

I, MICHAEL R. BROMWICH, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Managing Principal of The Bromwich Group LLC, a consulting firm incorporated in the State of Delaware. I am also a partner in the law firm Goodwin Procter LLP. Goodwin Procter is not involved in this matter.

2. I am an attorney licensed to practice in the State of New York and the District of Columbia. I am a member of the bar of the United States District Court for the Southern District of New York, the United States Court of Appeals for the Second Circuit, and many other courts.

3. I have been a practicing lawyer for 33 years. I have spent approximately 14 years in public service, as Assistant United States Attorney for the Southern District of New York (1983-1987); Associate Counsel for the Office of Independent Counsel: Iran-Contra (1987-1989; 1990-1991); Inspector General for the Department of Justice ("DOJ") (1994-1999); Director of the Bureau of Ocean Energy, Management, Regulation, and Enforcement in the Department of the Interior (2010-2011); and Director of the Bureau of Safety and Environmental Enforcement in the Department of the Interior (2011).

4. I have been doing oversight work of various kinds for approximately 20 years in both government and the private sector. As Inspector General of the DOJ, I had oversight authority over the entire DOJ, which included not only its litigating divisions but also its component agencies - i.e., the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Prisons, and many others.

5. From 1999 to 2010, I was a partner with the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"). During my tenure with the firm, I headed the Internal Investigations, Compliance, and Monitoring practice group. My practice included, among other things, conducting an internal investigation of a company alleged to have committed antitrust violations, and representing an individual in an international criminal price-fixing investigation.

6. Between 2002 and October 2013, I was selected on three different occasions to serve as a monitor. In 2002, I was jointly selected by the City of Washington, DC, Washington's Metropolitan Police Department ("MPD"), and the DOJ to monitor MPD. In 2009, I was jointly selected by the Government of the Virgin Islands, the Virgin Islands Police Department ("VIPD"), and the DOJ to monitor VIPD. Earlier this year, I was selected by one of the largest companies in the world to monitor it in connection with the resolution of various criminal and civil proceedings. In each of my previous monitoring assignments, I have selected subject matter experts to assist me in performing my monitoring responsibilities.

7. On two other occasions in 2013, after a thorough vetting and interviewing process, major international companies have selected me as one of three candidates submitted to the DOJ to serve as a corporate monitor. In both of those cases, DOJ selected a different candidate. The vetting process required me to supply multiple references from my previous monitoring assignments. Those references included top-

level executives of organizations I had monitored with whom I had enjoyed uniformly positive and constructive relationships.

8. On various occasions since 2003, I have spoken at meetings and conferences about my approach to monitoring. I have stressed the principles of openness, collaboration, cooperation, and fidelity to the document that establishes the scope of the monitoring assignment. The other monitoring assignments I have held have uniformly been collegial and collaborative. I have never before been accused of exceeding the scope of my monitoring authority. In fact, I have counseled other monitors and potential monitors on the importance of observing the limits of the monitoring assignment. Even though conducting oversight can lead to honest differences of opinion and conflicts, to my knowledge, no representative of any entity I have monitored has ever complained about the style or substance of my monitoring activities. My approach to monitoring in this matter does not differ from the approach I have followed in my other monitoring assignments.

9. In a monitoring proposal submitted to DOJ on September 18, 2013, in connection with this matter, I specifically articulated my view of the monitoring activities I would undertake if selected. This included work prior to the monitor's assessment of Apple's compliance program. I emphasized the importance of gaining an initial understanding of the company's pre-existing antitrust policies, and the steps the company was taking to change and upgrade them. I detailed my plan, to be implemented at the outset of the monitorship, to learn about the various activities being undertaken by the company to respond to the Final Judgment. I said that obtaining such information at the outset of the monitorship would help educate the monitoring team about the issues and challenges facing the company, and in turn would help shape the monitor's activities and the sequence of items to be monitored.¹

10. In my interview with DOJ and the Plaintiff States on September 19, 2013, and in my interview with the Court on October 10, 2013 I elaborated on my views about the importance of beginning the monitoring work immediately upon appointment. To the best of my recollection, I also touched on the importance of having preliminary meetings and/or interviews with members of the Board of Directors and senior management of the Company promptly after appointment.

11. In my three previous monitoring assignments, the top management of the organizations, up to and including the heads of the organizations, have made themselves promptly available for meetings, interviews, and discussions concerning the subject matter of the monitoring assignment. My requests for meetings, background interviews, and subject matter presentations have been responded to fully and completely, and the monitored entities have frequently offered more meetings, interviews, and materials than I have requested. My experience has been that early meetings, interviews, and discussions with top management are necessary to provide the monitor and his team with important background and context, and to establish

¹ In connection with my proposal, DOJ vetted me for personal and professional conflicts of interest. This process included providing information about financial investments, professional engagements, and personal relationships, among other things.

relationships with top executives and others in the monitored entity – relationships that are crucial to a successful monitorship. I have never before had a request for a meeting or interview in a monitoring assignment rejected or even deferred. I have never before been advised that requests for introductory meetings with members of senior management were unduly disruptive. Members of senior management of the companies and organizations I have monitored have uniformly encouraged me to contact them directly in the event that I or members of my team were not getting what we needed.

12. On October 17, 2013, the day following my selection, I received an email from Kyle Andeer, Apple's Senior Director for Competition Law & Policy, introducing himself and suggesting an early discussion about the monitoring assignment. (Bromwich Exhibit A; Apple Exhibit D)

13. On October 22, 2013 at Mr. Andeer's request, we met in New York at the offices of Gibson, Dunn & Crutcher LLP ("Gibson Dunn"). In addition to Mr. Andeer, Theodore J. Boutrous Jr. from Gibson Dunn and Kevin J. Arquit and Matthew J. Reilly from Simpson Thacher & Bartlett LLP ("Simpson Thacher") attended the meeting in-person.²

14. At the meeting on October 22, I outlined in detail my views of the monitoring assignment. I addressed staffing, my approach to monitoring, our specific responsibilities under the Final Judgment, and the initial steps we would be taking.

15. In describing my approach, I stated, among other things, that our authority is limited to the scope of the Final Judgment, that we intended immediately to open lines of communication to the company, that we would remain accessible to all parties, the importance of guarding our independence, and our hope to have a collaborative relationship with Apple. I said that during the initial 90-day period, I wanted to make use of the time – while the company was revising its antitrust policies, procedures, and training – to understand a) the company's reporting oversight structure for antitrust compliance, b) the company's existing antitrust policies and procedures, c) the ongoing processes to revise and update its policies and procedures, d) the overall role of the Audit and Finance Committee in compliance matters, and e) the role of the company's Risk Oversight Committee. I also invited Mr. Andeer and Apple's representatives, as I had invited DOJ and the Plaintiff States, to identify portions of the case record that they recommended we review to have a balanced appreciation for the background and context of the monitoring assignment. We also requested a short list of documents relevant to the issues described above.

16. I advised Mr. Andeer that I would like to have preliminary meetings or interviews with members of the Board of Directors and members of senior management during the week of November 18, a month in the future. In past monitorships, such meetings have generally taken place within days or at most two weeks of the beginning

² In light of Apple's complaints about our initial bill for work performed in October, it is worth noting that only one of the seven people attending the meeting is based in New York; four of the seven are based in Washington, DC. Even so, Mr. Andeer asked that the meeting be held in New York and we agreed to meet there.

of the monitoring assignment. I have never waited as long as a month to have such meetings and interviews. Mr. Andeer responded that the company was very concerned about the request for interviews with Board members and senior executives, that they were very busy, and that we would see "a lot of anger" about the case that still existed within the company. I told Mr. Andeer and Apple's outside lawyers that we would be very respectful of the time of Board Members and senior executives, that I would conduct the interviews personally, that I would limit each interview to one hour, and that I would be very flexible about scheduling in deference to the schedules of Board members and senior management. I explained that tone at the top of the company is very important in assessing the company's response to the Final Judgment, and to assessing the commitment to compliance of its leaders. Mr. Arquit said it was important for the "residue of tension" to wear off before we interviewed senior executives. Mr. Andeer added that Apple executives would "never get over the case" and that they were still extremely angry. Mr. Andeer suggested that any plan that included interviews of senior Apple executives was problematic because they did not expect to have to deal with me or other members of the monitoring team. He also said that many people in the company were fearful. I told him that I have found the best way to address such fears was to address them directly and have me speak with the people who are most fearful to dispel those concerns. Mr. Andeer said he agreed that it might be a good idea to do so. At no time did Mr. Andeer or any of the company's outside counsel suggest that we would be prohibited from doing monitoring work until January 14, 2014.

17. At the time I made the request on October 22 to have preliminary meetings or interviews with members of the Board of Directors and members of senior management, I had reviewed not only the Court's July 10, 2013 Opinion and Order but also the transcript of the August 27, 2013 status conference in this matter. During that proceeding, the Court observed that "Apple lawyers and its highest level executives" had been involved in a price-fixing conspiracy and had demonstrated "a blatant and aggressive disregard [] for the requirements of the law." August 27, 2013 Tr. At 17. I would have sought meetings and interviews early in the process with Board members and senior management in any event, but the Court's observations and comments, quoted above, further strengthened my view that such early meetings and interviews were essential first steps in the monitoring process in this matter.

18. On October 23, 2013, the DOJ reviewed a draft letter that I prepared regarding the monitoring relationship with Apple, including fees and expenses. Later that day, I sent the draft engagement letter by email to Mr. Andeer and invited him to suggest appropriate revisions to the section in the letter discussing confidentiality. (Bromwich Exhibit B) I did not invite comments on other aspects of the letter, which involved fees and expenses, because the Final Judgment made clear that the responsibility for approving fees and expenses resided with DOJ and the Plaintiff States, not with Apple. On that same day, Mr. Andeer responded by email that the engagement letter raised "a number of issues." (Bromwich Exhibit C)

19. On October 24, 2013, I sent an email to Mr. Andeer offering to have a brief introductory telephone call with the Apple Board of Directors and/or the Audit and Finance Committee during the week of October 28 to answer any questions the members had regarding my appointment. (Bromwich Exhibit D) My offer was motivated by Mr.

Andeer's representation at the October 22 meeting that the Board would be meeting during the week of October 28 and then not again for another six months. Mr. Andeer responded that same day to inform me that he had been mistaken about the Board's meeting schedule.³ (Bromwich Exhibit E)

20. On October 25, 2013, Mr. Andeer sent an email to me in response to the draft monitoring letter that I provided. (Bromwich Exhibit F) Mr. Andeer's email raised concerns regarding compensation and expense terms outlined by the letter. His email notified me of Apple's requirement that the monitoring team strictly adhere to Apple's policies for outside service providers, including expenses, that we notify Apple before adding new personnel, and that we submit a budget, among other requirements. In addition, Mr. Andeer said that Apple "does not allow the firms it works with to market their representation of Apple," complaining of what he alleged were press releases that had been issued by Goodwin Procter, my consulting firm, and Fried Frank.⁴

21. On October 26, 2013, I responded to Mr. Andeer's email of the previous day. (Bromwich Exhibit G) I explained that the relationship between Apple and the Monitor was not the same as the relationship between Apple and a supplier or vendor, and that my purpose in providing the draft letter was to invite his comments regarding the treatment of confidentiality, an issue about which he and Apple's outside counsel had expressed concern at the October 22 meeting. I provided specific responses to each of the points in Mr. Andeer's October 25 email.

