



1900 M Street, NW, Ste. 250, Washington, D.C. 20036
marc@zwillgen.com

Marc J. Zwillinger
(202) 706-5202 (phone)
(202) 706-5298 (fax)

March 11, 2016

VIA ELECTRONIC FILING

The Honorable Margo K. Brodie
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *In re Order Requiring Apple Inc. to Assist in the Execution of a Search Warrant Issued by the Court, No. 14 Cr. 387 (MKB); No. 15 MC 1902 (JO)*

Dear Judge Brodie:

We represent Apple Inc. in the above-referenced matter. We are in receipt of the Court's March 10, 2016 scheduling order and intend to respond to the government's application for an All Writs Act order (the "Application"). (See 3/7/2016 Order, No. 15 MC 1902, ECF No. 31.) We write to respectfully request that the Court extend the briefing schedule and permit Apple to submit a brief exceeding twenty-five pages, commensurate with the length of the brief filed by the Government and on consent.

The Government's previous *ex parte* application was filed on October 8, 2015. (No. 15 MC 1902, ECF No. 1.) Magistrate Judge Orenstein denied the application on February 29, 2016. (No. 15 MC 1902, ECF No. 29.) On March 7, 2016, the Government filed the present Application with this Court, and contemporaneously before Magistrate Judge Orenstein where it was styled as an "Appeal of Magistrate Judge Decision." (See No. 15 MC 1902, ECF No. 30.) Yesterday, the Court's scheduling order gave Apple two weeks, until March 24, to file a response.

We respectfully request an additional week to brief these important issues in light of the ongoing litigation in the Central District of California and the fact that there is no special urgency in this matter. The Government's application has been pending since October of last year, and, as the Court is aware, the criminal defendant whose phone the Application relates to has already pled guilty. Apple and the Department of Justice are presently litigating overlapping issues in the Central District of California. (*In the Matter of the Search of an Apple iPhone Seized During the Execution of a Search Warrant on a Black Lexus IS300, California License Plate 35KGD203*, No. ED 15-0451M.) Apple's reply brief in that matter is due on March 15, 2016 and oral argument is

scheduled for March 22. In light of the public importance of these issues, the benefit from the full airing of the related issues in the Central District of California, and the lack of urgency in this matter, Apple respectfully requests that the Court adjourn the schedule entered on March 10 by one week, so that Apple's response would be due March 31 and the Government's reply, if any, would be due April 7.

Apple additionally requests permission to file a response brief not to exceed forty-five pages, which would be commensurate with the length of the Government's Application and is warranted given the important public issues involved. On March 9, 2016, we met and conferred by telephone with counsel for the Government regarding the length of the briefs and the Government agreed that if Apple were permitted to respond, it would agree to Apple's request for forty-five pages for its response.

Finally, the protocols for the Court's CM/ECF system require that Apple first obtain the Court's approval to be added as an interested party before any filings on behalf of Apple will be accepted on the docket for *United States v. Yang*, 14 Cr. 387 (MKB). Apple respectfully requests that the Court instruct the Docket Clerk to add Apple as an interested party, so that counsel for Apple may enter appearances and file motions for admission *pro hac vice*, as well as make any subsequent filings as permitted by the Court.

We thank the Court for its consideration and can be available at the Court's convenience to address any questions or concerns.

Respectfully submitted,

/s/ Marc J. Zwillinger

Marc J. Zwillinger (admitted *pro hac vice*¹)
ZWILLGEN PLLC
1900 M Street, NW, Ste. 250
Washington, D.C. 20036
Telephone: (202) 706-5202

Theodore J. Boutrous, Jr. (*pro hac vice* forthcoming)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000

Alexander H. Southwell
Mylan L. Denerstein
GIBSON, DUNN & CRUTCHER LLP

¹ Jeffrey Landis and Marc Zwillinger were admitted *pro hac vice* in the prior proceeding before Judge Orenstein. Because the current proceeding is styled both as an Appeal and a new Application, we respectfully request that the Court accept our prior *pro hac vice* admission as applying in the *Yang* matter as well.

200 Park Avenue, 48th Floor
New York, New York 10166-0193
Telephone: (212) 351-4000

Attorneys for Interested Party Apple, Inc.

cc: All Counsel of Record (via ECF)