

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

DNAML PTY, LIMITED,

Plaintiff,

v.

APPLE INC., et al.,

Defendants.

CASE NO. 1:13-cv-06516-DLC

**DECLARATION OF MICHAEL J. GUZMAN IN SUPPORT OF DNAML'S  
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Michael J. Guzman, declare as follows:

1. I am a member of the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., counsel of record for Plaintiff in *DNAML PTY, Ltd v. Apple Inc.*, No. 1:13-cv-06516-DLC. I am admitted *Pro Hac Vice* in this Court in the above-entitled matter. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Documents produced by DNAML in this action were produced in native format. Each native document was given a number (*e.g.*, DNAML\_0040155 for Exhibit 1), but the documents do not have Bates-stamped page numbers. Documents produced by DNAML have been converted into PDF/A format and given page numbers, but otherwise have not been altered. Documents produced by third party Viant Capital ("Viant") in this action were produced in native format and do not have Bates-stamped page numbers. Documents produced by Viant have been labeled according to the internal tracking numbers used by DNAML's counsel (*e.g.*,

VIANT\_COLLECT\_0000146 for Exhibit 8), converted into PDF/A format, and given page numbers, but otherwise have not been altered.

3. Attached are true and correct copies of the following documents:
4. Email from Adam Schmidt to Gavin Forsyth, dated August 13, 2008 re: updated budgets wages to ground zero (DNAML\_0040155), attached hereto as Exhibit 1.
5. Email from Gavin Forsyth to Adam Schmidt, dated November 20, 2008 re: DNAML Board Meeting 25th November 2008 Agenda (DNAML\_0040132), attached hereto as Exhibit 2.
6. DNAML PTY Ltd. Minutes of Board Meeting, dated June 26, 2009 (DNAML\_0059377), attached hereto as Exhibit 3.
7. Declaration of David Greatorex, dated July 30, 2015, attached hereto as Exhibit 4.
8. Email from Martin Hoffman to Peter Yates and Adam Schmidt, dated September 13, 2007 re: dnaml share holders (DNAML\_0095530), attached hereto as Exhibit 5.
9. Email from Menno Veeneklaas to Adam Schmidt, dated June 7, 2010 re: DNAML Share register (DNAML\_0097093), attached hereto as Exhibit 6.
10. Excerpts of the deposition of Adam Schmidt, dated February 17, 2015, attached hereto as Exhibit 7.
11. Viant Group and Barrack & York Executive Summary, dated April 2010 re: dnlebooks (VIANT\_COLLECT\_0000146), attached hereto as Exhibit 8.
12. Viant Management Presentation to Hewlett-Packard, dated April 7, 2010 re: dnlebooks: a powerful end-to-end ebook technology platform (VIANT\_COLLECT\_0000067), attached hereto as Exhibit 9.

13. Email from Adam Schmidt to Leslie Hulse, dated May 29, 2008 re: sorry to have missed you! (HCA-DDA-006586-87), attached hereto as Exhibit 10.

14. Email from Michael Ball to Martin Hoffman et al., dated December 12, 2008 re: Letter to Shareholders (DNAML\_0025243), attached hereto as Exhibit 11.

15. Email from Matthieu R to Lindley Edwards and Michael Ball, dated June 1, 2009 re: Amended Letter (DNAML\_0049108), attached hereto as Exhibit 12.

16. Excerpt of email from Gavin Forsyth to Adam Schmidt, dated February 1, 2009 re: DNAML Budget 20090130\_ Revised V2.xls (DNAML\_0004655), attached hereto as Exhibit 13.

17. Email from Adam Schmidt to Siobhan Padgett, dated September 8, 2009, re: Hachette eBook Sales July 2009 (DNAML\_0000399), attached hereto as Exhibit 14.

18. Declaration of Thomas Moulton, dated July 22, 2015, attached hereto as Exhibit 15.

19. Excerpts of the deposition of Adam Schmidt, dated February 18, 2015, attached hereto as Exhibit 16.

20. Email from Adam Schmidt to alex@dnaml.com, dated April 13, 2011 re: ePub to Android (DNAML\_0011212), attached hereto as Exhibit 17.

21. Email from Adam Schmidt to Warren Moore, dated March 6, 2011 re: What DNAML has developed.docx (DNAML\_0023064), attached hereto as Exhibit 18.

22. Email from alex@desktopauthor.com to Melinda Siple, dated December 23, 2010 re: www.dnlreader.com (DNAML\_0090329), attached hereto as Exhibit 19.