22. On October 28, 2013, Mr. Andeer responded to my October 26 email, asking me to confirm that DOJ had approved the terms and conditions of the engagement letter. (Bromwich Exhibit H) Mr. Andeer's email also requested that I provide various data on my billing rates and administrative fee, as well as other information about billing rates.

23. On October 29, 2013, Barry Nigro sent an email response to Mr. Andeer's October 28 email at my request. (Bromwich Exhibit I) Mr. Nigro's email reiterated that the arrangement between the Monitor and Apple could not be governed by a "standard arrangement between a client and its lawyers or a client and its consultant," and that the Final Judgment did not provide Apple the right to negotiate or approve the fees charged or expenses incurred by the Monitor.

24. Also on October 29, a member of my team sent an email to Mr. Andeer reiterating a request for documents from Apple, which I initially made at the October 22 meeting in New York. (Bromwich Exhibit J) The email confirmed our request for items such as Apple's past compliance policies and procedures, documents that explain the reporting structure for Apple's compliance system, documents that explain the role and membership of the Audit & Finance and Risk Oversight Committees, training materials, and organization charts. It also asked for materials related to the compliance

³ We subsequently learned that Apple has Board meetings four times per year.

⁴ Goodwin Procter issued a notice on its web site to clarify that I was handling this matter through my consulting firm. My consulting firm did not issue a press release, although it did provide a two-sentence statement in response to numerous press inquiries.

enhancements Apple highlighted in a letter that the company sent to the DOJ on August 19, 2013, and that Mr. Andeer had provided to me at the October 22 meeting.

25. On October 31, 2013, Mr. Boutrous sent a letter notifying me of Apple's objections to the timing and scope of my activities as Monitor, and to the financial terms of the engagement letter. (Bromwich Exhibit K; Apple Exhibit A) This was the first time that Apple or its counsel had suggested that our proposed activities were in conflict with the Final Judgment, or were an inappropriate expansion of the scope of my responsibilities, rather than contrary to the hopes and expectations of Apple. Mr. Boutrous's letter included Apple's proposed confidentiality agreement.

26. On November 1, 2013, I responded to Mr. Boutrous by letter (Bromwich Exhibit L), and attached a separate letter to Timothy Cook, Apple's Chief Executive Officer, and D. Bruce Sewell, Apple's General Counsel. (Bromwich Exhibit M; Apple Exhibit M) In my letter to Mr. Boutrous, I reiterated my hope for a constructive relationship and my disappointment at not yet having received the materials I requested at the October 22 meeting with Apple and its outside counsel. I explained that my reason for writing directly to Messrs. Cook and Sewell was to establish a line of communication with the senior managers of the company, as I had done in previous successful monitorships.⁵ I had become concerned that the company was using its outside counsel as a shield to prevent interaction between senior management and my monitoring team.

27. In my November 1 letter to Messrs Cook and Sewell, I introduced myself, outlined my responsibilities under the Final Judgment, and repeated the principles that we would follow in our monitoring activities, including fidelity to the contours of the monitor's role as set forth in the Final Judgment. I pointed out that the company had failed to provide any of the materials it had promised, and that we had received no response to our request for brief preliminary interviews. The letter pointed to the aspects of the Final Judgment that supported our request to interview senior executives and members of the Board but again expressed flexibility in scheduling such interviews. At no point in my letters to Mr. Boutrous or Messrs. Cook and Sewell did I suggest that Apple's employees or senior management would be interviewed outside the presence of counsel, or even meet with me in a non-interview context without counsel if that was their preference.⁶

28. On November 4, 2013, Mr. Boutrous responded by email to my November 1 letter. (Bromwich Exhibit N) He asked to speak with me by telephone and enclosed a separate letter to me from Mr. Sewell. (Bromwich Exhibit O) In his letter,

⁵ Contrary to the claims in the papers Apple has filed with the Court on November 27 and December 13, (see Apple's Dec. 12, 2013 Memorandum of Law, at 5, 8, 16-17, and 19; Apple's Nov. 27, 2013 Objections, at 1, 13-18) this request for a direct line of communication was not intended to deprive Apple Board Members, senior executives, or employees of their right to have counsel present during interviews.

⁶ My frame of reference is provided by my experience: in none of my three other monitorships has the monitored entity hired outside counsel. This reflected the view of two public agencies and one company that the monitorship was not an adversary process and should not be approached in that way.

Mr. Sewell promised to provide me with a "comprehensive update on [Apple's] progress" and to "facilitate whatever meetings are appropriate for [me] to fully and completely discharge [my] responsibilities as the external monitor." He described my prior requests for documents from Apple as calling for "voluminous historical documents." On that same day, I responded to Mr. Boutrous's letter. (Bromwich Exhibit P) I explained that, in my experience with other monitorships involving specific required deadlines, the monitored entities had never argued that I was barred from beginning my monitoring work prior to the expiration of such deadlines. I also reiterated my desire to be reasonable and flexible in my approach and to accommodate the schedules of the company's executives in a fair and reasonable way.

29. On November 5, I emailed Mr. Boutrous to propose times for a call to discuss the open issues, as requested by his November 4 email to me. (Bromwich Exhibit Q) I included with my email a response to Mr. Sewell's November 4 letter. (Bromwich Exhibit R; Apple Exhibit L) In that letter, I explained to Mr. Sewell the importance of establishing prompt contact with top executives at the company and that such contact establishes the groundwork for a successful and productive monitorship. I also reiterated my request to meet with the newly hired Antitrust Compliance Monitor, Deena Said, as well as to conduct one-hour introductory interviews with Mr. Sewell and Mr. Cook. I also attempted to correct the misconception apparently communicated to Mr. Sewell that my previous document requests sought "voluminous historical documents."⁷

30. On November 6, I spoke by telephone with Mr. Boutrous and Daniel G. Swanson of Gibson Dunn, Mr. Nigro, and Maria Cirincione, a member of the monitoring team. During the call, Mr. Boutrous stated that it was not Apple's position that the Monitor should not start work, including interviews, prior to the January 14, 2014 deadline, which was in fact the position Mr. Boutrous had taken in his October 31 letter.⁸ Rather, he proposed a first round of interviews to include Mr. Sewell; Tom Moyer, Apple's Chief Compliance Officer; Ms. Said, Apple's Antitrust Compliance Monitor; and others during the week of November 18 or after Thanksgiving. He said that the interviews would help to bring my team "up to speed." Mr. Boutrous also said that, while Apple employees view the interviews as formidable in concept, actually participating in the interviews would ease the road going forward. In the interim, Mr. Boutrous proposed to provide my team with the background materials I had requested. Mr. Boutrous said that he did not believe that confidentiality would be an obstacle to Apple providing those materials. He made no reference to the materials as "voluminous." With respect to the open issue regarding fees, Mr. Boutrous said that both he and Mr. Swanson were familiar with my rates and were likely more in agreement with me regarding the appropriateness of that level of rates than with Apple.

⁷ Nothing further had been requested at that time beyond the few items outlined at the October 22 meeting.

⁸ "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." (Bromwich Exhibit K; Apple Exhibit A).

31. On November 7, I sent an email to Mr. Boutrous that addressed Apple's expense guidelines, and reiterated my hope to receive Apple's list of proposed employee interviews for the week of November 18. (Bromwich Exhibit S)

32. Mr. Boutrous responded to my November 7 email by email that same day. (Bromwich Exhibit T; Apple Exhibit C) He asserted that the week of November 18 was "looking bad from a scheduling standpoint." I had initially proposed the week of November 18 for interviews at the October 22 meeting, and this was the first time Apple had suggested that the week of November 18 was inconvenient. Mr. Boutrous suggested a list of potential interview candidates. The list included nine people, but not a single member of the Board and no senior executive other than Mr. Sewell.

33. I responded to Mr. Boutrous by email that same day and asked him to "keep trying [to schedule] for the week of November 18." (Bromwich Exhibit U) I continued to believe that providing a month's notice was sufficient for Apple to permit me to interview some of the people I had requested. I acknowledged that not all of the people with whom we had requested interviews would be available that week. I suggested other interview candidates for the week of November 18 or thereafter and listed the types of very basic information I was hoping to gather from these interviews.

34. On November 9, Mr. Boutrous responded to my email to say that he was checking on the week of November 18 and would report back. (Bromwich Exhibit V) I informed him that I would plan to fly to California the evening of Sunday, November 17 for a start time on Monday morning, November 18, unless the company preferred to begin the interviews on Tuesday. (Bromwich Exhibit W) I reiterated my request for the documents initially requested at the October 22 meeting.

35. Later in the day on November 9, Mr. Boutrous emailed to notify me that the week of November 18 was "very bad in terms of scheduling" and that only a few of the people I had requested or he had proposed were available at that time. (Bromwich Exhibit X) Mr. Boutrous requested that I change my schedule to come to California the week of December 9, a week during which I had previously told him I was unavailable. I responded to Mr. Boutrous by email that same day, expressing my disappointment. (Bromwich Exhibit Y) I asked him to identify which of the people on the list of interviewees were unavailable the week of November 18 and to confirm that he had conveyed my request to speak with them. I offered to rearrange my schedule to accommodate Apple by flying out to Cupertino during the week of November 11 if that was more convenient for Apple and the people I had asked to interview.

36. On November 11, Mr. Boutrous responded that my proposal regarding the requested interviews was "unreasonable, unnecessary, and unwarranted." (Bromwich Exhibit Z; Apple Exhibit B) I responded by email to Mr. Boutrous that same day and suggested that we try to make progress on the outstanding issues by phone. (Bromwich Exhibit AA; Apple Exhibit E) During a brief phone call that evening, I requested that Mr. Boutrous make additional efforts to arrange interviews the week of November 18, and that a failure to permit a single interview within a month of my appointment was inconsistent with the company's stated commitment to cooperate with our monitoring responsibilities.

37. On November 12, Mr. Boutrous emailed me to propose two interviews for Monday, November 18 of Tom Moyer, the company's Chief Compliance Officer and Gene Levoff, an in-house attorney with various responsibilities relating to the Audit and Finance Committee and risk management functions. (Bromwich Exhibit BB) I responded by email to Mr. Boutrous that same day and accepted his offer. (Bromwich Exhibit CC; Apple Exhibit F) I reiterated my hope that Apple would provide additional Apple personnel for interviews during my visit, and repeated once again the request for the documents initially requested at the October 22 meeting. Mr. Boutrous outlined the logistics for the interviews and suggested that Apple "plan[ned] to get [me] material in response to [my] 10/22 request." (Bromwich Exhibit DD)

38. On November 15, 2013, I emailed Mr. Boutrous to reiterate my hope that Apple would identify additional employees for my team to interview during the November 18 trip. (Bromwich Exhibit EE; Apple Exhibit H) As to Ms. Said, the newly-hired Internal Antitrust Compliance Officer, I said, "it would be useful to meet [her] if only briefly during our visit." I repeated once more my request for the documents initially requested at the October 22 meeting.

39. On November 17, 2013, Mr. Swanson emailed me an agenda for the November 18 interviews. (Bromwich Exhibit FF; Apple Exhibit G)

40. On November 18, 2013, I conducted one-hour interviews of Mr. Moyer and Mr. Levoff at Apple's satellite offices at 250 S. Mathilde Avenue, Sunnyvale. The interviews were informative and instructive. They provided some basic information about Apple's compliance structure and its approach to compliance issues. Even though these two interviews were the only ones scheduled, Apple insisted on limiting them to one hour each, consistent with my original offer concerning senior management and Board members, even though Mr. Moyer and Mr. Levoff fit into neither category. Apple was represented at the interviews by Mr. Boutrous (by phone), Mr. Reilly, and one of Mr. Reilly's colleagues from Simpson Thacher (by phone). None of Apple's lawyers raised an objection to any questions asked during the interviews, other than an occasional reminder to the witnesses that they were not to provide any attorney-client privileged information.

