EXHIBIT C

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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December 6, 2013

Lawrence J. Buterman, Esq.
United States Department of Justice
450 5th Street NW, Suite 4000
Washington, D.C. 20530

Gabriel R. Gervey, Esq.
Office of the Texas Attorney General
P.O. Box 12548
Austin, TX 78711

Re: *United States v. Apple Inc. et al.*, 12-cv-2826 (DLC);
State of Texas, et al. v. Penguin Group (USA) Inc., et al., 12-cv-3394 (DLC)

Dear Larry and Gabriel:

The Court's Order of December 2, 2013, directs Apple to follow the procedures set forth in § VI.H of the Final Judgment if it has any objections regarding the External Compliance Monitor ("ECM"), including objections to the ECM's fee structure, which Apple is unable to resolve through discussions with the ECM. Dkt. 413 at 3. As the following demonstrates, Apple has already adhered to the procedures outlined in § VI.H. The Department of Justice ("DOJ") and Plaintiff States have been on written notice of Apple's specific objections since October 31st, when Apple served them with a letter, describing its objections to the timing and scope of interview and other informational requests by the ECM, as well as the financial terms of the ECM's engagement. (*See* Attachment A.) We also discussed these objections with you during a teleconference on November 4th. As you know, Apple was not able to resolve disputes around these issues with the ECM, and, on November 27th, Apple provided the DOJ and Plaintiff States with notice of its continuing objections to the ECM's conduct as outside the scope of the Final Judgment and in violation of Apple's rights. (*See* Attachment B.) To avoid any doubt that Apple has complied with the Court's December 2nd Order and § VI.H of the Final Judgment, Apple hereby provides DOJ and Plaintiff States with further written notice of its objections to the ECM's fees, conduct, and appointment, as detailed in Attachments A and B.

Further to the objections noted above and in the attached, Apple also objects to the ECM pursuant to Federal Rule of Civil Procedure 53(a)(2), which requires that a special master (whether formally designated as a "master" or "monitor") "must not have a

relationship to the parties, attorneys, action, or court that would require disqualification by a judge under 28 U.S.C. § 455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification." To prevent appointment of a special master who does not satisfy this requirement, Rule 53(b)(3) provides that a court may issue an order appointing a special master "only after: (A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and (B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification." To the best of Apple's knowledge, the ECM never filed such an affidavit with the Court, making his appointment facially invalid. Moreover, Apple believes there are clear grounds for disqualification of the ECM under § 455(b)(4), which provides that a judge must disqualify herself if she "has a financial interest in the subject matter in controversy or in a party to the proceeding." In this case, where the Court has structured the appointment so that the ECM is directly compensated by the defendant, claims broad discretion to determine the scope of his duties, and is paid by the hour by Apple, the ECM has both a "financial interest" and the ability to independently to choose to pursue the most wide-ranging and intrusive investigation possible. Apple has neither "consent[ed] to the appointment" (Rule 53(a)(2)) nor "waive[d] the disqualification" (Rule 53(b)(3)). Accordingly, the ECM's appointment does not comply with Rule 53.

The ECM's intrusive, expensive, and unauthorized conduct (*see* Attachments A and B) is unconstitutional and is causing Apple irreparable harm. Accordingly, pursuant to § VI.H of the Final Judgment and the Court's December 2nd Order, Apple hereby formally objects to Mr. Bromwich's fees, conduct, and appointment.

We are available to discuss these issues with you at your convenience.

Sincerely,

Theodore J. Boutrous Jr. /eo

Theodore J. Boutrous Jr.

Enclosure

Exhibit A

GIBSON DUNN

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October 31, 2013

VIA E-MAIL

J. Robert Kramer, II, Esq.
United States Department of Justice
950 Pennsylvania Avenue, NW, Suite 3220
Washington, D.C. 20530

Gabriel R. Gervey, Esq.
Office of the Texas Attorney General
P.O. Box 12548
Austin, TX 78711

Re: *United States v. Apple Inc. et al.*, 12-cv-2826 (DLC);
State of Texas, et al. v. Penguin Group (USA) Inc., et al., 12-cv-3394 (DLC)

Dear Bob and Gabriel:

Pursuant to Section VI.H of the Final Judgment, we write to provide the United States and Plaintiff States with notice of Apple's objections to certain actions by the External Compliance Monitor. As set forth in detail in Apple's letter to the External Compliance Monitor (attached hereto as Attachment 1), Apple objects to the timing and scope of requests by the External Compliance Monitor to interview Apple's entire Board of Directors, its executive team, and additional senior executives. *See* Final Judgment at § VI.C (ordering the monitor to "conduct a review . . . [of] Apple's internal antitrust compliance policies and procedures" and "Apple's training program" "*as they exist 90 days after his or her appointment*") (emphasis added). Apple also objects to the financial terms of the External Compliance Monitor's engagement, which the Final Judgment requires be "reasonable and customary" and approved by the Plaintiffs. Final Judgment at § VI.I. The External Compliance Monitor has proposed fees that are well above typical hourly fees paid to law firm partners, as well as an additional administrative fee, and has not indicated a willingness to agree to Apple's standard expense policy. *See* Email Exchange between Michael Bromwich and Kyle Andeer, October 23-26, 2013 (attached hereto as Attachment 2). Apple does not believe the proposed fee structure is reasonable and customary, whether for a monitor or a lawyer.

We are available to discuss these issues with you at your convenience.

Sincerely,

/s Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

Attachments

cc: John R. Read, Esq.
Lawrence J. Buterman, Esq.

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October 31, 2013

VIA E-MAIL

Michael R. Bromwich
The Bromwich Group LLC
901 New York Avenue, NW 5th Floor
Washington, D.C. 20001

Re: External Antitrust Compliance Monitoring

Dear Michael:

It was a pleasure meeting you last week, and Apple looks forward to working with you to achieve our shared objective of developing a comprehensive and effective antitrust training program consistent with Judge Cote's Final Judgment. Apple is fully committed to ensuring that its antitrust training program, and its policies and procedures related thereto, are both robust and effective.

I am writing to follow up on three issues arising from our discussion last week and your recent correspondence (letter of October 23, 2013[1] and e-mails on October 26 and 29, 2013). First, Apple believes that the timing and scope of your requests are inconsistent with the letter and spirit of the Final Judgment. Judge Cote was very clear that the injunction should be narrowly tailored to address the antitrust violation she found in this case and sought to avoid unnecessarily burdening Apple or limiting its ability to innovate and do business in this dynamic industry. *See* Hearing Transcript, *United States v. Apple Inc.*, *et al.*, No. 1:12-CV-2826, at 8-9 (Aug. 27, 2013) ("I want this injunction to rest as lightly as possible on the way Apple runs its business.") (hereinafter "Aug. 27, 2013 Hearing Tr.").[2] Notably in this regard, the Final Judgment provides that the External Compliance Monitor's review of Apple's internal antitrust compliance policies and procedures and antitrust training program is not to commence until "90 days after his or her appointment." Final Judgment at § VI.C. Second, Apple also has concerns over the financial terms of your engagement, which the Final Judgment requires be "reasonable and customary" and approved by the

[1] As you are aware, Apple received a letter from you, in draft form, on October 23, 2013, which was not finalized until October 26, 2013.

[2] *See also* Aug. 27, 2013 Hearing Tr. at 27 ("I'm trying to think about, as I've indicated, where the real risks are and to minimize the burdens on Apple.")

Department of Justice ("DOJ"). Third, we also need to ensure that the confidentiality of any information Apple may share with you during the course of your activities as monitor is appropriately protected.

Apple is hopeful that these issues can be resolved quickly so that we can move forward together to achieve the objectives of the Final Judgment. Each of these issues is discussed in more detail below.

1. Timing and Scope of Monitor's Responsibilities

As you mentioned at the outset of our introductory meeting, the Final Judgment defines the scope of your responsibilities in a manner that is clear and straightforward. The monitor's primary responsibility is to "conduct a review . . . [of] Apple's internal antitrust compliance policies and procedures, *as they exist 90 days after his or her appointment*" and to "also conduct a review to assess whether Apple's training program, required by Section V.C of this Final Judgment, *as it exists 90 days after his or her appointment*, is sufficiently comprehensive and effective." Final Judgment at § VI.C (emphasis added).

During the August 27 hearing Judge Cote explained, "I don't think that the [Monitor] should conduct a review or assessment of the current policies. I would expect that Apple would revise its current policy substantially and procedures and create an effective training program. That will require some time. So I think this should be revised to have the [Monitor] doing an assessment in three months from appointment and *beginning to engage Apple in a discussion at that point*." Aug. 27, 2013 Hearing Tr. at 20-21(emphasis added).

Apple is in the process of revising and enhancing its compliance training programs to ensure that they are robust, comprehensive, effective, and compliant with the terms of the Final Judgment. In this regard, Apple will soon be bringing on board its new Antitrust Compliance Officer, as directed by the Final Judgment, and adding new lawyers with antitrust compliance expertise in the legal department. In light of the express language of the Final Judgment, as well as Judge Cote's elaboration at the August 27 hearing, the time period for your review of Apple's antitrust policies and procedures and training program does not commence until January 14, 2013 (90 days from the date of appointment).

Accordingly, your request to begin interviewing Apple's entire board and its executive team, as well as additional senior executives on November 18 is premature, not authorized by the Final Judgment, and would not only be disruptive to Apple's business operations but also directly contrary to Judge Cote's intent. We fully understand and expect that there will be a need to conduct interviews with certain personnel at some point once Apple's new training programs are up and running. And you have Apple's assurance that it will be a most willing partner in facilitating those meetings. Furthermore, there will be ample opportunity over the course of your engagement to determine whether Apple's new training program is consistent with the Judge's Order and is effective in its impact.

However, it makes no sense, and would be extremely disruptive, to schedule those interviews before Apple has completed its internal assessment and developed its new antitrust training program.

2. Financial Terms and Fiduciary Responsibilities

The Final Judgment requires the monitor to operate on "reasonable and customary terms" that are "consistent with reasonable expense guidelines." Final Judgment at § VI.I. Apple has already raised concerns regarding your hourly fees, the administrative fee you seek to impose in addition to those fees, the need for additional personnel, and finally, adherence to a defined expense policy. Apple does not believe your proposed fee structure is reasonable and customary, whether for a monitor or a lawyer, and respectfully objects to it. Moreover, your dictate that we simply accept these fees and costs at face value without any support or explanation is inconsistent with the company's fiduciary responsibilities to its shareholders, and to the customary practices of Apple and other companies in conducting business or legal activities. And, while the Final Judgment requires DOJ and Plaintiff States to approve your fee and expense structure (*see* Final Judgment at § VI.I), it appears from your correspondence you have not secured such approval but instead have simply submitted your proposed approach to DOJ and it has not acted upon it.

3. Confidentiality

To protect the confidentiality of any information Apple may share with you during the monitorship, we have attached a non-disclosure agreement for your signature that is consistent with Apple's standard confidentiality agreements and the Stipulated Protective Order in this matter. Apple also reserves its right to assert attorney-client privilege and work product protections as appropriate throughout this process. Finally, Apple again requests that, consistent with its policies, you, the Bromwich Group, Goodwin Procter, and Fried Frank refrain from using Apple's name in any marketing materials or media communications like the press release Goodwin Procter issued announcing your appointment and containing a direct quote from you.

* * * * *

Concurrent with this response, Apple has submitted to DOJ and Plaintiff States a notice of its objections. Please direct any future communications on these issues to me. As we work to resolve these issues, Apple will continue to focus its efforts on its internal assessment and enhancement of its antitrust policies and procedures and the training program mandated by the Final Judgment. As you know, Apple has retained seasoned antitrust practitioners and former government officials at the law firm of Simpson Thacher to aid it in this process. We appreciate an honest and open dialogue on these issues, and look forward to

working with you to establish antitrust compliance policies and training programs that are comprehensive and effective in satisfaction of the Final Judgment.

Very truly yours,

s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

Enclosure

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is entered into and is effective as of _____ (the "Effective Date") by and between Michael Bromwich, on behalf of the Bromwich Group, and Bernard Nigro (hereinafter "ECM") and Apple Inc. ("Apple" and, collectively, the "Parties") in connection with Section VI.I of the September 5, 2013 Final Judgment (the "Final Judgment") entered in *United States of America v. Apple, Inc.*, No. 1:12-CV-2826 (S.D.N.Y. Sept. 5, 2013) (the "Action"), and consistent with the May 7, 2012 Stipulated Protective Order entered in the Action (the "Protective Order").

Whereas, the Final Judgment contemplates that the Parties will execute customary confidentiality agreements in connection with ECM's monitoring responsibilities pursuant to the Final Judgment; and

Whereas, Apple contemplates that certain highly sensitive information and materials may be disclosed in connection with ECM's performance of his responsibilities pursuant to the Final Judgment; and

Whereas, the Parties agree that such materials should be kept confidential subject to the terms and conditions set forth below,

NOW, THEREFORE, the Parties do hereby agree and stipulate as follows:

1. DEFINITION OF CONFIDENTIAL INFORMATION. ECM agrees that all information disclosed by Apple to ECM in any manner in connection with ECM's monitoring responsibilities pursuant to the Final Judgment will be considered and referred to collectively in this Agreement as "Confidential Information." Confidential Information, however, does not include information that: (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of ECM; (b) ECM can demonstrate to have had rightfully in his possession prior to disclosure to ECM by Apple; (c) is independently developed by ECM without the use of any Confidential Information; or (d) ECM rightfully obtains from a third-party who has the right to transfer or disclose it to ECM without limitation.

2. NONDISCLOSURE AND NONUSE OF CONFIDENTIAL INFORMATION. ECM agrees to protect Apple's Confidential Information, using at least the same degree of care that he uses to protect his own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. ECM agrees to use Apple's Confidential Information for the sole purpose of performing his monitoring responsibilities in connection with the Final Judgment. ECM will not disclose, publish, or disseminate Confidential Information to anyone, and will not use Confidential Information in any manner, except as set forth in this Agreement.

3. INADVERTENT DISCLOSURE BY APPLE OF PRIVILEGED OR PROTECTED INFORMATION. If Apple inadvertently discloses to ECM material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection that ECM is not authorized to receive pursuant to the Final Judgment, the applicable privilege and/or protection will not be waived if Apple makes a request for return of such inadvertently produced material promptly after learning of its inadvertent production. Upon such notice, ECM will promptly return or destroy the materials subject to privilege and/or protection.

4. INADVERTENT DISCLOSURE BY ECM OF CONFIDENTIAL INFORMATION.
In the event of disclosure by ECM of any Confidential Information to any person or persons not authorized to receive such disclosure pursuant to this Agreement, ECM will promptly notify Apple of the disclosure and provide to Apple all known relevant information concerning the nature and circumstances of the disclosure. ECM will promptly thereafter take all reasonable measures to retrieve the improperly disclosed material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made. Unauthorized or inadvertent disclosure will not change the confidential status of any Confidential Information.

5. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION BY ECM.
Information and materials designated as Confidential Information pursuant to this Agreement may only be disclosed by ECM to the persons and in the manner set forth below:

(a) To the extent necessary to discharge ECM's monitoring responsibilities pursuant to the Final Judgment, attorneys, employees, and associates of ECM, including attorneys and employees of The Bromwich Group LLC, and attorneys and employees of Fried, Frank, Harris, Schriver & Jacobson.

(b) United States Department of Justice attorneys and employees, in connection with their enforcement or monitoring of compliance with the Final Judgment;

(c) Attorneys and employees of the Attorney General's Office of any Representative Plaintiff State (as defined in the Final Judgment), in connection with their enforcement or monitoring of compliance with the Final Judgment; and

(d) The Court and all persons assisting the Court in the Action, in connection with enforcement or monitoring of the Final Judgment, including law clerks, court reporters, and stenographic or clerical personnel.

In addition, before any information designated as Confidential Information may be disclosed to any person described in subparagraphs 5(a)-(c) above, he or she must first read this Agreement or must have otherwise been instructed on his or her obligations pursuant to this Agreement, and must execute the Agreement included as Appendix A hereto prior to receiving Confidential Information. Each individual described in subparagraphs 5(a)-(c) above and to whom Confidential Information is disclosed must not disclose that information to any other individual, except as set forth in this Agreement.

Nothing in this Agreement prevents disclosure by ECM of Confidential Information to any current employee of Apple, and nothing in this Agreement prevents the United States or any Representative Plaintiff State (as defined in the Final Judgment), subject to taking appropriate steps to preserve the confidentiality of such information, from using or disclosing Confidential Information as permitted or required by the Final Judgment, for law enforcement purposes, or as may otherwise be required by law or binding court order.

6. NOTICE OF DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION IN COURT PROCEEDINGS. Before disclosure of Confidential Information is made to any person or persons not authorized to receive the information pursuant to paragraph 5 above, ECM must give Apple at least ten (10) calendar days' advance notice in writing, including the name(s), address(es), and employer(s) of the person(s) to whom the disclosure will be made and the reason for the disclosure. If, within that ten-day period, Apple objects to the disclosure, ECM must make a written request to the United States and Representative Plaintiff States (as defined in the Final Judgment) within ten (10) calendar days' receipt of Apple's objection. In addition, in connection with any disclosure or use of Confidential Information in any court proceeding, ECM must take reasonable steps to maintain the confidentiality of those materials, including but not limited to filing documents under seal and satisfying the other requirements of paragraph 20 of the Protective Order.

7. PROCEDURES UPON COMPLETION OF ECM'S MONITORING RESPONSIBILITIES. The obligations imposed by this Agreement survive the termination of ECM's monitoring responsibilities as set forth in the Final Judgment. Within ninety (90) days after termination of ECM's monitoring responsibilities in connection with the Final Judgment, ECM must certify to Apple in writing that it has destroyed or returned to Apple all Confidential Information and that it has endeavored in good faith to ensure that any Confidential Information disclosed pursuant to paragraph 5 above has been destroyed or returned to Apple. However, nothing in this paragraph prevents the United States or the Representative Plaintiff States (as defined in the Final Judgment) from retaining or using Confidential Information, subject to taking appropriate steps to preserve the confidentiality of such information, as permitted or required by the Final Judgment, for law enforcement purposes, or as may otherwise be required by law or binding court order.

8. EQUITABLE RELIEF. ECM hereby acknowledges that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to Apple that may be difficult to ascertain. Accordingly, ECM agrees that Apple will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

9. NO IMPLIED WAIVER. Apple's failure or delay in exercising any of its rights will not constitute a waiver of such rights unless expressly waived in writing.

10. ENTIRE AGREEMENT AND GOVERNING LAW. This Agreement, in conjunction with the terms set forth in the Final Judgment, constitutes the entire Agreement with respect to the Confidential Information disclosed pursuant to this Agreement and supersedes all prior or contemporaneous oral or written Agreements concerning such Confidential Information. This Agreement may not be amended except by written Agreement signed by authorized representatives of both Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding that body of California law concerning conflicts of law. The Parties further submit to and waive any objections to the exclusive jurisdiction of and venue in the United States District Court for the Southern District of New York for any litigation arising out of this Agreement.

Understood and agreed to by the parties:

MICHAEL BROMWICH:

By: _____

Name: _____

Title: _____

BERNARD NIGRO:

By: _____

Name: _____

Title: _____

On behalf of APPLE INC.:

By: _____

Name: _____

Title: _____

Appendix A

I am employed as _____ by _____. I hereby certify that:

1. I have read the Confidentiality Agreement between Michael Bromwich and Apple Inc. (the "Agreement") and understand its terms.

2. I agree to be bound by the terms of the Agreement, including the terms relating to disclosure of Confidential Information (as defined in the Agreement) in paragraph 5 and the terms relating to the destruction or return of Confidential Information in paragraph 7 of the Agreement.

3. I agree to use the information provided to me in connection with the Agreement only for the purpose of enforcement and monitoring of the Final Judgment (as defined in the Agreement).

4. I understand that my failure to abide by the terms of the Agreement will subject me, without limitation, to liability for breach of the Agreement and this Appendix A.

5. I submit to the jurisdiction of the United States District Court for the Southern District of New York solely for the purpose of enforcing the terms of the Agreement and this Appendix A and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said court.

I make this certificate on this _____ day of _____ , _____.