23. Email from Laura Binnie to Adam Schmidt, dated October 14, 2009 re: First Draft of NYT-focused article (DNAML\_0016020), attached hereto as Exhibit 20.

24. Email from Hachette, dated May 29, 2008 re: PRESS RELEASE: Hachette Book Group Publishes Nextville in Interactive ebook Format (HBG-RSLR-00000008-10), attached hereto as Exhibit 21.
25. Email from Siobhan Padgett to David Young, dated April 22, 2009 re: DNAML (HBG-YOUNG000096685) (Padgett Ex. 15), attached hereto as Exhibit 22.
26. Email from Theresa Horner to Adam Schmidt, dated August 25, 2007 re: video ebook (DNAML\_0008841), attached hereto as Exhibit 23.
27. Email from Leslie Hulse to Brian Murray, dated December 4, 2008 re: DNL format e-books (HC-TXAG-0787796-97) (Hulse Ex. 6), attached hereto as Exhibit 24.
28. Excerpts of the deposition of Leslie Hulse, dated December 19, 2014, attached hereto as Exhibit 25.
29. Memorandum from John Makinson, dated July 7, 2008 re: June 2008 Penguin Group Competition Report (PENII-0817239-243), attached hereto as Exhibit 26.
30. Excerpts of the deposition of Frederick Foy, dated February 11, 2015, attached hereto as Exhibit 27.
31. Declaration of Adrian Jenkins, dated October 14, 2015, attached hereto as Exhibit 28.
32. Email from Adam Schmidt to Michael Ball et al., dated August 3, 2008 re: DNAML Reduction (DNAML0094461) (Schmidt Ex. 10), attached hereto as Exhibit 29.
33. Email from Justus Veeneklaas to Adrian Jenkins et al., dated December 18, 2009 attaching Prospects for the Sale of DNAML's Assets Findings and Recommendations (DNAML\_0093819), attached hereto as Exhibit 30.

34. Excerpts of the deposition of Scott Smith, dated January 8, 2015, attached hereto as Exhibit 31.

35. Email from Adam Schmidt to Siobhan Padgett, dated April 15, 2009 re: DNAML eBook review (DNAML\_0000756), attached hereto as Exhibit 32.

36. Email from Andy R. to Adam Schmidt and Gavin Forsyth, dated September 13, 2009 re: First set Invoice from Amnet (DNAML\_0095004 (attachments omitted)), attached hereto as Exhibit 33.

37. Email from Andy R. to Adam Schmidt and Gavin Forsyth, dated November 18, 2009 re: Sep 09 – Amnet Invoice (DNAML\_0035299 (attachments omitted)), attached hereto as Exhibit 34.

38. Email from Adam Schmidt to Adam Schmidt, dated April 10, 2009 re: Thoughts for Easter (DNAML\_0007346), attached hereto as Exhibit 35.

39. Email from Michael Ball to Adam Schmidt, dated September 22, 2009 (DNAML\_0008224), attached hereto as Exhibit 36.

40. Email from Menno Veeneklaas to Scott Smith, dated February 1, 2010 re: Digital media M&A opportunity (VIANT\_COLLECT\_0001177), attached hereto as Exhibit 37.

41. Email from Brian Murray to Charlie Redmayne, dated September 21, 2010 re: Update on DNAML – Auction for Domain URL ebook.com (HC-DOJ-0085910-11), attached hereto as Exhibit 38.

42. Email chain between Adam Schmidt and Geoff Isaac, dated August 13, 2009 re: Newsletter (DNAML\_0018798) (Hulse Ex. 22), attached hereto as Exhibit 39.

43. Email from Laura Binnie to Adam Schmidt, dated October 6, 2009 re: Ebook press releases: Happy Hour; Launch (DNAML\_0016183) (Hulse Ex. 25), attached hereto as Exhibit 40.

44. Email from Laura Binnie to Adam Schmidt, dated October 14, 2009 re: Marketing for ebook.com (DNAML\_0016138) (Hulse Ex. 23), attached hereto as Exhibit 41.

45. Email from Laura Binnie to Adam Schmidt, dated September 24, 2009 re: Ideas (DNAML\_0008184) (Hulse Ex. 24), attached hereto as Exhibit 42.

46. Email from Adam Schmidt to Gavin Forsyth, dated October 10, 2009 re: wire release (DNAML\_0018548), attached hereto as Exhibit 43.

47. Email DNAML press release, dated October 26, 2009 re: happy hour (DNAML\_0025680), attached hereto as Exhibit 44.

48. Email from Dan Amos to Adam Schmidt and Leslie Hulse, dated May 31, 2010 re: DNL/HC: Tax Nexus update (HC-TXAG-0894889-91) (Hulse Ex.20), attached hereto as Exhibit 45.