41. On that same date, I also met with Noreen Krall, Apple's Vice-President and Chief of Litigation, who had been added to the agenda by Apple. Ms. Krall had no substantive information to provide, but instead discussed fees, confidentiality, and related matters. I told Ms. Krall that it would be convenient and cost-effective to arrange additional interviews for November 19 or November 20, when I would still be in Northern California. I also told her that in view of Apple's failure to permit the interviews I had requested during the week of November 18, I would be willing to rearrange my schedule and return to California during the week of December 2 to conduct additional interviews, which was one of the alternatives Apple had earlier proposed.

42. Later on November 18, I emailed Ms. Krall to reiterate my suggestion that we arrange additional interviews for November 19 and 20 and/or the week of

December 2. (Bromwich Exhibit GG) Ms. Krall responded by email later that day and informed me that “due to preexisting scheduling conflicts,” Apple would not make additional personnel available for interviews on November 19 or 20. However, she stated that Apple would schedule additional interviews for December 4, 5, and 6. In my response to that email, I asked whether Ms. Krall had checked the availability of members of Apple’s Board of Directors whom I understood to live or work in the area. She failed to respond. (Bromwich Exhibit HH)⁹

43. On November 19, I emailed Ms. Krall, as well as Apple’s outside counsel from Gibson Dunn and Simpson Thacher. (Bromwich Exhibit II; Apple Exhibit S) I informed them that I would be in New York on November 21 and 22, during which time I hoped to meet with Andrea Jung, a member of Apple’s Board of Directors, and that I would be in Washington, D.C., on November 25, during which time I hoped to meet with Ronald Sugar, a member of Apple’s Board of Directors and the Chair of the Audit and Finance Committee.¹⁰ I again offered to limit the meetings to one hour each and requested that Apple suggest alternative dates if Ms. Jung and Dr. Sugar were unavailable on the dates that I had suggested. Ms. Krall responded on November 21, explaining that she was checking Dr. Sugar’s availability to meet in California on December 4, 5, or 6 and promised to provide an agenda for those meetings by the end of the week. (Bromwich Exhibit JJ) Ms. Krall did not address my request for a meeting with Ms. Jung.

44. On November 21, 2013, a month after the materials were requested, Apple provided its first and only set of materials in response to our requests for documents. The documents Apple provided included a presentation prepared and given by Mr. Moyer at his November 18 interview, excerpts from various training modules, the Antitrust and Competition Law Policy section from Apple’s Code of Conduct, five versions of Apple’s Business Conduct Policy from various years, and two 2013 antitrust training presentations. The total quantity of materials we received was 303 pages.

45. On November 22, in the face of Apple’s failure to produce more than two witnesses earlier that week and none of the senior executives or Board Members I had requested, its refusal to allow me even to meet the company’s new Antitrust Compliance Officer, and its delays in producing documents, we sent a letter to Apple’s Board of Directors through Ms. Krall, Apple’s in-house counsel. (Bromwich Exhibit KK; Apple Exhibit J) The letter began by explaining the responsibilities the Court had imposed when it appointed me as the Monitor in this matter. I described my disappointment at Apple’s lack of cooperation to date, particularly given that I told Mr. Andeer and Apple’s outside counsel in our first meeting that I thought it very important, based on

⁹ On multiple occasions, Apple’s counsel has highlighted my offer to meet with Mr. Sewell at the federal courthouse in San Jose as an apparent example of overreaching or inappropriate activity. (Apple’s Dec. 12, 2013 Memorandum of Law, at 4 and 16; Apple’s Nov. 27, 2013 Objections, at 13) To the contrary, it was one of many efforts to take Mr. Sewell and others up on their offers to work cooperatively with us, and to do so with minimal inconvenience to Apple executives. (Bromwich Exhibit EE)

¹⁰ Based on information on Apple’s web site, I had the mistaken belief that Dr. Sugar was based in Northern Virginia. In fact, he is based in Southern California.

my experience in previous monitorships, to build a relationship with Apple's senior employees and members of its Board. I concluded the letter by expressing hope that my relationship with Apple would become collaborative and positive and requesting the Board's support in working toward that goal. In response to Ms. Krall's suggestion that sending copies of the letter directly to the Board Members was "not necessary or customary in our communication with Board members," we did not do so.

46. Later on November 22, I received a letter from Mr. Reilly. (Bromwich Exhibit LL; Apple Exhibit I) He asserted that my requests to speak with Apple employees and Board members were "incredibly disruptive" and "counter-productive" to Apple's efforts to improve its antitrust compliance training and policies. He provided no evidence to support the claims that the requests, which Apple had not complied with, were "incredibly disruptive." Mr. Reilly claimed that my review should not begin "in substance" until "on or around January 14, 2014" and that Apple had therefore "gone far above and beyond" what the Final Judgment required of it by meeting with me on October 22, permitting me to interview two Apple employees on November 18, and providing me with some documents the day before. The letter did also include a proposed interview schedule for December 4-6 that included ten Apple employees (including Ms. Krall and the two employees I had interviewed on November 18) and included Dr. Sugar, the Chair of Apple's Audit and Finance Committee. Mr. Reilly also offered in the letter to schedule a telephone interview of Bruce Sewell on December 9.

47. On November 25, Mr. Sewell sent me an email in which he recited the steps Apple had taken to respond to my requests. (Bromwich Exhibit MM; Apple Exhibit P) He also expressed the hope that we would "continue to work cooperatively to conduct [the interviews proposed by Mr. Reilly] as efficiently and effectively as possible and to address any further requests that you may have." I responded the same day, stating that I was looking forward to the December 4-6 interviews and requested information regarding some of the individuals who had been put on the schedule but with whom I had not requested to meet. (Bromwich Exhibit NN) I also expressed the hope that Mr. Sewell could help me set up interviews with additional senior executives and Board members, and I noted my belief that it would be to Apple's advantage to facilitate those interviews early in the monitorship.

48. On November 27, Apple filed its Objections to the Court's Order Filed on November 21, 2013. On December 1, on my behalf, Ms. Cirincione forwarded to DOJ and the Plaintiff States, as well as to Ms. Krall, Mr. Boutrous, and Mr. Reilly, various profane and abusive emails I had received from members of the public that were prompted by Apple's Objections filed with this Court on November 27. (Bromwich Exhibit OO)

49. On December 4-6, I interviewed Dr. Sugar and nine Apple employees (including the two employees I had interviewed on November 18) in Sunnyvale, California. We played no role in determining whom we would be interviewing, and we had no say in the location of the interviews.¹¹ In advance, Apple's counsel advised us

¹¹ In my 20 years of doing oversight work, I have never before had the entity over which I was exercising oversight unilaterally dictate who could be interviewed, even in those instances in

that all interviews were to be held at Apple's satellite offices at 250 S. Mathilde Avenue, Sunnyvale. Until Dr. Sugar's interview, we had not been advised that he and Mr. Boutrous were flying from Los Angeles solely for the interview.

50. We accepted the roster of interviews without objection and without any requests for adjustment, apart from a time change on December 6, even though it included only one Board member and no members of top management.¹² All the interviews were strictly limited to an hour, with the exception of the interview of Ms. Said, which Apple's outside counsel allowed to extend for an additional 30 minutes. At least two outside lawyers for Apple attended each of the interviews, either in person or by phone. Mr. Boutrous attended Dr. Sugar's interview as his personal counsel as well as counsel for Apple. With the exception of Dr. Sugar's interview, Ms. Said attended all the interviews because, according to Apple's counsel, "she hopes these interviews will provide her with valuable information that will [be] helpful in her duties."¹³ Apple was represented at the interviews by Mr. Reilly, one of Mr. Reilly's colleagues from Simpson Thacher (by phone), and Ms. Said. None of Apple's lawyers raised an objection to any questions asked during the interviews, other than an occasional reminder to the witnesses that they were not to provide any attorney-client privileged information.¹⁴

51. On December 10, I sent Mr. Reilly an email in which I thanked him for arranging the December 4-6 interviews and asked when it would be most convenient for me to conduct additional interviews. (Bromwich Exhibit PP) I explained that, especially with the coming of the holiday season, it might make sense to conduct the additional interviews after January 14, 2014, but said that I would leave the choice to Apple. I expressed my willingness to meet with Apple at any time to discuss issues or concerns that Apple might have, and I stated that I would welcome the chance to discuss Apple's concerns regarding fee-related issues at Apple's earliest convenience.

52. I interviewed Mr. Sewell by telephone on December 10. The interview was cordial and professional. At the end of the interview, I advised Mr. Sewell of my note to Mr. Reilly and expressed the hope that we could resolve the outstanding issues promptly.

53. On December 17, I received a copy of a letter from Ms. Krall to DOJ and the Plaintiff States. The letter addressed the financial terms of the monitoring

which I have dealt with very sensitive matters, including highly classified matters of national security.

¹² Mr. Levoff appeared on the list of interviews for December 4-6 even though we had previously interviewed him on November 18. We had not requested to speak with Mr. Levoff in the first instance, much less requested to speak with him again.

¹³ I asked that Ms. Said be excluded from Dr. Sugar's interview because I planned to ask him about the process that led to her selection as the company's internal antitrust compliance officer. We subsequently learned that neither Dr. Sugar nor anyone above the level of Mr. Andeer had met Ms. Said.

¹⁴ Mr. Reilly abruptly ended one of the interviews but not because of any substantive objection. He ended the interview because I asked a follow-up question after the hour set for the interview had expired.

assignment, the timing of the monitor's assignment, and the scope of the monitor's responsibilities.

- a. The section on the financial terms of engagement proposed a fee cap lower by a factor of at least 10 than any monitorship I have been involved in or have knowledge about.
- b. The section on the timing of the monitor's assignment suggested that the monitor be prohibited from doing any further work until January 14 ("No further work by Mr. Bromwich is necessary until after January 14"), presumably including the review of documents that have already been provided and other work not requiring interaction with Apple. It provides no reason for this complete prohibition.
- c. The section on the scope of the monitor's responsibilities proposed a short list of activities deemed appropriate by Apple after January 14. Taken as a whole, these permissible items amount to a mechanical and limited approach to monitoring, including arrogating to Apple the power to dictate whom it is relevant and appropriate to interview. If accepted, the proposal as a whole would, in my judgment, nullify the Court's September 5 Order.

54. In the two months since my appointment, we have been given access to Apple personnel for substantive interviews or discussions for a total of thirteen hours spread over two visits to California. We have been given access to only one member of the Board of Directors and one senior executive (by phone). Of the eleven people we have been permitted to interview, seven are lawyers rather than business people. The interviews have not taken place at Apple's corporate headquarters in Cupertino, California, but instead at a remote location several miles away in Sunnyvale, California. This is far less access than I have ever received during a comparable period of time in the three other monitorships I have conducted. We have been provided, a month after we were told that all the materials would be produced promptly, only 303 pages of documents, which constitutes an incomplete response to the requests we made on October 22.