By: _____

Name: _____

Title: _____

ATTACHMENT 2

Subject: Monitoring Letter

On Oct 26, 2013, at 8:47 AM, Michael Bromwich <michael.bromwich@bromwichgroup.com> wrote:

Dear Kyle,

Thanks very much for your response to my cover note and our draft letter. Unfortunately, I think you may have misconceived its purpose. It was not to begin a negotiation about fees, rates, and expenses, nor was it meant to provide you with an opportunity to provide us with guidelines that are applicable to providers of legal services where Apple is the client -- but that are inapplicable to firms providing independent monitoring services. It was to give you an opportunity to modify or revise the confidentiality provision. In light of your response, it probably makes sense to execute any enhancements to the confidentiality agreement separately. I have attached a signed copy of the monitoring letter. The only change is the date.

Without responding to each item in your note, I wanted to clarify the following:

1. Administrative fees are completely standard for consulting firms. The Bromwich Group is not a law firm and does not practice law. The normal range for the administrative/management fees for consulting firms is between 10% and 25%. Therefore, the 15% is at the low end of the range.

2. We will add additional personnel, whether from Fried Frank or elsewhere, only as necessary and appropriate. We will keep you informed if we add personnel performing significant substantive responsibilities but not if we use a lawyer to do a discrete research project or a legal assistant to provide support. We will do this as a courtesy and we do not intend to provide a rationale. It will be because we need additional assistance.

3. On expenses, please advise whether your lawyers from Gibson Dunn working on this matter, your Wilmer lawyers working on the Samsung matter in the ND of California, and other lawyers working on high-end litigation and corporate matters follow these expense guidelines without exception. If they do, we will seriously consider doing so. We are happy to receive from you a list of Apple's preferred hotels.

4. We are serving as an independent compliance monitor pursuant to a Court order, not as counsel to Apple subject to its direction and control. Accordingly, we will not be providing a budget. You are incorrect in stating that this is standard practice in monitorships. We will do everything we reasonably can to keep fees and expenses to a minimum. We plan to provide you each month with a statement of the number of hours spent by each timekeeper on this matter but not to provide descriptions of the amount of time spent on specific tasks. We will maintain such records and will share them with the Department of Justice, the Plaintiff States, and the Court if requested to do so.

5. We will submit our invoices directly to you, or to someone you designate. We will be happy to execute W-9s.

6. My consulting firm did not issue a press release. Goodwin Procter posted an item on its web site without my advance knowledge or consent to clarify that the firm itself would not be involved in the monitorship.

We very much look forward to your responses to the various substantive matters we discussed on Tuesday and to your confirming the particulars of our initial visit to Cupertino the week of November 18.

Best regards.

MRB

On Fri, Oct 25, 2013 at 10:45 PM, Kyle Andeer <kandeer@apple.com> wrote:

Dear Michael,

Thank you for sharing your draft letter It is very helpful in that it tees up a number of different issues that make sense to address at the outset of our relationship. As you noted, the treatment of confidential information is one of several issues that will require additional research and thought. Although the disclosure of such information is highly unlikely given the narrow scope of the External Compliance Monitor's responsibilities, we agree that this is an issue we should seek to address at the outset. It likely makes sense for us to execute one of our "customary confidentiality agreements" as contemplated in the Final Judgment. Final Judgment at § VI.I, U.S. v. Apple, Inc., No. 1:12-CV-2826 (S.D.N.Y. Sept. 5, 2013). We will provide a full response on these and other issues in the next week, as well as a retention obligations agreement and confidentiality agreements to address this point.

I do want to raise concerns with the compensation and expense terms outlined in your letter which are in tension with the terms of the Final Judgment which require the External Monitor to operate on "reasonable and customary terms" that are "consistent with reasonable expense guidelines." Final Judgment at § VI.I, U.S. v. Apple, Inc., No. 1:12-CV-2826 (S.D.N.Y. Sept. 5, 2013). From our perspective they do not reflect the competitive realities of the marketplace. We expect that your firm – like all of Apple's legal service providers – will comply with Apple's Outside Service Provider Policy ("OSP") (attached) and its standard expense policy (also attached).

1. Administrative Fee. You request that the Bromwich Group be paid a "management/ administrative fee" of 15% of all billable hours. As you will note in the attached policies, Apple does not pay any of its legal vendors a "management/administrative fee."

2. Hourly Rates. You have requested that Apple pay you $1,100 per hour and Mr. Nigro $1,025 per hour. These rates are very high, particularly when compared to the average rate Apple pays a law firm partner ($565 per hour). Even if one looks at the top 25%, the average rate per partner is $801 per hour. Apple is prepared to compensate you at $800 per hour and Mr. Nigro at a rate of $700 per hour. With the foregoing principles in mind, we also ask that you provide the hourly rate for Maria Cirincione.

3. Additional Personnel. Pursuant to Apple's Outside Service Provider Policy, the Bromwich Group (and Fried Frank) should notify Apple before adding new timekeepers to its team and provide a rational for the additional resources. As you appreciate, this is a standard requirement that ensures costs do not spiral out of control.

4. Expense policy. Apple expects that you will adhere to its standard expense policy (attached) Apple will pay for coach airfare, lodging at Apple preferred hotels, and per diems of $15 for breakfast, $25 for lunch and $30 for dinner. The policy also outlines our guidelines on telephone and copying charges. Apple will not reimburse for data storage and information technology services. This is consistent with these policies is in keeping with the "reasonable expense guidelines" language in Section VI.I of the Final Judgment.

5. Budget and Invoicing. The Bromwich Group should submit an expected budget for its services for the coming year. As you know this is standard practice in any engagement, including in monitorships. In addition, Apple expects that your invoices will describe time spent on tasks and a description of those tasks. Apple reserves the right to challenge fees that are excessive, outside the scope your responsibilities, and/or unjustified pursuant to Sections VI.I. and VI.J. of the Final Judgment.

6. Billing. Apple requires firms to submit invoices - within 30 days of service - via an electronic portal. We can set up a meeting with our eBilling team as soon as you are ready. Apple will also require a signed W9 in order to pay invoices for your firm.

7. Marketing. Apple does not allow the firms it works with to market their representation of Apple (see OSP at 6). We noted that your firm, Goodwin Proctor, your consulting practice, The Bromwich Group, and Mr. Nigro's firm, Fried Frank all issued press releases announcing your appointments. We ask that you please refrain from using Apple's name in any marketing materials or media communications.

The requests in your letter do not reflect market realities. That raises significant concerns on our part. We sincerely hope that you will reflect on these points and that we can work out these issues without going to the Department of Justice and the courts. Please let me know if you would like to discuss.

Best regards,

Kyle

On Oct 23, 2013, at 3:58 PM, Michael Bromwich <michael.bromwich@bromwichgroup.com> wrote:

Dear Kyle,

I have attached a draft letter that sets forth our duties and responsibilities as the external antitrust compliance monitor under the Final Judgment, and touches on other matters relevant to our monitoring work, including information about fees, expenses, and confidentiality. This letter is specifically tailored to the provision of monitoring services under the Final Judgment. Accordingly, it is different in various ways from the engagement letter that would be appropriate if Apple were a client of a law firm or my consulting firm.

Before I provided a signed version of the letter, I wanted to make sure it should be addressed to you rather than someone else at Apple, and give you the opportunity to suggest any revisions to Section 10 of the letter dealing with confidentiality. I realize this may be a sensitive issue and I wanted to make sure the language I have crafted is acceptable. I am willing to consider reasonable modifications.

Please confirm that you should be the recipient of this letter (or provide an alternative addressee) and suggest any reasonable changes to the confidentiality language as promptly as you can.

Thanks very much.

MRB
<Apple Monitoring Letter -- 10-23.doc>

<Apple -- 10-26 Letter.pdf>

Exhibit B

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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November 27, 2013

Lawrence J. Buterman, Esq.
United States Department of Justice
450 5th Street NW, Suite 4000
Washington, D.C. 20530

Gabriel R. Gervey, Esq.
Office of the Texas Attorney General
P.O. Box 12548
Austin, TX 78711

Re: *United States v. Apple Inc. et al.*, 12-cv-2826 (DLC);
State of Texas, et al. v. Penguin Group (USA) Inc., et al., 12-cv-3394 (DLC)

Dear Larry and Gabriel:

Pursuant to Section VI.H of the Final Judgment, we write to provide the United States and Plaintiff States with notice of Apple's continuing objections to certain actions by the External Compliance Monitor ("ECM") which are outside the scope of the Final Judgment and violate Apple's rights. As set forth in detail in Apple's "Objections to the Court's Order Filed on November 21, 2013" (Dkt. 411), Apple objects to the ECM's premature and increasingly intrusive requests to interview its Board of Directors, the entire Apple executive team, and others, as extra-judicial and unauthorized by the mandate of the Final Judgment. *See* Objections at 10–15. Apple further objects to the ECM's direct communications with Apple's Board of Directors (*See id.* at 14, 17), and his extraordinary fee structure, which is not "reasonable and customary," and subjects Apple to an unconstitutional investigation by an individual whose personal financial interest is in line with a broad and lengthy investigation. *Id.* at 22–24.

We are available to discuss these issues with you at your convenience.

Sincerely,

Theodore Boutrous / ved

Theodore J. Boutrous Jr.

Enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. APPLE INC., Defendant.	12 Civ. 2826 (DLC)
THE STATE OF TEXAS, THE STATE OF CONNECTICUT, *et al.*, Plaintiffs, v. PENGUIN GROUP (USA) INC., *et al.*, Defendants.	12 Civ. 3394 (DLC)

DEFENDANT APPLE INC.'S OBJECTIONS
TO THE COURT'S ORDER FILED ON NOVEMBER 21, 2013

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INTRODUCTION

Michael Bromwich is already operating in an unfettered and inappropriate manner, outside the scope of the Final Judgment, admittedly based on secret communications with the Court, and trampling Apple's rights; the Court's proposal out of the blue to grant him even greater powers as monitor would only make things worse. Since his appointment, Mr. Bromwich has run far afield from his mandate and informed Apple that his fee structure is designed to "generate profits" for himself and the law firm he has retained to make up for the antitrust experience he lacks. The $1,100 hourly rate he proposes for himself and the $1,025 rate for his legal support system are higher than Apple has ever encountered for any task—and he insists on adding a 15% markup on top of that. Apple does not know what prompted the Court's proposed amendments to the Final Judgment but objects for the following reasons:

First, the Court lacks jurisdiction to substantively amend the September 5 Final Judgment during the pendency of Apple's appeal. The proposed amendments would authorize the monitor to interview Apple's personnel without counsel and to report the substance of those interviews to the Court *ex parte*—neither of which is allowed by the Final Judgment. The proposed amendments therefore would impermissibly expand the scope of the monitorship beyond what is set forth in the Final Judgment.

Second, because the additional authority conferred by the proposed amendments is not "judicial" in nature, the amendments would exceed this Court's authority under Federal Rule of Civil Procedure 53 and the constitutional separation of powers. To make matters worse, Mr. Bromwich has already exceeded in multiple ways the mandate this Court originally afforded him—pressing for immediate interviews with the very top executives at the company, such as CEO Tim Cook, and including others who have nothing whatsoever to do with the day-to-day

operation of the business unit at issue—including lead designer Jony Ive and board member Al Gore—even before the 90-day deadline for Apple's compliance has run. *See* Boutrous Decl. Exs. A at 2, B at 4. Mr. Bromwich's unreasonable investigation to date has been anything but "judicial," and the Court cannot constitutionally further augment his mandate.

Third, the proposed amendments would unfairly prejudice Apple's defense in the ongoing *parens patriae* and class action damages actions by giving the presiding judge access to *ex parte* oral briefings regarding *ex parte* interviews with Apple personnel and potentially revealing privileged, confidential, and irrelevant information about Apple to the Court, and even the plaintiffs and the public. Such *ex parte* communications would certainly lead a reasonable observer to question the impartiality of these proceedings, and could be potential grounds for judicial disqualification in this case and the pending damages trial.

Fourth, it is unconstitutional for Apple to be investigated by an individual whose personal financial interest is for as broad and lengthy an investigation as possible. Mr. Bromwich's extraordinary fee demand has already generated nearly 75% of a yearly judicial salary (almost $140,000) over the course of only two weeks, and he has refused to propose any sort of budget going forward. Other than to emphasize his need to "generate profits," he has refused to justify this approach by past billing practices in this area, even though the Final Judgment expressly limits his fees to what is "reasonable and customary." Due process "requires a disinterested prosecutor with the unique responsibility to serve the public … and to seek justice that is unfettered." *Young v. U.S. ex rel. Vuitton et Fils S.A.,* 481 U.S. 787, 814–15 (1987) (Blackmun, J., concurring). The proposed amendments would violate this important right.

Apple has diligently accommodated Mr. Bromwich's premature and inappropriate demands (*see* Boutrous Decl. Exs. C, D), but it has become clear over the past six weeks that Mr.

Bromwich views himself as an independent investigator whose role is to interrogate Apple personnel about matters unrelated to the injunction in an effort to ferret out any wrongdoing, all at Apple's expense. The Court's Final Judgment imposing a monitor was unprecedented, and the proposed expansion of the monitor's authority to investigate would be contrary to law and unconstitutional.

OBJECTIONS

I. The Court Lacks Jurisdiction to Modify the Injunction During Apple's Appeal

This Court lacks jurisdiction to impose the proposed amendments because, as described above and as set forth in more detail below, the amendments would materially modify the injunction the Court filed on September 5, 2013. That injunction—including its validity and scope—is presently on appeal to the Second Circuit (Dkt. 379 at 1), which deprives this Court of jurisdiction to further modify the injunction.

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co*., 459 U.S. 56, 58 (1982) (per curiam). After a party notices an appeal, the district court's authority is narrowly circumscribed. The Court may take actions "only 'in aid of the appeal or to correct clerical errors,' and may not 'adjudicate substantial rights directly involved in the appeal.'" *Int'l Ass'n of Machinists v. E. Airlines, Inc*., 847 F.2d 1014, 1017 (2d Cir. 1988) (quoting *Leonhard v. United States*, 633 F.2d 599, 609–10 (2d Cir. 1980)).

Because injunctions must "not impose unnecessary restrictions" and the "procedure prescribed" should "not [be] unduly burdensome," new terms affecting Apple's substantive and procedural rights under the injunction bear directly on the validity of the injunction itself. *Lorain Journal Co. v. United States*, 342 U.S. 143, 156 (1951).

The limited jurisdiction the Court retains under Rule 62(c) to "suspend, modify, restore or grant an injunction" "has been narrowly interpreted to allow district courts to grant only such relief as may be necessary to preserve the status quo pending an appeal …." *Int'l Ass'n of Machinists*, 847 F.2d at 1018; *see also Kidder, Peabody & Co. v. Maxus Energy Corp*., 925 F.2d 556, 564–65 (2d Cir. 1991). This exception is meant only to "preserve the status of the case as it sits before the court of appeals," protecting the appellate court's exercise of exclusive jurisdiction. *Ideal Toy Corp. v. Sayco Doll Corp*., 302 F.2d 623, 625 (2d Cir. 1962). The proposed amendments to the Final Judgment in no way maintain the status quo.

The Final Judgment contemplates an external compliance monitor of limited scope and duration. *See* Dkt. 374 § VI. The Court crafted the injunction specifically "to rest as lightly as possible on the way Apple runs its business," and did not "charge[the monitor] with assessing Apple's compliance generally with the terms of the final judgment." Dkt. 371 (Aug. 27, 2013 Hr'g Tr.) at 8–9, 17–18. Although the Department of Justice asked for a monitor with sweeping powers to review Apple's compliance with the antitrust laws for a period of ten years (*see* Dkt. 330 at 14), the Court authorized a monitor solely to review and report on Apple's antitrust compliance and training programs as they exist 90 days after the monitor's appointment. Dkt. 374 § VI. The Court authorized the appointed monitor to interview Apple personnel "who may have counsel present" "subject to the[ir] reasonable convenience." *Id*. § VI.G.1. The monitor was also directed to make a report 180 days after appointment by the Court, which would be provided to Apple, the United States, the plaintiff states, and the Court. *Id*. § VI.C.

But as set forth below, the proposed amendments—which would allow Mr. Bromwich to interview Apple personnel *ex parte* (Dkt. 410 ¶ 3) and deliver *ex parte* oral briefings *every month* to the Court (*id.* ¶ 4), which the Court would have authority to publish to the public (*id.* ¶ 5)—

would dramatically expand the monitor's role as set forth in the Final Judgment and would aggravate Mr. Bromwich's overreaching assertion of authority to date. As a matter of law, these substantive changes are prohibited while the Final Judgment is on appeal to the Second Circuit.

II. The Modifications to the Injunction Are Not Authorized by Rule 53 and Violate the Separation of Powers, Which Is Highlighted by Mr. Bromwich's Conduct to Date

The monitor's authority, especially if augmented through the proposed amendments, would violate the Federal Rules of Civil Procedure and constitutional separation of powers. Although Rule 53 authorizes the Court to appoint a special master, that authority is limited to what is necessary "to aid judges in the performance of specific *judicial duties*." *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957) (emphasis added); *see also In re Peterson*, 253 U.S. 300, 312–13 (1920). Rule 53 does not authorize district courts to appoint special masters or monitors to exercise authority not otherwise allowed by Article III. *Ex parte* interviews and communications with the Court and Apple's adversaries are not part of the "judicial duty" courts exercise under Article III. Especially when considered along with Mr. Bromwich's own misguided view of the scope of his authority under the September 5 Final Judgment and his unreasonable actions so far, it is clear that the investigation the Court has proposed to authorize Mr. Bromwich to undertake would far exceed the Court's authority under Rule 53 and violate the separation of powers.

A. The Court's Proposed Amendments Are Not Authorized by Rule 53 and Would Violate the Separation of Powers

To the extent that a "monitor" may be appointed by the Court as a "special master[], albeit by another name" (*Juan F. v. Weicker*, 37 F.3d 874, 880 (2d Cir. 1994)), the Court's appointment authority is governed by Rule 53, as the Court acknowledged for the first time in its November 21 order (Dkt. 410). In relevant part, Rule 53(a) provides that a court "may appoint a

master only to: … address … posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district." Fed. R. Civ. P. 53(a)(1).

A valid appointment under Rule 53(a) gives a master (or monitor) the authority to address issues *that would otherwise be addressed* "by an available district judge or magistrate judge." Fed. R. Civ. P. 53(a)(1)(C); *see La Buy*, 352 U.S. at 256 (masters may "aid judges in the performance of specific judicial duties"). Examples of appropriate delegations include giving masters "the ability to convene and to regulate hearings, to rule on the admissibility of evidence, to subpoena and swear witnesses, and to hold non-cooperating witnesses in contempt." *Benjamin v. Fraser*, 343 F.3d 35, 45 (2d Cir. 2003), *overruled on other grounds by Caiozzo v. Koreman*, 581 F.3d 63 (2d Cir. 2009). These are judicial functions normally exercised by Article III judges; and masters, as "quasi-judicial officers," exercise this delegated *judicial power*. *Benjamin*, 343 F.3d at 45; *see also Reed v. Rhodes*, 691 F.2d 266, 269 (6th Cir. 1982) (special masters act "in a quasi-judicial capacity"); *Cobell v. Norton*, 334 F.3d 1128, 1139 (D.C. Cir. 2003) ("Special Master-Monitor ... was serving as a judicial officer"). But there is no long-standing tradition of charging monitors with "wide-ranging extrajudicial duties" to fill "an investigative, quasi-inquisitorial, quasi-prosecutorial role that is unknown to our adversarial legal system." *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1149 (D.C. Cir. 2009).

The parties here did not enter into a consent decree and confer authority on a special master by contract. *Cf.* Fed. R. Civ. P. 53(a)(1)(A) (a court may appoint a master to "perform duties consented to by the parties"). Generally, "[c]orporate monitors are appointed as part of a negotiated settlement before judgment between a firm and a government enforcement agency." Vikramaditya Khanna & Timothy L. Dickinson, *The Corporate Monitor: The New Corporate Czar?*, 105 Mich. L. Rev. 1713, 1716 (2007). And in such cases, consent decrees "'should be

construed basically as contracts.'" *Juan F.*, 37 F.3d at 878 (quoting *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236–37 (1975)); *see also N.Y. State Ass'n for Retarded Children Inc. v. Carey*, 706 F.2d 956, 963 (2d Cir. 1983) (upholding appointment of special master pursuant to consent judgment because the "powers of the Special Master to inspect, to interview, and to make recommendations [went] no further than those agreed to in the Consent Judgment"); *cf. City of N.Y. v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 146 (2d Cir. 2011) ("Parties may consent to settlement terms that would otherwise, if imposed unilaterally, violate Rule 65(d) or a defendant's due process rights"). Apple, by contrast, *opposed* appointment of a monitor in a civil antitrust case as unprecedented, unwarranted, and legally improper, reserved all of its rights to challenge the appointment, and has appealed the Final Judgment. *See* Dkt. 331 at 9–13 (opposing appointment of external monitor); Dkt. 379 (notice of appeal). "When a party has for a nonfrivolous reason denied its consent, ... the district court must confine itself (and its agents) to its accustomed judicial role." *Cobell*, 334 F.3d at 1142; *see also Sierra Club v. U.S. Army Corps of Engineers*, 701 F.2d 1011, 1048 (2d Cir. 1983) (vacating appointment of special master due to the "highly intrusive nature of the mandate given the special master").