49. Email from Adam Schmidt to Leslie Hulse, dated July 1, 2010 re: move forward (DNAML\_0000511) (Hulse Ex. 21), attached hereto as Exhibit 46.

50. DNAML's Responses and Objections to Defendants' Second Set of Interrogatories, dated February 2, 2015, attached hereto as Exhibit 47.

51. Email from Dan Amos to Adam Schmidt, dated October 6, 2008 re: hachette report (DNAML\_0035537), attached hereto as Exhibit 48.

52. Email from Siobhan Padgett to dana@dnaml.com, dated August 1, 2008 re: DNAML for June (quick question) (DNAML\_0002514), attached hereto as Exhibit 49.

53. Excerpts of the deposition of Dennis W. Carlton, Ph.D., dated August 21, 2015, attached hereto as Exhibit 50.

54. DNAML's Responses and Objections to Defendants' Third Set of Interrogatories, dated March 6, 2015, attached hereto as Exhibit 51.

55. Email from Adam Schmidt to alex@dnaml, dated September 12, 2008 re: DeskTop Author – eBook (DNAML\_0075471), attached hereto as Exhibit 52.

56. DNAML Press Release, dated October 27, 2009 re: WebPost®: eBook prices have just hit a n... (DNAML\_0015884), attached hereto as Exhibit 53.

57. Email from Amalia to email, dated January 15, 2012 re: DNAML new lease structure (DNAML\_0094665), attached hereto as Exhibit 54.

58. Declaration of Robert Kelso, dated May 6, 2015, attached hereto as Exhibit 55.

59. Email from Gavin Forsyth to Adam Schmidt, with excerpt of attachment, dated January 11, 2009 re: DNAML Budget 20090112\_1.xls (DNAML\_0004693), attached hereto as Exhibit 56.

60. Email and excerpt of attachments, from Michael Ball to Matt Handbury, dated February 2, 2009 re: DNAML 2008/2010 Forecasts (DNAML\_0035463), attached hereto as Exhibit 57.

61. Email from Gavin Forsyth to Michael Ball, dated March 30, 2009 re: Updated DNAML Current Budget (DNAML\_0032418), attached hereto as Exhibit 58.

62. Declaration of Adam Schmidt, dated May 5, 2015, attached hereto as Exhibit 59.

63. Declaration of Con Tolis, dated May 5, 2015, attached hereto as Exhibit 60.

64. Company Background Summary, undated (DNAML\_0097945), attached hereto as Exhibit 61.

65. Email from Adam Schmidt to Alex, dated June 13, 2005 re: one for you (DNAML\_0070859), attached hereto as Exhibit 62.
66. Email from Siobhan Padgett to David Stack et al., dated May 29, 2008 re: Nextville – press release in PW daily (HBG-LIT-00021254), attached hereto as Exhibit 63.
67. Email from Adam Schmidt to Joan Scavuzzo, dated October 4, 2008 re: EPP Speaker Dinner on Thursday, October 16 at 7:30 P.M. (DNAML\_0007691), attached hereto as Exhibit 64.
68. Email from Malle Vallik to business@openbook.org, dated November 21, 2008 re BSIG Meeting (HC-DOJ-0005917), attached hereto as Exhibit 65.
69. Email from Edward McCoyd to Leslie Hulse et al., dated April 1, 2009 re: AAP DIWG meeting 4/28 (HC-TXAG-0659177-79), attached hereto as Exhibit 66.
70. Email Press Release for BookExpo America to Leslie Hulse, dated May 26, 2009 (HC-TXAG-0699815-24), attached hereto as Exhibit 67.
71. Email from Star Muhammad to Adam Schmidt, dated July 18, 2008 re: DNAML contract (HC-TXAG-0626412-23) (Hulse Ex. 2), attached hereto as Exhibit 68.
72. Email from Siobhan Padgett to Eric Pommat, dated June 13, 2008 re: LBF presentation/DNL (DNAML\_0002568) (Padgett Ex. 5), attached hereto as Exhibit 69.
73. Email from Brian Napack to Fritz Foy, dated June 9, 2008 re: Great talk with the economist (MACMLN0014666), attached hereto as Exhibit 70.
74. Email from Amalia to Adam Schmidt, dated May 4, 2011 re: CONVERTIBLE NOTES (DNAML\_0094692), attached hereto as Exhibit 71.
75. DNAML Summary of Government Grant Proceeds (VIANT\_COLLECT\_0000077), attached hereto as Exhibit 72.



