RE ELECTRONIC BOOKS ANTITRUST LITIGATION, Case No. 11-md-02293
and
Texas, et al. v. Penguin Group, et. al, Case No. 12-cv-03394

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF APPLE SETTLEMENT AGREEMENT

EXHIBIT B

DECLARATION OF KIM SCHMIDT FOR RUST CONSULTING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

This Document Relates to:

IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION	**No. 11-md-02293 (DLC)** **ECF Case** **CLASS ACTION**
THE STATE OF TEXAS, et al., **Plaintiffs,** **v.** **PENGUIN GROUP (USA) INC., et al.,** **Defendants**	**Civil Action** **No. 12-cv-03394**

DECLARATION OF KIM SCHMIDT

KIM SCHMIDT deposes and says:

1. I am a Senior Vice President for Rust Consulting, Inc. ("Rust Consulting"), which has been retained by the Plaintiff States Attorneys General and Class Counsel (collectively, "Plaintiffs") to serve as the Claims Administrator for the settlement with Plaintiffs and Apple Inc. ("Settlement"). I am responsible for supervising the claims administration services provided by Rust Consulting for the parties in this action. My business address is 201 S. Lyndale Avenue, Faribault, MN 55021. My telephone number is (612) 359-2872. I am authorized and qualified to make this declaration on behalf of Rust Consulting and myself.

2. I submit this declaration in connection with the above-captioned civil action at the request of Counsel for Plaintiffs.

3. Rust Consulting, Inc. is a national leader in the class action settlement administration industry. Rust is a wholly-owned subsidiary of SourceHOV Holdings, Inc. and administers settlements and projects within the legal, public, and business sectors. Rust Consulting has provided claims administration services for class actions in cases involving antitrust, consumer, finance, insurance and healthcare, labor and employment, property, securities, and telecom related settlements, as well as mass tort matters.

4. Rust Consulting specializes in class action notification and claims administration, including direct mail notification, published media campaigns, telephone support services, claim processing, and monetary distribution. In its 35-year history, Rust has provided services for more than 3,500 projects and distributed billions of dollars in settlement assets.

5. Our experience includes the administration of large and complex cases such as *Authors' Guild v. Google, Inc.*, No. 1:05-CV-08136 (S.D.N.Y.); *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. M-02-1486 & MDL 1486 (N.D. Cal.); *Microsoft I-V Cases* No. J.C.C.P. 4106 (Cal. Super. Ct. S.F. County); *Naef v. Masonite Corp.*, No. CV 94-4033 (Ala. Cir. Ct. Mobile County); *SEC v. Federal National Mortgage Association*, No. 1:06-CV-00959 (D.D.C.); *Sullivan v. DB Investments, Inc.*, No. 04-2819 (D.N.J.); and *In re Motorola Securities Litigation*, No. 03-C-00287 (N.D. Ill.). Attached as Exhibit A is additional information on Rust Consulting.

Consulting Services

6. Rust Consulting was engaged to consult and coordinate on the administration process for the Settlement. We will provide notice and claims administration services in order to facilitate the provision of notice and to distribute and/or administer the distribution of any settlement funds paid to Plaintiffs in connection with the Settlement. This work will include consulting and coordination with the e-book retailers for electronic notification and the distribution of credit payments, consulting and coordination with Kinsella Media LLC ("Kinsella") regarding the Notice Plan and Notices, noticing, designing and programming systems, toll-free IVR telephone support, website administration, exclusion and objection tracking, claimant correspondence, claims processing, validation, and quality control, payment calculation and distribution, reporting, and computer operations.

7. Rust Consulting, as Claims Administrator, and Kinsella, as Notice Provider, worked together in the Prior Settlements reached between the Attorneys General of 49 states, the District of Columbia, and five U.S. territories and commonwealths, and the following publishers: Hachette Book Group, Inc., HarperCollins Publishers LLC, Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc.

8. Rust Consulting and Kinsella also worked together in the Prior Settlements reached between the Plaintiff States[1], the Settlement Class[2], and the publishers Holtzbrinck Publishers, LLC, d/b/a Macmillan and Penguin Group (USA), Inc.

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[1] "Plaintiff States" are the States and Commonwealths of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

[2] "Settlement Class" includes all persons who purchased E-books published by the named Publishers during the period from April 1, 2010 until May 21, 2012, who resided in any U.S. State, Commonwealth or Territory, other than Plaintiff States, at the time of their purchase.

9. Rust Consulting and Kinsella will work cooperatively with Plaintiffs to create and implement a Notice Plan that is the same as or similar to those approved in the Prior Settlements, including direct notice supplemented with paid media notice and earned media outreach.

10. Given the ongoing appeals, Plaintiffs and Apple recommend that the form and content of all the Notices proposed herein be presented to the Court for review and approval after the Final Liability Decision has been issued. Rust Consulting and Kinsella are available to assist with the drafting of the notices in a clear and concise form once the relevant appeals have been resolved or upon instruction from Plaintiffs or the Court.

