# FIRST SUPPLEMENTAL

# APPENDIX

# J

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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| **IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION** | ) | **No. 11-md-02293 (DLC)**<br>**ECF Case** |

**This Document Relates to:**

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| **THE STATE OF TEXAS, et al.,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**HACHETTE BOOK GROUP, INC., et al.,**<br><br>**Defendants.** | ) | **Civil Action No. 12-cv-6625 (DLC)** |

**[PROPOSED] ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENTS**

The States, Commonwealths and Territories of Texas, Connecticut, Ohio, Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming, together with the District of Columbia ("Plaintiff States"), and HarperCollins Publishers, L.L.C., Hachette Book Group, Inc., Simon & Schuster, Inc. and Simon & Schuster Digital (collectively "Defendants"), entered into Settlement Agreements dated June 11, 2012.

These Settlement Agreements have been presented to the Court for Preliminary Approval pursuant Sections 4C and 16 of the Clayton Act, 15 U.S.C. §15c and §26.

Upon review and consideration of these Settlement Agreements, the Plaintiff States' Notice of Motion and Plaintiff States' Memorandum in Support of Motion for Preliminary Approval of Settlements and Proposed Notice and Distribution Plans ("States' Memorandum in Support of Motion"), and the attachments thereto, all of which have been filed with the Court, and for good cause appearing therein;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

## GENERAL FINDINGS

1. The Court has jurisdiction over this action and each of the Parties.

2. The Court, for purposes of this Order, adopts the definitions set forth in the Settlement Agreements.

3. The Court, for purposes of this Order, finds that the Attorneys General are the superior representatives of natural persons in the Plaintiff States and have authority to settle and release the Claims of the natural persons who are eligible Consumers in the Plaintiff States.

4. The Court, for purposes relating to the Settlement Agreements, confirms the Attorneys General of the States of Texas, Connecticut and Ohio as Liaison Counsel for the Plaintiff States.

5. The Court confirms the appointment of Fifth Third Bank as Escrow Agent, and Kinsella Communications and Rust Consulting as the Notice and Claims Administrators for purposes of the implementation of the Settlements.

## PRELIMINARY APPROVAL OF SETTLEMENTS AND PROPOSED DISTRIBUTION PLAN

6. The Court finds that these Settlement Agreements appear to be the product of serious, informed, non-collusive negotiations, have no obvious deficiencies, and fall within the range of possible approval.

7. The Court finds that the settlements encompassed by the Settlement Agreements (the "Settlements"), including the proposed methods of distribution and allocation of the monies paid in settlement of these actions as outlined in the Settlement Agreements and in the Distribution Plan, attached as Appendices A, B, C & F to States' Memorandum in Support of Motion, are entitled to preliminary approval.

8. The Court finds the Settlements satisfy the requirements of 15 U.S.C. 15c and due process.

9. The terms of the Settlement Agreements and the Distribution Plan are hereby preliminarily approved and notice of them shall be given as provided in this Order.

## NOTICE OF SETTLEMENT

10. The Court finds that the form and content of the proposed Notice Plan (the "Notice"), attached to this Order as Attachment A, are in full compliance with the requirements of 15 U.S.C. 15c and satisfy due process. The Court further finds that the Notice provides to the eligible Consumers in Plaintiff States sufficient information to make informed and meaningful decisions regarding their options in this litigation and the effect of these Settlements on their rights and is the best practicable method of notice under the circumstances. The Court approves the Notice Plan and approves the distribution of the various emails, and publication notices, in

substantially the same form as included in the Notice Plan.

11. The Court finds that the proposed sixty-day (60) Notice Period is adequate for eligible Consumers in Plaintiff States to exercise their right to object to the proposed Settlements or to exclude themselves from the proposed Settlements. The Notice Period shall begin thirty (30 )days after the entry of this Preliminary Approval Order, and end sixty (60) days thereafter. The Court further finds that a ninety day (90) period after the entry of this Preliminary Order for consumers to submit electronic or paper claims, elect whether to select a check instead of a credit, and submit requests for exclusions or objections, is fair and adequate.

