paragraph 130 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 130, and on that basis denies them.

131. S&S denies the allegations in paragraph 131 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining

allegations in paragraph 131, and on that basis denies them.

132. S&S denies the allegations in paragraph 132 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 132, and on that basis denies them.

133. S&S admits that it entered into an agency agreement with Apple for ebooks. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 133, and on that basis denies them.

134. S&S admits that plaintiffs purport to quote statements made by Steve Jobs to Walt Mossberg without citation to any publication or document. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 134, and on that basis denies them.

135. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 135, and on that basis denies them.

136. S&S denies the allegations in paragraph 136 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 136, and on that basis denies them.

137. S&S denies the allegations in paragraph 137 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 137, and on that basis denies them.

138. S&S admits that plaintiffs purport to quote an article in paragraph 138 and refers to the article for a true and complete statement of its contents. S&S denies the allegations in paragraph 138 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 138, and on

that basis denies them.

139. S&S denies the allegations in paragraph 139 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 139, and on that basis denies them.

140. S&S admits that plaintiffs purport to quote a news article in paragraph 140 and refers to the article for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 140 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 140, and on that basis denies them.

141. S&S admits that plaintiffs purport to cite a news report in paragraph 141 and refers to the news report for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 141, and on that basis denies them.

142. S&S denies the allegations in paragraph 142 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 142, and on that basis denies them.

143. S&S denies the allegations in paragraph 143 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 143, and on that basis denies them.

144. S&S admits that plaintiffs purport to quote an article in paragraph 144 and refers to the article for a true and complete statement of its contents. S&S denies the allegations in paragraph 144 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 144, and on

that basis denies them.

145. S&S admits that plaintiffs purport to cite an email in paragraph 145 and refers to the email for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 145 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 145, and on that basis denies them.

146. S&S denies the allegations in paragraph 146 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 146, and on that basis denies them.

147. S&S denies the allegations in paragraph 147 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 147, and on that basis denies them.

148. S&S admits that plaintiffs purport to cite a news article in paragraph 148 and refers to the email for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 148, and on that basis denies them.

149. S&S denies the allegations in paragraph 149 to the extent that they relate to S&S, except that S&S admits that its agency agreement with Apple included a MFN clause that contained maximum prices for ebooks. S&S otherwise lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 149, and on that basis denies them.

150. S&S admits that plaintiffs purport to cite an article in paragraph 150 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or

information to form a belief as to the truth of the remaining allegations in paragraph 150, and on that basis denies them.

151. S&S admits that plaintiffs purport to quote articles in paragraph 151 and refers to the articles for a true and complete statement of their contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 151, and on that basis denies them.

152. S&S admits that Carolyn Reidy spoke to Russ Grandinetti on January 22, 2010 and that Michael Selleck met with Laura Porco in January 2010. S&S denies the remaining allegations in paragraph 152 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 152, and on that basis denies them.

153. S&S denies the allegations in paragraph 153 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 153, and on that basis denies them.

154. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 154, and on that basis denies them.

155. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 155, and on that basis denies them.

156. S&S denies the allegations in paragraph 156 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 156, and on that basis denies them.

157. S&S admits that plaintiffs purport to quote an article in paragraph 157 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge

or information to form a belief as to the truth of the allegations in paragraph 157, and on that basis denies them.

158. S&S admits that plaintiffs purport to quote an article in paragraph 158 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 158, and on that basis denies them.

159. S&S admits that it negotiated with Amazon to reach an agency agreement, but otherwise denies the allegations to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 159, and on that basis denies them.

160. S&S denies the allegations in paragraph 160 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 160, and on that basis denies them.

161. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 161, and on that basis denies them.

162. S&S denies the allegations in paragraph 162 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 162, and on that basis denies them.

163. S&S denies the allegations in paragraph 163 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 163, and on that basis denies them.

164. S&S denies the allegations in paragraph 164 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining

allegations in paragraph 164, and on that basis denies them.

165. S&S admits that Amazon had distributed ebooks for S&S under an agency agreement, but otherwise denies the allegations to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 165, and on that basis denies them.

166. S&S admits that Sony and Barnes & Noble both have distributed ebooks for S&S under agency agreements, but otherwise denies the allegations in paragraph 166 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 166, and on that basis denies them.

167. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 167, and on that basis denies them.

168. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 168, and on that basis denies them.

169. S&S denies the allegations in paragraph 169 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 169, and on that basis denies them.

170. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 170, and on that basis denies them.

171. S&S denies the allegations in paragraph 171 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 171, and on that basis denies them.

172. S&S denies the allegations in paragraph 172 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining

allegations in paragraph 172, and on that basis denies them.