In the absence of agreement between the parties, Rule 53 does not authorize the Court to delegate duties to a master which *the Court itself* would be powerless to perform. Nor could it.

The Constitution vests the federal courts with "[t]he judicial power." U.S. Const. art. III § 1. And the judicial power is "the only kind of power that federal judges may exercise by virtue of their Article III commissions." *Young*, 481 U.S. at 816 (Scalia, J., concurring in the judgment); *see also Nat'l Mut. Ins. Co. of D.C. v. Tidewater Transfer Co.*, 337 U.S. 582, 590 (1949) ("it was 'generally supposed that the jurisdiction given [to Article III judges] was constructively limited to cases of a Judiciary nature'") (quoting 2 The Records of the Federal

Convention of 1787, at 430 (Max Farrand, ed., 1911)); *Mistretta v. United States*, 488 U.S. 361, 385 (1989) ("According to express provision of Article III, the judicial power of the United States is limited to 'Cases' and 'Controversies'"); *Muskrat v. United States*, 219 U.S. 346, 355 (1911) ("The power conferred on [federal courts] is exclusively judicial, and it cannot be required or authorized to exercise any other") (internal quotation marks omitted). The "executive or administrative duties of a nonjudicial nature may not be imposed on judges holding office under Art. III of the constitution." *Morrison v. Olson*, 487 U.S. 654, 677 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 123 (1976)). Indeed, as Alexander Hamilton famously observed, the judiciary "must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments." The Federalist No. 78, at 522–523 (A. Hamilton) (J. Cooke ed., 1961). Courts may issue injunctions, but they do not have unlimited power to conduct investigations in the name of *enforcing* those injunctions or otherwise policing the conduct of the enjoined litigant.

Federal courts do not, for example, have the autonomous power to punish litigants for criminal contempt as a means of enforcing their judgments. *See Bloom v. Illinois*, 391 U.S. 194, 207 (1968). The enforcement of court orders, like the enforcement of legislation, is reserved to the executive branch. Likewise, governmental investigation of potentially illegal conduct (such as disregard for a court order or ongoing antitrust violations) is a quintessentially executive function. *See Heckler v. Chaney*, 470 U.S. 821, 832 (1985); *Buckley*, 424 U.S. at 138; *United States v. Nixon*, 418 U.S. 683, 693 (1974). "There simply are certain things that courts, in order to remain courts, cannot and should not do." *Missouri v. Jenkins*, 515 U.S. 70, 132 (1995) (Thomas, J., concurring). And because these powers are not part of the judicial authority conferred by Article III, district courts may not authorize "quasi-judicial" special masters or monitors to undertake them. *See* Fed. R. Civ. P. 53(a)(1)(C).

The unilateral investigation the Court has empowered Mr. Bromwich to undertake is not a judicial function, and therefore cannot be delegated by the Court. The injunction, particularly as the Court proposes to amend it and in light of how Mr. Bromwich interprets his authority (*see infra* pp. 10–16), goes well beyond any reasonable and limited role of assessing compliance and training policies (as they exist 90 days after entry), and plainly (and wrongly) vests the monitor with wide-ranging, intrusive, and excessive inquisitorial powers of a sort reserved to prosecutors. *See Cobell*, 334 F.3d at 1141 (reversing appointment of monitor where district court "authorized the Monitor to engage in ex parte communications, and required the [defendant] to 'facilitate and assist' the Monitor, to 'provide him with access to any offices or employees to gather information,' and to pay his hourly fees and expenses") (alterations omitted). Indeed, the injunction gives the monitor the same powers that it bestows on the Department of Justice and State Attorneys General. *Compare* Dkt. 374 § VII.A.1-2 (plaintiffs permitted "access [to] inspect and copy" documents, and "to interview ... Apple's officers, employees, or agents"), *with id.* § VI.G.1–3 (monitor may interview witnesses and demand documents).

If the proposed amendments were adopted, Mr. Bromwich's powers would *exceed* those of the government entities, because he would be authorized to interview witnesses *ex parte*, and report *ex parte* to the Court. Dkt. 410 ¶¶ 3–4; *compare* Dkt. 374 § VII.A.2 (Apple personnel may have counsel present during interviews) *with id.* § VII.C ("No information or documents obtained by [the plaintiffs] ... shall be divulged … to any person other than an authorized representative of the Executive Branch of the United States, the Attorney General's Office of any Plaintiff State, or the External Compliance Monitor, except in the course of legal proceedings").

Roving investigations with a commission to ferret out wrongdoing—including the powers to "interview," "inspect," and "discover evidence"—are well outside the boundaries of "[t]he

judicial power." Rather, they are prosecutorial powers vested in the President by Article II, § 1. The Court may not, therefore, appoint a monitor "to act[] as an internal investigator" who "report[s] ... to the district court." *Cobell*, 334 F.3d at 1141.

The separation of powers is no mere "remedy to be applied when specific harm, or risk of specific harm, can be identified." *Plaut v. Spendthrift, Inc.*, 514 U.S. 211, 239 (1995). Rather, it is "a *structural safeguard*" embedded in our constitutional system. *Id.*; *see also Nat'l Mut. Ins.*, 337 U.S. at 590–91 ("The doctrine of separation of powers is fundamental in our system"). Appointing special masters to oversee ongoing compliance with antitrust injunctions "could contravene the separation of powers doctrine because it would involve the creation of a substantial quasi-legislative, quasi-executive bureaucracy within the Judicial Branch of government." *United States v. AT&T*, 552 F. Supp. 131, 168 n.158 (D.D.C. 1982). The Court's proposed amendment would turn a "quasi-judicial" monitor into a mini-executive—a role Mr. Bromwich has quickly embraced and, as discussed below, already abused.

B. Mr. Bromwich Has Already Exceeded His Authority

Mr. Bromwich's interpretation of his mandate and his conduct to date have exceeded the authority that this Court could permissibly and constitutionally delegate to him, and highlight the serious problems with the Final Judgment and the proposed amendments.

After Apple reached out to Mr. Bromwich on October 17 (Boutrous Decl. Ex. D)—the day after he was appointed—the parties agreed to meet in New York on October 22. At that meeting, Mr. Bromwich declared that he would begin interviewing Apple's top executives and board members starting on November 18. Apple explained, however, that the timing of the requests was premature given that Apple was still putting its new compliance and training programs in place in advance of the January 14 deadline. *See id*. Ex. E.

The terms of the Final Judgment are clear that the monitor's "review of Apple's internal antitrust compliance policies and procedures and antitrust training program is not to commence until '90 days after his or her appointment.'" Boutrous Decl. Ex. A at 1 (quoting Dkt. 374 § VI.C). Indeed, at the August 27 hearing, the Court stated:

> I don't think that the [Monitor] should conduct a review or assessment of the current policies. I would expect that Apple would revise its current policy substantially and procedures and create an effective training program. That will require some time. So I think this should be revised to have the [Monitor] doing an assessment in three months from appointment and *beginning to engage Apple in a discussion at that point*.

Dkt. 371 (Aug. 27, 2013 Hr'g Tr.) at 20–21 (emphasis added). Accordingly, Apple explained that Mr. Bromwich's request "to begin interviewing Apple's entire board and its executive team, as well as additional senior executives on November 18 is premature, not authorized by the Final Judgment, and would not only be disruptive to Apple's business operations but also directly contrary to Judge Cote's intent." Boutrous Decl. Ex. A at 2; *see also id.* at 3 ("It makes no sense and would be extremely disruptive, to schedule those interviews before Apple has completed its internal assessment and developed its new antitrust training program").

Despite its good-faith and legitimate concerns, Apple nonetheless sought to accommodate Mr. Bromwich's demands and agreed to arrange interviews with nine high-level business and legal executives if Mr. Bromwich was willing to wait until the week of December 2. *See* Boutrous Decl., Ex. C. Mr. Bromwich nonetheless continued to demand to "interview/meet Tim Cook, Phil Schiller, and Edd[y] Cue," as well as any other "Senior VPs who touch antitrust-related issues in a meaningful way." *Id.* Ex. B at 4. He also sought to interview three members of Apple's Board of Directors—including Al Gore—who happen to live in or frequently visit Northern California. *Id.* at 5.

Most of the executives and board members Mr. Bromwich sought to interview are not

even relevant to his mandate. By contrast, Apple's proposed interviewees were the key individuals involved in rolling out Apple's enhanced compliance and training efforts. Nevertheless, because Apple could not produce its entire slate of directors and board members on a few weeks' notice, Mr. Bromwich accused Apple of not taking "its obligations and [Mr. Bromwich's] responsibilities under the Final Judgment very seriously." Boutrous Decl. Ex. B at 2. He then demanded that Apple "[b]e prepared to support any representations concerning [the] availability [of the individuals he wanted to interview] with *detailed copies of their schedules for that entire week*." *Id.* (emphasis added). He said he "was not prepared to drag things out any longer" than the week of November 18. *Id.*

Mr. Bromwich's "demands and approach [were] unreasonable, unnecessary and unwarranted, and [went] well beyond the scope of the Final Judgment and Judge Cote's guidance." Boutrous Decl., Ex. B at 1. The Final Judgment states that all Apple interviews "be subject to the *reasonable convenience* of such personnel and without restraint or interference by Apple" (Dkt. 374 § VI.G.1 (emphasis added)), but Mr. Bromwich reasserted his demand for a "slate of interviews and meetings next week." Boutrous Decl. Ex. E at 1.

Apple offered to make available on November 18 for interviews its Chief Compliance Officer and Head of Global Security (Tom Moyer), and Associate General Counsel and Legal Liaison to the Audit and Finance Committee (Gene Levoff). *See* Boutrous Decl. Ex. F at 1.[1]

Mr. Bromwich accepted this proposal (Boutrous Decl., Ex. F at 1 ("We accept")), and on

[1] Apple again urged Mr. Bromwich to postpose the meetings until the week of December 2 or December 9 so that he could interview others, including Bruce Sewell (Apple's General Counsel) and Deena Said (the new Antitrust Compliance Officer). *See* Boutrous Decl. Ex. F at 2 ("Apple respectfully submits that this will be more efficient and effective in getting you the information you seek and in working together to ensure that the company has comprehensive and effective antitrust compliance and training programs").

November 18, he interviewed Messrs. Moyer and Levoff (Boutrous Decl. ¶ 3). He also met with Noreen Krall (Apple's Chief Litigation Counsel) to discuss Mr. Bromwich's fees and the details of the confidentiality agreement. *See id*.

Not content to wait, however, Mr. Bromwich pressed for more interviews. Upon learning that Apple General Counsel Bruce Sewell was attending the important *Apple v. Samsung* trial during the week of November 18, Mr. Bromwich proposed to "stop by the courthouse and meet him." *Id*. Ex. H. Mr. Bromwich also again sought to interview the new Antitrust Compliance Officer, even though the day of the interviews was literally her first day on the job. *Id*.

Mr. Bromwich's incessant "demands for immediate attention" compelled Apple to once again explain how "incredibly disruptive" Mr. Bromwich's requests had become. *See* Boutrous Decl. Ex. I at 1. Apple reminded Mr. Bromwich that the "reason for th[e] three-month window is of course to provide Apple and its counsel with time to develop new, comprehensive antitrust training and compliance materials in accordance with the Final Judgment, without hampering Apple's business." *Id.* at 2. And Apple tried to persuade Mr. Bromwich that his "continual requests for additional interviews and other information before January 14, 2014[] affirmatively hamper Apple's efforts to develop a new antitrust training and compliance program as efficiently and effectively as possible within the deadline set by Judge Cote." *Id.* at 3. Nevertheless, "[i]n the spirit of cooperation," Apple proposed a schedule for eleven additional interviews to take place between December 4 and 6. *Id.* at 4.

Not only has Mr. Bromwich continued to press for interviews with Apple's Board members and senior executives, he has begun contacting them directly (not through counsel) in an explicit effort to "promote" a "relationship between the company liaisons and the monitoring team that is *unfiltered through outside counsel*." Boutrous Decl. Ex. J at 5 (emphasis added).

His letter, sent directly to the board members, specifically asking them to respond without aid of their counsel, is manifestly inappropriate.

Even worse, Mr. Bromwich does not base his aggressive investigative approach on the terms of the Court's Final Judgment or statements on the record, but rather on his *ex parte* conversations with the Court.

For example, the record indicates quite clearly that the monitor's duties do not commence until January 14. *See* Dkt. 374 § VI.C ("The [Monitor] shall conduct a review to assess whether Apple's internal antitrust compliance policies and procedures, *as they exist 90 days after his or her appointment*, are reasonably designed to detect and prevent violations of the antitrust laws. The [Monitor] shall also conduct a review to assess whether Apple's training program, ... *as it exists 90 days after his or her appointment*, is sufficiently comprehensive and effective.") (emphasis added); Dkt. 384 (appointing monitor on October 16, 2013). This makes sense given that the monitor's first report is not due until 180 days after the monitor's appointment. Dkt. 374 § VI.C; *see also* Dkt. 375 (Sept. 5, 2012 Hr'g Tr.) at 10 ("we have provided for a six-month report from the monitor"); *id*. ("I would appreciate six-month reports").

Mr. Bromwich, however, has determined that his duties must commence *immediately*. And his basis for rejecting Apple's reading of the record is what he termed his "distinct advantage of *having discussed [his] intentions to get off to a fast start directly with [the Court] during the interviewing process*." Boutrous Decl. Ex. K (emphasis added). He gives "that discussion far more weight" than what he called Apple's "snippets of transcript taken out of context" (*id.* (emphasis added))—*i.e*., the public record. *See also id*. Ex. L at 1 ("[I]n my interviews during the monitor selection process with the Department of Justice and the Plaintiff States, and separately with Judge Cote, I made clear that one of the keys to a successful

monitorship was getting off to a fast start and promptly making contact with top executives at the company .... There was no suggestion at any time from anyone that these activities needed to be deferred for 90 days after the appointment of the External Compliance Monitor.") It is exceedingly problematic and disturbing that Apple does not know how many of these conversations occurred or what has been discussed.

As these communications and activities make clear, Mr. Bromwich has no intention of limiting his role to the terms of the Final Judgment or to handling judicial matters that the Court itself could not "effectively and timely address[]." Fed. R. Civ. P. 53(a)(1)(C). Rather, cloaked in the mandate given to him by this Court, he is asserting investigative powers that belong exclusively to the Executive Branch and is assuming that he can function without regard to the restrictions imposed by the Federal Rules of Civil Procedure, or any other rules, that govern discovery and exchange of information in a civil case.

The Court has no authority to travel the country to interview Apple's employees (particularly without counsel present), review all of Apple's corporate documents, or initiate contempt charges against Apple, all at Apple's expense, and it may not escape that constitutional limitation by appointing a "quasi-judicial officer" to accomplish that end. Because the Court's proposed amendments purport to confer executive powers on a quasi-judicial officer, they are not supported by Rule 53 and violate the constitutional separation of powers.

III. The Court Cannot Simultaneously Receive *Ex Parte* Reports from the Monitor and Preside Over the Pending Damages Trial and Putative Class Action

The injunction, if modified as proposed, would allow the monitor to "communicate with a party or a party's agent on an *ex parte* basis if reasonably necessary" (Dkt. 410 ¶ 3), and would direct the monitor to "provide the Court with *ex parte* oral briefings at least once a month, or more frequently as the Monitor or Court decide in the exercise of their discretion is appropriate"

(*id.* ¶ 4). This is a 180-degree turn from the September 5 order, which authorized interviews with "counsel present." Dkt. 374 § VI.G.1. This invitation to Mr. Bromwich to circumvent Apple's counsel risks disclosure of privileged and confidential information to the Court and raises serious due process concerns—particularly while the Court is simultaneously presiding over proceedings on the class and state plaintiffs' claims for damages and penalties.

"Ex parte communications between a master and the court present troubling questions." Fed. R. Civ. P. 53(b) Advisory Committee's Note; *cf. In re Kensington Int'l Ltd.*, 368 F.3d 289, 311 (3d Cir. 2004) (ex parte contacts with consulting advisors are an "egregious problem"). For this reason, the Rules Advisory Committee advises that "[o]rdinarily the [appointment] order should prohibit such communications." Fed. R. Civ. P. 53(b) Advisory Committee's Note.

These "troubling questions" are magnified here where *ex parte* contact with the Court may be preceded by *ex parte* contact with Apple personnel. The Final Judgment permits Mr. Bromwich to conduct interviews (but *with counsel present* and subject to *reasonable convenience*), to "inspect any documents in the possession, custody, or control of Apple," and to "require Apple to provide compilations of documents, data, or other information" related to his responsibilities as expressly delineated. Dkt. 374 § VI.G.2–3.

As discussed above, however, Mr. Bromwich has already shown a proclivity to leap far beyond his mandate, and now this Court proposes amendments that would give him power to interview Apple personnel *ex parte*, something he will no doubt be quick to exploit. Indeed, the day after the Court filed its proposed amendments, Mr. Bromwich directly contacted Apple's entire Board of Directors, citing the Court's order and encouraging them to "promote" a "direct relationship between the company liaisons and the monitoring team that is unfiltered through outside counsel." Boutrous Decl. Ex. J at 5. The proposed amendments would allow Mr.

Bromwich to then take such "unfiltered" information to the Court, again without Apple's counsel present (Dkt. 410 ¶ 4), and the Court would be allowed in turn to disclose the information to the public (*id.* ¶ 5), including, of course, Apple's adversaries in the *parens patriae* and putative class action seeking nearly $1 billion pending before this Court.

Receipt of such information, delivered *ex parte*, is grounds for disqualification of a judge presiding over continuing proceedings in the matter and in related litigation. *See* 28 U.S.C. § 455(a) ("Any ... judge … of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned"); *see also In re Kensington*, 368 F.3d at 310 ("If judges engage in *ex parte* conversations with the parties or outside experts, the adversary process is not allowed to function properly and there is an increased risk of an incorrect result"). It is also a violation of the ethics rules. *See* Code of Conduct for U.S. Judges, Canon 3(A)(4) ("a judge should not initiate, permit, or consider *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers").[2] Where a presiding judge who is expected to render impartial rulings based on a transparent record developed in open court in compliance with the rules of evidence receives any (much less regular) *ex parte* briefings regarding information that a monitor has gathered by interviewing the defendant's employees and reviewing the defendant's corporate documents, "an objective, disinterested observer fully informed of the underlying facts, [would] entertain significant doubt that justice would be done absent recusal." *Diamondstone v. Macaluso*, 148 F.3d 113, 121 (2d Cir. 1998); *see also Kensington*, 368 F.3d at 310 ("ex parte communications run contrary to our adversarial trial

[2] The Code of Conduct recognizes four exceptions to the general rule against *ex parte* communications (Canon 3(A)(4)(a)–(d)), none of which is applicable here.

system"); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 886 (2009) (due process may require disqualification where the circumstances offer the temptation "to the average ... judge to ... lead him not to hold the balance nice, clear and true") (internal quotation marks omitted).

In *Kensington*, for example, the Third Circuit ordered the district judge to recuse himself from two asbestos-related bankruptcy proceedings over which he was presiding after the judge appointed consulting advisors who had played a role in other asbestos-related litigation and then engaged in *ex parte* communications with these advisors. 368 F.3d at 294. Describing the *ex parte* meetings with the advisors as an "egregious problem," the Third Circuit held that the district judge's "unrecorded" *ex parte* communications with those advisors "support[ed] disqualification," in part because there was "no official record of what was said." *Id*. at 309–10. The exact same concerns are present here.

The twin *ex parte* provisions in the proposed amendments risk—indeed, they *encourage*—disclosure of privileged and confidential information, including information wholly unrelated to the very narrow scope of Mr. Bromwich's assigned role. Without counsel present, interviewees might unknowingly disclose information protected by the attorney-client privilege in describing the contents of privileged conversations to Mr. Bromwich—information which Mr. Bromwich would then be free to convey *ex parte* to the Court. Dkt. 410 ¶ 4. According to the proposed amendments, once the information is in the Court's hands, the Court has discretion to reveal that information to the public. Dkt. 410 ¶ 5. There is no legitimate need to allow Mr. Bromwich to potentially gain access to privileged and confidential information as well as information having nothing to do with his narrow mandate—which Apple could not be compelled to disclose—through *ex parte* conversations with Apple's personnel.

