

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. 12-CV-2826 (DLC)
)
 v.)
)
 APPLE, INC., et al.,)
)
 Defendants.)

THE STATE OF TEXAS;)
 THE STATE OF CONNECTICUT; et al.,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 12-cv-03394 (DLC)
)
 PENGUIN GROUP (USA) INC. et al.,)
)
 Defendants.)

DIRECT TESTIMONY OF LAURA PORCO (AMAZON.COM)

1. My name is Laura Porco. I have a bachelor's degree in Journalism from Ohio State University. After graduating from Ohio State I worked for the Society of Professional Journalists and the Indiana Arts Commission. I then went to work for Macmillan Computer Publishing which, at the time I joined it, was a division of Simon & Schuster. Macmillan Computer Publishing was later bought by Pearson and became a division of that company. Following that job, I worked at a startup company called thebigstore.com, then I came to Amazon in July 2000.

2. My initial job at Amazon was Senior Manager of the Books Merchandising Team, which involved physical books. In 2004, I became Director of Merchandising for Amazon's physical books business. In that job, I was responsible for developing publisher relationships, merchandising their titles and negotiating contract terms to sell their books on the Amazon website. At the end of 2006, I joined the Kindle team as Director of Kindle Books. As of mid-2009, I reported to David Naggar, who in turn reported to Russ Grandinetti, VP – Kindle. In January 2011, I left the Kindle team and took a new job as the Director of Buying for an Amazon business called MyHabit.com, which does not involve ebooks.

My Duties and Responsibilities on the Kindle Team

3. The Kindle was launched in November 2007. Amazon's Kindle team had been working on this project since before I arrived in late 2006. As Director of Kindle Books, I was responsible for working with publishers to build the catalog of books available for customers to buy electronically, ebooks.

4. During 2006 and early 2007, I managed a team of between seven and ten people whose job was to build an ebook catalogue for the new Kindle product. During that time, we had discussions with almost every trade and professional book publisher of any significant size, more than 100 publishers. The publishers we talked with included the large trade publishers referred to as the "Big Six" – Random House, Penguin, HarperCollins, Hachette, Simon & Schuster and Macmillan.

5. My team and I were responsible for negotiating agreements with the publishers to get their ebooks into the Kindle catalogue. The Big Six publishers were particularly important to Kindle's business because they had then (and still have) a large share of the physical trade books market. By the time I arrived in 2006, some of the contracts had already been signed, including some of the Big Six publishers' contracts.

6. During our negotiations with publishers about ebooks, we spent a good deal of time talking about the customer experience we wanted to achieve and things like Digital Rights Management ("DRM"). The publishers were mostly concerned about issues such as clarity on copyright ownership, implementation of DRM, and whether the files would be secure. We spent considerably less time and energy negotiating financial terms with publishers. In fact, several of the largest trade publishers had publicly available ebook terms that we simply accepted. There was very little discussion or negotiation of those financial terms between Amazon and the publishers.

7. In addition to negotiating agreements, my team was primarily focused on working with publishers to prioritize the electronic conversion of titles we believed were going to be important to Kindle customers, including new releases and *New York Times* bestsellers. Amazon invested a considerable amount of energy and resources to make sure that when we launched, Kindle would have the largest possible collection of books that customers would want to read. We worked with publishers to get them to digitize their titles and Amazon paid for digitizing some books. We looked at Amazon's data regarding book sales in physical format and provided that data to publishers to help them prioritize their investment in converting titles to the digital format and negotiating rights with authors so they could make the books that customers were most interested in available in digital format.

8. At the time of the Kindle launch in November 2007, more than 90,000 ebooks were available in the Kindle store. This included most of the then-current *New York Times* bestsellers. Since then, Amazon has continued to invest in the Kindle store to add new titles and to improve the customer experience.

Publishers Complained About Amazon's Prices

9. I heard complaints from publishers about Amazon's \$9.99 ebook price for *New York Times* bestsellers and new releases almost from the time the Kindle store launched. In late 2008, several of the Big Six publishers told Amazon that they were increasing the digital list price ("DLP") for these ebooks. Before, most of these publishers had set a DLP that was roughly 20% less than the physical list price ("PLP"). This lower price reflected the cost savings associated with a digital product, as compared to print books. But in late 2008, several of these publishers increased the DLP to match the PLP. By November 24, 2008, Hachette, Random House, Simon & Schuster and Penguin had all raised their DLPs to parity with the PLP. (AMZN-MDL-0083273; AMZN-MDL-0120602) On January 29, 2009, Harper also announced price changes that would bring its DLP into line with the PLP for most trade titles; in some cases, its DLP was slightly higher than the PLP. (AMZN-MDL-0084692)