173. S&S denies the allegations in paragraph 173 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 173, and on that basis denies them.

174. S&S denies the allegations in paragraph 174 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 174, and on that basis denies them.

175. S&S denies the allegations in paragraph 175 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 175, and on that basis denies them.

176. S&S admits the allegations in paragraph 176.

177. S&S admits the allegations in paragraph 177.

178. S&S admits the allegations in paragraph 178.

179. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 179, and on that basis denies them.

180. S&S admits that plaintiffs purport to quote an article in paragraph 180 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 180, and on that basis denies them.

181. S&S denies the allegations in paragraph 181 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 181, and on that basis denies them.

182. S&S denies the allegations in paragraph 182 to the extent that they relate to S&S.

S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 182, and on that basis denies them.

183. S&S denies the allegations in paragraph 183 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 183, and on that basis denies them.

184. S&S denies the allegations in paragraph 184 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 184, and on that basis denies them.

185. S&S admits that plaintiffs purport to cite a survey in paragraph 185 and refers to the survey for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 185, and on that basis denies them.

186. S&S admits that plaintiffs purport to cite a survey and analyst report in paragraph 186 and refers to the survey and analyst report for a true and complete statement of their contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 186, and on that basis denies them.

187. S&S admits that it sold the ebook Best Friends Forever for \$11.99. S&S otherwise denies the allegations in paragraph 187 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 187, and on that basis denies them.

188. S&S admits that it sold an ebook version of Best Friends Forever for \$11.99. S&S otherwise denies the allegations in paragraph 188 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining

allegations in paragraph 188, and on that basis denies them.

189. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 189, and on that basis denies them.

190. S&S denies the allegations in paragraph 190 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 190, and on that basis denies them.

191. S&S admits that lawsuits have been filed in the United States by the Department of Justice and certain states. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 191, and on that basis denies them.

192. S&S admits that plaintiffs purport to quote an article in paragraph 192 and refers to the article for a true and complete statement of its contents. S&S admits that the Texas Attorney General conducted an investigation of S&S related to ebooks. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 192, and on that basis denies them.

193. S&S admits that plaintiffs purport to quote an article in paragraph 193 and refers to the article for a true and complete statement of its contents. S&S admits that the Connecticut Attorney General conducted an investigation of S&S related to ebooks. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 193, and on that basis denies them.

194. S&S admits that plaintiffs purport to quote an article in paragraph 194 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 194, and on that basis denies them.

195. S&S admits that plaintiffs purport to quote an article in paragraph 195 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 195, and on that basis denies them.

196. S&S admits that plaintiffs purport to quote an article in paragraph 196 and refers to the article for a true and complete statement of its contents. S&S admits that the European Commission has conducted an investigation of S&S related to ebooks. S&S otherwise lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 196, and on that basis denies them.

197. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 197, and on that basis denies them.

198. S&S admits the allegations in paragraph 198 to the extent that they relate to S&S, except denies that antitrust inquiries are on-going to the extent that they have been settled. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 198, and on that basis denies them.

199. S&S admits that an ebook is sometimes, but not always, the digital equivalent of a print book. S&S further admits that consumers buy ebooks for various reasons and that multiple ebooks can be stored on an eReader device. S&S otherwise denies the allegations in paragraph 199 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 199, and on that basis denies them. To the extent that the allegations in paragraph 199 purport to state a legal conclusion, S&S avers that no response is required.

200. S&S lacks sufficient knowledge or information to form a belief as to the truth of

the allegations in paragraph 200, and on that basis denies them. To the extent that the allegations in paragraph 200 purport to state a legal conclusion, S&S avers that no response is required.

201. S&S denies the allegations in paragraph 201 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 201, and on that basis denies them. To the extent that the allegations in paragraph 201 purport to state a legal conclusion, S&S avers that no response is required.

202. S&S denies the allegations in paragraph 202 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 202, and on that basis denies them.

203. S&S admits that it uses a wholesale model for the sale of print books through retail outlets. S&S further admits that it sold the ebook edition of “The Greater Journey” for \$19.99 at one time, and that the chart in paragraph 203(b) accurately reflects the prices charged by S&S for those ebooks during the week of August 7, 2011. S&S otherwise denies the allegations in paragraph 203 as they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 203, and on that basis denies them.

204. S&S denies the allegations in paragraph 204 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 204, and on that basis denies them.

205. S&S denies the allegations in paragraph 205 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 205, and on that basis denies them.

206. S&S admits that plaintiffs purport to quote a blog article in paragraph 206 and

refers to the article for a true and complete statement of its contents. S&S further admits that it previously sold ebooks to retailers on a wholesale model. S&S otherwise denies the allegations to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 206, and on that basis denies them.