This potential disclosure of privileged information is particularly problematic here where

there is ongoing litigation. In addition to the risk of the judge being prejudiced by information received by the monitor, there is a very real risk that the plaintiff states and putative class plaintiffs will benefit from the investigation, as Mr. Bromwich retains and discloses to the Court information that the Court proposes it will potentially disclose on the public record.

Additionally, *ex parte* communications between Mr. Bromwich and the Court create confusion as to the scope of his powers and responsibilities. For example, as discussed above, Apple reads this Court's order and statements on the record to mean that the monitor's principal duties do not commence until January 14. Mr. Bromwich, however, on the basis of apparent *ex parte* communications with the Court, claims that his duties commence immediately and that he is authorized to immediately interview the top officials and the board before Apple even has a chance to revise its compliance and training programs as envisioned by the Court. This assertion of authority on the basis of private conversations between Mr. Bromwich and the Court is the antithesis of the rule of law. There can be no doubt that the Final Judgment and this Court's explanation of it on the public record define the scope of his role and responsibilities, but Mr. Bromwich is using private conversations with the Court as a basis for exceeding his authority.

No litigant could possibly take comfort in the objectiveness of a court's judgment in ruling on fiercely contested motions and proceedings when the court is regularly meeting privately with a judicially appointed investigator charged with looking to uncover evidence of possible wrongdoing by that litigant. And to the extent the Court actually intended to unleash Mr. Bromwich as its agent in this manner, such order transforms the Court from an impartial arbiter of "Cases" and "Controversies" into Apple's litigation adversary. Apple therefore objects to the Court's proposed amendments and requests that the Court disclose the existence and scope of any *ex parte* communications it has had with Mr. Bromwich.

IV. The Court's Proposed Order Deprives Apple of Its Right to a "Disinterested Prosecutor"

The Due Process Clause entitles a defendant to a disinterested prosecutor. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249–50 (1980) (citing *Bordenkircher v. Hayes,* 434 U.S. 357, 365 (1978)). This requirement prevents executive decisions from being tainted by "a personal interest, financial or otherwise." *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 808 (1987) (internal quotation marks omitted). The monitorship the Court has imposed—particularly with the proposed amendments—would violate this due process protection.

A. The Monitor's Personal Financial Interest in the Proceedings Is Unconstitutional

Mr. Bromwich views his role as akin to that of an independent prosecutor or investigator assigned by the Court to investigate a single corporate citizen. He regularly cites his independence in seeking to commence interviews with Apple executives and board members even before Apple has had a chance to revise its antitrust compliance and training programs as contemplated by the Court. *See* Boutrous Decl. Ex. M at 2 ("Apple and the other parties must respect our independence"); *id.* Ex. N at 3 (asserting that providing details about his invoices would "compromise [his team's] independence"). The Final Judgment itself directs the monitor to keep his eyes and ears open for any signs of illegal behavior and to pass such information along to the plaintiffs. Dkt. 374 § VI.F ("If the [Monitor] ... discovers ... evidence that suggests ... that Apple is violating or has violated this Final Judgment or the antitrust laws, the [Monitor] shall promptly provide that information to the United States and the Representative Plaintiff States"). Thus, unlike a normal law enforcement officer or prosecutor, Mr. Bromwich does not have "a detached and impartial view of all groups in his community," but rather a singular focus on Apple. Robert Jackson, *The Federal Prosecutor*, Address Delivered at the Second Annual

Conference of the United States Attorneys (Apr. 1, 1940).

Moreover, Mr. Bromwich is not disinterested. The Court's proposed amendments incorporate the Final Judgment's requirement that Apple pay Mr. Bromwich for the time he spends investigating Apple. *See* Dkt. 410 ¶ 8; Dkt. 374 ¶ VI.I ("The [Monitor] shall serve at the cost and expense of Apple"). And *Apple's adversaries*, including the plaintiff states, have the authority to approve the expenses that Mr. Bromwich intends to bill to Apple. *See* Dkt. 374 § VI.I. They too have every incentive to inflict on Apple the broadest and most expensive investigation possible.

This "personal incentive" to run as broad and intrusive an investigation as possible deprives Apple of its due process right to a neutral prosecutor. *See Young*, 481 U.S. at 804 ("A prosecutor may be tempted to bring a tenuously supported prosecution if such a course promises financial or legal rewards for the private client"); *People ex rel. Clancy v. Superior Court*, 39 Cal. 3d 740, 746 (1986) ("When a government attorney has a personal interest in the litigation, the neutrality so essential to the system is violated"). To the extent Article III courts are empowered to appoint private lawyers to police their injunctions, those lawyers must be "disinterested," just like "a public prosecutor who undertakes such a prosecution." *Young*, 481 U.S. at 804. As an arm of the court, such an appointed lawyer must meet the highest standards of financial impartiality. *See Caperton*, 556 U.S. at 886 (recusal required "whether or not *actual* bias exists or can be proved," so long as the financial interest "offer[s] a *possible* temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true") (emphasis added) (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

The proposed amendments provide by reference that the appointment shall "be for a period of two years." Dkt. 374 § VI.A; Dkt. 410 ¶ 6. Likewise, the order provides that the Court

"may *sua sponte* ... extend the appointment by one or more one-year periods." Dkt. 374 § VI.A. Mr. Bromwich is therefore financially incentivized to recommend extending the appointment period—at Apple's expense. Indeed, Mr. Bromwich has repeatedly expressed the need to establish a fee structure that will allow him to "generate profits." *See* Boutrous Decl. Ex. N at 2, Ex. O at 2. This is a vicious circle that violates due process. *Young*, 481 U.S. at 814-15 (Blackmun, J., concurring) (due process "requires a disinterested prosecutor with the unique responsibility to serve the public, rather than a private client, and to seek justice that is unfettered"); *Caperton*, 556 U.S. at 876 ("It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process'") (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). There is no support in the federal rules or the Constitution for ordering Apple to self-fund the investigation of itself by a court-appointed lawyer, acting on the Court's behalf, who has a financial incentive to make the investigation as expansive and expensive as possible.

B. Mr. Bromwich's Excessive Fees, Which He Refuses to Justify as Either Reasonable or Customary, Violate the Final Judgment

The Court's proposed amendments incorporate the Final Judgment's statement that "compensation of the [Monitor] shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities and consistent with reasonable expense guidelines." Dkt. 410 ¶ 8; Dkt. 374 § VI.I. Mr. Bromwich's billing rates, the 15% "service charge," and his refusal to justify his fees for this monitorship all directly conflict with the Court's Final Judgment, and aggravate the due process concern with his investigation.

Mr. Bromwich has proposed an hourly rate for himself of $1,100. *See* Boutrous Decl. Ex. O at 2. And *because he lacks any antitrust experience*, Mr. Bromwich has also retained the law firm Fried Frank to assist him, whose partner's hourly rate is $1,025. *Id*. at 3. Mr. Bromwich has made no attempt to justify why his lack of any substantive experience with the

matter at issue justifies hiring another law firm with a four-digit billing rate.

As Apple explained to Mr. Bromwich, of all known past Apple matters, "not a single partner had an effective billing rate as high as or higher than those that [Mr. Bromwich has] proposed." Boutrous Decl. Ex. O at 1. And Mr. Bromwich's rates in this matter dramatically exceed what he has quoted in the past. For instance, in a proposal to monitor the New Orleans Police Department five months ago, he suggested a $495 hourly rate, without an administrative fee, which the Department of Justice termed "relatively expensive." *Id*. Ex. O at 2.

On top of these rates, Mr. Bromwich proposes to charge a 15% "administrative fee" to be applied to all fees generated by him, Fried Frank, and other lawyers from other firms he proposes to include on his team.[3] *See* Boutrous Decl. Ex. O at 2, Ex. N at 2–3. This is unprecedented in Apple's experience; no law firm Apple has ever engaged has charged a 15% administrative fee on top of the billing rate (*id.* Ex. O at 2), and Mr. Bromwich has not identified a single other instance in which he has collected such a fee from a corporate client or monitored entity. *Id*. Ex. N at 2–3. Mr. Bromwich appears to be simply taking advantage of the fact that there is no competition here or, in his view, any ability on the part of Apple, the subject of his authority, to push back on his demands.

[3] Mr. Bromwich has sought to justify this 15% markup on the grounds that he is handling this assignment through his "consulting firm," the Bromwich Group, rather than through Goodwin Proctor—the law firm where he is a partner and which is located in the same office building as the Bromwich Group. Boutrous Decl. Ex. O at 2. But this Court appointed Mr. Bromwich himself, not the Bromwich Group, to serve as monitor (Dkt. 384), and Mr. Bromwich has not cited anything to suggest that it is "reasonable and customary" for lawyers to form consulting groups to handle monitorships and charge additional fees on that basis. Moreover, this distinction seems slippery at best, given that Goodwin Proctor issued a press release, clearly meant to drum up more business, trumpeting, "Goodwin Partner Michael R. Bromwich Appointed Antitrust Monitor for Apple." *See* Goodwin Proctor Press Release, Oct. 18, 2013, *available at* http://www.goodwinprocter.com/News/Press-Releases/2013/10_18_13_Goodwin-Partner-Michael-R-Bromwich-Appointed-Antitrust-Monitor-for-Apple.aspx.

Mr. Bromwich flatly refused Apple's request that Mr. Bromwich provide a budget and a work plan and adhere to Apple's billing guidelines, and rejected Apple's proposal of a fee structure comparable to that of the many major law firms working on Apple matters. *See* Boutrous Decl. Ex. N at 3–4. And he has refused to justify either his rates or his billing practices as being either "reasonable" or "customary." *See id.* at 3 ("your requests for additional support for the administrative fee, and for the billing rates of ... other timekeepers ... are ... a thinly-veiled attempt to substitute a fee negotiation and approval process, in which Apple sets the terms of the relationship, for the process the Court prescribed in its September 5 Order"). Nor has the Department of Justice been able to defend his demands as either "reasonable" or "customary."

As a result of the foregoing and Mr. Bromwich's overbroad view of his mandate, Mr. Bromwich's invoice for his first two weeks of work was for $138,432.40. *See* Boutrous Decl. Ex. O at 3. (As a supposed agent of the Court, he racked up nearly 75% of a district judge's yearly pay in only two weeks.) These charges were incurred before any documents were exchanged, interviews scheduled, or meaningful travel conducted, and indeed before the 90-day deadline triggering his review of Apple's compliance and training programs under the injunction.

The Final Judgment does not give Mr. Bromwich a blank check to unilaterally impose his billing practices. His total failure to engage with Apple on whether his billing structure is "reasonable" or "customary" plainly violates the Final Judgment and confirms that he is not a disinterested pubic official seeking to fulfill the public interest as required by due process.

CONCLUSION

The proposed amendments in the Court's November 21, 2013 order are unnecessary, contrary to law, and unconstitutional. The Court therefore should not amend the injunction as proposed, and should issue an order directing Mr. Bromwich to limit his monitorship to the four

corners of the Final Judgment and this Court's contemporaneous statements on the public record explaining it.

Dated: November 27, 2013

Respectfully submitted,

By: /s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.

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On behalf of Defendant Apple Inc.

Exhibit A

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October 31, 2013

VIA E-MAIL

Michael R. Bromwich
The Bromwich Group LLC
901 New York Avenue, NW 5th Floor
Washington, D.C. 20001

Re: External Antitrust Compliance Monitoring

Dear Michael:

It was a pleasure meeting you last week, and Apple looks forward to working with you to achieve our shared objective of developing a comprehensive and effective antitrust training program consistent with Judge Cote's Final Judgment. Apple is fully committed to ensuring that its antitrust training program, and its policies and procedures related thereto, are both robust and effective.

I am writing to follow up on three issues arising from our discussion last week and your recent correspondence (letter of October 23, 2013[1] and e-mails on October 26 and 29, 2013). First, Apple believes that the timing and scope of your requests are inconsistent with the letter and spirit of the Final Judgment. Judge Cote was very clear that the injunction should be narrowly tailored to address the antitrust violation she found in this case and sought to avoid unnecessarily burdening Apple or limiting its ability to innovate and do business in this dynamic industry. *See* Hearing Transcript, *United States v. Apple Inc., et al.*, No. 1:12-CV-2826, at 8-9 (Aug. 27, 2013) ("I want this injunction to rest as lightly as possible on the way Apple runs its business.") (hereinafter "Aug. 27, 2013 Hearing Tr.").[2] Notably in this regard, the Final Judgment provides that the External Compliance Monitor's review of Apple's internal antitrust compliance policies and procedures and antitrust training program is not to commence until "90 days after his or her appointment." Final Judgment at § VI.C. Second, Apple also has concerns over the financial terms of your engagement, which the Final Judgment requires be "reasonable and customary" and approved by the

[1] As you are aware, Apple received a letter from you, in draft form, on October 23, 2013, which was not finalized until October 26, 2013.

[2] *See also* Aug. 27, 2013 Hearing Tr. at 27 ("I'm trying to think about, as I've indicated, where the real risks are and to minimize the burdens on Apple.")

Department of Justice ("DOJ"). Third, we also need to ensure that the confidentiality of any information Apple may share with you during the course of your activities as monitor is appropriately protected.

Apple is hopeful that these issues can be resolved quickly so that we can move forward together to achieve the objectives of the Final Judgment. Each of these issues is discussed in more detail below.

1. Timing and Scope of Monitor's Responsibilities

As you mentioned at the outset of our introductory meeting, the Final Judgment defines the scope of your responsibilities in a manner that is clear and straightforward. The monitor's primary responsibility is to "conduct a review . . . [of] Apple's internal antitrust compliance policies and procedures, *as they exist 90 days after his or her appointment*" and to "also conduct a review to assess whether Apple's training program, required by Section V.C of this Final Judgment, *as it exists 90 days after his or her appointment*, is sufficiently comprehensive and effective." Final Judgment at § VI.C (emphasis added).

During the August 27 hearing Judge Cote explained, "I don't think that the [Monitor] should conduct a review or assessment of the current policies. I would expect that Apple would revise its current policy substantially and procedures and create an effective training program. That will require some time. So I think this should be revised to have the [Monitor] doing an assessment in three months from appointment and *beginning to engage Apple in a discussion at that point*." Aug. 27, 2013 Hearing Tr. at 20-21(emphasis added).

Apple is in the process of revising and enhancing its compliance training programs to ensure that they are robust, comprehensive, effective, and compliant with the terms of the Final Judgment. In this regard, Apple will soon be bringing on board its new Antitrust Compliance Officer, as directed by the Final Judgment, and adding new lawyers with antitrust compliance expertise in the legal department. In light of the express language of the Final Judgment, as well as Judge Cote's elaboration at the August 27 hearing, the time period for your review of Apple's antitrust policies and procedures and training program does not commence until January 14, 2013 (90 days from the date of appointment).

Accordingly, your request to begin interviewing Apple's entire board and its executive team, as well as additional senior executives on November 18 is premature, not authorized by the Final Judgment, and would not only be disruptive to Apple's business operations but also directly contrary to Judge Cote's intent. We fully understand and expect that there will be a need to conduct interviews with certain personnel at some point once Apple's new training programs are up and running. And you have Apple's assurance that it will be a most willing partner in facilitating those meetings. Furthermore, there will be ample opportunity over the course of your engagement to determine whether Apple's new training program is consistent with the Judge's Order and is effective in its impact.

However, it makes no sense, and would be extremely disruptive, to schedule those interviews before Apple has completed its internal assessment and developed its new antitrust training program.

2. Financial Terms and Fiduciary Responsibilities

The Final Judgment requires the monitor to operate on "reasonable and customary terms" that are "consistent with reasonable expense guidelines." Final Judgment at § VI.I. Apple has already raised concerns regarding your hourly fees, the administrative fee you seek to impose in addition to those fees, the need for additional personnel, and finally, adherence to a defined expense policy. Apple does not believe your proposed fee structure is reasonable and customary, whether for a monitor or a lawyer, and respectfully objects to it. Moreover, your dictate that we simply accept these fees and costs at face value without any support or explanation is inconsistent with the company's fiduciary responsibilities to its shareholders, and to the customary practices of Apple and other companies in conducting business or legal activities. And, while the Final Judgment requires DOJ and Plaintiff States to approve your fee and expense structure (*see* Final Judgment at § VI.I), it appears from your correspondence you have not secured such approval but instead have simply submitted your proposed approach to DOJ and it has not acted upon it.

3. Confidentiality

To protect the confidentiality of any information Apple may share with you during the monitorship, we have attached a non-disclosure agreement for your signature that is consistent with Apple's standard confidentiality agreements and the Stipulated Protective Order in this matter. Apple also reserves its right to assert attorney-client privilege and work product protections as appropriate throughout this process. Finally, Apple again requests that, consistent with its policies, you, the Bromwich Group, Goodwin Procter, and Fried Frank refrain from using Apple's name in any marketing materials or media communications like the press release Goodwin Procter issued announcing your appointment and containing a direct quote from you.

* * * * *

Concurrent with this response, Apple has submitted to DOJ and Plaintiff States a notice of its objections. Please direct any future communications on these issues to me. As we work to resolve these issues, Apple will continue to focus its efforts on its internal assessment and enhancement of its antitrust policies and procedures and the training program mandated by the Final Judgment. As you know, Apple has retained seasoned antitrust practitioners and former government officials at the law firm of Simpson Thacher to aid it in this process. We appreciate an honest and open dialogue on these issues, and look forward to

working with you to establish antitrust compliance policies and training programs that are comprehensive and effective in satisfaction of the Final Judgment.

Very truly yours,

s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

Enclosure

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is entered into and is effective as of _____ (the "Effective Date") by and between Michael Bromwich, on behalf of the Bromwich Group, and Bernard Nigro (hereinafter "ECM") and Apple Inc. ("Apple" and, collectively, the "Parties") in connection with Section VI.I of the September 5, 2013 Final Judgment (the "Final Judgment") entered in *United States of America v. Apple, Inc.*, No. 1:12-CV-2826 (S.D.N.Y. Sept. 5, 2013) (the "Action"), and consistent with the May 7, 2012 Stipulated Protective Order entered in the Action (the "Protective Order").

Whereas, the Final Judgment contemplates that the Parties will execute customary confidentiality agreements in connection with ECM's monitoring responsibilities pursuant to the Final Judgment; and

Whereas, Apple contemplates that certain highly sensitive information and materials may be disclosed in connection with ECM's performance of his responsibilities pursuant to the Final Judgment; and

Whereas, the Parties agree that such materials should be kept confidential subject to the terms and conditions set forth below,

NOW, THEREFORE, the Parties do hereby agree and stipulate as follows:

1. DEFINITION OF CONFIDENTIAL INFORMATION. ECM agrees that all information disclosed by Apple to ECM in any manner in connection with ECM's monitoring responsibilities pursuant to the Final Judgment will be considered and referred to collectively in this Agreement as "Confidential Information." Confidential Information, however, does not include information that: (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of ECM; (b) ECM can demonstrate to have had rightfully in his possession prior to disclosure to ECM by Apple; (c) is independently developed by ECM without the use of any Confidential Information; or (d) ECM rightfully obtains from a third-party who has the right to transfer or disclose it to ECM without limitation.

2. NONDISCLOSURE AND NONUSE OF CONFIDENTIAL INFORMATION. ECM agrees to protect Apple's Confidential Information, using at least the same degree of care that he uses to protect his own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. ECM agrees to use Apple's Confidential Information for the sole purpose of performing his monitoring responsibilities in connection with the Final Judgment. ECM will not disclose, publish, or disseminate Confidential Information to anyone, and will not use Confidential Information in any manner, except as set forth in this Agreement.

3. INADVERTENT DISCLOSURE BY APPLE OF PRIVILEGED OR PROTECTED INFORMATION. If Apple inadvertently discloses to ECM material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection that ECM is not authorized to receive pursuant to the Final Judgment, the applicable privilege and/or protection will not be waived if Apple makes a request for return of such inadvertently produced material promptly after learning of its inadvertent production. Upon such notice, ECM will promptly return or destroy the materials subject to privilege and/or protection.

4. INADVERTENT DISCLOSURE BY ECM OF CONFIDENTIAL INFORMATION. In the event of disclosure by ECM of any Confidential Information to any person or persons not authorized to receive such disclosure pursuant to this Agreement, ECM will promptly notify Apple of the disclosure and provide to Apple all known relevant information concerning the nature and circumstances of the disclosure. ECM will promptly thereafter take all reasonable measures to retrieve the improperly disclosed material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made. Unauthorized or inadvertent disclosure will not change the confidential status of any Confidential Information.

5. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION BY ECM. Information and materials designated as Confidential Information pursuant to this Agreement may only be disclosed by ECM to the persons and in the manner set forth below:

(a) To the extent necessary to discharge ECM's monitoring responsibilities pursuant to the Final Judgment, attorneys, employees, and associates of ECM, including attorneys and employees of The Bromwich Group LLC, and attorneys and employees of Fried, Frank, Harris, Schriver & Jacobson.

(b) United States Department of Justice attorneys and employees, in connection with their enforcement or monitoring of compliance with the Final Judgment;

(c) Attorneys and employees of the Attorney General's Office of any Representative Plaintiff State (as defined in the Final Judgment), in connection with their enforcement or monitoring of compliance with the Final Judgment; and

(d) The Court and all persons assisting the Court in the Action, in connection with enforcement or monitoring of the Final Judgment, including law clerks, court reporters, and stenographic or clerical personnel.

In addition, before any information designated as Confidential Information may be disclosed to any person described in subparagraphs 5(a)-(c) above, he or she must first read this Agreement or must have otherwise been instructed on his or her obligations pursuant to this Agreement, and must execute the Agreement included as Appendix A hereto prior to receiving Confidential Information. Each individual described in subparagraphs 5(a)-(c) above and to whom Confidential Information is disclosed must not disclose that information to any other individual, except as set forth in this Agreement.

Nothing in this Agreement prevents disclosure by ECM of Confidential Information to any current employee of Apple, and nothing in this Agreement prevents the United States or any Representative Plaintiff State (as defined in the Final Judgment), subject to taking appropriate steps to preserve the confidentiality of such information, from using or disclosing Confidential Information as permitted or required by the Final Judgment, for law enforcement purposes, or as may otherwise be required by law or binding court order.

6. NOTICE OF DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION IN COURT PROCEEDINGS. Before disclosure of Confidential Information is made to any person or persons not authorized to receive the information pursuant to paragraph 5 above, ECM must give Apple at least ten (10) calendar days' advance notice in writing, including the name(s), address(es), and employer(s) of the person(s) to whom the disclosure will be made and the reason for the disclosure. If, within that ten-day period, Apple objects to the disclosure, ECM must make a written request to the United States and Representative Plaintiff States (as defined in the Final Judgment) within ten (10) calendar days' receipt of Apple's objection. In addition, in connection with any disclosure or use of Confidential Information in any court proceeding, ECM must take reasonable steps to maintain the confidentiality of those materials, including but not limited to filing documents under seal and satisfying the other requirements of paragraph 20 of the Protective Order.

7. PROCEDURES UPON COMPLETION OF ECM'S MONITORING RESPONSIBILITIES. The obligations imposed by this Agreement survive the termination of ECM's monitoring responsibilities as set forth in the Final Judgment. Within ninety (90) days after termination of ECM's monitoring responsibilities in connection with the Final Judgment, ECM must certify to Apple in writing that it has destroyed or returned to Apple all Confidential Information and that it has endeavored in good faith to ensure that any Confidential Information disclosed pursuant to paragraph 5 above has been destroyed or returned to Apple. However, nothing in this paragraph prevents the United States or the Representative Plaintiff States (as defined in the Final Judgment) from retaining or using Confidential Information, subject to taking appropriate steps to preserve the confidentiality of such information, as permitted or required by the Final Judgment, for law enforcement purposes, or as may otherwise be required by law or binding court order.

8. EQUITABLE RELIEF. ECM hereby acknowledges that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to Apple that may be difficult to ascertain. Accordingly, ECM agrees that Apple will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

9. NO IMPLIED WAIVER. Apple's failure or delay in exercising any of its rights will not constitute a waiver of such rights unless expressly waived in writing.

10. ENTIRE AGREEMENT AND GOVERNING LAW. This Agreement, in conjunction with the terms set forth in the Final Judgment, constitutes the entire Agreement with respect to the Confidential Information disclosed pursuant to this Agreement and supersedes all prior or contemporaneous oral or written Agreements concerning such Confidential Information. This Agreement may not be amended except by written Agreement signed by authorized representatives of both Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding that body of California law concerning conflicts of law. The Parties further submit to and waive any objections to the exclusive jurisdiction of and venue in the United States District Court for the Southern District of New York for any litigation arising out of this Agreement.

Understood and agreed to by the parties:

MICHAEL BROMWICH:

By: _____

Name: _____

Title: _____

BERNARD NIGRO:

By: _____

Name: _____

Title: _____

On behalf of APPLE INC.:

By: _____

Name: _____

Title: _____

Appendix A

I am employed as _____ by _____. I hereby certify that:

1. I have read the Confidentiality Agreement between Michael Bromwich and Apple Inc. (the "Agreement") and understand its terms.

2. I agree to be bound by the terms of the Agreement, including the terms relating to disclosure of Confidential Information (as defined in the Agreement) in paragraph 5 and the terms relating to the destruction or return of Confidential Information in paragraph 7 of the Agreement.

3. I agree to use the information provided to me in connection with the Agreement only for the purpose of enforcement and monitoring of the Final Judgment (as defined in the Agreement).

4. I understand that my failure to abide by the terms of the Agreement will subject me, without limitation, to liability for breach of the Agreement and this Appendix A.

5. I submit to the jurisdiction of the United States District Court for the Southern District of New York solely for the purpose of enforcing the terms of the Agreement and this Appendix A and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said court.

I make this certificate on this _____ day of _____ , _____.

By: _____

Name: _____

Title: _____

ATTACHMENT 2

Subject: Monitoring Letter

On Oct 26, 2013, at 8:47 AM, Michael Bromwich <michael.bromwich@bromwichgroup.com> wrote:

Dear Kyle,

Thanks very much for your response to my cover note and our draft letter. Unfortunately, I think you may have misconceived its purpose. It was not to begin a negotiation about fees, rates, and expenses, nor was it meant to provide you with an opportunity to provide us with guidelines that are applicable to providers of legal services where Apple is the client -- but that are inapplicable to firms providing independent monitoring services. It was to give you an opportunity to modify or revise the confidentiality provision. In light of your response, it probably makes sense to execute any enhancements to the confidentiality agreement separately. I have attached a signed copy of the monitoring letter. The only change is the date.

Without responding to each item in your note, I wanted to clarify the following:

1. Administrative fees are completely standard for consulting firms. The Bromwich Group is not a law firm and does not practice law. The normal range for the administrative/management fees for consulting firms is between 10% and 25%. Therefore, the 15% is at the low end of the range.

2. We will add additional personnel, whether from Fried Frank or elsewhere, only as necessary and appropriate. We will keep you informed if we add personnel performing significant substantive responsibilities but not if we use a lawyer to do a discrete research project or a legal assistant to provide support. We will do this as a courtesy and we do not intend to provide a rationale. It will be because we need additional assistance.

3. On expenses, please advise whether your lawyers from Gibson Dunn working on this matter, your Wilmer lawyers working on the Samsung matter in the ND of California, and other lawyers working on high-end litigation and corporate matters follow these expense guidelines without exception. If they do, we will seriously consider doing so. We are happy to receive from you a list of Apple's preferred hotels.

4. We are serving as an independent compliance monitor pursuant to a Court order, not as counsel to Apple subject to its direction and control. Accordingly, we will not be providing a budget. You are incorrect in stating that this is standard practice in monitorships. We will do everything we reasonably can to keep fees and expenses to a minimum. We plan to provide you each month with a statement of the number of hours spent by each timekeeper on this matter but not to provide descriptions of the amount of time spent on specific tasks. We will maintain such records and will share them with the Department of Justice, the Plaintiff States, and the Court if requested to do so.

5. We will submit our invoices directly to you, or to someone you designate. We will be happy to execute W-9s.

6. My consulting firm did not issue a press release. Goodwin Procter posted an item on its web site without my advance knowledge or consent to clarify that the firm itself would not be involved in the monitorship.

We very much look forward to your responses to the various substantive matters we discussed on Tuesday and to your confirming the particulars of our initial visit to Cupertino the week of November 18.

Best regards.

MRB

On Fri, Oct 25, 2013 at 10:45 PM, Kyle Andeer <kandeer@apple.com> wrote:

Dear Michael,

Thank you for sharing your draft letter It is very helpful in that it tees up a number of different issues that make sense to address at the outset of our relationship. As you noted, the treatment of confidential information is one of several issues that will require additional research and thought. Although the disclosure of such information is highly unlikely given the narrow scope of the External Compliance Monitor's responsibilities, we agree that this is an issue we should seek to address at the outset. It likely makes sense for us to execute one of our "customary confidentiality agreements" as contemplated in the Final Judgment. Final Judgment at § VI.I, U.S. v. Apple, Inc., No. 1:12-CV-2826 (S.D.N.Y. Sept. 5, 2013). We will provide a full response on these and other issues in the next week, as well as a retention obligations agreement and confidentiality agreements to address this point.

I do want to raise concerns with the compensation and expense terms outlined in your letter which are in tension with the terms of the Final Judgment which require the External Monitor to operate on "reasonable and customary terms" that are "consistent with reasonable expense guidelines." Final Judgment at § VI.I, U.S. v. Apple, Inc., No. 1:12-CV-2826 (S.D.N.Y. Sept. 5, 2013). From our perspective they do not reflect the competitive realities of the marketplace. We expect that your firm – like all of Apple's legal service providers – will comply with Apple's Outside Service Provider Policy ("OSP") (attached) and its standard expense policy (also attached).

1. Administrative Fee. You request that the Bromwich Group be paid a "management/ administrative fee" of 15% of all billable hours. As you will note in the attached policies, Apple does not pay any of its legal vendors a "management/administrative fee."

2. Hourly Rates. You have requested that Apple pay you $1,100 per hour and Mr. Nigro $1,025 per hour. These rates are very high, particularly when compared to the average rate Apple pays a law firm partner ($565 per hour). Even if one looks at the top 25%, the average rate per partner is $801 per hour. Apple is prepared to compensate you at $800 per hour and Mr. Nigro at a rate of $700 per hour. With the foregoing principles in mind, we also ask that you provide the hourly rate for Maria Cirincione.

3. Additional Personnel. Pursuant to Apple's Outside Service Provider Policy, the Bromwich Group (and Fried Frank) should notify Apple before adding new timekeepers to its team and provide a rational for the additional resources. As you appreciate, this is a standard requirement that ensures costs do not spiral out of control.

4. Expense policy. Apple expects that you will adhere to its standard expense policy (attached) Apple will pay for coach airfare, lodging at Apple preferred hotels, and per diems of $15 for breakfast, $25 for lunch and $30 for dinner. The policy also outlines our guidelines on telephone and copying charges. Apple will not reimburse for data storage and information technology services. This is consistent with these policies is in keeping with the "reasonable expense guidelines" language in Section VI.I of the Final Judgment.

5. Budget and Invoicing. The Bromwich Group should submit an expected budget for its services for the coming year. As you know this is standard practice in any engagement, including in monitorships. In addition, Apple expects that your invoices will describe time spent on tasks and a description of those tasks. Apple reserves the right to challenge fees that are excessive, outside the scope your responsibilities, and/or unjustified pursuant to Sections VI.I. and VI.J. of the Final Judgment.

6. Billing. Apple requires firms to submit invoices - within 30 days of service - via an electronic portal. We can set up a meeting with our eBilling team as soon as you are ready. Apple will also require a signed W9 in order to pay invoices for your firm.

7. Marketing. Apple does not allow the firms it works with to market their representation of Apple (see OSP at 6). We noted that your firm, Goodwin Proctor, your consulting practice, The Bromwich Group, and Mr. Nigro's firm, Fried Frank all issued press releases announcing your appointments. We ask that you please refrain from using Apple's name in any marketing materials or media communications.

The requests in your letter do not reflect market realities. That raises significant concerns on our part. We sincerely hope that you will reflect on these points and that we can work out these issues without going to the Department of Justice and the courts. Please let me know if you would like to discuss.

Best regards,

Kyle

On Oct 23, 2013, at 3:58 PM, Michael Bromwich <michael.bromwich@bromwichgroup.com> wrote:

Dear Kyle,

I have attached a draft letter that sets forth our duties and responsibilities as the external antitrust compliance monitor under the Final Judgment, and touches on other matters relevant to our monitoring work, including information about fees, expenses, and confidentiality. This letter is specifically tailored to the provision of monitoring services under the Final Judgment. Accordingly, it is different in various ways from the engagement letter that would be appropriate if Apple were a client of a law firm or my consulting firm.

Before I provided a signed version of the letter, I wanted to make sure it should be addressed to you rather than someone else at Apple, and give you the opportunity to suggest any revisions to Section 10 of the letter dealing with confidentiality. I realize this may be a sensitive issue and I wanted to make sure the language I have crafted is acceptable. I am willing to consider reasonable modifications.

Please confirm that you should be the recipient of this letter (or provide an alternative addressee) and suggest any reasonable changes to the confidentiality language as promptly as you can.

Thanks very much.

MRB
<Apple Monitoring Letter -- 10-23.doc>

<Apple -- 10-26 Letter.pdf>

Exhibit B

[redacted]

From: Boutrous Jr., Theodore J.
Sent: Monday, November 11, 2013 7:48 AM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia
Subject: RE: Apple -- Expense Guidelines

Dear Michael:

I am very surprised and disappointed in your email below. I thought that we had set things on a productive and collaborative path in our call last week and with my follow up list of potential interviewees (which was much broader and longer than the one I had suggested during the cordial November 6 call). During our call, I specifically noted that the week of November 18 might not be feasible or convenient and suggested that the week of December 2 (the week after the intervening Thanksgiving holiday week) might work well. When I then followed up and proposed December 2, you responded in your November 7 email that you would be in Europe the week of December 2 and had some other scheduling conflicts that week and the week of December 9. I then simply wrote back and asked if you could reshuffle your schedule so that we could make the December 9 timeframe work.

Your response below was not in the spirit of our efforts and offer to host you at Apple headquarters for a full slate of interviews and provide other information well in advance of the date on which your review of the new compliance and training programs is to commence under the Final Judgment (January 14). As set forth in my October 31 letter, Judge Cote and the Final Judgment could not have been clearer regarding the timing and scope of your review and the need to avoid unduly intruding on Apple's business operations. The Final Judgment is also clear that any "interview [is] to be subject to the reasonable convenience of such personnel…." Final Judgment at VI.G.1. Contrary to your suggestions below, and as Apple's General Counsel Bruce Sewell made clear in his letter to you and I emphasized when we spoke and in my letter to you and in my conversations with the Justice Department and States on these issues, Apple takes its obligations and responsibilities under the Final Judgment very seriously. To that end, and among the other things it is doing on this front, Apple has made a reasonable proposal regarding the requested interviews and for working collaboratively and productively with you. Under the circumstances, your demands and approach are unreasonable, unnecessary and unwarranted, and go well beyond the scope of the Final Judgment and Judge Cote's guidance.

Ted

Theodore J. Boutrous Jr.

GIBSON DUNN

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333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7804 • Fax +1 213.229.6804
TBoutrous@gibsondunn.com • www.gibsondunn.com

From: Michael Bromwich [mailto:michael.bromwich@bromwichgroup.com]
Sent: Saturday, November 09, 2013 2:48 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbinsrussell.com
Subject: Re: Apple -- Expense Guidelines

Ted,

This is a very disappointing response, and very much at odds with what my understanding was during and after our call last Wednesday. The company was put on notice on October 22 that we intended to make our initial visit the week of November 18. Your response suggests that our request was not -- and is not -- taken seriously by the company. Apple is a can-do company, and I am confident that they can pull this together. If they maintain that they cannot, that suggests to me that they do not take its obligations and my responsibilities under the Final Judgment very seriously. The questions below need only be answered if the company maintains that that it unable to comply with our request for a series of interviews and meetings the week of November 18.

Please advise which of the 15 people (Sewell, Moyer, Levoff, Vetter, Andeer, Said, Persamperi, Moerer, McDonald, Cook, Schiller, Cue) identified in your e-mail and my response are unavailable for as little as an hour any day the week of November 18 (Monday through Friday). Be prepared to support any representations concerning their unavailability with detailed copies of their schedules for that entire week.

Please confirm that contact has been made with the 2-3 Board members identified in my e-mail who appear to work in the vicinity of Apple's headquarters, and that they are also unavailable for a meeting/interview of similar length.

Please advise which of the subjects identified in my recent e-mail cannot be addressed in a presentation/discussion (with almost two weeks notice) and why that is the case.

I remain willing to upend my schedule and make the trip this coming week rather than the week of November 18 if that will mean the company is better able to comply with our quite reasonable requests. I am not prepared to drag things out any longer than that.

Thanks.

MRB

On Sat, Nov 9, 2013 at 4:01 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

Michael:

I have now heard back and, unfortunately, that week is very bad in terms of scheduling. I know you will be out of the country the week of December 2, but we would very much appreciate it if you could work on your scheduling conflicts the week of December 9 and make the trip that week. Apple will be able to have a full slate of interviewees for you to meet with that week along the lines of my prior email and the new ACO will have had time to get acclimated and up and running. This will get things off to a strong start and would be much better from the standpoints of efficiency and effectiveness. It doesn't make sense to have you fly all the way to California only to

meet with a few people the week of November 18. In the meantime, we can start getting you some of the information you have requested. We are also working on a new confidentiality arrangement based on the protective order. Can we make this work?

Theodore J. Boutrous Jr.

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TBoutrous@gibsondunn.com • www.gibsondunn.com

From: Michael R. Bromwich [mailto:michael.bromwich@bromwichgroup.com]
Sent: Saturday, November 09, 2013 11:30 AM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbinsrussell.com
Subject: Re: Apple -- Expense Guidelines

Thanks, Ted. We appreciate it. We will plan to fly in late Sunday and be ready to go first thing Monday morning unless a Tuesday start would be significantly better for the company.

Also, we would be grateful for any of the materials we originally requested October 22.

Best.

MRB

On Nov 9, 2013, at 2:13 PM, "Boutrous Jr., Theodore J." <TBoutrous@gibsondunn.com> wrote:

> Checking to see what can be pulled together for that week Will report back
>
> **Theodore J. Boutrous Jr.**
>
> GIBSON DUNN
>
> Gibson, Dunn & Crutcher LLP
> 333 South Grand Avenue, Los Angeles, CA 90071-3197
> Tel +1 213.229.7804 • Fax +1 213.229.6804
> TBoutrous@gibsondunn.com • www.gibsondunn.com

From: Michael Bromwich [mailto:michael.bromwich@bromwichgroup.com]
Sent: Thursday, November 07, 2013 12:58 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.
Subject: Re: Apple -- Expense Guidelines

Thanks, Ted. Let's keep trying for the week of November 18. The following two weeks are bad for me -- I'm out of the country and otherwise committed the week of December 2 and have some real scheduling difficulties the following week as well. And then we're into the holidays when we can expect people to be traveling everywhere.

We have always understood that we would not be able to grab everyone we would like to meet or interview the week of the 18th, but let's resolve to do the best we can. The list you have generated is an excellent start.

In addition to the people on this list, all of whom we want to meet/interview either the week of the 18th or at some point soon thereafter, we would like to interview/meet Tim Cook, Phil Schiller, and Eddie Cue. If there are other Senior VPs who touch antitrust-related issues in a meaningful way, we would like to add them to the list as well.

In addition, we would be very interested in gathering information while we are out there on the following.

1. A discussion of the overall compliance structure at Apple -- spheres of responsibility, reporting structure, and personnel involved in compliance.

2. Overview of the compliance activities that were commenced after the Final Judgment, as referred to in Bruce Sewell's November 4 letter.

3. Overview of the structure and operation of the Risk Management Committee.

4. Overview of the role of the Audit Committee in compliance

5. Overview of the evaluative tools -- e.g., outside audits and reviews -- currently used to review and monitor the compliance program.

6. Discussion of the tools and methods currently used within the company to promote compliance.

7. Structure for reporting and investigating suspected compliance violations (antitrust and other issues).

8. Existing system for imposing discipline on company personnel who violate compliance policies.

9. Mechanisms for reporting compliance violations and preventing retaliation.

These are just a few ideas about topics that I have found very worthwhile to explore at the outset of monitoring. I will leave to Apple which of these it wants to take up the week of 11/18 and which it would prefer to defer until our next trip -- realistically,

probably in early January. I am open to interviewing people who are the most knowledgeable on these subjects, or receiving presentations, which can then be later followed up on with interviews. I want to be as flexible as possible about this, but I have no doubt we will be able to usefully fill 2-3 days the week of 11/18.