55. I have reviewed the recent filings of Apple's counsel in this matter, including its November 27, 2013, Objections to the Court's Order Filed on November 21, 2013, and its Memorandum of Law in Support of Its Motion by Order to Show Cause for a Stay of the Injunction Pending Appeal. The characterization of our activities as a "roving investigation," (Apple's Dec. 12, 2013 Memorandum of Law, at 1) "a broad and amorphous inquisition," (*Id.* at 3) and "unauthorized and unconstitutional investigatory efforts" (*Id.* at 6) bear no relation whatsoever to the activities we have attempted to conduct. During the course of my career, I have conducted scores of investigations in both the public and private sector, supervised hundreds of others, and conducted many hundreds of interviews. The request for limited preliminary background interviews to learn about corporate structure, process, culture, and tone does not convert monitoring into an investigation of any kind, much less into a "roving investigation" or a "broad and amorphous inquisition." (*Id.* at 1 and 3)"

56. Attached hereto as Bromwich Exhibit A is an email from Kyle Andeer to Michael R. Bromwich, sent on October 17, 2013.

57. Attached hereto as Bromwich Exhibit B is a draft engagement letter from Michael R. Bromwich to Kyle Andeer, sent on October 23, 2013.

58. Attached hereto as Bromwich Exhibit C is an email from Kyle Andeer to Michael R. Bromwich, sent on October 23, 2013.

59. Attached hereto as Bromwich Exhibit D is an email from Michael R. Bromwich to Kyle Andeer, sent on October 24, 2013.

60. Attached hereto as Bromwich Exhibit E is an email from Kyle Andeer to Michael R. Bromwich, sent on October 24, 2013.

61. Attached hereto as Bromwich Exhibit F is an email from Kyle Andeer to Michael R. Bromwich, sent on October 25, 2013.

62. Attached hereto as Bromwich Exhibit G is an email from Michael R. Bromwich to Kyle Andeer, sent on October 26, 2013.

63. Attached hereto as Bromwich Exhibit H is an email from Kyle Andeer to Michael R. Bromwich, sent on October 28, 2013.

64. Attached hereto as Bromwich Exhibit I is an email from Barry Nigro to Kyle Andeer, sent on October 29, 2013.

65. Attached hereto as Bromwich Exhibit J is an email from Maria Cirincione to Kyle Andeer, sent on October 29, 2013.

66. Attached hereto as Bromwich Exhibit K is a letter from Theodore J. Boutrous, Jr. to Michael R. Bromwich, sent on October 31, 2013.

67. Attached hereto as Bromwich Exhibit L is a letter from Michael R. Bromwich to Theodore J. Boutrous, Jr., sent on November 1, 2013.

68. Attached hereto as Bromwich Exhibit M is a letter from Michael R. Bromwich to Timothy Cook, sent on November 1, 2013.

69. Attached hereto as Bromwich Exhibit N is an email from Theodore Boutrous to Michael R. Bromwich, sent on November 4, 2013.

70. Attached hereto as Bromwich Exhibit O is a letter from Bruce Sewell to Michael R. Bromwich, sent on November 4, 2013.

71. Attached hereto as Bromwich Exhibit P is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 4, 2013.

72. Attached hereto as Bromwich Exhibit Q is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 5, 2013.

73. Attached hereto as Bromwich Exhibit R is a letter from Michael R. Bromwich to Bruce Sewell, sent on November 5, 2013.

74. Attached hereto as Bromwich Exhibit S is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 7, 2013.

75. Attached hereto as Bromwich Exhibit T is an email from Theodore Boutrous to Michael R. Bromwich, sent on November 7, 2013.

76. Attached hereto as Bromwich Exhibit U is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 7, 2013.

77. Attached hereto as Bromwich Exhibit V is an email from Theodore Boutrous to Michael R. Bromwich, sent on November 9, 2013.

78. Attached hereto as Bromwich Exhibit W is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 9, 2013.

79. Attached hereto as Bromwich Exhibit X is an email from Theodore Boutrous to Michael R. Bromwich, sent on November 9, 2013.

80. Attached hereto as Bromwich Exhibit Y is an email from Michael R. Bromwich to Theodore Bromwich, sent on November 9, 2013.

81. Attached hereto as Bromwich Exhibit Z is an email from Theodore Boutrous to Michael R. Bromwich, sent on November 11, 2013.

82. Attached hereto as Bromwich Exhibit AA is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 11, 2013.

83. Attached hereto as Bromwich Exhibit BB is an email from Theodore Boutrous to Michael R. Bromwich, sent on November 12, 2013.

84. Attached hereto as Bromwich Exhibit CC is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 12, 2013.

85. Attached hereto as Bromwich Exhibit DD is an email from Theodore Boutrous to Michael R. Bromwich sent on November 13, 2013.

86. Attached hereto as Bromwich Exhibit EE is an email from Michael R. Bromwich to Theodore Boutrous, sent on November 15, 2013.

87. Attached hereto as Bromwich Exhibit FF is an email from Daniel Swanson to Michael R. Bromwich, sent on November 17, 2013.

88. Attached hereto as Bromwich Exhibit GG is an email from Michael R. Bromwich to Noreen Krall, sent on November 18, 2013.

89. Attached hereto as Bromwich Exhibit HH is an email from Michael R. Bromwich to Noreen Krall, sent on November 18, 2013.

90. Attached hereto as Bromwich Exhibit II is an email from Michael R. Bromwich to Noreen Krall, sent on November 19, 2013.

91. Attached hereto as Bromwich Exhibit JJ is an email from Noreen Krall to Michael R. Bromwich, sent on November 21, 2013.

92. Attached hereto as Bromwich Exhibit KK is a letter from Michael R. Bromwich to Apple's Board Members, sent on November 22, 2013.

93. Attached hereto as Bromwich Exhibit LL is a letter from Matthew Reilly to Michael R. Bromwich, sent on November 22, 2013.

94. Attached hereto as Bromwich Exhibit MM is an email from Bruce Sewell to Michael R. Bromwich, sent on November 25, 2013.

95. Attached hereto as Bromwich Exhibit NN is an email from Michael R. Bromwich to Bruce Sewell, sent on November 25, 2013.

96. Attached hereto as Bromwich Exhibit OO is an email from Maria Cirincione to DOJ and the Plaintiff States, as well as to Noreen Krall, Theodore Boutrous, and Matthew Reilly, sent on November 27, 2013.

97. Attached hereto as Bromwich Exhibit PP is an email from Michael R. Bromwich to Matthew Reilly, sent on December 10, 2013.

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

Dated: December 30, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael R. Bromwich", written over a horizontal line.

Michael R. Bromwich

From: Kyle Andeer [<mailto:kandeer@apple.com>]
Sent: Thursday, October 17, 2013 12:08 AM
To: mbromwich@goodwinprocter.com; Nigro, Barry
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

The information in this e-mail and any attachment(s) is intended solely for the personal and confidential use of the designated recipients. This message may be an attorney-client communication protected by privilege. If you are not the intended recipient, you may not review, use, copy, forward, or otherwise disseminate this message. Please notify us of the transmission error by reply e-mail and delete all copies of the message and any attachment(s) from your systems.

From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Wednesday, October 23, 2013 6:58 PM
To: Kyle Andeer
Cc: Nigro, Barry; Cirincione, Maria
Subject: Monitoring Letter
Attachments: Apple Monitoring Letter -- 10-23.doc

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



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

October 23, 2013

Kyle Andeer, Esquire
Apple Inc.
1 Infinite Loop
Cupertino, California 95014

Re: External Antitrust Compliance Monitoring

Dear Mr. Andeer:

This letter sets forth the terms under which The Bromwich Group LLC, a Delaware limited liability company (“the Bromwich Group” or “we”), will discharge its responsibilities to the Court as the External Compliance Monitor (“monitor”) under the Plaintiff United States’ Final Judgment in *United States of America v. Apple, Inc. et al.*, and the Plaintiff States’ Order Entering Permanent Injunction (collectively the “Final Judgment”) in *The State of Texas, et. al., v. Penguin Group (USA) Inc. et al.*, Civil Action No. 1:12-CV-3394, dated September 5, 2013, in the United States District Court for the Southern District of New York. A copy of the Final Judgment is attached as Exhibit A. A copy of the Court’s October 16, 2013 order appointing Michael R. Bromwich as the monitor is attached as Exhibit B.

1. Monitoring. We will be undertaking the monitoring responsibilities and duties described in Section VI. of the Final Judgment and Permanent Injunction.

2. Term of Appointment. Pursuant to Section VI of the Final Judgment, we will serve as monitor for a period of two years, commencing on October 16, 2013 (“date of appointment”), provided that the appointment will not expire before Apple completes two years of the training required by Section V.C. of the Final Judgment. In addition, the appointment may be extended by the Court from the date of appointment, either *sua sponte* or on application of the United States or any Plaintiff State, by one or more one-year periods.

3. Scope of Authority. Pursuant to the Final Judgment, we have the power and authority to review and evaluate Apple's internal antitrust policies and procedures, and the training program required by Section V.C. of the Final Judgment, and to recommend changes to address any perceived deficiencies in the antitrust policies, procedures, and training. The review of Apple's antitrust policies and procedures is to determine whether they are reasonably designed to detect and prevent violations of the antitrust laws. The review of Apple's antitrust training program is to determine whether it is sufficiently comprehensive and effective.

4. Written Reports. As required by the Final Judgment, we will provide a written report to Apple, the United States, the Representative Plaintiff States, and the Honorable Denise L. Cote, United States District Judge for the Southern District of New York, no later than 180 days after the date of appointment – i.e., April 14, 2014 – setting forth our assessment of the company's internal antitrust compliance policies, procedures, and training as they exist on January 14, 2014 (*i.e.*, 90 days after the date of the appointment). If appropriate, we will make recommendations reasonably designed to improve Apple's policies, procedures, and training for ensuring antitrust compliance.

Thereafter, we will provide additional written reports at six month intervals throughout the term of the monitoring appointment. In addition, at our discretion, or at the request of the Court, the United States, or the Representative Plaintiff States, we may provide additional written reports, in addition to the reports required at six month intervals, setting forth additional recommendations reasonably designed to improve Apple's policies, procedures, and training for ensuring antitrust compliance. With respect to any recommendations contained in any written reports, we will follow the procedures set forth in Section VI.E. of the Final Judgment.

5. Potential Violations and Referrals. Pursuant to the Final Judgment, if we discover or receive evidence that suggests a violation of either the Final Judgment or the antitrust laws, we must promptly provide that information to the United States and the Representative Plaintiff States without taking any further action.

6. Cooperation. The Final Judgment requires Apple to assist us to perform our monitoring responsibilities and forbids it from taking any action that interferes with or impedes our efforts to discharge our responsibilities. The Final Judgment specifically recognizes that we may engage in the following activities, among others:

- a. interview any Apple personnel;
- b. inspect and copy any documents in the possession, custody or control of Apple;
- c. require Apple to provide compilations of documents, data, or other information, and to submit reports to us containing such material in the form we may specify.

Any objection to our activities must be conveyed in writing to the United States and the Representative Plaintiff States within 10 calendar days of the action or actions giving rise to the objection.

7. Personnel. Subject to the approval of the United States after consultation with the Representative Plaintiff States, we may hire persons reasonably necessary to fulfill our monitoring responsibilities. We have requested, and the Court has specifically ordered, that Bernard A. (Barry) Nigro of Fried, Frank, Harris Shriver & Jacobson assist us in discharging our monitoring responsibilities. We will add other personnel, from Fried Frank and elsewhere, as necessary and appropriate to discharge our responsibilities.

