

## RESOLUTION AGREEMENT

Intervenors Jane Does 1 through 6 and Cecil Bothwell ("Intervenors") and defendant-in-intervention Secretary David W. Hoyle, in his official capacity as the Secretary of the North Carolina Department of Revenue ("Department"), enter into this resolution agreement ("Resolution Agreement" or "Agreement") effective this 19th day of January 2011.

WHEREAS, Amazon.com LLC ("Amazon") filed a complaint against the Department in the United States District Court for the Western District of Washington, captioned *Amazon.com LLC v. Hoyle*, No. 2:10-cv-00664-MJP ("the Action");

WHEREAS, Intervenors, represented by the American Civil Liberties Union ("ACLU"), filed a complaint in intervention in the Action;

WHEREAS, the Department filed motions to dismiss Amazon's complaint and the complaint in intervention, and Amazon filed a motion for summary judgment;

WHEREAS, the Court heard arguments on the motions and issued a decision on October 25, 2010 ("Order"), denying the Department's motions to dismiss and granting Amazon's motion for summary judgment;

WHEREAS, the Court's decision granting limited declaratory relief to Amazon resolved the majority of the claims raised in the complaint in intervention;

WHEREAS, the Department subsequently filed an answer to the complaint in intervention; and

WHEREAS, the Department and Intervenors desire to enter into this Resolution Agreement to resolve any remaining issues without further litigation.

### **NOW IT IS HEREBY AGREED:**

1. In its Order, the Court held that "much of the declaratory and injunctive relief sought [by Intervenors] overlaps with the declaratory relief issued by this order." In light of that holding, without conceding the correctness of that holding or the Court's decision and solely to resolve this matter without further litigation, the Department stipulates that Intervenors are entitled to the same limited declaratory relief that the Court granted to Amazon in its Order. The parties will submit a stipulated judgment to the Court granting that same relief upon execution of this Agreement.

2. Intervenors agree to file a notice of voluntary dismissal with prejudice of the remaining claims for relief in the complaint in intervention not addressed in the stipulated judgment within three business days of the submission of the stipulated judgment to the Court.

3. Intervenors and the ACLU agree not to file any other action with respect to the information document requests ("IDRs") at issue in this Action or any other similarly worded previously issued IDR. However, should the Department commence proceedings related to the

IDRs at issue in this Action, Intervenor and the ACLU reserve the right to seek to intervene in any such proceeding and to raise any issues they deem fit, including those raised in the complaint in intervention.

4. The Department agrees, upon receipt of notice of filing of voluntary dismissal, to pay attorneys' fees and costs in the amount of \$99,000.

5. The Department agrees that it will not appeal the Court's Order or any final judgment entered by the Court. In the event that Amazon files an appeal of the Court's October 25 decision, the Department reserves the right to file a cross-appeal and/or to otherwise respond to such an appeal. Intervenor similarly reserve the right to file their own cross-appeal or brief in connection with any such appeal filed by Amazon. The filing of an appeal by Amazon will not render this Agreement invalid or unenforceable. If such an appeal is commenced, the parties agree that Intervenor shall not be precluded from requesting attorneys' fees and costs associated with work performed in connection with that appeal.

6. The Department agrees that it will include the following statement on any information document request ("IDR") issued to an internet retailer that sells books, movies, music or other expressive items and that also requests customer names: "This IDR does not request the names, titles or other identifying information from which names and titles can be derived of the books, movies, music or other expressive items sold."

7. This Agreement does not preclude the Department from proposing assessments of sales or use tax against Amazon or its customers, including Intervenor.

8. This Agreement does not constitute a concession, agreement or admission by the Department or Intervenor as to the correctness or applicability of any legal or factual contention of the other parties.

9. This Agreement may only be amended by written agreement of all parties. Any amendment shall be attached to and become part of this Agreement.

10. This Agreement shall be governed by the laws of the State of North Carolina.

11. This Agreement is final and conclusive except the matter to which it relates may be reopened in the event of fraud, malfeasance, noncompliance or misrepresentation of material fact. The finality of this Agreement is not contingent on any further action by the Court.

12. By signing this Agreement, the Department and Intervenor, by and through their counsel, certify that they have read and agreed to all of the terms hereof and that they have the authority to enter into this Agreement.


INTERVENORS, BY AND THROUGH THEIR COUNSEL

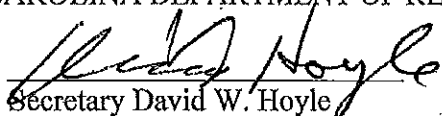
By:

Name:

  
Aden Fine

Title: Counsel for Intervenors  
Date: 1/20/11

AMERICAN CIVIL LIBERTIES UNION  
By:   
Name: Aden Fine  
Title: Counsel for Intervenors  
Date: 1/20/11

NORTH CAROLINA DEPARTMENT OF REVENUE  
By:   
Name: Secretary David W. Hoyle  
Title: Secretary, North Carolina Department of Revenue  
Date: 1-19-11