76. Excerpts of the Expert Report of Michael D. Rosen, CPA, Ph.D., ABV, dated March 13, 2015, attached hereto as Exhibit 73.

77. Email from Gavin Forsyth to Adam Schmidt, dated February 26, 2009 re: Share Registers (DNAML\_0094964), attached hereto as Exhibit 74.

78. Email from Michael Ball to Daniel Coney, dated May 5, 2008 re: Investment oin (sic) DNAML (DNAML\_0044633), attached hereto as Exhibit 75.

79. Email DNAML Press Release, dated November 20, 2008 re: DeskTop Author – Hachette eBook (DNAML\_0012861), attached hereto as Exhibit 76.

80. Email DNAML Press Release, dated December 19, 2008 re: Christmas DNL bonus (DNAML\_0007521), attached hereto as Exhibit 77.

81. Email DNAML Press Release, dated January 8, 2009 re: Hachette eBook Offer (DNAML\_0084274), attached hereto as Exhibit 78.

82. Email DNAML Press Release, dated January 22, 2009 re: PDF 2 PageTurn with Hachette eBook (DNAML\_0014459), attached hereto as Exhibit 79.

83. Email DNAML Press Release, dated February 25, 2009 re: pdf 2 page turn the engine (DNAML\_0004892), attached hereto as Exhibit 80.

84. Email DNAML Press Release, dated October 30, 2008 re: eBook rollout (DNAML\_0013137), attached hereto as Exhibit 81.

85. Email from Adam Schmidt to Siobhan Padgett, dated September 17, 2008 re: book of lies weekend (sic) promotion results (DNAML\_0002322), attached hereto as Exhibit 82.

86. Email from Adam Schmidt to Michael Ball, dated September 12, 2008 re: Quark (DNAML\_0015288), attached hereto as Exhibit 83.

87. Email DNAML Press Release, dated November 11, 2009 re: Happy Hour 2 (DNAML\_0085997), attached hereto as Exhibit 84.
88. Email DNAML Press Release, dated January 6, 2010 re: eBooks and PDF to Kindle (DNAML\_0087057), attached hereto as Exhibit 85.
89. Email DNAML Press Release, dated January 22, 2010 re: eBook from eBook.com (DNAML\_0086918), attached hereto as Exhibit 86.
90. DNAML Press Release, Ebook.com launches the most Interactive eBook web site yet, dated October 8, 2009, attached hereto as Exhibit 87.
91. Email DNAML Press Release, dated October 10, 2009 re: WebWire Targeted Media Distribution: Ebook.com launches an Interact... (DNAML\_0015865), attached hereto as Exhibit 88.
92. Email from Leslie Hulse to Adam Schmidt, dated January 27, 2010 re: Update (HC-DOJ-0064396), attached hereto as Exhibit 89.
93. Email from Leslie Hulse to Adam Schmidt, dated March 24, 2010 re: Agency rollout (HC-DOJ-0042184-201), attached hereto as Exhibit 90.
94. Email from Leslie Hulse to Adam Schmidt, dated March 29, 2010 (HCA-DDA-002437), attached hereto as Exhibit 91.
95. Email from Neil DeYoung to Adam Schmidt, dated March 2, 2010 re: Agency Agreement – DNAML (HBG-00006698-709), attached hereto as Exhibit 92.
96. Agreement between DNAML PTY, Limited and Hachette Book Group, dated March 2, 2010 (HBG00019178-88), attached hereto as Exhibit 93.

97. Objections and Responses of the Penguin Group, a Division of Pearson PLC to Plaintiffs' First Set of Requests for Admission Directed to Publisher Defendants, dated September 29, 2014, attached hereto as Exhibit 94.

98. Excerpts of deposition of Douglas Stambaugh, dated February 25, 2015, attached hereto as Exhibit 95.

99. Simon & Schuster, Inc.'s Responses and Objections to Plaintiffs' First Set of Requests for Admission Directed to Publisher Defendants, dated September 29, 2014, attached hereto as Exhibit 96.

100. Responses and Objections of Defendants Holtzbrinck Publishers, LLC D/B/A Macmillan and Verlagsgruppe Georg von Holtzbrinck GMBH to Plaintiffs' First Set of Requests for Admission, dated September 29, 2014, attached hereto as Exhibit 97.

101. Excerpts of Hachette Book Group, Inc.'s Responses and Objections to Plaintiffs' First Set of Requests for Admission, dated September 29, 2014, attached hereto as Exhibit 98.

