



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

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

February 17, 2016

VIA ELECTRONIC FILING – UNDER SEAL

The Honorable James Orenstein
United States Magistrate 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. 15-MC-1902*

Dear Judge Orenstein:

I write in response to this Court's February 16, 2016 order (the "Order") requesting that Apple provide certain additional details regarding other requests it has received during the pendency of this matter that are of a similar nature to the one at issue in the instant case.

As recently as yesterday, Apple was served with an order by the United States Attorney's Office for the Central District of California. (*See* Exhibit A.) The government obtained that order on the basis of an *ex parte* application pursuant to the All Writs Act (*see* Exhibit B), regarding which Apple had no prior opportunity to be heard (despite having specifically requested from the government in advance the opportunity to do so). The attached order directs Apple to perform even more burdensome and involved engineering than that sought in the case currently before this Court—*i.e.*, to create and load Apple-signed software onto the subject iPhone device to circumvent the security and anti-tampering features of the device in order to enable the government to hack the passcode to obtain access to the protected data contained therein. (*See* Exhibit A.) As invited by the California court's order, Apple intends to promptly seek relief. But, as this recent case makes apparent, the issue remains quite pressing.

In addition to the aforementioned order, Apple has received other All Writs Act orders during the pendency of this case, certain details of which are set forth in the table below. In particular, for each such request Apple provides the following categories of information requested in the Order:

(1) the jurisdiction in which the request was made, (2) the type of device at issue in the request, (3) the version of iOS being used on that device, and (4) Apple's response to the request and/or its current status, as applicable.

| Date Received | Jurisdiction | Device Type | iOS Version | Status |
|---------------|---------------------------------|----------------------------------|--|---|
| 10/8/2015 | Southern District of New York | iPhone 4S | 7.0.4 | Apple objected (12/9/2015) |
| 10/30/2015 | Southern District of New York | iPhone 5S | 7.1 | Apple objected (12/9/2015) |
| 11/16/2015 | Eastern District of New York | iPhone 6 Plus | 8.1.2 | Apple objected (12/9/2015) |
| | | iPhone 6 | 8.1.2 | |
| 11/18/2015 | Northern District of Illinois | iPhone 5S | 7.1.1 | Apple objected (12/9/2015) |
| 12/4/2015 | Northern District of California | iPhone 6 | 8.0 (or higher) | Apple objected (12/9/2015) |
| | | iPhone 3 | 4.2.1 | |
| | | iPhone 3 | 6.1.6 | |
| 12/9/2015 | Northern District of Illinois | iPhone 5S | 7.0.5 | Apple requested copy of underlying Motion but has not received it yet (2/1/2016) |
| 1/13/2016 | Southern District of California | N/A (device ID not yet provided) | N/A (device ID not yet provided, but the requesting agent advised device is pre-iOS 8) | Apple was advised by the requesting agent that she is seeking a new warrant. Apple has not yet received this warrant. |
| 2/2/2016 | Northern District of Illinois | iPad 2 Wifi | 7.0.6 | Apple objected (2/5/2016) |
| 2/9/2016 | District of Massachusetts | iPhone 6 Plus | 9.1 | Apple objected (2/11/2016) |

With respect to the other categories of information sought in the Order (specifically, categories 4-6), Apple responds that following its objection or other response to each request there has not been any final disposition thereof to Apple's knowledge, and Apple has not agreed to perform any services on the devices to which those requests are directed.¹

Sincerely,

/s/ Marc J. Zwillinger

Marc J. Zwillinger

cc: All Counsel of Record (via ECF)

¹ Apple further notes that shortly preceding the pendency of the instant case, it received additional All Writs Act orders—specifically, two from the Southern District of Ohio (both on September 24, 2015) and Northern District of Illinois (on October 6, 2015). Apple objected to each of these orders, and to Apple's knowledge there have been no further developments since such objections were lodged.