207. S&S admits that plaintiffs purport to quote a blog article in paragraph 207 and refers to the article for a true and complete statement of its contents. S&S admits that under the agency model, it is the seller of record, sets prices for ebooks, and pays its retailer agents a commission. S&S denies the remaining allegations in paragraph 207 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 207, and on that basis denies them.

208. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 208, and on that basis denies them.

209. S&S admits that plaintiffs purport describe an agreement in paragraph 209 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 209 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 209, and on that basis denies them.

210. S&S admits that plaintiffs purport describe an agreement in paragraph 210 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 210 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 210, and on that basis denies them.

211. S&S admits that plaintiffs purport describe an agreement in paragraph 211 and

refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 211 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 211, and on that basis denies them.

212. S&S admits that plaintiffs purport describe an agreement in paragraph 212 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations of paragraph 212 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 212, and on that basis denies them.

213. S&S admits that plaintiffs purport describe an agreement in paragraph 213 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations of paragraph 213 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 213, and on that basis denies them.

214. S&S admits that plaintiffs purport describe an agreement in paragraph 214 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations of paragraph 214 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 214, and on that basis denies them.

215. S&S admits that plaintiffs purport describe an agreement in paragraph 215 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations of paragraph 215 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in

paragraph 215, and on that basis denies them.

216. S&S admits that plaintiffs purport describe an agreement in paragraph 216 and refers to the agreement for a true and complete statement of its contents. S&S otherwise denies the allegations of paragraph 216 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 216, and on that basis denies them.

217. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 217, and on that basis denies them.

218. S&S admits that Michael Selleck is the Executive Vice President of Simon & Schuster for Sales and Marketing. S&S further admits that plaintiffs purport to quote a letter in paragraph 218 and refers to the letter for a true and complete statement of its contents. S&S otherwise denies the allegations in paragraph 218, including plaintiffs' characterizations of the quoted letter.

219. S&S admits that plaintiffs purport to quote an article in paragraph 219 and refers to the article for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 219, and on that basis denies them.

220. S&S admits that plaintiffs purport to quote a user agreement in paragraph 220 and refers to the agreement for a true and complete statement of its contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 220, and on that basis denies them.

221. S&S admits that plaintiffs purport to quote a user agreement in paragraph 221 and refers to the agreement for a true and complete statement of its contents. S&S lacks sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 221, and on that basis denies them.

222. S&S admits that plaintiffs purport to reference screen captures in paragraph 222 and refers to the screen captures for a true and complete statement of their contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 222, and on that basis denies them.

223. S&S admits that plaintiffs purport to reference screen captures in paragraph 223 and refers to the screen captures for a true and complete statement of their contents. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 223, and on that basis denies them.

224. S&S avers that to the extent the allegations in paragraph 224 purport to state a legal conclusion, no response is required. To the extent a response is required, S&S admits that it entered into agency agreements with retailers to sell ebooks on S&S's behalf. S&S otherwise denies the remaining allegations in paragraph 224 to the extent they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 224, and on that basis denies them.

225. S&S avers that paragraph 225 purports to state a legal conclusion, and therefore no responsive pleading is required.

226. S&S denies the allegations in paragraph 226 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 226, and on that basis denies them.

227. S&S denies the allegations in paragraph 227 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 227, and on that basis denies them.

228. S&S avers that paragraph 228 purports to state the scope of plaintiffs' putative class, but denies that any such class may be certified as to S&S.

229. S&S avers that paragraph 229 purports to state a legal conclusion, and therefore no response is required.

230. S&S avers that paragraph 230 purports to state a legal conclusion, and therefore no response is required.

231. S&S avers that paragraph 231 purports to state a legal conclusion, and therefore no response is required.

232. S&S avers that paragraph 232 purports to state a legal conclusion, and therefore no response is required.

233. S&S denies the allegations in paragraph 233 to the extent that they relate to S&S and avers that the States acting as *parens patriae* are a superior form of resolution. S&S further avers that to the extent paragraph 233 purports to state a legal conclusion, and no response is required.

234. S&S denies the allegations in paragraph 234 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 234, and on that basis denies them.

235. S&S denies the allegations in paragraph 235 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining

allegations in paragraph 235, and on that basis denies them.

236. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 236, and on that basis denies them, except admits that Steve Jobs was the CEO & Chairman of Apple.

237. S&S lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 237, and on that basis denies them.

238. S&S avers that paragraph 238 purports to state the scope of plaintiffs' putative class, but denies that any such class may be certified as to S&S.