8. Compensation. The Final Judgment provides that the monitor and the members of his team be compensated on reasonable and customary terms commensurate with each person's experience and responsibility. The billing rate for Mr. Bromwich is \$ 1,100 per hour. The billing rate for Mr. Nigro is be \$ 1,025 per hour. The billing rate for other Fried Frank lawyers will be at their usual and customary billing rate, and additional lawyers and other personnel who provide services to the Bromwich Group as part of our monitoring efforts in this matter will be billed at rates commensurate with their experience and responsibility. In addition, The Bromwich Group will charge a management/administrative fee of 15% for managing and administering this matter. The 15% fee will be based only on fees billed for monitoring services, not on expenses. We will provide invoices on a monthly basis. We expect payment to be made within 30 days of your receipt of the invoice.

9. Expenses. The Final Judgment provides for expenses to be compensated so long as they are consistent with reasonable expense guidelines. Our invoices will provide a detailed itemization of expenses, including but not limited to transportation (air and local), lodging, meals, telephone, copying, data storage, and information technology. Payment of all fees and expenses is due within 30 days of receipt of invoice.

11. Confidentiality. In connection with our monitoring activities, Apple will be required to disclose to us in oral, written and other forms, certain confidential, proprietary and sensitive information. So long as it is consistent with our duties and obligations under the Final Judgment, we will treat all such information in strict confidence and will not disclose or publish such information to any other person and will undertake all steps reasonably necessary to prevent such disclosure; provided, however, that we may disclose such information under any of the following circumstances:

- (a) After lawful receipt by us from third parties subject to no restriction of confidentiality;
- (b) If already known us at the time of disclosure or independently developed by the recipient without the use of the disclosed information;
- (c) In the case of the Company, to those of its employees and other personnel working on this matter who need to know such information

in connection with the provision of the monitoring services required by the Final Judgment;

- (d) If required to do so pursuant to a legally binding disclosure requirement or by order of a court or other governmental body; or
- (e) If required in order to fulfill our duties and responsibilities as defined by the Final Judgment, including disclosure to the Court, the United States, or the Representative Plaintiff States. We will not, however, disclose any privileged information to the United States or Representative Plaintiff States.

12. Dispute Resolution. Any objections by Apple to actions by the Monitor in must be conveyed in writing to the United States and the Representative Plaintiff States within ten calendar days after the action giving rise to the objection. In the event those objections cannot be resolved, they will be submitted to the Court.

14. Relationship Between This Letter and the Final Judgment. In the event of any inconsistency between this Letter and the Final Judgment, the terms of the Final Judgment govern.

Very truly yours,

THE BROMWICH GROUP LLC

By: _____
MICHAEL R. BROMWICH
Managing Principal

From: Kyle Andeer [kandeer@apple.com]
Sent: Wednesday, October 23, 2013 8:50 PM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria
Subject: Re: Monitoring Letter

Michael,

Thank you for the draft; it raises a number of issues and we will respond as quickly as we can.

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>

From: Michael R. Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Thursday, October 24, 2013 2:37 PM
To: Kyle Andeer
Cc: Nigro, Barry; Cirincione, Maria
Subject: Board and Audit Committee

Kyle,

When we met on Tuesday, you mentioned that the Board will be meeting next week and then not meeting again for six months. In light of that, I wanted to offer to have a brief initial phone call with the Board and/or the Audit Committee next week. I can't come out there in person, but I thought its members might be interested in an introductory call during which I could answer any questions they might have.

Please let me know if you can make this work. If not, we can track them down later on.

Thanks very much.

MRB

From: Kyle Andeer [kandeer@apple.com]
Sent: Thursday, October 24, 2013 2:49 PM
To: Michael R. Bromwich
Cc: Nigro, Barry; Cirincione, Maria; Matthew J. Reilly
Subject: Re: Board and Audit Committee

Michael,

I was mistaken, there is no Board meeting next week. Please copy Matt Reilly on all future communications.

Kyle

On Oct 24, 2013, at 11:37 AM, "Michael R. Bromwich" <michael.bromwich@bromwichgroup.com> wrote:

> Kyle,
>
> When we met on Tuesday, you mentioned that the Board will be meeting next week and then not meeting again for six months. In light of that, I wanted to offer to have a brief initial phone call with the Board and/or the Audit Committee next week. I can't come out there in person, but I thought its members might be interested in an introductory call during which I could answer any questions they might have.
>
> Please let me know if you can make this work. If not, we can track them down later on.
>
> Thanks very much.
>
> MRB

From: Kyle Andeer [kandeer@apple.com]
Sent: Friday, October 25, 2013 10:45 PM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria
Subject: Re: Monitoring Letter
Attachments: Apple Travel Policy for Suppliers-2.doc; ATT00001.htm; Apple - OSPP - Updated for Competition 10_23_13.docx; ATT00002.htm

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 rationale 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 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



Outside Service Provider Policy

Effective June 6, 2012

General

As an Outside Service Provider (“OSP”), you play an important role in helping us deliver expert and innovative services to Apple Inc. (“Apple”). We greatly value our relationship with you and want to ensure that this relationship is mutually beneficial. To that end, this Policy will help you understand and satisfy our quality service requirements, which are integral to our business relationship. This Policy is applicable to all services you provide to Apple or its affiliates. By accepting an engagement to provide services to us, you agree to comply with this Policy, its Attachments and any supplemental instructions provided by Apple.

Roles and Responsibilities

We may designate an Apple Relationship Lead to act as Apple’s point of contact for general communications and inquiries during your engagement as an OSP. Additionally, we will assign an Apple Matter Lead to manage each Matter for Apple, including approving scopes of work, resource requirements, budgets, etc. A “Matter” is an engagement of your firm for goods or services to Apple or Apple designate.

You will appoint an OSP Relationship Lead who will take ultimate responsibility for all substantive work product that you produce and/or services you provide. The OSP Relationship Lead will ensure that your work product is of the highest level of competency and quality and delivered in the most efficient manner feasible. You will designate an OSP Matter Lead to manage each Matter. The OSP Matter Lead will act as the primary point of contact with respect to any given Matter and keep the Apple Matter Lead informed of ongoing developments with respect to assigned matters.

Only authorized parties may retain or oversee OSP services, or approve invoices on behalf of Apple. For Board Matters, an authorized representative of the Board of Directors, the Corporate Secretary of Apple, the relevant committee of the Board of Directors and individual Apple director(s) are considered authorized parties. For all other matters, the only authorized parties are the Apple Chief Executive Officer, the Apple Chief Financial Officer, an Apple Lawyer, Apple Government Affairs, Apple Tax Vice President or Senior Director, Apple Vice President of Internal Audit, and Senior Managers or Directors of Apple’s Global Security team.

Engagement of Services

Whenever you accept engagement on a new Matter, you will first confirm no actual or potential conflicts of interest in accordance with this Policy. Before beginning work on a Matter you will provide a fee estimate, as well as a list of timekeepers proposed to work on the new Matter along with their respective hourly rate(s) using the template available in Mitrastech’s e-billing system, Collaborati (or from Apple upon request). Occasionally, the Apple Matter Lead may request a project strategy for new Matters. If this is the case, the OSP Matter Lead must develop and submit for approval a strategy for addressing the Matter’s scope of work, staffing, and resource management.

The Apple Matter Lead will review the submitted documents and either approve them or advise the OSP Relationship Lead of any discrepancies and required modifications. You will not initiate work on any Matter without the Apple Matter Lead’s approval.

Fees; Alternate Fee Arrangements; Billable Charges; Invoicing; Budgets; Electronic Billing; Withholding Tax Considerations; Payment

Every bill submitted to us as of the Effective Date will comply with this Policy and is deemed an assertion by you that the services and disbursements reflected on the bill are both reasonable and necessary for every matter.

You will only charge fees to us at the lesser of (i) our agreed discounted rates; or (ii) the lowest price offered to any other client for similar services. Furthermore, fees for professional services will reflect either an hourly rate or an alternative fee arrangement. By “professional services” we mean any service rendered by lawyers, paralegals, consultants, accountants, engineers, lobbyists, or other legal service providers in the performance of their foreseeable duties.

New timekeepers or changes in professional service rates require Apple’s express approval. You will submit for approval requests for a new timekeeper or rate increase to LGSTKSubmission@apple.com a minimum of fifteen (15) calendar days prior to the requested effective date. Apple will consider no more than one rate increase request for any reason (including promotion or other increases) in a twelve (12) month period, and no more than one timekeeper form submission per month. If Apple requires you to issue invoices electronically, then all submissions will conform to the timekeeper template and instructions available in Collaborati. If Apple requires you to issue paper invoices, then all submissions will conform to the timekeeper template and instructions available from Apple upon request to LGSTKSubmission@apple.com. The option to submit requests for new timekeepers or a timekeeper rate increase only extends to providers of professional services.

Fees that are billed for goods or any non-professional services will be based on pre-approved rates. For the purposes of this Policy, goods include any item that is tangible and movable at the time of procurement.

Alternative Fee Arrangements

For mutually agreed upon alternate fee arrangements, invoices should include all timekeeper and expense details with the appropriate line item adjustment reflecting the arrangement total. You will use task code ‘ADFEE’ for the line item adjustment. Alternate fee arrangement invoices that fail to provide these details will be rejected.

Billable Charges

Administrative tasks may be factored in as part of your hourly rate or alternative fee arrangements, but not charged separately. Such administrative tasks will include, but are not limited to, work performed by summer associates, interns, law clerks, first year associates, conflicts lawyers or staff, secretaries, librarians, file clerks, administrators, messengers, word processors, proofreaders, docket/calendaring personnel, litigation support staff, meeting coordinators, or any other administrative personnel.

Charges for work that exceed twelve (12) hours per day on an Apple matter must be pre-approved by the responsible Apple Matter Lead. Additionally, you will not bill for professionals not pre-approved by the responsible Apple Matter Lead.

You may only charge expenses that are consistent with the predetermined expense codes provided below. We will not authorize disbursements that do not conform to the permissible expense codes or do not reflect actual expenses without mark-ups. You will pass through to us all discounts, rebates, or other similar reductions made available to you for third party expenses.

Expense Code	Description	Detailed Instructions
E101	Copying	Only pre-approved large volume (>500 pages) B/W copy charges at \$0.03/page
E102	Outside printing	Only pre-approved large volume (>500 pages) color copy charges at \$0.15/page
E105	Telephone	Only conference call charges

E107	Delivery services/messengers	Only overnight delivery services
E110	Out-of-town travel	Pre-approval required by Apple Matter Lead; only coach airfare with no travel agent fee; lodging at an <u>Apple preferred hotel or its equivalent</u>
E111	Meals	Only out-of-town travel meals adhering to per diem limits*
E112	Court fees	
E113	Subpoena fees	
E114	Witness fees	Pre-approval required by Apple Matter Lead
E115	Deposition transcripts	Pre-approval required by Apple Matter Lead for video transcripts
E116	Trial transcripts	
E117	Trial exhibits	
E118	Litigation support vendors	Pre-approval required by Apple Matter Lead
E119	Expert	Pre-approval required by Apple Matter Lead
E120	Private investigators	Pre-approval required by Apple Matter Lead
E121	Arbitrators/mediators	Pre-approval required by Apple Matter Lead
E122	Local counsel	Pre-approval required by Apple Matter Lead
E123	Other professionals	Pre-approval required by Apple Matter Lead
E125	Translation	
E126	Drawings	Pre-approval required by Apple Matter Lead
E127	Patent and Trademark Records	
E128	Searching and Monitoring	
E129	Official Fees, excluding post-issuance patent eminence, <u>trademark renewal fees</u>	Pre-approval required by Apple Matter Lead for any late fees
E130	Post-Issuance Patent Maintenance and Trademark Renewal Fees	

*Per Diem out-of-town travel meal limits, in accordance with Apple's Travel Policy

Region	Currency	Breakfast	Lunch	Dinner
Americas	US Dollars	25	25	50
EMEIA	Euros/GBP	20	35	40
Japan	Yen	3,000	4,000	8,000
Australia	AU Dollars	30	30	50
Asia (except Japan)	US Dollars	25	25	60

Unless otherwise expressly approved by the Apple Matter Lead, we will only reimburse travel expenses for actual time spent by you working on an Apple Matter while traveling. You will submit receipts and supporting documentation for all travel related expenses regardless of the amount. For all other expenses, you will submit supporting documentation when the total disbursement in any category exceeds \$500.

