

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

 Plaintiff,

 v.

APPLE INC., *et al.*,

 Defendants.
-----X

12 Civ. 2826 (DLC)

-----X
THE STATE OF TEXAS,
THE STATE OF CONNECTICUT, *et al.*,

 Plaintiffs,

 v.

PENGUIN GROUP (USA) INC., *et al.*,

 Defendants.
-----X

12 Civ. 03394 (DLC)

DECLARATION OF THEODORE J. BOUTROUS, JR.

I, THEODORE J. BOUTROUS, JR., pursuant to 28 U.S.C. § 1746, declare:

1. I am an attorney duly licensed to practice law in the State of California. I have been given permission to appear before the United States District Court for the Southern District of New York *pro hac vice*. I am a partner at Gibson, Dunn & Crutcher LLP and am one of the attorneys representing Apple Inc. in the above-captioned matter. I respectfully submit this declaration in support of Defendant Apple Inc.'s Motion by Order to Show Cause For a Stay of the Injunction filed on December 12, 2013. I have personal knowledge of the matters stated herein and, if called upon to do so, could and would competently testify thereto.

2. An Order to Show Cause setting an expedited briefing schedule for this Motion is necessary to ensure that the Court reaches a decision whether to stay the injunction, and, if necessary, to allow Apple to file an emergency motion seeking a stay of the injunction from the Second Circuit in the event this Court denies a stay, before the injunction's January 14, 2014 deadline triggering review by the external compliance monitor, Micheal Bromwich, of Apple's enhanced compliance and training programs. An expedited briefing schedule is also necessary because Apple is suffering ongoing irreparable harm from the injunction. Finally, an expedited briefing schedule will also ensure that the briefing on this matter is complete before the holidays and that the Court has adequate time to review the parties' briefing before the hearing.

3. On October 7, 2013, Apple submitted to the Court a letter objecting to Mr. Bromwich's appointment as monitor due to his lack of antitrust experience. Apple also suggested in the letter that the Court simply appoint Barry Nigro alone. Because the letter contains sensitive information, it was submitted for in camera review.

4. During a teleconference on November 4, 2013, Apple discussed with the Department of Justice and the state plaintiffs its objections to the monitor. Specifically, Apple discussed the objections Apple had outlined in its October 31, 2013 letter to the Department of Justice and the state plaintiffs, including its objections to the timing and scope of interview and other informational requests by the monitor, as well as the financial terms of his engagement. Apple continued these discussions with the Department of Justice and state plaintiffs during a teleconference on December 9, 2013.

5. On December 5, 2013, Mr. Bromwich interviewed Dr. Ronald Sugar, Apple's Chair of the Board of Director's Audit Committee. During that interview, Mr. Bromwich asked Mr. Sugar if they could open a direct line of communication.

6. To date, Mr. Bromwich has not offered Apple any concrete or constructive advice on developing good antitrust compliance programs, with the exception of a few broad statements about providing training to personnel.

7. Attached hereto as Exhibit A is a letter from Theodore J. Boutrous, Jr. to Michael Bromwich, sent on October 31, 2013.

8. Attached hereto as Exhibit B is an email exchange between Theodore J. Boutrous, Jr. and Michael Bromwich, spanning the period from November 7 to November 11, 2013.

9. Attached hereto as Exhibit C is an email from Theodore J. Boutrous, Jr. to Michael Bromwich, sent on November 7, 2013.

10. Attached hereto as Exhibit D is an email from Kyle Andeer to Michael Bromwich and Barry Nigro, sent on October 17, 2013.

11. Attached hereto as Exhibit E is an email exchange between Theodore J.

Boutrous, Jr. and Michael Bromwich, spanning the period from November 7 to November 11, 2013.

12. Attached hereto as Exhibit F is an email exchange between Theodore J. Boutrous, Jr. and Michael Bromwich, on November 12, 2013.

13. Attached hereto as Exhibit G is an email from Daniel Swanson to Michael Bromwich, sent on November 17, 2013, and the meeting agenda which was attached thereto.

14. Attached hereto as Exhibit H is an email from Michael Bromwich to Theodore J. Boutrous, Jr., sent on November 15, 2013.

15. Attached hereto as Exhibit I is a letter from Matthew Reilly to Michael Bromwich, sent on November 22, 2013.

16. Attached hereto as Exhibit J is a letter from Michael Bromwich to Apple's Board of Directors, sent on November 22, 2013.

17. Attached hereto as Exhibit K is an email from Michael Bromwich to Matthew J. Reilly, sent on November 22, 2013.

18. Attached hereto as Exhibit L is a letter from Michael Bromwich to Bruce Sewell, sent on November 5, 2013.

19. Attached hereto as Exhibit M is a letter from Michael Bromwich to Timothy Cook and Bruce Sewell, sent on November 1, 2013.

20. Attached hereto as Exhibit N is a letter from Michael Bromwich to Noreen Krall, sent on November 22, 2013.

21. Attached hereto as Exhibit O is a letter from Noreen Krall to Michael Bromwich, sent on November 21, 2013.

22. Attached hereto as Exhibit P is an email from Bruce Sewell to Michael Bromwich, sent on November 25, 2013.

23. Attached hereto as Exhibit Q is a true and correct copy of a letter from Theodore J. Boutrous, Jr. to Lawrence J. Buterman and Gabriel R. Gervy sent on December 6, 2013.

24. Attached hereto as Exhibit R is a true and correct copy of a letter from Theodore J. Boutrous, Jr. to J. Robert Kramer, II and Gabriel R. Gervy sent on October 31, 2013.

25. Attached hereto as Exhibit S is a true and correct copy of an email from Michael Bromwich to Theodore J. Boutrous, Jr., Matthew Reilly, and Noreen Krall sent on November 19, 2013.

26. No previous application has been made for the relief sought herein.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

Dated: December 12, 2013

Respectfully submitted,


Theodore J. Boutrous, Jr.