We would also very much ask for the company's assistance in arranging interviews with its Board members. In addition to Mr. Cook, I note that Mr. Levenson and Mr. Campbell, both of whom are members of the Audit Committee, are based in Mountain View (Campbell) and South San Francisco (Levenson). My understanding is that Mr. Gore either lives of frequently visits Northern California. If one or more of these outside directors are available the week of the 18th, we would very much like to meet with them.

Thanks very much for your continued assistance and cooperation on this.

Best.

MRB

On Thu, Nov 7, 2013 at 3:16 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

Thank you Michael. I look forward to reviewing this and very much appreciated our call yesterday. The week of November 18 is looking bad from a scheduling standpoint (including because the new Antitrust Compliance Officer will be officially starting work that week and a number of other folks will be traveling), so we would like to propose the week of December 2. I am still working to confirm, but interviewees could potentially include:

Bruce Sewell, Senior Vice President, General Counsel, and Secretary Member of Management Risk Oversight Committee
Tom Moyer, Chief Compliance Officer and Head of Global Security
Gene Levoff, Senior Director, Associate General Counsel - Corporate Law and Assistant Secretary, Legal Counsel to Audit and Nominating and Corporate Governance Committee, Liaison to Board of Directors, Counsel Risk Management Committee
Doug Vetter, Vice President, Associate General Counsel Product Law and Assistant Secretary. Assumed responsibility in July 2013 for legal groups supporting hardware, software, and iTunes (including App Store and iBooks Store).
Kyle Andeer, Senior Director, Competition Law & Policy
Deena Said, Antitrust Compliance Officer
Annie Persamperi, Legal Counsel, iBooks Store

Keith Moerer, Director, iTunes content
Rob McDonald, Head of iBooks Store for the United States

I hope we can work together to make this a productive first trip for you to Apple and sets us on a joint path to achieving the objectives of this effort.

Ted

Sent from my iPad

On Nov 7, 2013, at 1:00 PM, "Michael Bromwich" <michael.bromwich@bromwichgroup.com> wrote:

> Dear Ted,
>
> As promised during our call yesterday afternoon, attached please find a letter that sets forth the items included in Apple's expense policies that we feel comfortable signing on to. As you will see, we have no objection to agreeing to follow those polices that don't raise independence concerns or otherwise seem inappropriate. Please let us know if you have any questions or need to discuss any of the specific items.
>
> Again, I want to thank you for the very productive discussion we had yesterday. We look forward to receiving the list of people and groups the company is proposing we meet and/or interview the week of November 18 so we can reach closure on the issue as soon as possible and schedule the trip.
>
> Best regards.
>
> ***MRB***
>
> <Apple -- Letter to Boutrous -- 11-7.PDF>

Exhibit C

[redacted]

From: Boutrous Jr., Theodore J.
Sent: Thursday, November 07, 2013 12:17 PM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.
Subject: Re: Apple -- Expense Guidelines

Thank you Michael. I look forward to reviewing this and very much appreciated our call yesterday. The week of November 18 is looking bad from a scheduling standpoint (including because the new Antitrust Compliance Officer will be officially starting work that week and a number of other folks will be traveling), so we would like to propose the week of December 2. I am still working to confirm, but interviewees could potentially include:

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Deena Said, Antitrust Compliance Officer
Annie Persamperi, Legal Counsel, iBooks Store
Keith Moerer, Director, iTunes content
Rob McDonald, Head of iBooks Store for the United States

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Ted

Sent from my iPad

On Nov 7, 2013, at 1:00 PM, "Michael Bromwich" <michael.bromwich@bromwichgroup.com> wrote:

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> As promised during our call yesterday afternoon, attached please find a letter that sets forth the items included in Apple's expense policies that we feel comfortable signing on to. As you will see, we have no objection to agreeing to follow those polices that don't raise independence concerns or otherwise seem inappropriate. Please let us know if you have any questions or need to discuss any of the specific items.
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and/or interview the week of November 18 so we can reach closure on the issue as soon as possible and schedule the trip.

Best regards.

MRB

<Apple -- Letter to Boutrous -- 11-7.PDF>

Exhibit D

[redacted]

From: Kyle Andeer [mailto:kandeer@apple.com]
Sent: Thursday, October 17, 2013 12:08 AM
To: Bromwich, Michael; barry.nigro@friedfrank.com
Subject: Introduction

Hi Michael & Barry,

I wanted to drop you a quick note of introduction in light of today's news. I am responsible for Apple's in-house antitrust/competition legal team; I have spent three years here after a decade at the DOJ and the FTC.

I don't believe I have met either of you before but I am looking forward to it. The circumstances (at least from my perspective) could be better but I am committed to working with both of you and developing a best of class antitrust compliance program for iTunes. We are already hard at work developing such a program working with our internal compliance team here at Apple and Kevin Arquit and Matt Reilly at Simpson Thacher. We are hopeful that the program that we will present to you in 90 days will meet our lofty goals. That said, we recognize and expect that you will have thoughts and comments. I really do hope this can be a collaborative effort.

I thought it might be helpful to at least introduce myself at the outset. I am more than willing to get on a call (or a plane) at any time if that would be of interest. And Michael, I apologize for using your Goodwin address . . . I did not have one for your consulting practice. Let me know if there is a better contact.

Kyle

Kyle Andeer | Apple Legal | Senior Director, Competition Law & Policy/Commercial & Retail Law
1 Infinite Loop, Cupertino, California 95014 | T (408) 862-9307 | C (408) 464-2006 | kandeer@apple.com

Exhibit E

[redacted]

From: Michael Bromwich <michael.bromwich@bromwichgroup.com>
Sent: Monday, November 11, 2013 8:34 AM
To: Boutrous Jr., Theodore J.; Carroll, Sarah
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia
Subject: Re: Apple -- Expense Guidelines

Ted, let's see if we can make some progress on a phone call this afternoon rather than exchanging additional e-mails. We don't think a slate of interviews and meetings next week, almost a full month after we identified it as the time we would like to begin our on site work, is at all unreasonable, especially because we have made clear that we will understand if some of the people we want to meet are unavailable next week. I'm hopeful that we can work something out that isn't overly burdensome to the company but that doesn't cause us further delay. I think we can.

Please let us know what times this afternoon would work for you. Thanks.

MRB

On Mon, Nov 11, 2013 at 10:48 AM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

Dear Michael:

I am very surprised and disappointed in your email below. I thought that we had set things on a productive and collaborative path in our call last week and with my follow up list of potential interviewees (which was much broader and longer than the one I had suggested during the cordial November 6 call). During our call, I specifically noted that the week of November 18 might not be feasible or convenient and suggested that the week of December 2 (the week after the intervening Thanksgiving holiday week) might work well. When I then followed up and proposed December 2, you responded in your November 7 email that you would be in Europe the week of December 2 and had some other scheduling conflicts that week and the week of December 9. I then simply wrote back and asked if you could reshuffle your schedule so that we could make the December 9 timeframe work.

Your response below was not in the spirit of our efforts and offer to host you at Apple headquarters for a full slate of interviews and provide other information well in advance of the date on which your review of the new compliance and training programs is to commence under the Final Judgment (January 14). As set forth in my October 31 letter, Judge Cote and the Final Judgment could not have been clearer regarding the timing and scope of your review and the need to avoid unduly intruding on Apple's business operations. The Final Judgment is also clear that any "interview [is] to be subject to the reasonable convenience of such personnel…." Final Judgment at VI.G.1. Contrary to your suggestions below, and as Apple's General Counsel Bruce Sewell made clear in his letter to you and I emphasized when we spoke and in my letter to you and in my conversations with the Justice

Department and States on these issues, Apple takes its obligations and responsibilities under the Final Judgment very seriously. To that end, and among the other things it is doing on this front, Apple has made a reasonable proposal regarding the requested interviews and for working collaboratively and productively with you. Under the circumstances, your demands and approach are unreasonable, unnecessary and unwarranted, and go well beyond the scope of the Final Judgment and Judge Cote's guidance.

Ted

Theodore J. Boutrous Jr.

GIBSON DUNN

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TBoutrous@gibsondunn.com • www.gibsondunn.com

From: Michael Bromwich [mailto:michael.bromwich@bromwichgroup.com]
Sent: Saturday, November 09, 2013 2:48 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbinsrussell.com
Subject: Re: Apple -- Expense Guidelines

Ted,

This is a very disappointing response, and very much at odds with what my understanding was during and after our call last Wednesday. The company was put on notice on October 22 that we intended to make our initial visit the week of November 18. Your response suggests that our request was not -- and is not -- taken seriously by the company. Apple is a can-do company, and I am confident that they can pull this together. If they maintain that they cannot, that suggests to me that they do not take its obligations and my responsibilities under the Final Judgment very seriously. The questions below need only be answered if the company maintains that that it unable to comply with our request for a series of interviews and meetings the week of November 18.

Please advise which of the 15 people (Sewell, Moyer, Levoff, Vetter, Andeer, Said, Persamperi, Moerer, McDonald, Cook, Schiller, Cue) identified in your e-mail and my response are unavailable for as little as an hour any day the week of November 18 (Monday through Friday). Be prepared to support any

representations concerning their unavailability with detailed copies of their schedules for that entire week.

Please confirm that contact has been made with the 2-3 Board members identified in my e-mail who appear to work in the vicinity of Apple's headquarters, and that they are also unavailable for a meeting/interview of similar length.

Please advise which of the subjects identified in my recent e-mail cannot be addressed in a presentation/discussion (with almost two weeks notice) and why that is the case.

I remain willing to upend my schedule and make the trip this coming week rather than the week of November 18 if that will mean the company is better able to comply with our quite reasonable requests. I am not prepared to drag things out any longer than that.

Thanks.

MRB

On Sat, Nov 9, 2013 at 4:01 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

Michael:

I have now heard back and, unfortunately, that week is very bad in terms of scheduling. I know you will be out of the country the week of December 2, but we would very much appreciate it if you could work on your scheduling conflicts the week of December 9 and make the trip that week. Apple will be able to have a full slate of interviewees for you to meet with that week along the lines of my prior email and the new ACO will have had time to get acclimated and up and running. This will get things off to a strong start and would be much better from the standpoints of efficiency and effectiveness. It doesn't make sense to have you fly all the way to California only to meet with a few people the week of November 18. In the meantime, we can start getting you some of the information you have requested. We are also working on a new confidentiality arrangement based on the protective order. Can we make this work?

Theodore J. Boutrous Jr.

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TBoutrous@gibsondunn.com • www.gibsondunn.com

From: Michael R. Bromwich [mailto:michael.bromwich@bromwichgroup.com]
Sent: Saturday, November 09, 2013 11:30 AM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbinsrussell.com
Subject: Re: Apple -- Expense Guidelines

Thanks, Ted. We appreciate it. We will plan to fly in late Sunday and be ready to go first thing Monday morning unless a Tuesday start would be significantly better for the company.

Also, we would be grateful for any of the materials we originally requested October 22.

Best.

MRB

On Nov 9, 2013, at 2:13 PM, "Boutrous Jr., Theodore J." <TBoutrous@gibsondunn.com> wrote:

> Checking to see what can be pulled together for that week Will report back
>
> **Theodore J. Boutrous Jr.**
>
> GIBSON DUNN
>
> Gibson, Dunn & Crutcher LLP
> 333 South Grand Avenue, Los Angeles, CA 90071-3197
> Tel +1 213.229.7804 • Fax +1 213.229.6804
> TBoutrous@gibsondunn.com • www.gibsondunn.com
>
> **From:** Michael Bromwich [mailto:michael.bromwich@bromwichgroup.com]
> **Sent:** Thursday, November 07, 2013 12:58 PM
> **To:** Boutrous Jr., Theodore J.
> **Cc:** Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.
> **Subject:** Re: Apple -- Expense Guidelines

Thanks, Ted. Let's keep trying for the week of November 18. The following two weeks are bad for me -- I'm out of the country and otherwise committed the week of December 2 and have some real scheduling difficulties the following week as well. And then we're into the holidays when we can expect people to be traveling everywhere.

We have always understood that we would not be able to grab everyone we would like to meet or interview the week of the 18th, but let's resolve to do the best we can. The list you have generated is an excellent start.

In addition to the people on this list, all of whom we want to meet/interview either the week of the 18th or at some point soon thereafter, we would like to interview/meet Tim Cook, Phil Schiller, and Eddie Cue. If there are other Senior VPs who touch antitrust-related issues in a meaningful way, we would like to add them to the list as well.

In addition, we would be very interested in gathering information while we are out there on the following.

1. A discussion of the overall compliance structure at Apple -- spheres of responsibility, reporting structure, and personnel involved in compliance.

2. Overview of the compliance activities that were commenced after the Final Judgment, as referred to in Bruce Sewell's November 4 letter.

3. Overview of the structure and operation of the Risk Management Committee.

4. Overview of the role of the Audit Committee in compliance

5. Overview of the evaluative tools -- e.g., outside audits and reviews -- currently used to review and monitor the compliance program.

6. Discussion of the tools and methods currently used within the company to promote compliance.

7. Structure for reporting and investigating suspected compliance violations (antitrust and other issues).

8. Existing system for imposing discipline on company personnel who violate compliance policies.

9. Mechanisms for reporting compliance violations and preventing retaliation.

These are just a few ideas about topics that I have found very worthwhile to explore at the outset of monitoring. I will leave to Apple which of these it wants to take up the week of 11/18 and which it would prefer to defer until our next trip -- realistically, probably in early January. I am open to interviewing people who are the most knowledgeable on these subjects, or receiving presentations, which can then be later followed up on with interviews. I want to be as flexible as possible about this, but I have no doubt we will be able to usefully fill 2-3 days the week of 11/18.

We would also very much ask for the company's assistance in arranging interviews with its Board members. In addition to Mr. Cook, I note that Mr. Levenson and Mr.

Campbell, both of whom are members of the Audit Committee, are based in Mountain View (Campbell) and South San Francisco (Levenson). My understanding is that Mr. Gore either lives of frequently visits Northern California. If one or more of these outside directors are available the week of the 18th, we would very much like to meet with them.

Thanks very much for your continued assistance and cooperation on this.

Best.

MRB

On Thu, Nov 7, 2013 at 3:16 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

Thank you Michael. I look forward to reviewing this and very much appreciated our call yesterday. The week of November 18 is looking bad from a scheduling standpoint (including because the new Antitrust Compliance Officer will be officially starting work that week and a number of other folks will be traveling), so we would like to propose the week of December 2. I am still working to confirm, but interviewees could potentially include:

Bruce Sewell, Senior Vice President, General Counsel, and Secretary Member of Management Risk Oversight Committee
Tom Moyer, Chief Compliance Officer and Head of Global Security
Gene Levoff, Senior Director, Associate General Counsel - Corporate Law and Assistant Secretary, Legal Counsel to Audit and Nominating and Corporate Governance Committee, Liaison to Board of Directors, Counsel Risk Management Committee
Doug Vetter, Vice President, Associate General Counsel Product Law and Assistant Secretary. Assumed responsibility in July 2013 for legal groups supporting hardware, software, and iTunes (including App Store and iBooks Store).
Kyle Andeer, Senior Director, Competition Law & Policy
Deena Said, Antitrust Compliance Officer
Annie Persamperi, Legal Counsel, iBooks Store
Keith Moerer, Director, iTunes content
Rob McDonald, Head of iBooks Store for the United States

I hope we can work together to make this a productive first trip for you to Apple and sets us on a joint path to achieving the objectives of this effort.

Ted

Sent from my iPad

On Nov 7, 2013, at 1:00 PM, "Michael Bromwich" <michael.bromwich@bromwichgroup.com> wrote:

> Dear Ted,
>
> As promised during our call yesterday afternoon, attached please find a letter that sets forth the items included in Apple's expense policies that we feel comfortable signing on to. As you will see, we have no objection to agreeing to follow those polices that don't raise independence concerns or otherwise seem inappropriate. Please let us know if you have any questions or need to discuss any of the specific items.
>
> Again, I want to thank you for the very productive discussion we had yesterday. We look forward to receiving the list of people and groups the company is proposing we meet and/or interview the week of November 18 so we can reach closure on the issue as soon as possible and schedule the trip.
>
> Best regards.
>
> ***MRB***
>
> <Apple -- Letter to Boutrous -- 11-7.PDF>

Exhibit F

[redacted]

From: Michael Bromwich <michael.bromwich@bromwichgroup.com>
Sent: Tuesday, November 12, 2013 3:10 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry (Barry.Nigro@friedfrank.com); Cirincione, Maria (Maria.Cirincione@friedfrank.com); Richman, Cynthia; Swanson, Daniel G.
Subject: Re: Apple

Ted,

Thanks very much for your timely response and the offer of interviews with Mr. Moyer and Mr. Levoff next Monday, November 18. We accept. We are hopeful that once you advise the company that we will be conducting these interviews on Monday, other people whom we have identified, or whom you have suggested, will become available on Monday, Tuesday, or even Wednesday. I think it is very much in the company's interests for us to meet, if only briefly, those people with whom we will be having the most contact over the next two years.

Please let us know whether we should be prepared to conduct the interviews Monday morning or Monday afternoon. Also, we would very much appreciate obtaining the materials we originally requested on October 22, especially those most relevant to Mr. Moyer's and Mr. Levoff's responsibilities, as soon as possible.

Please let us know if the company has any suggestions on hotels where we should try to make reservations.

Again, thanks very much for your cooperation in this matter.

Best regards.

MRB

On Tue, Nov 12, 2013 at 4:55 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

> Dear Michael:
>
> It was good speaking with you yesterday. I have confirmed that Apple would be able to make available for 1-hour intenrviews on Monday November 18 Tom Moyer, who is Chief Compliance Officer and Head of Global Security, and Gene Levoff, who serves as Senior Director, Associate General Counsel - Corporate Law - and Assistant Secretary, Legal Counsel to Audit and Nominating and Corporate Governance Committee, Liaison to Board of Directors, and Counsel to Risk Management Committee. While

they would be able to cover many of the topics you have expressed interest in discussing at the outset of your work, we strongly encourage you to hold off and make the trip the week of December 2 or December 9, when Apple can make a fuller slate of folks available to you, including Bruce Sewell, who will be attending the Samsung trial next week, and Deena Said, the new Antitrust Compliance Officer, who will be starting her job at the company and attending new employee orientation next week, along with other relevant members of the legal and business teams mentioned in my prior correspondence. Apple respectfully submits that this will be more efficient and effective in getting you the information you seek and in working together to ensure that the company has comprehensive and effective antitrust compliance and training programs. Regards,

Ted

Exhibit G

[redacted]

From: Swanson, Daniel G.
Sent: Sunday, November 17, 2013 12:11 AM
To: 'Michael Bromwich'
Cc: Richman, Cynthia; 'Nigro, Barry'; 'Cirincione, Maria'; 'Carroll, Sarah'; 'Matthew J. Reilly'; Boutrous Jr., Theodore J.
Subject: RE: Apple -- Trip to CA
Attachments: AppleAgenda.docx; ECM Stipulated Protective Order.docx

Michael: Ted is out of pocket today but we wanted to get you a copy of Monday's agenda. Matt Reilly will be in attendance and Ted will dial in as soon as he gets out of a morning court hearing. Also attached is a draft protective order reflecting Apple's changes.

Daniel G. Swanson

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7430 • Fax +1 213.229.6430
Avenue Louise 480, Brussels, 1050
Tel +32 2 554 70 00 • Fax +32 2 554 70 33
DSwanson@gibsondunn.com • www.gibsondunn.com

From: Michael Bromwich [mailto:michael.bromwich@bromwichgroup.com]
Sent: Friday, November 15, 2013 9:51 AM
To: Boutrous Jr., Theodore J.
Cc: Swanson, Daniel G.; Richman, Cynthia; Nigro, Barry; Cirincione, Maria; Carroll, Sarah; Matthew J. Reilly
Subject: Apple -- Trip to CA

Dear Ted,

1. The hotel you recommended was sold out. We're staying at the Sheraton in Sunnyvale.

2. Our return flight is late afternoon Tuesday. We remain hopeful that you will identify additional people for us to meet Monday or Tuesday.

3. We think it would be useful for us to meet Deena Said if only briefly during our visit.

4. You had mentioned that Bruce Sewell will be attending the Apple-Samsung trial next week. I would be happy to stop by the courthouse and meet him briefly over a cup of coffee at the courthouse on Monday or Tuesday if that's convenient for him. I think it's important that the two of us meet as soon as possible.