All services procured through a TPP whom you have hired on our behalf require prior approval by the Apple Matter Lead. TPP invoices and compliance with this Policy are your responsibility. You will promptly pay TPPs that you engage to work on a Matter and submit the TPP invoice to us for reimbursement at the actual cost and without mark-up or other administrative fee.

Invoicing

You must submit invoices monthly for each separate matter. Every invoice must be itemized with separate time entries for each task performed and cost entries for each disbursement incurred. We will not accept block billing. Each time and cost entry requires a task code. Refer to Attachment C for the full list of acceptable task/expense codes.

You will ensure that each itemized time entry briefly describes each specific task performed and its purpose. Additionally, every task performed must reflect actual time spent recorded in tenth-of-an-hour increments. If Apple requires you to issue invoices electronically, then you will include an Apple reference number on all invoices in lieu of the purchase order (PO) number. The appropriate Apple reference number is available in Collaborati. If Apple requires you to issue paper invoices, then you should continue to include the purchase order (PO) number on your invoices.

You will submit all invoices in local currency no later than thirty (30) calendar days after the end of each month in which services were rendered or expenses incurred.

We may reduce payment for persistent failure to comply with our invoice submission requirements. We reserve the right to refuse payment for invoices submitted or containing line items that are more than 180 calendar days after the end of the month in which the work was performed and for invoices that do not conform to this Policy.

Invoices submitted after sixty (60) calendar days are subject to a reduction of charges as follows:

Days After End of Billing Period	Percentage of Reduction of Charges
61 – 90	3%
91 – 120	15%
121 – 180	50%
181+	100%

eBilling

We require our OSPs to submit electronic invoices (LEDES 1998B format) for Apple Inc. via Collaborati. To register with Mitrtech, please contact us at LGSHelp@apple.com. You will submit invoices for our affiliates in paper format to the Apple Matter Lead. Invoices for our affiliates will need to be submitted through Collaborati at a future date upon our request.

Budgets

We may request a budget for any engagement. You will submit requested budgets in Collaborati and ensure that submitted budgets include anticipated costs for TPPs, including but not limited to local counsel, subcontractors, experts, etc. If, at any time, you reasonably foresee that expenses will exceed the budget or that the budget will change due to new assumptions, you will submit a revised budget with an explanation of the circumstances for such variance in Collaborati.

Payment

We will make every effort to process invoices that comply with this Policy for prompt payment. Apple payment terms are net forty-five (45) calendar days of the invoice date. We will pay invoices in local currency, unless the Apple Matter Lead requires otherwise. We will not pay any interest or service charges on the outstanding balance in the event that payment is delayed for any reason. We will only pay you for the correct and undisputed portion of submitted invoices.

APPLE TRAVEL POLICY FOR SUPPLIERS

Air Travel

- It is the Traveler's responsibility to choose the least expensive flight
- Book travel at least fourteen (14) days in advance whenever possible. Plan carefully to reduce or eliminate costly changes to itinerary.
- Take advantage of lower airfare alternatives whenever possible, such as: using non-refundable airfares, non- upgradeable fares, connections and alternate airports.
- Choice of airlines or flight routings due to membership in mileage programs or traveler preference which results in higher cost to Apple is not permitted.
- Apple will reimburse only for Coach class.
- Travelers may upgrade to a higher class with personal mileage upgrade programs provided the cost of the flight is less than or equal to the lowest available fare within Apple guidelines.
- If issuance of a new airline ticket is required due to change(s) in itinerary, the traveler must request that the unused ticket be credited against the new ticket's cost.
- Airline club memberships, travel insurance and upgrades are not reimbursable

Ground Transportation

- Use rental cars when alternate transportation such as taxis, shuttles, or public transportation is not cost effective or a reasonable alternative.
- The mid-size rental category or lower is acceptable.
- The selection of higher-priced rentals to earn mileage on airline programs is not permitted.
- Refuel prior to returning the rental car to avoid the higher refueling costs.
- Apple will not reimburse for additional insurance costs. Supplier will incur the expense if additional insurance is selected.
- Tolls and parking required for business are reimbursable.
- Tips for taxis are reimbursable up to a maximum of 15 percent.
- Traffic and parking tickets are not reimbursable.

Meals

- Reasonable costs of personal meals only are reimbursable up to the following limits.

Breakfast	\$15
Lunch	\$25
Dinner	\$30

- Meal tips are reimbursable up to a maximum of 15 percent.

Original receipts for all reimbursable expenses must be provided to Apple as provided in the

Agreement.

Lodging

- Hotel/motel accommodations are to be in the moderate price range.
- Book travel at least fourteen (14) days in advance whenever possible. Plan carefully to reduce or eliminate costly changes to itinerary.
- “No-show” charges are not reimbursable.
- Telephone calls, laundry charges, or personal entertainment, such as in-room videos, spa or hotel health club charges, are not reimbursable.
- Sample of Apple Preferred Hotels – Cupertino Area:
 - Hotel Cypress, Cupertino, CA - \$187 – (408) 253 8900 - .25 miles
 - Cupertino Inn, Cupertino, CA - \$142 – (408) 996 7700 - .70 miles
 - Fairmont San Jose, CA - \$177 – (408) 998 1900 - 7.8 miles
 - Intercontinental Hotel , San Francisco CA - \$195 – (415) 616 6500 – 37 miles
 - Hilton, San Francisco, CA - \$195 – (415) 433 6600 – 38 miles

From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Saturday, October 26, 2013 11:47 AM
To: Kyle Andeer
Cc: Nigro, Barry; Cirincione, Maria
Subject: Re: Monitoring Letter
Attachments: Apple -- 10-26 Letter.pdf

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 rationale 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>

From: Kyle Andeer [kandeer@apple.com]
Sent: Monday, October 28, 2013 6:02 PM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria
Subject: Re: Monitoring Letter

Dear Michael,

Thank you for your letter. I am in Brussels this week but our counsel will respond to the letter and other issues in due course.

I am disappointed by your position on rates and other fees. They do not reflect market realities. I would ask that you confirm that the Department of Justice has approved the financial terms and conditions of your engagement including the administrative fee, the hourly rates, and the expenses. See Final Judgment. VI.I ("The External Compliance Monitor and any persons hired to assist the External Compliance Monitor shall serve at the cost and expense of Apple, on such terms and conditions as the United States, after consultation with the Representative Plaintiff States, approves, including, but not limited to, the execution of customary confidentiality agreements.").

Apple also asks that you provide: (a) the actual hourly billing rates that clients are charged by your law firms for your services (including any standard/regular discounts); (b) the billing rates (net of discounts, fee caps, or write offs) you have received in the past serving as a monitor; (c) administrative fees paid to the Bromwich Group in the past (and whether the government has ever paid you an administrative fee); (d) any information that would support your claim that administrative fees are standard for the Bromwich Group; (e) the justification for applying an administrative fee to Fried Frank's billings (and whether you have applied this fee to billings by third part vendors in past monitoring engagements); and (f) any other information about your billing rates and practice that may be relevant. I also repeat my request for Ms. Cirincione's actual billing rate (including any standard/regular discounts) charged her other clients.

This information will help us assess whether we need to object to these terms. I can also confirm that Gibson, Wilmer and our other legal vendors abide by our expense policy.

Best regards,
Kyle

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.

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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>

From: Nigro, Barry
Sent: Tuesday, October 29, 2013 10:31 AM
To: 'Kyle Andeer'
Cc: Cirincione, Maria; Michael Bromwich
Subject: RE: Monitoring Letter

Dear Kyle,

Mike Bromwich asked me to respond to your latest e-mail. Your note continues to approach this matter as though this were a conventional relationship between Apple and counsel retained by Apple rather than an arrangement under which Mr. Bromwich and I were appointed by the Court to perform certain highly-specialized services following a judicial finding of antitrust liability. The language you quote makes this point -- we "serve at the cost and expense of Apple, on such terms and conditions as the United States, after consultation with the Representative Plaintiff States, approves, including, but not limited to, the execution of customary confidentiality agreements." This language makes clear that the arrangement between the external antitrust compliance monitor and Apple is not a standard arrangement between a client and its lawyers or a client and its consultant.

Unlike the conventional situation where Apple selects its own counsel or consultant, Apple's role in the selection process was limited. In the selection process, Apple had the right to suggest candidates and raise objections to the candidates selected by DOJ and the Plaintiff States. Your emails seem to suggest that you believe Apple has a larger role to play in managing its relationship with the external monitor, and, in particular, in determining its fees and expenses. The Order, however, does not provide that Apple will be permitted to negotiate or approve fees and expenses.

We do not believe it is appropriate for us to engage in a negotiation with the entity we have been charged with monitoring under Judge Cote's Order. We view this exchange as unfortunate and had hoped that by now we could have been focused on substantive matters, such as Apple's antitrust compliance program. We will represent to you that the Department of Justice was in fact provided with a proposed draft of the October 23, 2013 letter, including the provisions relating to fees and expenses.

We hope that having provided this information, we can move forward with the important work we were selected to do.

Sincerely,

Barry

Bernard (Barry) A. Nigro Jr.
barry.nigro@friedfrank.com | Tel: +1.202.639.7373 | Fax: +1.202.639.7003

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th Street, NW, Washington, DC 20006
friedfrank.com

From: Kyle Andeer [<mailto:kandeer@apple.com>]
Sent: Monday, October 28, 2013 6:02 PM
To: Michael Bromwich

Cc: Nigro, Barry; Cirincione, Maria

Subject: Re: Monitoring Letter

Dear Michael,

Thank you for your letter. I am in Brussels this week but our counsel will respond to the letter and other issues in due course.

I am disappointed by your position on rates and other fees. They do not reflect market realities. I would ask that you confirm that the Department of Justice has approved the financial terms and conditions of your engagement including the administrative fee, the hourly rates, and the expenses. See Final Judgment. VI.I ("The External Compliance Monitor and any persons hired to assist the External Compliance Monitor shall serve at the cost and expense of Apple, on such terms and conditions as the United States, after consultation with the Representative Plaintiff States, approves, including, but not limited to, the execution of customary confidentiality agreements.").

Apple also asks that you provide: (a) the actual hourly billing rates that clients are charged by your law firms for your services (including any standard/regular discounts); (b) the billing rates (net of discounts, fee caps, or write offs) you have received in the past serving as a monitor; (c) administrative fees paid to the Bromwich Group in the past (and whether the government has ever paid you an administrative fee); (d) any information that would support your claim that administrative fees are standard for the Bromwich Group; (e) the justification for applying an administrative fee to Fried Frank's billings (and whether you have applied this fee to billings by third part vendors in past monitoring engagements); and (f) any other information about your billing rates and practice that may be relevant. I also repeat my request for Ms. Cirincione's actual billing rate (including any standard/regular discounts) charged her other clients.

