

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

APPLE INC., *et al.*,

Defendants.

12 Civ. 2826 (DLC)

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

Plaintiffs,

v.

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

Defendants.

12 Civ. 03394 (DLC)

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**DECLARATION OF KYLE ANDEER**

I, KYLE ANDEER, pursuant to 28 U.S.C. § 1746, declare:

1. I am Senior Director of Competition Law and Policy at Apple. I respectfully submit this declaration in support of the Reply in Support of Defendant Apple Inc.'s Motion by Order to Show Cause For a Stay of the Injunction filed on January 7, 2014. I have personal knowledge of the matters stated herein and, if called upon to do so, could and would competently testify thereto.

2. Apple has complied with every provision of this Court's Final Judgment. Pursuant to the Final Judgment, Apple renegotiated its agency agreements with all of the Publisher Defendants. *See* Dkt. 374 § IV.A. Apple's Audit Committee appointed Deena Said as its Antitrust Compliance Officer. *See* Dkt. 374 § 5. Apple has furnished a copy of the Final Judgment to all relevant personnel, and has obtained the employee certifications required by the Final Judgment. *See* Dkt. 374 § V.A-B. I also held three separate live trainings for employees on the meaning of the Final Judgment. *See id.* § V.C. Apple has engaged in these efforts willingly and proactively, and will continue to do so regardless of the Court's decision on this motion.

3. Apple has taken significant steps to enhance and strengthen its antitrust compliance programs and policies. Apple hired the law firm Simpson, Thacher & Bartlett LLP specifically to assist the company in reviewing and strengthening its antitrust compliance program. Apple has also continued to build out its in-house competition legal team it established in November 2010 with the recent hire of a seasoned antitrust lawyer from the Federal Trade Commission. Apple is appealing the Court's finding of price-fixing against the company, but there is no inconsistency between Apple's defense of this action and its commitment to a strong program of

compliance and training. Apple has a steadfast commitment to operating ethically and within the law, and the lessons from all of its experience, including this lawsuit, have been incorporated into the compliance and training programs it is rolling out.

4. I proactively reached out to schedule a meeting on the very day Michael Bromwich was appointed as monitor in this case on October 16, 2013. *See* Dkt. 419, Ex. D. It was my hope that through early engagement we could develop a strong working relationship. During our first meeting, on October 22, 2013, I emphasized that Apple was committed to ensuring that it had a strong and robust antitrust compliance program, that we were looking forward to his input and would welcome any suggestions he might have for developing and implementing the program. To date, Mr. Bromwich has yet to provide any concrete or specific comments or suggestions.

5. To my surprise, at our meeting, Mr. Bromwich proposed interviewing members of Apple's executive team and Board on a regular basis during his monitorships, beginning the week of November 18. I expressed the view that such interviews were premature and that many of the executive team and Board members are not involved in the issues presented by this case (such as the head of design), let alone involved in the revising and enhancing of the company's antitrust compliance and training policies. I also expressed concern about the difficulties of scheduling such interviews with the executives and Board members given their schedules, especially on such short notice. I questioned whether such interviews would be conducive to achieving our goal of establishing a cooperative and collaborative relationship and working toward the goal of ensuring Apple has a robust compliance and training program, before we even had a chance to review and revise our programs as appropriate. I emphasized that, while

Apple believes that it did not violate the law and is thus appealing, the company is strongly committed to compliance with the law, including the antitrust laws and the Court's Final Judgment, and was committed to working diligently toward those ends.


6. At no time did I suggest to Mr. Bromwich that anyone at Apple would refuse to comply with the Final Judgment or seek to interfere with the duties and responsibilities of the external compliance monitor for any reason. I repeatedly emphasized that Apple and its executives were fully committed to ensuring that the company had an effective and robust compliance program regardless of the outcome of this matter on appeal.

7. Mr. Bromwich's tone and approach changed significantly after I challenged his financial demands in this matter. The financial demands made by Mr. Bromwich are neither reasonable or customary in Apple's experience. I made a proposal to Mr. Bromwich in October 25, 2013. Mr. Bromwich promptly rejected that proposal and took the position that Apple has no right to negotiate any aspect of his engagement. He has yet to respond to any of Apple's offers.

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

Dated: January 7, 2014

Respectfully submitted,

  
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Kyle Andeer