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LITIGATION III, ANTITRUST DIV.
U.S. DEPT OF JUSTICE

June 25, 2012

John R. Read, Esq.
Chief, Litigation III Section
Antitrust Division, United States Department of Justice
450 5th Street, NW, Suite 4000
Washington, DC 20530

Re: United States v. Apple, Inc. et al., No.
12-CV-2826(DLC) (S.D.N.Y.) \Re Comments on Proposed Final
Judgment as to Defendants Hachette, HarperCollins, and
Simon & Schuster

Dear Mr. Read,

I am writing to express an opinion on the Department of Justice's law suit against Apple, Hachette, HarperCollins and Simon & Schuster.

I am an avid reader of books, a literary agent, and a soon-to-be published author (*The Map Room*, Penguin Putnam 2013). I understand that there are varying level of expertise on the subject of publishing, ebooks, agency model, and collusion, and that is why I have been reluctant to write. Why listen to someone who earns their keep off of the current model, and who would be hurt if Amazon is allowed to sell-at-a-loss? Clearly I am biased, despite the fact that I am also a consumer.

Still, it seems to me that I understand where the DOJ is coming from: regardless of outcome, if the Big Six Publishers (minus Random House) *did* collude (of which I have no knowledgeable opinion) then it is the responsibility of the DOJ to press charges. We come to a place where the law, perhaps, is blinded of the needs of the people. I know for a fact that many authors have written you, many literary agents, many independent bookstores as well as major chains. The only major player in publishing who fully supports this case is Amazon. That alone should be indicative as to the danger of this case. But I'm not sure if you are entirely aware of how Amazon is viewed. As an agent, I work hard to create relationships between our clients (authors) and publishers. Ideally, an author has ONE publisher for their entire life, and with that comes a team of people who connect to that

author on a very real and personal level. As an agent, Amazon is literally the only major publishing player I do not submit my clients' works to. As an author, an Amazon editor recently approached my agent, who is an agent at WME, certainly one of the biggest and best agencies in the country, and asked for us to submit my novel to them. And WME refused, as did I. To do business with Amazon is to literally go against my morals. Would I ever do that for another publisher? Not at all. But I am literally paid to advise my clientele and I professionally choose *not* to have any dealings with Amazon. They have cutthroat and inappropriate contracts, they have predatory practices, they *have no heart* and do not care the slightest for the author. They say they want to cut out the gatekeeper – that's the publisher and the agent. I get that. I really do. But to this point they have proved that their entire purpose is to win a battle for customers and marketshare, and it is entirely clear to all petitioning parties that it is Amazon that gains from this, in such ways as to damage the industry irrevocably.

That is the difficulty here. On the surface, by the letter, this is about collusion of a group of the men and women representing five publishing houses. But it is at your discretion to bring forth a case, to push forward an issue that is about so so much more than alleged collusion. And it is imperative that an organization purposed with maintaining the welfare of the consumer and competitive market take into account the reality of the bigger picture. In fact, how can this be any type of collusion if the accused parties are literally *making less per book* than they were before the Agency Model? If it is, fundamentally, about drawing a line in the sand and punishing (if the findings show true collusion), then I ask that punishment fit the crime, which is to say: the big five publishers should be punished, but the industry, the agency model should not be dismantled – for it is that agency model that has grown competition so heartily.

Thank you for your time in this difficult case. I appreciate your consideration, and your fair judgment.

Sincerely



Seth Fishman