This information will help us assess whether we need to object to these terms. I can also confirm that Gibson, Wilmer and our other legal vendors abide by our expense policy.

Best regards,
Kyle

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 rationale 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.

From: Cirincione, Maria
Sent: Tuesday, October 29, 2013 12:07 PM
To: 'Kyle Andeer'
Cc: 'Michael Bromwich'; Nigro, Barry
Subject: Apple - Document Request Follow-Up
Attachments: Aug. 19 Letter to L. Buterman.pdf

Kyle,

As a follow-up to our meeting on October 22 in New York, below is a list of materials that we discussed and you agreed to provide to us. We understood from our discussion, and from Gibson Dunn's August 19 letter to Lawrence Buterman ("Aug. 19 Letter"), that these are existing Apple materials.

- Apple's past and current antitrust compliance policies and procedures (except for the December 2012 Code of Business Conduct, which we have from Apple's website)
- Documents that explain or discuss
 - the reporting oversight structure for compliance (both antitrust and general compliance)
 - the role of the Audit Committee, and specifically with respect to compliance
 - the members that make up, and the role of, the Risk Oversight Committee, and specifically with respect to the Committee's compliance role
- Past and current antitrust compliance training manuals and other written training materials

In addition, you mentioned that Apple has previously created organization charts for the DOJ and that you would be able to do the same for us. We would like to take you up on your offer and request organization charts for the iBookstore, iTunes, and App Store divisions. Previously created organization charts are sufficient, with the understanding that you will send updated versions as they are available.

Finally, the Aug. 19 Letter (attached) outlines the steps Apple has taken, and plans to take, with respect to Apple's commitment to legal compliance. To the extent written materials associated with these steps are not duplicative of the requests outlined above, we would like to review copies of these documents.

Please feel free to send materials directly to me. We encourage you to send them as they are available, rather than waiting to collect and send them all at once. Of course, please do not hesitate to contact us if you have any questions.

Regards,

Maria

Maria R. Cirincione
maria.cirincione@friedfrank.com | Tel: +1.202.639.7044

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th St., NW, Washington, DC 20006

friedfrank.com

 Please consider the environment before printing this email

----- Forwarded message -----

From: **Richman, Cynthia** <CRichman@gibsondunn.com>

Date: Thu, Oct 31, 2013 at 11:51 AM

Subject: Apple/e-books

To: "michael.bromwich@bromwichgroup.com" <michael.bromwich@bromwichgroup.com>

Cc: "Boutrous Jr., Theodore J." <TBoutrous@gibsondunn.com>

Mr. Bromwich: Please see the attached letter from Ted Boutrous.

Thank you.

Cynthia E. Richman

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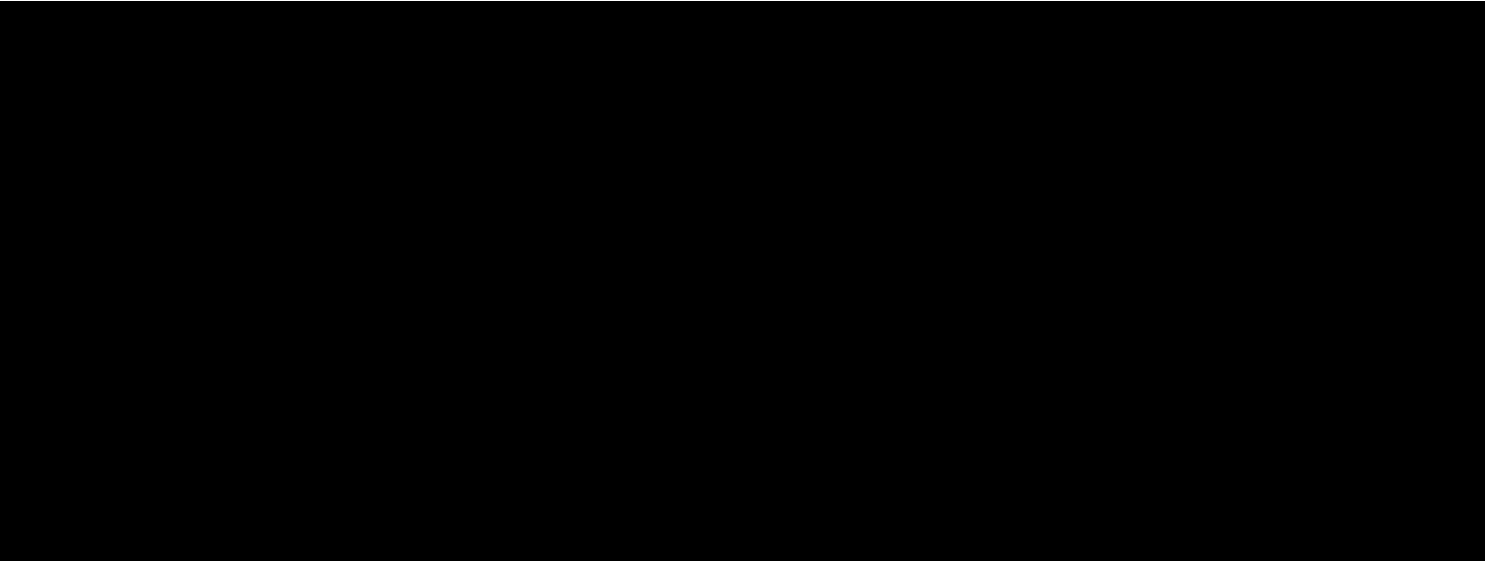
Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W., Washington, DC 20036-5306

Tel [+1 202.955.8234](tel:+12029558234) • Fax [+1 202.530.9691](tel:+12025309691)

CRichman@gibsondunn.com • www.gibsondunn.com

This message may contain confidential and privileged information. If it has been sent to you in error, please



GIBSON DUNN

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel 213.229.7000
www.gibsondunn.com

Theodore J. Boutrous Jr.
Direct: +1 213.229.7804
Fax: +1 213.229.6804
TBoutrous@gibsondunn.com

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, 2013¹ 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.")

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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.

GIBSON DUNN

October 31, 2013

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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

GIBSON DUNN

October 31, 2013

Page 4

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: _____

The Bromwich Group

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

November 1, 2013

BY FEDERAL EXPRESS AND EMAIL

Theodore J. Boutrous Jr., Esq.
333 South Grand Avenue
Los Angeles, CA 90071-3197

Dear Ted:

Thank you for your October 31 letter. We very much look forward to working with you and Apple to achieve what your letter describes as the shared objective of achieving robust and effective antitrust compliance policies, procedures, and training.

With respect to Apple's concerns regarding confidentiality, we are in full agreement about the importance of preserving the confidentiality of Apple's business information. We can assure you that we take this concern seriously and will take necessary steps to safeguard this information. However, we were appointed by the Court and operate under its continuing supervision. In that light, we think it would be inappropriate for us to consent to a provision such as Paragraph 10 that would potentially strip the Court of jurisdiction in any dispute arising under the Agreement. We doubt our authority to enter into such an agreement, but in any event we decline to do so. At our meeting on October 22, we raised the possibility of operating under the Protective Order entered in the underlying litigation. Please let us know if that option is acceptable to you or advise us in what respects you believe it to be inadequate.

We understand that you have filed objections with the DOJ and Plaintiff States regarding the other concerns addressed in your letter. We look forward to the resolution of these matters in the very near future, consistent with the Final Judgment.

We believe that it is important to begin our relationship on a constructive and collaborative note. In my view, it is unfortunate that ten days after our October 22 meeting, we have received none of the materials we requested at the meeting, nor any indication of when we will receive them, and our request for interviews beginning the week of November 18 has been met with stiff resistance. You should know that our intention to get a fast start on our work

Theodore J. Boutrous Jr., Esq.

Page 2

November 1, 2013

following our appointment, including conducting interviews with executives and Board members, was fully shared with DOJ, the Plaintiff States, and the Court during the external monitor selection process. We respect your right to object to our requests but it means that, in the meantime, we will be blocked from meeting with anyone from the company other than its legal representatives. In every other monitoring or oversight assignment I have ever had, such meetings occurred within days, or at most a couple of weeks, following my selection or appointment. We hope that Apple will reconsider its position on the interviews and that we will be able to overcome these obstacles promptly.

To advance our goal of establishing direct communication with management of the company, we request that you share the attached letter with Tim Cook and Bruce Sewell. We will send originals of the letter directly to Mr. Cook and Mr. Sewell by Federal Express. We had prepared the letter before receiving your October 31 letter because we strongly believe that we need to establish communications with principals of the company itself, not only with its lawyers. We see no reason to delay this communication.

Please confirm when the enclosure letter has been delivered to Mr. Cook and Mr. Sewell.

Very truly yours,

Michael R. Bromwich /mec

Michael R. Bromwich

Enclosure

cc (w/encl.): Bernard A. Nigro, Jr.

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.

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

Mr. Timothy D. Cook
D. Bruce Sewell, Esq.
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November 1, 2013

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

Mr. Timothy D. Cook
D. Bruce Sewell, Esq.
Page 3
November 1, 2013

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.

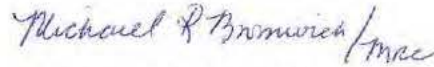
The success of our relationship depends in large part on the interest, attention and commitment given to this matter by Apple’s top management, including both of you. It cannot be delegated away. To ensure that we establish a proper and productive relationship from the outset, I respectfully request 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.

Mr. Timothy D. Cook
D. Bruce Sewell, Esq.
Page 4
November 1, 2013

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

Very truly yours,

A handwritten signature in cursive script that reads "Michael R. Bromwich".

Michael R. Bromwich

cc: Bernard A. Nigro, Jr.

From: **Boutrous Jr., Theodore J.** <TBoutrous@gibsondunn.com>
Date: Mon, Nov 4, 2013 at 9:08 PM
Subject: e-books/Apple
To: "Michael R. Bromwich" <michael.bromwich@bromwichgroup.com>

> Michael: Thank you for your letters of November 1st. As requested, we delivered your letter to Mr. Cook and Mr. Sewell and we've attached Mr. Sewell's response.

>

> I think it would be productive for us to speak by phone. I really want to work with you find a smooth path to our shared objectives. Are you available on Wednesday?

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.



November 4, 2013

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

Re: United States v. Apple Inc., et al., Civil Action No. 1:12-cv-2826 (DLC)

Dear Michael:

Thank you for your letter of November 1st. I am looking forward to working with you to ensure Apple's antitrust policies and training programs are comprehensive, effective, and fully compliant with the terms of the Final Judgment. Apple is actively working to achieve these goals and has been since the Court entered the Final Judgment in September. The internal Antitrust Compliance Officer ("ACO") has been designated by the audit committee. The ACO will dedicate the next two months to developing new training materials and redesigning our compliance program. The ACO needs this time to work uninterrupted on developing these materials. As this work progresses and we prepare to launch our revised program the ACO will reach out to you with a comprehensive report so you can begin your monitoring function.

I too intend to provide you with a comprehensive update on our progress and facilitate whatever meetings are appropriate for you to fully and completely discharge your responsibilities as the external monitor. However, for the moment it appears we have a disagreement over scope and timing. I am aware that Apple's lawyers are presently addressing our concerns with aspects of your proposed work plan (including requests for voluminous historical documents and immediate interviews before any enhanced policies are established) with you and representatives from the Department of Justice and the Plaintiff States. These disputes in no way diminish the fact that executives at the highest levels of management, including myself and Mr. Cook, are extremely attentive to the issue of compliance with the Final Judgment and are taking active steps to meet the remediation time line expressed by Judge Cote.