5. We were not planning to have a court reporter attend next week's interviews, unless that is your preference.

6. Please advise who, if anyone, will be attending the interviews along with the witnesses.

7. We still have not received any of the written materials we have been promised since October 22. We would appreciate receiving these as soon as possible.

Please let me know if you have any questions.

MRB

AGENDA

9:00-9:40: Noreen Krall, Apple Vice President Litigation

Confidentiality and Engagement Agreements

10:15-11:15: Tom Moyer, Chief Compliance Officer and Head of Global Security

Compliance Program Overview

11:15-12:15: Gene Levoff , Senior Director, Associate General Counsel - Corporate Law - and Assistant Secretary, Legal Counsel to Audit and Nominating and Corporate Governance Committee, Liaison to Board of Directors, and Counsel to Risk Management Committee.

Audit Committee Overview

Exhibit H

[redacted]

From: Michael Bromwich <michael.bromwich@bromwichgroup.com>
Sent: Friday, November 15, 2013 9:51 AM
To: Boutrous Jr., Theodore J.
Cc: Swanson, Daniel G.; Richman, Cynthia; Nigro, Barry; Cirincione, Maria; Carroll, Sarah; Matthew J. Reilly
Subject: Apple -- Trip to CA

Dear Ted,

1. The hotel you recommended was sold out. We're staying at the Sheraton in Sunnyvale.

2. Our return flight is late afternoon Tuesday. We remain hopeful that you will identify additional people for us to meet Monday or Tuesday.

3. We think it would be useful for us to meet Deena Said if only briefly during our visit.

4. You had mentioned that Bruce Sewell will be attending the Apple-Samsung trial next week. I would be happy to stop by the courthouse and meet him briefly over a cup of coffee at the courthouse on Monday or Tuesday if that's convenient for him. I think it's important that the two of us meet as soon as possible.

5. We were not planning to have a court reporter attend next week's interviews, unless that is your preference.

6. Please advise who, if anyone, will be attending the interviews along with the witnesses.

7. We still have not received any of the written materials we have been promised since October 22. We would appreciate receiving these as soon as possible.

Please let me know if you have any questions.

MRB

Exhibit I

SIMPSON THACHER & BARTLETT LLP
1155 F STREET, N.W.
WASHINGTON, DC 20004
(202) 636-5500

FACSIMILE (202) 636-5502

DIRECT DIAL NUMBER
(202) 636-5566

E-MAIL ADDRESS
mreilly@stblaw.com

BY E-MAIL

November 22, 2013

Re: External Antitrust Compliance Monitoring

Michael R. Bromwich
The Bromwich Group LLC
901 New York Avenue, NW 5th Floor
Washington, D.C. 20001

Dear Michael:

I write in regard to your repeated requests to interview additional Apple executives, board members, and other employees, and to attempt to agree more generally on a schedule moving forward. In the past few weeks, you have sent frequent and repetitive requests to speak with—among many others—at least five different board members and the entire Apple executive team (including Sir Jonathan Ive, whose sole and exclusive responsibility at Apple is to perfect elegant product designs), long before the Court contemplated that your review would begin. As explained below, these requests are inconsistent with Judge Cote's direction and counter-productive to Apple's extensive efforts to develop a comprehensive new antitrust training and monitoring program. Furthermore, cascades of emails and demands for immediate attention are incredibly disruptive.

First and most fundamentally, and as we explained to you previously, Judge Cote stated expressly that she expected your review to begin three months after your appointment, noting from the bench that "I don't think that the [Monitor] should conduct a review or assessment of the current policies. I would expect that Apple would revise its current policy substantially . . . and create an effective training program. That will require some time. So I think this should be revised to have the [Monitor] ***doing an assessment in three months from appointment and beginning to engage Apple in a discussion at that point***." Transcript of Oral Argument at 20-21, Apple, Inc., No. 1:12-CV-2826 (Sept. 5, 2013) (emphasis added). Similarly, the Court amended the Final Judgment to require you to "conduct a review . . . [of] Apple's internal antitrust compliance policies and procedures, ***as they exist 90 days after his or her appointment***" and to "also conduct a review to assess whether Apple's training program, required by Section V.C of this Final Judgment, ***as it exists 90 days after his or her appointment***, is sufficiently comprehensive and effective." Final Judgment § VI.C (emphasis added). Judge Cote also stated more generally that "I want this injunction to rest as lightly as possible on the way Apple runs its business." Transcript of Oral Argument at 8-9, Apple, Inc., No. 1:12-CV-2826 (Sept. 5, 2013).

Thus, Judge Cote clearly prescribed that your review would begin in substance on or around January 14, 2014, not almost immediately after your appointment. She also directed that you conduct your review in such a way as to disrupt Apple's business operations as little as possible. The reason for this three-month window is of course to provide Apple and its counsel with time to develop new, comprehensive antitrust training and compliance materials in accordance with the Final Judgment, without hampering Apple's business. Apple and its counsel have in fact already dedicated substantial internal

and external resources to developing Apple's new training and compliance program, which we intend to provide to you in draft form in the near future.

Second, ***despite*** the fact that the Court expected your engagement to begin substantively after this three-month window, Apple already has gone far beyond what the Final Judgment and Judge Cote require of it. Apple took the initiative to meet with you and your team on October 22, 2013, immediately after your appointment. We then agreed to schedule interviews of two senior Apple attorneys on November 18, 2013, despite the fact that the Final Judgment does not require Apple to do so. Most recently, we have proposed making several more Apple employees available to you in the first week of December for two-and-a-half full days of additional interviews. We have also provided you with a number of documents pursuant to your requests and will provide additional documents going forward.

Third, your continual requests for additional interviews and other information before January 14, 2014, affirmatively hamper Apple's efforts to develop a new antitrust training and compliance program as efficiently and effectively as possible within the deadline set by Judge Cote. Even after we have met and conferred with you in good faith regarding specific requests, you have regularly repackaged the same demands in different forms, through a variety of emails and telephonic and in-person meet and confers, and on a nearly daily or weekly basis. This constant stream of repetitive requests distracts the Apple in-house and outside counsel responsible for developing the new training program, thereby taking away time that would otherwise be devoted to completing the very antitrust program that is the centerpiece of Judge Cote's Order.

In short, we have gone far above and beyond that required of us by the Final Judgment in order to demonstrate our commitment to working with you in good faith and to complying with Judge Cote's instructions. We remain committed to doing so. In the spirit of cooperation, and to ensure that you obtain the information you need while minimizing any further disruption to the company, we propose the following schedule for additional interviews, generally to be conducted every two months or so beginning with the upcoming interviews in December:

December 4:

9:00 a.m.: Chris Keller, Vice President, Internal Audit

10:00 a.m.: Noreen Krall, Vice President and Chief Litigation Counsel

11:00 a.m.: Doug Vetter, Vice President and Associate General Counsel

1:00 p.m.: Kyle Andeer, Senior Director, Competition Law & Policy

2:00 p.m.: Annie Persampieri, Corporate Counsel, Internet Services & Software

3:00 p.m.: Deena Said, Antitrust Compliance Officer[1]

December 5:

11:00 a.m.: Ronald Sugar, Director and Chair of the Audit and Finance Committee

2:00 p.m.: Rob McDonald, Head, U.S. iBookstore

3:00 p.m.: Tom Moyer, Chief Compliance Officer (by phone, as Mr. Moyer will be traveling)

---

[1] Please let me know what time you plan to begin interviewing each day. If any of the proposed times do not work for you, we will work with you in good faith to move specific interviews later in the afternoon on December 4 or to a mutually convenient time on December 6.

December 6:

9:00 a.m.: Gene Levoff, Associate General Counsel, Corporate Law

11:00 a.m.: Keith Moerer, Director, iBookstore

Please note that Bruce Sewell is unavailable December 4-6 due to prior commitments, but will be available for a telephonic interview the week of December 9. We will follow up with proposed dates and times for that call shortly. We will also provide you with any other logistical information shortly before the interviews.

Furthermore, we propose offering one or a small number of senior executives and content managers in early February. Any meeting between you and an Apple business executive or manager, or between you and Mr. Sugar, will be held in the presence of counsel so that we may appropriately protect Apple's attorney-client privilege.

In advance of the additional interviews set out above, we are happy to continue working with you in good faith to respond to any document requests that are reasonably related to your duties as monitor. To that end, enclosed please find a revised draft confidentiality agreement reflecting our discussions last week. Please let me know if you have any further changes to or comments regarding the agreement.

Feel free to contact me with any questions.

Sincerely,

Matthew J. Reilly

Encl.

Exhibit J

The Bromwich Group

The Bromwich Group LLC
901 New York Avenue, NW, 5th Floor
Washington, DC 20001

November 22, 2013

Mr. Arthur Levinson
Chairman and former CEO
Genentech, Inc.
One DNA Way
South San Francisco, CA 94080

Mr. Albert Gore, Jr.
The Climate Reality Project
901 E Street, N.W.
Suite 610
Washington, D.C. 20004

Mr. William Campbell
Chairman and former CEO
Intuit Inc.
2700 Coast Avenue
Mountain View, CA 94043

Mr. Robert Iger
President and Chief Executive Officer
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521

Mr. Timothy Cook
CEO
Apple Inc.
One Infinite Loop
Cupertino, CA 95014

Ms. Andrea Jung
Senior Advisor to the Board of Directors
Avon Products, Inc.
777 Third Avenue
New York, NY 10017

Mr. Millard Drexler
Chairman and Chief Executive Officer
J. Crew Group, Inc.
770 Broadway
New York, NY 10003

Mr. Ronald Sugar
Former Chairman and CEO
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042

Re: Relationship between External Compliance Monitor and Apple

Dear Members of the Apple Inc. Board of Directors:

As you know, on September 5, 2013, the Honorable Denise L. Cote, United States District Judge for the Southern District of New York, issued a Final Judgment in *United States of America v. Apple, Inc., et al.*, Civil Action No. 1:12-CV-2826 and Order Entering

Permanent Injunction in *The State of Texas, et al., v. Penguin Group (USA), Inc., et al.*, Civil Action No. 1:12-CV-3394 (collectively, the "Final Judgment").

Section VI of the Final Judgment established the position of External Compliance Monitor ("monitor") with "the power and authority to review and evaluate Apple's existing internal antitrust compliance policies and procedures," as well as the training program required by the Final Judgment. In addition, the monitor has the power and authority to recommend changes to "address any perceived deficiencies in those policies, procedures, and training." Section VI.B.

More specifically, the Final Judgment requires the monitor to "conduct a review to assess whether Apple's internal antitrust compliance policies and procedures, as they exist 90 days after his or her appointment, are reasonably designed to detect and prevent violations of the antitrust laws" and to "conduct a review to assess whether Apple's training program, required by the [Final Judgment], as it exists 90 days after his or her appointment, is sufficiently comprehensive and effective." Section VI.C. The monitor is required to provide an initial written report summarizing his findings, conclusions, and recommendations no later than April 14, 2014, and additional written reports at six-month intervals for a period of two years. The Court may extend the duration of the monitor's appointment beyond two years, and the monitor, at his discretion or at the request of the Department of Justice, State Attorneys General, or the Court, may file additional reports.

Consistent with a selection process set forth in the Final Judgment, I was selected by the Court, on October 16, 2013, to serve as the monitor. I have assembled a small team to work with me, led by Barry Nigro, the chair of the Antitrust Department at Fried, Frank, Harris, Shriver & Jacobson LLP.

I have been doing oversight and monitoring work of various kinds for the past twenty years – first, as the Inspector General for the Department of Justice during the Clinton Administration, and subsequently as a monitor of public agencies and private companies. This is the fourth time in the last eleven years I have been selected to serve as a monitor. I am familiar with the challenges and opportunities presented by serving as a monitor or otherwise engaging in oversight work. I have developed an approach of openness, engagement, and collaboration that has been successful for me and the organizations – both public and private – that I have monitored.

I regret to report that in the month since my appointment, I have experienced a surprising and disappointing lack of cooperation from Apple and its executives that is rare in my oversight experience. Within a week of my appointment, on October 22, Mr. Nigro and I met in New York with a senior lawyer for the company and three of the company's outside lawyers to discuss the monitor's role and my approach to the

responsibilities created by the Court's Final Judgment. I outlined my expectations for the relationship. As reflected in Judge Cote's observations during the trial, and in the post-trial conferences focused on appropriate remedies, senior executives and the Board have an important role to play in the fulfillment of Apple's obligations. At the October 22 meeting, I explained that, in my experience, the monitor and the company benefit from the monitor's direct and regular access to senior management of the company.

In that connection, I advised the company that I felt it was important to conduct a set of initial meetings and interviews with company executives and members of the Board to introduce myself, lay the foundation for our relationship, and learn some basic facts about the company's compliance framework. At the October 22 meeting, I proposed that my first visit to Cupertino for those initial meetings and interviews take place the week of November 18, a full month after my appointment. I expressed my willingness to advance the meetings by a week if that was more convenient for the company and its executives. I should note that the initial meetings for my other monitoring assignments generally occurred within two weeks of my appointment.

Apparently, my requests were inconsistent with the desires, and perhaps the expectations, of the company. Since the October 22 initial meeting until today, the company has not been responsive to our efforts to discharge the obligations the Court assigned to us. The company consistently opposed our requests to conduct interviews during the week of November 18. It originally took the position that we were not to begin our work until 90 days after my appointment, and later opposed the request on grounds that providing senior executive and Board member interviews was overly burdensome, and that *all* of the individuals with whom we had asked to meet were unavailable during the entire week of November 18.

When we made it clear that we intended to travel to California during the week of November 18 and expected to meet with as many of the fifteen individuals we had requested as possible, the company agreed to schedule interviews with only two individuals. We were told that the others were "unavailable," with a specific reason given only for Bruce Sewell. Despite repeated promises, we received not a single document from the company in advance of our trip to California in response to requests we initially made on October 22, and repeated thereafter.[1] Once we arrived in California, the company provided interviews only with the two individuals who had been identified in advance, but with no one else. The company gave no explanation for failing to be more responsive to our requests for other interviews, other than "unavailability."

---

[1] After our November 18 trip to California, counsel for the company provided its first set of documents in response to our requests.

In addition to requests for interviews with relevant executives, we also asked to meet with Board members who work and reside in and around Northern California. We repeated our request upon our arrival on Monday, November 18 but we never received a response. It is unclear to me whether these requests have been communicated to you, although they certainly should have been.

Our requests to meet with key Apple personnel have been largely ignored, and when not ignored the responses have been extremely slow in coming. The company has spent far more time challenging the terms of our compensation and raising other objections related to administrative matters, even though the Court's Order provided no role for Apple in setting the monitor's compensation.[2] Apple has sought for the past month to manage our relationship as though we are its outside counsel or consultant, to whom it can dictate terms and conditions, and whose approval is required before we can undertake our work. Despite Apple's failure to respond adequately to our reasonable requests, we will continue to "proceed with all reasonable diligence" in our duties, as instructed by Judge Cote's November 21, 2013 Order proposing an amendment to her original September 5 Order.

The company's approach to date is antithetical to the type of relationship that is required for the monitor and the company to work together in a constructive and collaborative manner. This approach has the potential to create a relationship fraught with friction and tension rather than the positive, collaborative relationship we can – and should – have.

We understand that Apple is appealing the antitrust verdict the Court rendered against the company. We further understand that the company strongly opposed the appointment of an external antitrust compliance monitor, and that Apple has never had a monitor of any kind. That may explain why, over the past month, Apple has taken an unfortunate and unproductive approach. But understanding the company's perspective does not excuse Apple's continuing failure to cooperate.

We are off to a slow, difficult, and unfortunate start, but I have no doubt that we can get our relationship back on track. It is very early in a long-term relationship. I have several suggestions for you as members of the Board in the exercise of your oversight responsibilities, which I believe could help the Company fulfill its obligations under the Final Judgment:

- Ensure that Apple personnel appointed to serve as liaisons to me and the other members of the monitoring team understand that a relationship

---

[2] The latest of these challenges was in the form of a letter from Noreen Krall on November 21, 2013, demanding documentation and support for compensation.

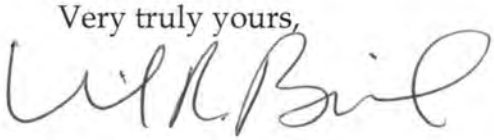
with a court-appointed monitor is different from a relationship with counsel to the company, an adversary in litigation, or an outside counsel or consultant.

- Promote a positive, direct relationship between the company liaisons and the monitoring team that is unfiltered through outside counsel.

- Encourage senior management of the company to work with us to build a constructive relationship with a shared goal of creating a world-class antitrust compliance program at Apple. That can happen only if the company substitutes a new approach, based on collaboration and engagement, for the confrontational and obstructionist approach it has adopted in the first month of our relationship.

I very much regret that my first encounter with you has been under these circumstances. I look forward to meeting with you in the near future and working with you to ensure that Apple fully complies with the Court's Final Judgment in this matter and builds an antitrust compliance program that can serve as an industry leader.

Very truly yours,



Michael R. Bromwich

Exhibit K

[redacted]

From: Michael Bromwich <michael.bromwich@bromwichgroup.com>
Sent: Friday, November 22, 2013 8:02 PM
To: Reilly, Matt
Cc: Nigro, Barry; Carroll, Sarah; Boutrous Jr., Theodore J.; Cirincione, Maria; Arquit, Kevin; Noreen Krall
Subject: Re: Letter and Confidentiality Agreement

Matt,

Thanks for your letter and the draft confidentiality agreement. We will review the agreement and get back to you promptly.

In response to your letter, we simply disagree with the oft-repeated claim that Judge Cote never meant for us to begin our work before January 14. We have the distinct advantage of having discussed our intentions to get off to a fast start directly with her during the interviewing process. We give that discussion far more weight than snippets of transcript taken out of context.

We appreciate the schedule you have provided. We may have some follow-up, but we appreciate the effort that you have made. I thought we had mentioned that we would not be arriving until the late morning of December 4; I don't arrive back in the US from overseas until late in the day on December 3. I'm hopeful that we can make adjustments to accommodate our later arrival.

Thanks again.

MRB

On Fri, Nov 22, 2013 at 10:31 PM, Reilly, Matt <Matt.Reilly@stblaw.com> wrote:
Michael,

Please see the attached letter and confidentiality agreement pursuant to our discussion at Monday's meeting.

Best,
Matt

Exhibit L

The Bromwich Group LLC
901 New York Avenue, NW, 5th Floor
Washington, DC 20001

November 5, 2013

BY EMAIL

D. Bruce Sewell, Esq.
Senior Vice President and General Counsel
Apple, Inc.
One Infinite Loop
Cupertino, CA 95014

Dear Bruce:

Thanks very much for your letter of November 4. I am pleased to hear about the work that Apple has been doing with respect to antitrust compliance since the Court entered the Final Judgment on September 5, including the selection of the internal Antitrust Compliance Officer ("ACO"). Based on your letter, it appears that we fully share the objective of establishing and maintaining a professional, constructive, and collaborative relationship.

First, let me briefly respond to your suggestion that our interactions with Apple should not begin in any meaningful way until the expiration of the 90 days provided by the Final Judgment. The Final Judgment makes clear that our initial assessment of the company's antitrust policies, procedures, and training should be as they exist *as of* January 14, 2014, but the Final Judgment in no way precludes us from beginning our work upon appointment. Indeed, in my interviews during the monitor selection process with the Department of Justice and the Plaintiff States, and separately with Judge Cote, I made clear that one of the keys to a successful monitorship was getting off to a fast start and promptly making contact with top executives at the company, including conducting preliminary interviews. These early contacts lay the groundwork

for the type of relationship that benefits both the company and the monitor. There was no suggestion at any time from anyone that these activities needed to be deferred for 90 days after the appointment of the External Compliance Monitor.

I have no doubt, as you suggest, that your newly selected ACO will be quite busy over the next two months, but I also have no doubt that he or she would be available for a brief meeting within the next 2-3 weeks. I am sure the same is true for many of the senior executives in the company, including you and Mr. Cook. That is why from the outset we have been willing to limit each of these initial sessions to one hour. From our perspective, we would benefit from an early window into the work the company has been doing since the Final Judgment. From your perspective, there is a substantial benefit in allowing us to become aware of those efforts as they are taking place rather than having them summarized for the first time when they are complete. It would allow us to comment about such activities in our semi-annual reports and make clear that our information was based on something other than an after-the-fact report.