239. S&S avers that paragraph 239 purports to state the scope of plaintiffs' putative class, but denies that any such class may be certified as to S&S.

240. S&S avers that paragraph 240 purports to state the scope of plaintiffs' putative class, but denies that any such class may be certified as to S&S.

241. S&S incorporates in its response to the allegations in paragraph 241 each of its responses to the allegations provided in paragraphs 1 through 240 of this Answer, above.

242. S&S avers that paragraph 242 purports to state a legal conclusion, and therefore no response is required. To the extent a response is required, S&S denies the allegations in paragraph 242.

243. S&S avers that paragraph 243 purports to state a legal conclusion, and therefore no response is required. To the extent a response is required, S&S denies the allegations in paragraph 243.

244. S&S denies the allegations in paragraph 244 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 244, and on that basis denies them.

245. S&S denies the allegations in paragraph 245 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 245, and on that basis denies them.

246. S&S admits that for ebooks sold under the agency model, S&S sets the prices for its ebooks and remains the seller of record. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 246, and on that basis denies them, except avers that where the allegations purport to state a legal conclusion, no response is required.

247. S&S denies the allegations in paragraph 247.

248. S&S incorporates in its response to the allegations in paragraph 248 each of its responses to the allegations provided in paragraphs 1 through 247 of this Answer, above. S&S denies the remaining allegations in paragraph 248 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required.

249. S&S denies the allegations in paragraph 249 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 249, and on that basis denies them.

250. S&S denies the allegations in paragraph 250 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 250, and on that basis denies them.

251. S&S incorporates in its response to the allegations in paragraph 251 each of its responses to allegations provided in paragraphs 1 through 250 of this Answer, above.

252. S&S denies the allegations in paragraph 252 to the extent that they relate to S&S, except admits that it has sold ebooks in all states. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 252, and on that basis denies them.

253. S&S denies the allegations in paragraph 253 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 253, and on that basis denies them.

254. S&S denies the allegations in paragraph 254 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 254, and on that basis denies them.

255. S&S denies the allegations in paragraph 255 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 255, and on that basis denies them.

256. S&S denies the allegations in paragraph 256 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 256, and on that basis denies them.

257. S&S denies the allegations in paragraph 257 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is

required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 257, and on that basis denies them.

258. S&S denies the allegations in paragraph 258 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 258, and on that basis denies them.

259. S&S denies the allegations in paragraph 259 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 259, and on that basis denies them.

260. S&S denies the allegations in paragraph 260 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 260, and on that basis denies them.

261. S&S denies the allegations in paragraph 261 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 261, and on that basis denies them.

262. S&S denies the allegations in paragraph 262 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 262, and on that basis denies them.

263. S&S denies the allegations in paragraph 263 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 263, and on that basis denies them.

264. S&S denies the allegations in paragraph 264 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 264, and on that basis denies them.

265. S&S denies the allegations in paragraph 265 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 265, and on that basis denies them.

266. S&S denies the allegations in paragraph 266 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 266, and on that basis denies them.

267. S&S denies the allegations in paragraph 267 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 267, and on that basis denies them.

268. S&S denies the allegations in paragraph 268 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is

required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 268, and on that basis denies them.

269. S&S denies the allegations in paragraph 269 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 269, and on that basis denies them.

270. S&S denies the allegations in paragraph 270 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 270, and on that basis denies them.

271. S&S denies the allegations in paragraph 271 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 271, and on that basis denies them.

272. S&S denies the allegations in paragraph 272 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 272, and on that basis denies them.

273. S&S denies the allegations in paragraph 273 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 273, and on that basis denies them.

274. S&S denies the allegations in paragraph 274 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 274, and on that basis denies them.

275. S&S denies the allegations in paragraph 275 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 275, and on that basis denies them.

276. S&S denies the allegations in paragraph 276 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 276, and on that basis denies them.

277. S&S denies the allegations in paragraph 277 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 277, and on that basis denies them.

278. S&S denies the allegations in paragraph 278 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 278, and on that basis denies them.

279. S&S denies the allegations in paragraph 279 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is

required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 279, and on that basis denies them.

280. S&S denies the allegations in paragraph 280 to the extent that they relate to S&S, except avers that where the allegations purport to state a legal conclusion, no response is required. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 280, and on that basis denies them.

281. S&S denies the allegations in paragraph 281 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 281, and on that basis denies them.

282. S&S incorporates in its response to the allegations in paragraph 282 each of its responses to the allegations provided in paragraphs 1 through 281 of this Answer, above.

283. S&S denies the allegations in paragraph 283 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 283, and on that basis denies them.