12. As soon as practicable after entry of this Order, but no later than 30 days after the date of entry hereof, Liaison Counsel for Plaintiff States shall cause notice to be disseminated to the eligible Consumers in the Plaintiff States in accordance with the Notice Plan and the terms of this Order. Prior to the Fairness Hearing, Liaison Counsel shall serve and file sworn statements attesting to compliance with the Notice Plan.

13. The Court approves the expenditure of actual notice and administrative costs reasonably incurred in the amount and manner and to the extent provided for in Paragraphs IV, V and VI of the Settlement Agreements, for the purpose of providing Notices to eligible Consumers in Plaintiff States in accordance with the Notice Plan and to administer the Distribution Plan. The Escrow Agent is directed to pay such costs as they have been or are hereafter reasonably incurred upon Written Direction, as provided in the Settlement Agreements and Escrow Agreement.

## REQUESTS FOR EXCLUSION

14. All eligible Consumers in Plaintiff States who submit valid and timely requests for exclusion from the Settlements during the Notice Period pursuant to, and complying with, instructions contained in the Notice, shall not have any rights under the Settlement Agreements and shall not be bound by the Settlement Agreements or the final judgment.

15. All eligible Consumers in Plaintiff States who do not submit valid and timely requests for exclusion from the Settlements during the Notice Period pursuant to, and complying with, instructions contained in the Notice shall be bound by the Settlement Agreements and by the final judgment, in the event that the Settlement Agreements are finally approved by the Court.

## THE FAIRNESS HEARING

16. A hearing on final settlement approval (the "Fairness Hearing") is hereby scheduled to be held before the undersigned on _____, 201_ at _____ a.m. Eastern Standard Time in Courtroom No. ___, United States Courthouse, 500 Pearl Street, New York, NY, 100007-1312 to consider the fairness, reasonableness and adequacy of the Settlements, the dismissal with prejudice of this action as to the Defendants, and the entry of final judgment in this action.

17. Any eligible Consumer in the Plaintiff States who has not previously filed a request for exclusion in the manner set forth above may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlements, the dismissal with prejudice of this action as to the Defendants and/or the entry of final judgment. Provided, however, no person

shall be heard in opposition to the Settlements, dismissal and/or entry of final judgment and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before _____, 2012 such person: (a) files with the Clerk of Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the Settlements, the dismissal of claims and/or the entry of final judgment and any documentation in support of such opposition, and (b) serves a copy of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon the Claims Administrator at: E-books AG Settlements Objections, P.O. Box 00000, Faribault, MN 00000.

18. Any eligible Consumer in the Plaintiff States who does not file, and serve as required, an objection within the Notice Period in the manner provided in the Notice and this Order shall be deemed to have waived any such objection by appeal, collateral attack or otherwise.

19. The date and time of the Fairness Hearing shall be set forth in the Notices, but shall be subject to adjournment by the Court without further notice to eligible Consumers in Plaintiff States other than that which may be posted by the Court.

20. The Parties shall file with the Court any pleadings or memoranda in support of the Settlements and Settlement Agreements at least ten (10) calendar days before the Fairness Hearing.

## CONFIDENTIALITY

21. No information received by the Notice and Claims Administrator in connection with the Settlements that pertains to a particular eligible Consumer, other than information

contained in a request for exclusion or in an objection, shall be disclosed to any person or entity other than as directed by the Court.

## OTHER PROVISIONS

22. These Settlement Agreements, subject to this Court's final approval, fully and finally compromise, settle and resolve the Plaintiff States' claims subject to the terms and conditions set forth in the Settlement Agreements.

23. All discovery and other pretrial proceedings in this action are hereby stayed pending the Effective Date of the Settlements as defined in the Settlement Agreements, except such proceedings as may be necessary to implement the terms of the Settlement Agreements.

24. If the Settlement Agreements are terminated or otherwise do not become effective in accordance with the provisions of the Settlement Agreements, the Settlements and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreements, and without prejudice to the *status quo ante* rights of the Plaintiff States and the Defendants.

25. Neither this Order nor the Settlement Agreements shall constitute any evidence or admission of liability by Defendants nor shall they be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement Agreements or the terms of this Order,

or by Defendants in connection with any action asserting claims that are released by the terms of the Settlement Agreements.

SO ORDERED:

Dated: New York, New York
September _____, 2012

_____
Hon. Denise Cote
United States District Judge