As I am sure you are aware, monitors often have specific deadlines, some of which can be very demanding. Even so, the existence of such deadlines has never, to my knowledge, been viewed as a reason for the monitor to defer his work until the deadlines have passed. I have been involved in four monitorships over the past eleven years, three as monitor and one as counsel to the monitored entity. In every case, the monitor has met with the top management within 14 days of appointment. Those introductory meetings and interviews have helped create the foundation for the type of relationships that must exist between the monitor and entity being monitored. In none of these cases was the work of the monitor deferred until any of the deadlines, even those that were most demanding, had passed.

As to your concern about a request for "voluminous historical documents," I am afraid you may have been misinformed. Our requests were limited to the company's compliance policies and training materials, organization charts for three specific business divisions, information that describes the company's compliance reporting structure and the roles played by the Audit and Risk Oversight Committees, and any materials referred to in an August 19 letter sent to the Department of Justice, which was provided to us in New York on October 22, that are not duplicative of our other requests. These are very specific and narrowly drawn requests, and we have heard no previous suggestion that the volume was viewed as significant. My impression is that they were viewed as quite modest and reasonable. If that impression is incorrect, we would welcome further discussion on the issue.

I am scheduled to speak with Mr. Boutrous tomorrow to discuss these issues. Our hope is that you will fully authorize him to resolve these issues so that we can move forward without further delay. I ask that you support our efforts to begin our work as promptly as possible, including meeting with me at your earliest convenience.

Please feel free to contact me at any time to discuss these matters directly. I can be reached at 202-682-4268.

Very truly yours,

Michael R. Bromwich

cc: Tim Cook, Chief Executive Officer
Theodore J. Boutrous Jr., Esq.
Bernard A. Nigro Jr., Esq.

Exhibit M

The Bromwich Group

The Bromwich Group LLC
901 New York Avenue, NW, 5th Floor
Washington, DC 20001

November 1, 2013

BY FEDERAL EXPRESS AND
BY E-MAIL VIA THEODORE J. BOUTROUS, JR.

Mr. Timothy D. Cook
Chief Executive Officer
Apple Inc.

D. Bruce Sewell, Esq.
Senior Vice President and General Counsel
Apple Inc.
One Infinite Loop
Cupertino, CA 95014

Dear Gentlemen:

As you know, on October 16, 2013, I was selected by the Honorable Denise L. Cote, United States District Judge for the Southern District of New York, to serve as the external antitrust compliance monitor pursuant to the Final Judgment in *United States v. Apple, Inc. et al.*, Civil Action No. 1:12-CV-2826.[1] I want to take this opportunity to introduce myself, to share with you some information about my responsibilities, to express my hope for a constructive and collaborative relationship, and to express some concern about our initial interactions with the company.

I have been conducting oversight in the public and private sectors for twenty years, have served as an independent monitor for two public agencies, have worked with companies of all sizes and types as a private sector lawyer, and am currently serving as the independent monitor for one of the largest companies in the world. I am well aware that this litigation was hotly contested, that the company is appealing the Court's September 5 Final Judgment ("Final Judgment"), and that the company opposed the creation of the external monitor position.

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[1] Judge Cote further ordered that Bernard A. Nigro, Jr. of Fried Frank, Harris, Shriver & Jacobson assist me on this matter.

I view all of this as prologue but as fundamentally irrelevant to my responsibilities as the independent monitor. It presents no bar whatsoever to our developing a constructive and harmonious working relationship. Our monitoring responsibilities are clearly described in the Court's Final Judgment. The principal responsibilities are:

- to review and evaluate Apple's internal antitrust compliance policies and procedures;
- to review Apple's antitrust compliance training program and ensure that it satisfies the specific requirements of the Court's Final Judgment;
- to make recommendations regarding Apple's antitrust policies, procedures, and training;
- to work with Apple's newly-appointed Antitrust Compliance Officer, including in connection with the annual antitrust compliance audit the company is required to conduct; and
- to submit semi-annual reports to Apple, the Department of Justice ("DOJ"), the Plaintiff States in the litigation, and the Court and to submit any additional reports that may be requested or may be necessary or appropriate.

As we advised your counsel last week during an in-person meeting ("October 22 Meeting"), we will adhere to several basic principles in conducting our monitoring activities. First, we will follow the specific contours of the monitor's role as set forth in the Final Judgment. Second, we will be accessible at all times to Apple, the other parties in the litigation, and the Court. Our independence does not require remoteness; in fact, it requires the opposite. Third, Apple and the other parties must respect our independence. We are not counsel to Apple, nor a consultant to Apple, nor are we affiliated with the DOJ or the Plaintiff States. We were selected by the Court and ultimately we report to the Court. Finally, the relationship we have with Apple need not – and should not – be adversarial. In fact, the only sure road to failure, for both Apple and the monitoring team, is if we are treated as an adversary and given anything less than the full and complete cooperation of the company and its top management.

In the October 22 Meeting, we made initial requests to obtain a limited set of documentary materials and to conduct brief preliminary interviews of various members of top management and the Board during the week of November 18. These requests were in line with requests I have made in every matter of this type in which I have previously been involved and are central to our ability to discharge our responsibilities. Your counsel suggested that senior management and the Board would find it disconcerting to be interviewed at this time and repeatedly asked for justifications for our requests. After the October 22 Meeting, your

counsel, through two emails, attempted to negotiate issues related to our monitorship that, according to the Final Judgment, are not subject to negotiation. Yesterday, we received a letter ("October 31 Letter") from your counsel formally objecting to our request to interview senior Apple personnel prior to January 14, 2014. To date, we have not received any requested documentary materials.

Our obligation and authority to speak with you and Apple's senior leaders come directly from Judge Cote's Final Judgment and findings. At the August 27, 2013 hearing, to which your counsel specifically referred in the October 31 Letter, Judge Cote highlighted the central role played in the matters that were at issue by Apple's "lawyers and highest level executives." Hearing Transcript, *United States v. Apple, et al.*, No. 1:12-CV-2826, at 17 (Aug. 27, 2013). Accordingly, in outlining some of the specific activities the monitor is authorized to undertake, the Final Judgment listed as the first item the authority to "interview, either informally or on the record, any Apple personnel . . . ." Section VI.G.1. In the context of the Final Judgment as a whole, it is clear that the most important interviews will involve senior management and the Board. When your counsel expressed concern about tying up executives and Board members with time-consuming interviews, I assured them that each of these initial interviews would be limited to one hour. Although we will do everything possible to accommodate the busy schedules and other commitments of the people we seek to interview, we do not believe the blanket refusal to consent to any interviews prior to the middle of January is consistent with our mandate, and it contradicts the company's pledges to cooperate fully with us.

The success of our relationship depends in large part on the interest, attention and commitment given to this matter by Apple's top management, including both of you. It cannot be delegated away. To ensure that we establish a proper and productive relationship from the outset, I respectfully request that you take a direct interest in making sure that the people within the company who will be overseeing Apple's compliance with the Final Judgment provide us with full and complete cooperation consistent with its obligations under Paragraph VI.G of the Final Judgment.

I am prepared to meet with you, or to speak with you by telephone, at any time regarding these matters. I look forward to working with you and your colleagues as Apple fulfills its obligations under the Final Judgment and, in the words of your counsel, as it seeks to develop a world-class antitrust compliance program.

Please feel free to share this letter with members of your Board and with other members of senior management.

Very truly yours.

Michael R Bromwich/MRE

Michael R. Bromwich

cc: Bernard A. Nigro, Jr.

Exhibit N

The Bromwich Group

The Bromwich Group LLC
901 New York Avenue, NW, 5th Floor
Washington, DC 20001

November 22, 2013

Noreen Krall, Esq.
Apple Inc.
Chief Litigation Counsel
1 Infinite Loop
Cupertino, CA 95014

Re: *U.S. v. Apple, Inc., et al.*, Civil Action No. 1:12-CV-2826

Dear Noreen:

Thank you for your letter of November 21. We too are pleased that we finally made a small amount of progress this week, although the progress has been unacceptably slow. Apple has been slow to produce the materials we initially requested a month ago, grudgingly given us access to only two of the 15 witnesses with whom we had requested interviews during our trip to Silicon Valley this past week, refused to allow us an introduction during that trip to the newly-hired internal Antitrust Compliance Officer, and generally deflected our repeated requests to have initial discussions with senior executives at the company and its Board members.

Instead, Apple has continued to focus on the issues of fees and expenses in disregard of the Court's September 5, 2013 Order. That Order establishes that the monitor proposes its fees and its policies relating to expenses, and the Department of Justice ("DOJ") and Plaintiff States collectively have the sole power of approval. Apple's role is to pay the invoices submitted by the monitor in connection with his work. The only requirement outlined in the September 5 Order is that the "compensation of the External Compliance Monitor and any

persons hired to assist the External Compliance Monitor shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities and consistent with reasonable expense guidelines." September 5, 2013 Order, at p. 14.

Apple has converted this standard into a license to make inappropriate demands. Such demands are perfectly understandable and acceptable in other circumstances (i.e., when the company is deciding among various service providers and is expected to negotiate aggressively in order to decide whether or not to retain the services of a particular firm). That is not the case here. The authority regarding who to select as monitor rested, and continues to rest, with the Court, not Apple. The Court selected me as a candidate recommended by the DOJ and Plaintiff States. And, the fees and expenses to be paid to the monitor and his team are not set by Apple; they are set by the monitor, with approval reserved for the DOJ and the Plaintiff States.

In the interests of putting these issues to rest, let me respond to the claims contained in your November 21 letter.

First, you assert that the fee structure we have proposed is "unreasonable for a matter of this size, scope, and type" based on your comprehensive review of past billing practices for law firms working for Apple. Your statistical analysis might be relevant if this matter was in fact comparable to the other matters in your database, but it is not. We have been told by company representatives that Apple has never before had a monitor of any kind, so your review of past matters in which you retained law firms cannot include matters of "this size, scope, and type" because your database contains no such matters. Further, as we discussed again when we met this past Monday, we are providing you with discounts from our standard rates. Unlike other service providers who discount in the hope that they will obtain further work from Apple, we are quite correctly barred from doing any other work for Apple during the duration of the monitorship and for a year afterwards.

As for your concerns about the 15 percent administrative fee, as we discussed on Monday, the fact is the law firms you deal with charge out their associates at hourly rates that generate profits far in excess of 15 percent; indeed, the markups range from more than 30 percent to well over 100 percent. In that context, a 15 percent administrative and management fee is modest.

Second, your suggestion that our proposed fees bear no relation to fees I have charged in past monitorships is misplaced. You refer to an hourly rate I proposed to monitor the New Orleans Police Department ($495/hour), as though it were a comparable assignment. It is not. For one thing, the difference between

monitoring a private company and a municipal police department with severe financial problems is obvious on its face. Your reference to another engagement in which I charged $750/hour to a municipal entity is based on a misunderstanding; that matter is not a monitorship at all but instead a different type of assignment.

Third, your requests for additional support for the administrative fee, and for the billing rates of Ms. Cirincione and other timekeepers (including a paralegal) are, again, a thinly-veiled attempt to substitute a fee negotiation and approval process, in which Apple sets the terms of the relationship, for the process the Court prescribed in its September 5 Order. Because Apple's historical experience with law firms is limited to hiring lawyers as counsel, this effort is not surprising, but it is inconsistent with the Court's September 5 Order.

Furthermore, as you are undoubtedly aware, I discussed Ms. Cirincione's rate with Messrs. Boutrous and Swanson on November 6. We explained that Ms. Cirincione's rate would be discounted significantly from the standard rate she charges to almost all of her clients. Moreover, as I told you at our meeting on November 18, and as I explained to Messrs. Boutrous and Swanson, I retained Ms. Carroll after a careful search for a talented and cost-effective associate. Ms. Cirincione, Ms. Carroll and Mr. Cowdery (a Fried Frank paralegal), are the only members of the monitoring team apart from Mr. Nigro and myself.

Fourth, you complain about our decision not to provide detail in our invoices on the tasks undertaken in addition to the amount of time spent by timekeepers on specific days, but this complaint ignores two basic facts. First, we have told you we will maintain detailed records and they will be provided to DOJ and the Plaintiff States for their review, as provided for in the Court's September 5 Order. Second, our experience to date with Apple on the fee and expense issues validates that decision. We have no interest in, or obligation to agree to, sharing with Apple each task we decide to undertake. In fact, such disclosure is inappropriate and could serve to compromise our independence. The work we undertake to fulfill our obligations under Judge Cote's September 5 Order is not in Apple's discretion.

Fifth, our experience over the past month clearly demonstrates that our ability to fulfill our obligations would be compromised at this point if we were to create a budget for our monitoring activities. We could not have anticipated the amount of effort it would take to get the small number of documents and the small number of interviews we have obtained so far. Nor could we have anticipated the amount of time we have spent responding to the numerous e-mails and letters received from Apple or the time we have spent drafting letters to senior executives of the company notifying them of Apple's lack of

cooperation and seeking an early course correction. Until we see more cooperation from the company, and have a longer track record on which to base estimates, we are unable to provide a budget. Moreover, your insistence on a budget at this point is inconsistent with your acceptance of my suggestion at our November 18 meeting to base a budget on our first three months of work on this matter. Your letter does not explain the reason for changing your position between then and November 21.

A minor additional point: you suggest that this initial bill was before any "meaningful travel [was] conducted." However, it does include a trip to New York for the introductory October 22 meeting for which Mr. Nigro, Ms. Cirincione and I traveled round-trip from Washington, DC to New York. We were puzzled at Apple's selection of New York as the meeting site when four of the seven attendees are based in DC and only one was based in New York. Meeting in New York was Apple's choice, and yet this selection caused a non-trivial contribution to the bill.

Finally, contrary to your letter, I never said or even suggested that "Apple's wealth is sufficient reason not to address the billing concerns [contained in your November 21 Letter]." That was said by you. It was a view you attributed to me, without any foundation, that I quickly corrected. Please be careful about imputing views to me that I do not hold and have never articulated.

I have no doubt that we can develop a constructive and productive relationship with you and your colleagues, but we have been unable to do so after a full month of making every effort to communicate our expectations and to work with you. Unfortunately, we have seen little reciprocity and instead a consistent pattern of delay, unresponsiveness, and lack of cooperation. We very much hope that changes with our trip to Cupertino the week of December 2.

Very truly yours,

Michael R. Bromwich

Exhibit O

November 21, 2013

BY E-MAIL

Michael R. Bromwich
The Bromwich Group LLC
901 New York Avenue, NW 5th Floor
Washington, D.C. 20001

Re: External Antitrust Compliance Monitoring

Dear Michael,

Thank you for meeting with us this week and for the fruitful discussions that we had on a number of issues, and I am glad that we were able to reach agreement in areas such as confidentiality. However, there is one issue left to be resolved: your proposed fees and expenses in this matter.[1] As we have conveyed to you previously, the billing rates that you have proposed, as well as the 15% administrative fee that you intend to charge on top of those rates, are unreasonable, non-customary, and inconsistent with Judge Cote's direction.[2]

First, the fee structure that you have proposed is unreasonable for a matter of this size, scope, and type. Apple has now conducted an extensive review of past billing practices for comparable matters, law firms, and law firm partners who have done work for Apple. Of the approximately 5000 matters that we reviewed, involving roughly 1750 partners, not a single partner had an effective billing rate as high as or higher than those that you have proposed here, and no firm ever imposed an "administrative fee" similar to the 15% fee that you propose. Whether compared to the most expensive partners who have **ever** worked on Apple matters, or the average of the top 10% of the most expensive partners who have worked on those matters, your fees far exceed customary billing arrangements for engagements of similar size and scope and are certainly not "customary and reasonable."

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1 Your letter dated November 7, 2013 indicates you agree to adhere to some but not all terms of the Apple expense policy and guidelines.

2 *See* September 5, 2013 Final Judgment ("Final Judgment") § VI.I (providing that "[t]he compensation of the External Compliance Monitor and any persons hired to assist the External Compliance Monitor shall be on ***reasonable and customary terms*** commensurate with the individuals' experience and responsibilities and consistent with reasonable expense guidelines") (emphasis added); *see also id.* § VI.J. (permitting Apple to challenge actions it "determines" not to be "cost-effective").

Second, your proposed fees appear to bear no relation to the fees that you have charged in past monitorships. For example, in a proposal to monitor the New Orleans Police Department, you suggested a fee of $495 per hour, with no additional administrative fee, which the Department of Justice referred to as "relatively expensive."[3] You also informed us that, in another monitoring engagement relating to a municipality, you billed at a fee of $750 per hour, while you billed a foreign sovereign state $1250 per hour. Based on this billing history, it is unclear to us how your billing at $1100 per hour is consistent with your own "reasonable and customary" practices either.

Third, despite our previous requests, you still have provided no support for adding the 15% administrative fee on top of all time billed in a matter of this type, in which you have been personally appointed to perform the duties of an attorney. Please explain what support, if any, you have for the contention that a 15% administrative fee is "customary and reasonable" for a monitoring engagement involving legal functions.[4]

Fourth, while you have now provided some support for the billing rate of Mr. Nigro, you still have provided no meaningful support for your own rate or the rates of other members of your team such as Ms. Cirincione, Mr. Chowdery, Mr. Bensing, and Ms. Carroll and no evidence to suggest that those rates are reasonable and customary.[5]

Fifth, your proposal to provide only time billed and the total billed amount does not permit us to determine whether your fees and expenses are reasonable and customary. While you expressed concern regarding confidentiality in providing additional detail, you should at minimum provide a general description of each task performed, so that Apple may make a reasonable assessment of your bills. Apple requires detailed time entries—without block billing—from all law firms before paying bills in any comparable matters. We appreciate your stated willingness at the meeting to consider Apple's request for a description of any work performed, and we look forward to receiving your response.

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3 *See* June 4, 2013 Department of Justice Memorandum at 18.

4 A justification that you stated at the meeting for the 15% administrative fee was that your solo practitioner consulting group could not generate a profit by staffing associates to this matter. However, the proposed 15% fee applies to Fried Frank, which already has two associates staffed to the monitoring team, and we request support showing that you will not generate a "profit" without that 15% mark-up.

5 Other areas in which we have requested additional detail include the hourly billing rates that the Bromwich Group and Fried Frank traditionally charge their respective clients, including any standard discounts or allowances for matters of this type, size, and scope, and any evidence that applying the 15% fee to the invoices of Fried Frank—a law firm—is reasonable or customary under these circumstances.

Sixth, we requested a budget in order to process your initial bill, as Apple requires for all law firms. In response, you provided an arbitrary figure of $5 million, in order for Apple to process your initial invoices. Without some rational explanation for that figure, as well as some support for why it is reasonable, Apple cannot fairly evaluate whether your proposed budget is consistent with the letter and spirit of the Final Judgment.

Seventh, we are now in receipt of your first invoice. The total invoice for October was $138,432.40. This total includes $18,056 in administrative fees and billable rates of $1,100 and $1,025 for you and Mr. Nigro, respectively. These fees, invoiced ***for only two weeks of work***—before any documents were exchanged, interviews scheduled, or meaningful travel conducted—only amplifies Apple's concern and heightens the need to reach agreement on fees immediately.

Finally, you suggested that Apple's wealth is a sufficient reason not to address the billing concerns set out above. This contention is irrelevant and nowhere reflected in the Final Judgment. Rather, Judge Cote's decision expressly requires your fees and expenses to be customary and reasonable.

We look forward to receiving the documentation and support for your proposal requested here as soon as possible, and we intend to continue working with you in good faith to try to resolve all of these issues. However, by sending this letter and meeting and conferring orally with you, Apple does not waive, but rather fully preserves, the right to raise any or all of these issues with the Court, if necessary.

Feel free to contact me with any questions.

Sincerely,

Noreen Krall

Exhibit P

[redacted]

From: Bruce Sewell <bsewell@apple.com>
Subject: Apple Board of Directors Notification
Date: November 25, 2013 at 12:32:06 PM PST
To: michael.bromwich@bromwichgroup.com

By E-mail

November 25, 2013

Re: External Antitrust Compliance Monitoring

Michael R. Bromwich

The Bromwich Group LLC

901 New York Avenue, NW 5th Floor

Washington, D.C. 20001

Dear Michael,

Thank you for your letter of November 22, 2013, to Apple's Board of Directors, which we have provided electronically to the entire Board. It appears that our letters may have crossed; as set out in our correspondence of November 22, we have now laid out in great detail proposed next steps, including confirming the interviews of approximately a dozen senior Apple witnesses over two-and-a-half days during the first week of December. I hope that we can continue to work cooperatively to conduct those interviews as efficiently and effectively as possible and to address any further requests that you may have.

Feel free to contact me with any questions.

Sincerely,

Bruce Sewell

Noreen Krall
nkrall@apple.com
408-862-5159 Office
408-203-1074 Cell