

EXHIBIT C



December 17, 2013

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

Eric Lipman, 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 Eric:

I write to follow-up regarding Apple's objections to Mr. Bromwich's fees, as well as the timing and scope of his work pursuant to the Final Judgment and Permanent Injunction. As you know, Apple has moved to stay Section VI of the Final Judgment. But to minimize future disputes and mitigate further disruptions and injury to Apple and its business operations, we believe it would be constructive to continue to meet and confer regarding our objections.

1. Financial Terms of Engagement

We have repeatedly objected to the financial terms of Mr. Bromwich's engagement and have outlined our complaints regarding Mr. Bromwich's fee structure in detail and at length. See, e.g., Email from K. Andeer to M. Bromwich (Oct. 25, 2013); Letter from T. Boutrous to L. Buterman, G. Gervery (Oct. 31, 2013); Letter from T. Boutrous to M. Bromwich (Oct. 31, 2013); Letter from N. Krall to M. Bromwich (Nov. 21, 2013); Apple's Objections to the Court's Order Filed on November 21, 2013 (Nov. 27, 2013), Dkt. 411. We will not repeat those objections here, but in an effort to resolve this dispute instead propose that the following billing rates apply: Michael Bromwich at \$800/hour; Barry Nigro at \$700/hour; Maria Cirincione at \$400/hour; Sarah Carroll at \$300/hour. As we have previously explained,

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these rates are reasonable in light of a detailed analysis of billing rates for law firms doing work for Apple and the nature of the tasks to be performed by Mr. Bromwich and his team.

Given the defined set of tasks for the monitor set forth in the Final Judgment and detailed below, and assuming quarterly meetings between the Bromwich Group and Apple going forward, in Apple's experience in analogous matters, fees for 2014 and 2015 in this matter should not exceed \$250,000 using the billing rates listed above. Apple will further reimburse reasonable costs and expenses incurred during the monitorship that are in compliance with Apple's expense policies for law firms.

Apple also requests that Mr. Bromwich's bills include time entries that, at a minimum, contain a general description of each task performed (i.e., no block billing). This is a customary practice, and Apple does not believe it will impinge on Mr. Bromwich's independence. Mr. Bromwich should also provide a workplan and budget for 2014 (on a quarterly basis), so the parties can evaluate whether it is consistent with the letter and spirit of the Final Judgment. We look forward to discussing Apple's fee proposal with you and Mr. Bromwich.

2. Timing of Monitor's Assignment

Apple's position is that no further interviews or information requests by Mr. Bromwich are appropriate until after January 14. 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." Final Judgment § VI.C. Despite our objections to Mr. Bromwich's commencement of work prior to January 14, we sought to accommodate Mr. Bromwich's premature requests for interviews and documents. Mr. Bromwich has already conducted thirteen interviews with Apple personnel and we have produced documents responsive to his information requests.

No further work by Mr. Bromwich is necessary until after January 14. We will continue to focus our attention over the next month on developing a plan to revise Apple's antitrust compliance policy and training programs in accordance with the Final Judgment.

3. Scope of Monitor's Responsibilities

Mr. Bromwich must refrain from further efforts to expand his mandate beyond the sharply delineated tasks set forth in the Final Judgment. The Final Judgment confines the scope of the External Compliance Monitor's work to the following:

1. “[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;”
2. “[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;” and
3. “[R]ecommendations reasonably designed to improve Apple’s policies, procedures, and training for ensuring antitrust compliance.”

Final Judgment § VI.C; *see also id.* VI.B. The External Compliance Monitor is also tasked with providing reports to Apple, Plaintiffs, and the Court setting forth his assessments and making such recommendations.

In discharging these responsibilities, Apple proposes that Mr. Bromwich adhere to the following schedule and procedures in order to minimize further disputes regarding the scope of his mandate and further disruptions to Apple’s business operations:

- As described above, there will be no further interviews of Apple employees or Board members by Mr. Bromwich prior to his review of Apple’s revised antitrust compliance policies, procedures, and training materials.
- After January 14, 2014, Apple will provide Mr. Bromwich with an antitrust compliance plan, a copy of its revised antitrust compliance policies and procedures, along with documentation describing the training program required by Section V.C. of the Final Judgment. Mr. Bromwich will review those materials and provide any recommendations “to address any perceived deficiencies in those policies, procedures, and training” that are “reasonably designed to improve Apple’s policies, procedures, and training for ensuring antitrust compliance.” Final Judgment §§ VI.B, VI.C. We will be available to discuss Mr. Bromwich’s comments on the antitrust policies, procedures, and training materials.
- To aid Mr. Bromwich in assessing the comprehensiveness and efficacy of Apple’s revised antitrust policies, procedures, and training materials, Apple will make certain Apple executives and employees available to Mr. Bromwich for interviews related to Apple’s revised antitrust policies, procedures, and training materials after January 14, 2014. The interviews will be scheduled at the “reasonable convenience of such personnel.” Final Judgment § VI.G.

- To accommodate the schedules of all involved, we will work with Mr. Bromwich on a calendar for quarterly meetings in order to maximize the productivity of in-person meetings and eliminate or avoid schedule conflicts.
- In carrying out these duties, Mr. Bromwich will not seek interviews with Apple's employees and Board members who are not relevant to his mandate of assessing Apple's revised antitrust compliance policies and procedures and Apple's antitrust training program. Mr. Bromwich must also cease his requests for *ex parte* access to Apple Board members and executives. See, e.g., Boutrous Decl. at ¶ 5 (Dec. 12, 2013); *id.* Ex. J at 5; Final Judgment § VI.G.1 (noting that Apple personnel "may have counsel present").
- Any materials that are reviewed or generated and preserved by Mr. Bromwich in the course of performing his duties shall be made available to counsel for Apple for review for privilege and/or confidentiality concerns before such documents are made publicly available. Documents containing Confidential or Highly Confidential information shall be subject to the Protective Order applicable in *United States v. Apple, Inc.*, 12-cv-2826. See Stipulated Protective Order, Dkt. 43.

We are available to discuss these issues with you at your convenience. We are also available to meet and discuss this proposal in person the week of January 14 in Washington, D.C.

Sincerely,

A handwritten signature in black ink, appearing to read "Noreen Krall", with a long horizontal flourish extending to the right.

Noreen Krall
Vice President, Chief Litigation Counsel
Apple Inc.

cc: Michael Bromwich, Esq.