10. During the fall of 2008 and early 2009, I had a number of discussions with publishers, including HarperCollins, Random House and Hachette. The publishers told me that their decision to change their pricing policy regarding DLPs was tied to Amazon's \$9.99 pricing policy for most *New York Times* bestsellers and new releases. I don't remember specifics of these conversations, but it was clear to me that the publishers hoped that changing their DLP would force Amazon to raise the customer price for these ebooks. [REDACTED]

11. In December 2009, several of the publishers told Amazon that they were planning to window a substantial number of their ebooks. Maja Thomas of Hachette told me that this change in policy was "about our pricing" and that there was no data to support what they were doing. (AMZN-TXCID-0009278)

The Publishers Simultaneously Demanded Agency

12. I first heard about the agency model during a dinner with Madeline Macintosh of Random House on January 18, 2010. I was in New York that week on a periodic trip to meet

with publishers. I've known Madeline for many years; she worked at Amazon on my team for a while, and we often had dinner together when I traveled to New York. During our dinner, Madeline told me that she had heard that HarperCollins, Simon & Schuster and Hachette were going to do a deal with Apple that would allow the publishers to control the ebook consumer price and that the publishers would release new titles only to Apple and to other retailers that went along with this new model. (AMZN-MDL-0142874; AMZN-MDL-0160969 – 971)

13. Madeline was worried that Random House would be the only publisher that decided to stay with the reseller model and that they would be unable to sell books in the Apple store. Madeline also told me that she was under pressure from other publishers for Random House to move to this agency model because Apple had made it clear that unless all of the Big Six participated, they wouldn't bother with building a bookstore. She was concerned because she believed that other publishers were talking with one another and were making plans to move to the agency model. She specifically mentioned Simon & Schuster (Carolyn Reidy), Hachette (David Young) and HarperCollins (Brian Murray). I was uncomfortable with the subject of this conversation and I immediately reported it to my supervisors and Amazon's legal counsel. (AMZN-MDL-0160969 – 971)

14. I had previously scheduled meetings with other publishers during the rest of the week and I used the meetings as an opportunity to talk to my partners at the other publishers about this new model, whether it was something that they were talking about or thinking about. During that week and, possibly, the following week I remember speaking in person or by phone with Michael Selleck at Simon & Schuster, Ana Maria Alessi at HarperCollins, Maja Thomas at Hachette, Tim McCall at Penguin, and Fritz Foy at Macmillan. My recollection of these conversations is that the publishers were telling me that they were thinking about making the change to a new model in which they would control pricing. Several of the publishers also told me that they were switching to an agency model because it was the only way in which Apple would open a bookstore and do business with them. I heard that comment from Madeline Macintosh during our dinner and I also recall having that conversation with Ana Maria Alessi at

HarperCollins and Maja Thomas at Hachette. As a result of these conversations, I believed the publishers were acting together, with Apple, to change to the agency model.

15. In late January, I provided information about my discussions with the publishers to Amazon's lawyers, who were preparing a letter to the government antitrust agencies.

[REDACTED]

Agency Negotiations and Aftermath

16. In February and March 2010, I participated in negotiating agency agreements with four of the five publishers (Russ Grandinetti had handled the initial agency negotiations with Macmillan). During the negotiations, we had discussions with Hachette, HarperCollins, Simon & Schuster and Penguin in which they all made it clear to us that reseller terms in any form were non-negotiable because agency terms were the only way Apple wanted to do business. They also told us that they were requiring Amazon to switch its terms to agency because that's what Apple required them to do. They said their agreement with Apple included restrictions around consumer pricing that made it technically impossible for them to remain on reseller terms with Amazon or any other retailer. They told us that the wholesale model with Amazon would no longer work for them because of these requirements. I remember having this conversation during the agency contract negotiations with each of the four publishers I worked on who moved to agency in 2010, Hachette (Maja Thomas), HarperCollins (Ana Maria Alessi), Simon & Schuster (Michael Selleck) and Penguin (Tim McCall and David Shanks). These negotiations with publishers included multiple participants over many discussions.

17. During these negotiations, each of the four publishers told us that there was no room for Amazon or for the publishers to negotiate different customer pricing. We tried to negotiate for the ability to run price promotions across all books (such as "\$5.00 off any mystery title") or to offer a points or rewards program for frequent ebook buyers, but we were told that none of those promotions could be permitted. I remember these discussions in particular because some of them became quite heated.

18. After the move to agency, we continued to communicate with publishers how bad their agency pricing was for their business. We looked at the growth of agency publishers' ebook businesses compared with the growth of reseller model publishers' ebook businesses and the difference was significant. For example, in July 2010, we prepared charts illustrating the difference and I reviewed these with each of the publishers. (AMZN-DOJ-000417 – 420; AMZN-DOJ-000466 – 483) They did nothing to change their pricing in response.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on April 24, 2013.

A handwritten signature in black ink, appearing to read "Laura Porco", written over a horizontal line.

Laura Porco