

EXHIBIT B

January 3, 2014

VIA E-MAIL

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

Gabriel R. Gervey, Esq.
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P.O. Box 12548
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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 Section VI(H) of the Final Judgment, I write to lodge further objections regarding Michael Bromwich, the external compliance monitor appointed by the District Court.

Mr. Bromwich's submission of a lengthy declaration testifying about disputed evidentiary facts in support of the plaintiffs' opposition to Apple's motion for a stay is grossly inappropriate behavior for someone appointed by the District Court purportedly to serve as the Court's agent in carrying out its judgment and judicial functions. By literally becoming a witness testifying for the plaintiffs in a contested proceeding against Apple, Mr. Bromwich has now made it clear that "his impartiality might reasonably be questioned," 28 U.S.C. § 455(a), and that he "has a personal bias or prejudice concerning a party, [and] personal knowledge of disputed evidentiary facts concerning the proceeding." *Id.*, § 455(b). Accordingly, Mr. Bromwich must be disqualified from serving as the monitor in this matter. *See Fed. R. Civ. P. 53(a)(2)* (requiring that a special master "must not have a relationship to the parties, attorneys, action, or court that would require disqualification of 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."); *see also Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 878 (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 omitted).

January 3, 2014

Page 2

Moreover, Mr. Bromwich's actions preceding the filing of this declaration likewise have both demonstrated and fostered an appearance of bias and lack of partiality toward Apple, including his *ex parte* communications with the Court, the Department of Justice and the States before his appointment, his reliance on those *ex parte* communications as grounds for expanding his mandate beyond the terms of the Final Judgment, his apparent coordination with plaintiffs to broaden the scope of his mandate in this manner, his financial demands, and his adversarial, inquisitorial and prosecutorial communications and activities toward Apple since his appointment.

Finally, as we have already objected, Mr. Bromwich did not file with the Court before his appointment the affidavit mandated by Rule 53(b)(3) "disclosing whether there is any ground for disqualification under 28 U.S.C. § 455." Fed. R. Civ. P. 53(a)(2).

Sincerely,

/s/ Theodore J. Boutrous Jr.

Theodore J. Boutrous Jr.