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OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF ECONOMIC JUSTICE  
ANTITRUST BUREAU

December 24, 2013

**Via ECF Filing**

The Honorable Denise Cote  
United States District Judge  
Southern District of New York

Re: *Texas v. Penguin Group (USA) Inc.*, 12-CV-3394 (S.D.N.Y.) (DLC); *In re Electronic Books Antitrust Litig.*, 11-MD-2293 (S.D.N.Y.) (DLC)

Dear Judge Cote:

I write on behalf of Plaintiff States to oppose any further deposition of Plaintiffs' expert, as requested in the letter to the Court dated December 23, 2013 from Daniel Swanson. First, the Court set the amount of time available to depose Plaintiffs' expert and Apple chose to use all of that time on November 1, 2013, before Apple disclosed its expert opinions and before Apple opposed the motion for class certification. Second, the schedule for expert discovery agreed to by the parties and so ordered by the Court on December 9, 2013, does not contemplate such a deposition or even a procedure for requesting a deposition after the allocated time has been used. Third, Plaintiffs' expert rebuttal report does not include opinions that are new or that could not have been anticipated.

Plaintiff States take no position on whether further expert depositions may later be appropriate to avoid surprise at trial, after the parties and the Court focus what is in dispute. In any event, Plaintiff States insist that any depositions, if permitted now or later, be reciprocal, as offered in Mr. Swanson's letter at n. 3.

Respectfully submitted,

/s/ Robert Hubbard

Robert Hubbard  
Assistant Attorney General