284. S&S denies the allegations in paragraph 284 to the extent that they relate to S&S. S&S lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 284, and on that basis denies them.

285. S&S avers that the allegations in paragraph 285 purport to state a legal conclusion, and therefore no response is required.

To the extent that the Complaint sets forth any allegations to which S&S has not responded above, these are denied.

AFFIRMATIVE AND OTHER DEFENSES

S&S sets forth below its affirmative defenses. Each defense is asserted as to all claims against S&S. By setting forth these affirmative defenses, S&S does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to the plaintiffs. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the plaintiffs' allegations.

As separate and distinct affirmative defenses, S&S alleges as follows:

FIRST DEFENSE

The complaint fails to state a claim against S&S upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' claims, and the claims of a putative class, will be extinguished, in whole or in part, by any judgment on or releases of the claims brought by certain sovereign jurisdictions in their *parens patriae* capacity in *The State of Texas, et al. v. Hachette Book Group, Inc., et al.*, Case No. 1:12-cv-06625-DLC, and it is improper to allow both sets of overlapping claims to proceed simultaneously. Plaintiffs' claims cannot be maintained as a class action because class counsel are not the superior representatives of consumers. S&S has or will have settled the claims of consumers in at least 55 of 56 sovereign jurisdictions with the Attorneys General or equivalent authorities in each jurisdiction in their superior standing as *parens patriae*. On September 14, 2012, the Court entered an Order Preliminarily Approving Proposed Settlements with these 55 sovereign jurisdictions. As part of the proposed settlements, consumers in these jurisdictions will release all claims against S&S. Plaintiffs' claims will be barred by the doctrines of release and *res judicata*, and the putative class will not have standing to state a claim.

THIRD DEFENSE

Plaintiffs' claims against S&S are barred because S&S was not part of any contract, combination, or conspiracy in restraint of trade.

FOURTH DEFENSE

Plaintiffs' claims against S&S are barred because agency agreements are neither subject to nor unlawful under Section 1 of the Sherman Act.

FIFTH DEFENSE

Plaintiffs' claims against S&S are barred because S&S's alleged actions did not result in any harm to competition and plaintiffs, including the putative class, have suffered no antitrust injury.

SIXTH DEFENSE

Plaintiffs' claims against S&S describe lawful activity under the rule of reason because the procompetitive justifications for S&S's alleged actions outweigh any alleged resulting harm to competition.

SEVENTH DEFENSE

Plaintiffs' claims against S&S are barred because the relief sought is broader than what is necessary to remedy the alleged harm.

EIGHTH DEFENSE

Plaintiffs' state law claims against S&S are barred because this court lacks subject matter jurisdiction to decide them, and because the state law claims are duplicative of the Sherman Act claims.

NINTH DEFENSE

Plaintiffs' indirect purchaser claims against S&S are barred because the Complaint

admits and alleges that Plaintiffs' are direct purchasers of ebooks, and any indirect purchaser claims are duplicative of the direct purchaser claims alleged by the putative class.

TENTH DEFENSE

S&S's actions were undertaken in good faith to promote legitimate business purposes and in order to promote competition.

ELEVENTH DEFENSE

Plaintiffs' claims on behalf of a purported class are barred because there are not sufficient questions of law or fact that are common to the purported class and Plaintiffs cannot satisfy the prerequisites set forth in Rule 23 of the Federal Rules of Civil Procedure to maintain this action as a class action.

TWELFTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not defined a proper relevant market for purposes of this action.

THIRTEENTH DEFENSE

Plaintiffs' demand for injunctive relief is moot as a result of the Proposed Final Judgment already entered in *United States v. Apple, Inc.*, Case No. 1:12-cv-02826.

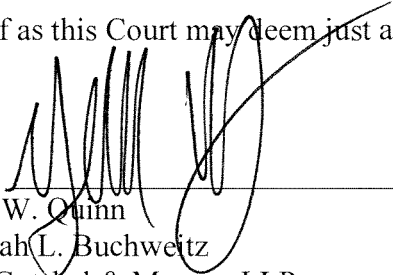
ADDITIONAL DEFENSES

S&S hereby adopts and incorporates by reference any and all other defenses asserted or to be asserted by any other defendant to the extent S&S may share in such a defense. S&S reserves the right to amend this Answer, and to assert additional defenses, cross-claims, and third party claims in this action when and if they become appropriate.

WHEREFORE, S&S seeks judgment:

- A. Dismissing with prejudice all claims asserted against S&S;
- B. Awarding the costs of defending this action, including reasonable attorneys' fees, costs, and disbursements; and
- C. Granting such other and further relief as this Court may deem just and proper.

Dated: September 14, 2012

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