102. Excerpts of HarperCollins Publishers L.L.C.'s Objections and Responses to Plaintiffs' First Set of Requests for Admission, dated September 29, 2014, attached hereto as Exhibit 99.

103. Email from Leslie Hulse to Josh Marwell and Ana Maria Alessi, dated February 19, 2010, re: agency term sheet (HC-DOJ-0048746-47) (Hulse Ex. 12), attached hereto as Exhibit 100.

104. Excerpts of deposition of Timothy McCall, dated March 4, 2015, attached hereto as Exhibit 101.

105. Excerpts of deposition of Siobhan Padgett, dated February 26, 2015, attached hereto as Exhibit 102.

106. Email from Adam Schmidt to Gavin Forsyth, dated November 19, 2009 re: Signed letter of engagement (DNAML\_0011991), attached hereto as Exhibit 103.

107. Email from Adam Schmidt to Gavin Forsyth, dated November 20, 2009 re: Managing Director Letter to Shareholders (DNAML\_0039880), attached hereto as Exhibit 104.

108. Email from Menno Veeneklaas to Adam Schmidt and Gavin Forsyth, dated February 22, 2010 re: Viant Capital LLC Agreement (DNAML\_0035122), attached as Exhibit 105.

109. Email from Justus Veeneklaas to Adrian Jenkins et al., dated February 14, 2010 re: DNAML Shareholder Update 14/1/10 (DNAML\_00097025), attached hereto as Exhibit 106.

110. September Monthly Report for DNAML Shareholder Representative, undated (VIANT\_COLLECT\_0000249), attached hereto as Exhibit 107.

111. Email from John Batdorf to Johann Kempe, dated September 9, 2010 re: Update on DNAML – Auction for Domain URL ebook.com (VIANT\_COLLECT\_0005675), attached hereto as Exhibit 108.

112. Email from Adam Schmidt to Gavin Forsyth, dated September 14, 2010 re: Viant Engagement Letter – DNAML Amendment 9-13-10 (DNAML\_0038294), attached hereto as Exhibit 109.

113. Email from Charlie Redmayne to Brian Murray, dated September 28, 2010 re: eBook.com – Valuation Analysis – 28-09-10.ppt (HC-DOJ-0091660-68), attached hereto as Exhibit 110.

114. Email from Adam Schmidt to Dr. Moritz Hagenmüller, dated March 5, 2012 re: Final sale contract EBook.com (DNAML\_0023753), attached hereto as Exhibit 111.

115. Excerpts of the Reply Report of James D. Ratliff Concerning Causation, dated August 11, 2015, attached hereto as Exhibit 112.

116. Excerpts of the Expert Report of James D. Ratliff, dated March 13, 2015, attached hereto as Exhibit 113.

117. Excerpts of the deposition of James D. Ratliff, dated August 25, 2015, attached hereto as Exhibit 114.

118. Excerpts of the Expert Report of Dennis W. Carlton, dated April 24, 2015, attached hereto as Exhibit 115.

119. Publishers Weekly PWxyz Blog, *Gnashing of Teeth: Publishers vs. Readers*, by Peter Brantley, dated March 11, 2012, (<http://web.archive.org/web/20150330031534/http://blogs.publishersweekly.com/blogs/PWxyz/2012/03/11/gnashing-of-teeth-publishers-vs-readers>), attached hereto as Exhibit 116.

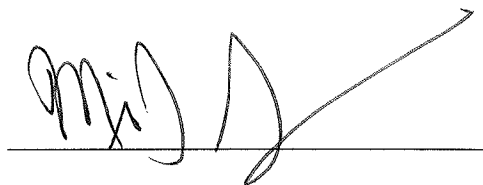
120. Smashwords Blog, *Smashwords Puts Authors and Publishers in Control of Pricing*, dated December 1, 2010, (<http://blog.smashwords.com/2010/11/smashwords-puts-authors-and-publishers.html>), attached hereto as Exhibit 117.

121. The Shatzkin Files, *Amazon and Hachette Have Settled So There Will Be No Big Bang Change in the Publishing Business Model*, by Michael Shatzkin, dated November 14, 2014, (<http://www.idealogue.com/blog/whats-so-hard-to-understand-about-random-houses-strategy/#comment-41607715>), attached hereto as Exhibit 118.

122. Email from Adam Schmidt to Robert Kasher, re: FW: some Good News from Quatro, dated October 22, 2008, attached hereto as Exhibit 119.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of October, 2015

A handwritten signature in black ink, appearing to read "Michael J. Guzman", is written over a horizontal line. The signature is stylized and cursive.

Michael J. Guzman