E-book Retailer Coordination

11. Most E-book retailers require customers to create accounts and provide a valid email address before one can purchase an E-book. In addition, most E-book retailers track each and every E-book purchase. This information provides an unusual opportunity to deliver direct notice to approximately 95% or more of eligible consumers.

12. Rust Consulting will work cooperatively with Plaintiffs to coordinate with leading e-book retailers to implement the Settlement. The e-book retailers maintain the customer records and to the extent these are available, notice will be provided directly to customers via email.

13. Six retailers (Amazon, Barnes & Noble, Apple, Kobo, Sony, and Google) assisted in providing notice email to the 23.27 million individual customers who purchased qualifying E-books. Four of these retailers (Amazon, Barnes & Noble, Kobo, and Google) have agreed to identify and maintain in their own internal system, during the pendency of this litigation, the information for customers who are eligible to receive Apple Settlement funds ("Eligible Customers"). Or, if they no longer service their Eligible Customers or are

unable to maintain this customer information, they will provide Counsel for Plaintiffs with notice of the changed circumstances and they will work with Rust Consulting and Counsel for Plaintiffs to determine a plan by which their customers will be noticed and receive an award (if any). These four retailers (Amazon, Barnes & Noble, Kobo, and Google) have also agreed to send an initial notice email to Eligible Customers when directed by this Court. Apple and Sony have provided the Claims Administrator all necessary contact information so it can send a similar notice email to all Eligible Customers identified by Apple and Sony. The Claims Administrator will ensure that the contact information for the Apple and Sony Eligible Customers is maintained during the pendency of this litigation.

14. Based on the request of Counsel for Plaintiffs, Rust Consulting will make it possible for Eligible Consumers to update their contact information during the pendency of this litigation through the settlement website at www.ebookagsettlements.com.

15. The Retailer Email will describe, in plain, easily understood language, the basic elements of Plaintiffs' lawsuits, including important deadlines, and give notice of the proposed Settlement and Eligible Consumers' right to opt-out. The Retailer Email will also identify the website and toll-free phone number that Eligible Consumers can go to or call in order to receive the Detailed Notice, which will contain more detail about the Settlement and Eligible Consumers' rights.

16. To supplement the Retailer Email notice, where possible, Rust will send postcard notices to Eligible Consumers for whom a correct email address could not be identified in the Prior Settlements.

Telephone Support

17. As part of the notification process, Rust Consulting will obtain a toll-free telephone number for callers to obtain information from an automated, interactive voice recording system. The line will allow callers the ability to listen to commonly asked questions and answers related to the settlements, request a Claim Form or speak to a Customer Service Representative.

18. The toll-free settlement information line will:

a) Be staffed by live customer service representatives during normal business hours.

b) Become operational commencing with the start of the electronic email notification period.

c) Be included in any press releases, Notices, and Claim Forms that are distributed and prominently featured on the settlement website.

Settlement Website

19. Rust Consulting will maintain the existing settlement website, and add any additional information or documents upon the request of Plaintiffs or the Court. Settlement notifications will direct customers to the settlement website where potentially Eligible Consumers will be able to change their payment option from a credit to a check, file a Claim Form and provide supporting documentation online, and/or obtain general information regarding the settlement. The website will include (at a minimum):

a) Court settlement documents,

b) the Detailed Notice once finalized and approved by the Court,

c) answers to commonly asked questions,

d) toll-free number and email address for additional questions,

e) other settlement related documents,

f) important dates, and

g) procedures for submission of requests for exclusion, objections, or notices of appearance for the Settlement Hearing.

Requests for Exclusions and Claimant Correspondence

20. Rust Consulting will receive and process all requests for exclusions to the Settlement. Exclusion requests received by Rust will be date stamped, processed, and distributed to Counsel for Plaintiffs for review.

21. Rust Consulting will receive, process, and respond where necessary, to all paper and email correspondence received from potentially eligible consumers. This will include requests for a Claim Form, notification for changes in names and addresses, and any other general correspondence regarding the settlements.

Claim Forms

22. Rust Consulting will mail Claim Forms upon request to potentially Eligible Consumers. Consumers will also have the option to submit their Claim Form by mail or electronically through the settlement website.

23. Rust Consulting will be responsible for receiving and processing all Claim Forms filed by potentially Eligible Consumers.

24. Claimants with an incomplete or deficient Claim Form will be mailed a letter describing the deficiency and if appropriate, requesting additional information. Rust will process

deficiency letter responses from potentially Eligible Consumers. Claims resolved by a deficiency response will be included in the distribution. Claims not resolved in the deficiency process will not be included in the distribution.

Distribution of Settlement Awards

25. At the close of the notice and claim period, and if a distribution is to be made, Rust Consulting will coordinate the *pro rata* allocation of the Consumer Fund to Eligible Consumers.

26. Rust will work cooperatively with the Escrow Agent to provide information for tax filing and tax reporting.

I declare that the foregoing is true and correct to the best of my knowledge.

Executed this 15th day of July, 2014 in Faribault, Minnesota.

Kim Schmidt

Kim Schmidt, Senior Vice President