EXHIBIT E

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December 21, 2013

VIA ELECTRONIC MAIL

Mr. Lawrence E. Buterman, Esq.
U.S. Department of Justice
450 5th Street, NW
Suite 4000
Washington, DC 20530

Re: United States v. Apple Inc., et al., No. 12-cv-2826 (DLC); State of Texas v. Penguin Group (USA), Inc., No. 12-cv-3394 (DLC)

Dear Larry:

We write to correct several glaring misstatements in your letter to Judge Cote dated December 13, 2014. We will respond to the legal issues raised in your letter pursuant to the briefing schedule in the Judge's December 13 Order.

First, it is categorically untrue that Apple is engaged in a "systematic and untoward campaign to publicly malign the External Compliance Monitor (the 'ECM') and prevent him from carrying out his responsibilities." Apple has done nothing more than press its constitutional challenges and other objections to the ECM's appointment and conduct, including his fee structure and the scope and timing of his investigation. At the same time, however, Apple has fully complied with the terms of the Final Judgment. Among other things, Apple has renegotiated its agreements with the publisher defendants, hired an Antitrust Compliance Officer who is working with the company to enhance and expand antitrust compliance and training, distributed the Final Judgment to all relevant personnel, and collected certifications from personnel indicating that they read and understood the terms of the Final Judgment. Apple has also opened its doors to the ECM on two occasions, permitted 13 interviews with high-level executives, and allowed the ECM to engage in other information gathering, notwithstanding Apple's view that the Final Judgment does not authorize the ECM to commence his review of Apple's compliance and training programs until January 14, 2014. Based on the record, there can be no serious claim that Apple has "prevented" any action by the ECM that is consistent with the directives of the Final Judgment. And, as you are well aware, neither the DOJ nor Plaintiff States has ever suggested as much in any of the meet and confers that we've had on these issues.

Second, Apple's objections are ripe for the Court's consideration. The Judge's December 2 Order directed Apple to "follow the procedure created by Section VI.H. if it has any objections regarding the Monitor which it is unable to resolve through discussions with the Monitor… Apple shall use the procedure created by Section VI.H. to address [objections about the Monitor's fee structure] as well." Apple has fully and repeatedly complied with Section VI.H of the injunction – which requires Apple to convey "in writing to the United States and the Representative Plaintiff States within ten calendar days after the action giving rise to the objection." The DOJ and Plaintiff States have had written notice of Apple's objections since October 31, 2013, when Apple served them with a letter, outlining its objections to the timing, scope, and financial terms of the monitor's engagement. *See* Boutrous Decl. Ex. R. Apple has reiterated these concerns, including in a teleconference on November 4, 2013 (Boutrous Decl. ¶ 4); in its objections filed with the Court on November 27, 2013 (Dkt. 411); in a letter on December 6, 2013 (Boutrous Decl. Ex. Q); and again in a teleconference on December 9, 2013 (Boutrous Decl. ¶ 4). This is above and beyond the notice requirements of the Final Judgment (and by incorporation, the Court's December 2 Order) and the disputes are ripe for resolution by the Court.

Apple did not merely raise concerns. Apple has made specific proposals as to how to resolve the "fee dispute." It made concrete proposals on fees, expenses, budgets, and other matters in October, but the Department of Justice said it approved of Mr. Bromwich's approach as is. At the same time, Apple also asked for information that would allow Apple to assess whether Mr. Bromwich's proposals were either reasonable or customary. Apple has yet to receive any information from either the Department of Justice or Mr. Bromwich. Nor has Apple received a counter-offer to any of its proposals from either the Department of Justice or Mr. Bromwich. Indeed, while Mr. Bromwich agreed to follow some of Apple's expense guidelines, he has repeatedly responded to Apple's efforts to resolve the remaining fee and cost issues by saying that Apple has no right to question his demands or negotiate the terms of his engagement. Mr. Bromwich's email of December 10 was the first time he had even suggested that he might be willing to discuss the issue.

Third, it is not the case, as you suggested, that Apple has "*refused* to articulate how it wanted the External Compliance Monitor to proceed moving forward and what resolution it wanted on the fee dispute" (emphasis added). The subject of our many discussions with you and the ECM over the past eight weeks have centered on these very issues. And just last week, in our teleconference of December 9, I outlined in general terms Apple's expectations regarding how the ECM should discharge his obligations under the Final Judgment. I discussed several principles that should govern the determination of Mr. Bromwich's fees and laid out an overview of how I thought he should be proceeding under the Final Judgment in terms of the scope and timing of his activities. Further, the night before you submitted your letter containing this claim to the Court, we sent you an email indicating that Apple

would be providing you with a concrete proposal for moving forward on the three general categories of disagreement (i.e., the ECM's fees, the scope of his mandate under the Final Judgment, and timing). Matt Reilly separately responded to the ECM's December 10 email in a telephone call that same day, and informed the ECM that Apple was preparing such a proposal, which has now been sent to you and him. We offered to discuss these issues with you at any time, and also to meet in person in January. That offer still stands.

Fourth, the letter notes that you have explained on "numerous occasions" that "neither Plaintiffs nor Mr. Bromwich read paragraph 3" of the Court's proposed amendments to the Final Judgment to allow the ECM to communicate with a party or a party's agent outside the presence of company counsel. But as we have explained, also on numerous occasions, Apple's interpretation of that proposed amendment and its use of the phrase "*ex parte*" was consistent with both the term's common usage (*see, e.g.*, *United States v. Talao*, 222 F.3d 1133, 1136 (9th Cir. 2000)), and with repeated statements and actions by Mr. Bromwich, who was pressing for and promoting direct communications with Apple's leadership, including sending a letter to the Board itself and even after Apple had served its objections. As a result, Apple was compelled to raise its concerns regarding this amendment with the Court.

Sincerely,

T. Boutrous, Jr.

Theodore J. Boutrous Jr.

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