Apple
1 Infinite Loop
Cupertino, CA 95014
T 408 996-1010
F 408 996-0275
www.apple.com

Michael R. Bromwich
November 4, 2013
Page 2



Apple shares your objective of establishing a constructive relationship and I look forward to collaborating with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Sewell", with a stylized flourish extending from the top left.

Bruce Sewell, General Counsel

Cc: Tim Cook, Chief Executive Officer

From: **Michael Bromwich** <michael.bromwich@bromwichgroup.com>
Date: Mon, Nov 4, 2013 at 10:07 PM
Subject: Re: e-books/Apple
To: "Boutrous Jr., Theodore J." <TBoutrous@gibsondunn.com>

Ted,

Thanks for your note and Bruce Sewell's letter. I'm available tomorrow and Wednesday.

Like you, I'm very interested in resolving the issues that have arisen at the outset of our relationship. I'm hopeful that you can help persuade senior management at Apple that the important work described in Mr. Sewell's letter is not at all inconsistent with our beginning the work we have been selected to do. I would be less than candid if I didn't tell you I am disappointed that his view seems to be that our work begins only when the court-imposed deadline to revise its antitrust compliance policies, procedures and training has passed.

As I'm sure you know, many monitorships involve specific deadlines the monitored entity is required to meet. To my knowledge, the existence of such deadlines has never been viewed as a reason for the monitor to defer his work until the deadlines have passed. In the three other monitorships I have done over the past eleven years, I have met with top management of the company or organization within 14 days of beginning of my responsibilities. Those introductory meetings, without resistance or delay in any instance, have helped pave the way for cordial, collaborative relationships that have proceeded smoothly and with an absolute minimum of tension. I am confident the same can be the case here.

We intend to be reasonable and flexible in our approach to this matter, and accommodating to the busy schedules of the company's executives. We look forward to working out a schedule for

MRB

On Mon, Nov 4, 2013 at 9:08 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

> Michael: Thank you for your letters of November 1st. As requested, we delivered your letter to Mr. Cook and Mr. Sewell and we've attached Mr. Sewell's response.

>

> I think it would be productive for us to speak by phone. I really want to work with you find a smooth path to our shared objectives. Are you available on Wednesday?

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From: Michael Bromwich <michael.bromwich@bromwichgroup.com>
Date: November 5, 2013 at 5:34:42 PM EST
To: "Theodore J. Boutrous Jr." <TBoutrous@gibsondunn.com>
Subject: Re: e-books/Apple

Ted, I've got a meeting at 3:00 pm that may last until close to 4:30. Can you do it earlier and if not, can you do it at 4:30 pm?

I wanted to provide Bruce Sewell with a response to his letter, which I have attached. Please pass it on to him and Tim Cook.

Thanks.

MRB

On Tue, Nov 5, 2013 at 3:06 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:
Michael:

Would [3:30](#) or [4:00 pm eastern time tomorrow](#) work for you?

Theodore J. Boutrous Jr.

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

[333 South Grand Avenue, Los Angeles, CA 90071-3197](#)

[+1 213.229.7804](#) [+1 213.229.6804](#)

TBoutrous@gibsondunn.com www.gibsondunn.com

<mailto:michael.bromwich@bromwichgroup.com>

Ted,

Thanks for your note and Bruce Sewell's letter. I'm available tomorrow and Wednesday.

Like you, I'm very interested in resolving the issues that have arisen at the outset of our relationship. I'm hopeful that you can help persuade senior management at Apple that the important work described in Mr. Sewell's letter is not at all inconsistent with our beginning the work we have been selected to do. I would be less than candid if I didn't tell you I am disappointed that his view seems to be that our work begins only when the court-imposed deadline to revise its antitrust compliance policies, procedures and training has passed.

As I'm sure you know, many monitorships involve specific deadlines the monitored entity is required to meet. To my knowledge, the existence of such deadlines has never been viewed as a reason for the monitor to defer his work until the deadlines have passed. In the three other monitorships I have done over the past eleven years, I have met with top management of the company or organization within 14 days of beginning of my responsibilities. Those introductory meetings, without resistance or delay in any instance, have helped pave the way for cordial, collaborative relationships that have proceeded smoothly and with an absolute minimum of tension. I am confident the same can be the case here.

We intend to be reasonable and flexible in our approach to this matter, and accommodating to the busy schedules of the company's executives. We look forward to working out a schedule for preliminary meetings and discussions later this month, either next week or the week of [November 18](#), that reflect an appropriate balance between our needs and the company's interests.

Let me know the best times for you to speak tomorrow or Wednesday.

Best regards.

MRB

On Mon, Nov 4, 2013 at 9:08 PM, Boutrous Jr., Theodore J. <TBoutrous@gibsondunn.com> wrote:

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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

D. Bruce Sewell, Esq.

November 5, 2013

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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.

D. Bruce Sewell, Esq.

November 5, 2013

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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.

From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Thursday, November 07, 2013 3:01 PM
To: Theodore J. Boutrous Jr.
Cc: Nigro, Barry; Cirincione, Maria
Subject: Apple -- Expense Guidelines
Attachments: Apple -- Letter to Boutrous -- 11-7.PDF

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 policies 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

The Bromwich Group

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

November 7, 2013

BY E-MAIL

Theodore J. Boutrous Jr., Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

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

Dear Ted:

As discussed on our call yesterday, I am writing to outline the expense policies we will follow in connection with serving as the External Compliance Monitor. We reviewed and considered Apple's standard expense policies in light of our obligations pursuant to the Final Judgment, including our obligation to remain independent and to maintain expenses at a level that is reasonable and customary. As we explained yesterday, we will do everything we reasonably can to keep expenses to a minimum, consistent with our responsibilities to the Court.

We are happy to commit to use our best efforts to adhere to the following guidelines:

- **Air Travel** – We will seek to obtain the lowest available, refundable, coach fare on the flight that matches best with our travel plans. If Apple advises us that it prefers we purchase nonrefundable fares, we will do so, provided that Apple pays any expenses associated with changes in travel plans.
- **Ground Transportation** – We agree to follow Apple's Travel Policy for Suppliers with respect to ground transportation.

Theodore J. Boutrous Jr., Esq.
November 7, 2013
Page 2

- **Out-of-Town Meals** – We agree to adhere to the per diem rates in Apple's Outside Service Provider Policy (\$25/\$25/\$50 for breakfast/lunch/dinner plus 15% tip).
- **Lodging** – We agree to adhere to Apple's Travel Policy for Suppliers with respect to lodging, except that Apple will reimburse for "no show" charges due to changes in travel plans.
- **In-house Copying** – We agree to provide in-house copying services at 12 cents per page for black-and-white copies.
- **External Copying** – We agree to pass through external copying services at cost.
- **Delivery Services** – We agree to pass through overnight and in-town delivery services at cost.
- **International and Conference Telephone Calls** – We agree to pass through international and conference telephone calls at cost.
- **Other Expenses** – To the extent that other expenses not specifically identified above are incurred (e.g., online legal research charges), we agree to limit these expenses to a level that is customary and reasonable.

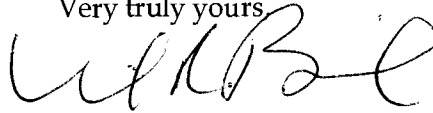
We believe these guidelines are reasonable, comply with the Final Judgment, and are consistent with Apple's desire to minimize expenses.

Some of the policies developed by Apple for its dealings with outside vendors, including outside counsel, are inappropriate for an independent monitor because they interfere with his independence and lodge too much control or authority with Apple, which is the entity being monitored, or are otherwise inappropriate. After careful review, we believe the guidelines, other than those specifically described above, are either inapplicable or inappropriate as applied to our relationship with Apple.

Theodore J. Boutrous Jr., Esq.
November 7, 2013
Page 3

Please let me know if you have any questions.

Very truly yours

A handwritten signature in black ink, appearing to read "MRB", written in a cursive style.

Michael R. Bromwich

cc: Bernard A. Nigro Jr.

From: Boutrous Jr., Theodore J. [TBoutrous@gibsondunn.com]
Sent: Thursday, November 07, 2013 3:17 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:

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 policies 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>

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From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Thursday, November 07, 2013 3:58 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 or 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:

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Tom Moyer, Chief Compliance Officer and Head of Global Security

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Best regards.

MRB

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From: Boutrous Jr., Theodore J. [TBoutrous@gibsondunn.com]
Sent: Saturday, November 09, 2013 2:13 PM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia
Subject: RE: Apple -- Expense Guidelines

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

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To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbinsrussell.com
Subject: Re: Apple -- Expense Guidelines

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Sent: Saturday, November 09, 2013 4:01 PM
To: Michael R. Bromwich
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbsrussell.com
Subject: RE: Apple -- Expense Guidelines

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Sent: Saturday, November 09, 2013 5:48 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbsrussell.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

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Sent: Monday, November 11, 2013 10:48 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

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: Saturday, November 09, 2013 2:48 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; Swanson, Daniel G.; Richman, Cynthia; scarroll@robbsrussell.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.

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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 or 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 policies 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>

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Monday, November 11, 2013 11:34 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.

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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?

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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.

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Checking to see what can be pulled together for that week Will report back

Theodore J. Boutrous Jr.

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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

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Gore either lives or 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:

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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 policies 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>

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From: Boutrous Jr., Theodore J. [TBoutrous@gibsondunn.com]
Sent: Tuesday, November 12, 2013 4:55 PM
To: Michael R. Bromwich (michael.bromwich@bromwichgroup.com)
Cc: Nigro, Barry; Cirincione, Maria; Richman, Cynthia; Swanson, Daniel G.
Subject: Apple

Dear Michael:

It was good speaking with you yesterday. I have confirmed that Apple would be able to make available for 1-hour interviews 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

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From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Tuesday, November 12, 2013 6:10 PM
To: Boutrous Jr., Theodore J.
Cc: Nigro, Barry; Cirincione, Maria; 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:

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From: Boutrous Jr., Theodore J. [TBoutrous@gibsondunn.com]
Sent: Wednesday, November 13, 2013 10:03 AM
To: Michael Bromwich
Cc: Nigro, Barry; Cirincione, Maria; Richman, Cynthia; Swanson, Daniel G.; Matthew J. Reilly (Matt.Reilly@stblaw.com)
Subject: RE: Apple

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks Michael. Confirmed for Monday morning with Messrs. Moyer and Levoff. I am traveling today but we will get you logistical details (including hotel info) as soon as possible. Apple also plans to get you materials in response to your 10/22 request (adding Matt Reilly who will be coordinating that). Best,

Ted

Theodore J. Boutrous Jr.

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From: Michael Bromwich [<mailto: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

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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 interviews 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

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Friday, November 15, 2013 12:51 PM
To: Theodore J. Boutrous Jr.
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

From: Swanson, Daniel G. <DSwanson@gibsondunn.com>
Sent: Sunday, November 17, 2013 3:11 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

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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

From: Michael R. Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Monday, November 18, 2013 4:30 PM
To: nkrall@apple.com
Cc: Matthew J. Reilly; Cirincione, Maria
Subject: Interviews

Dear Noreen,

It was good to meet you this morning. As Matt will confirm, our interviews of Tom and Gene went very smoothly and were very informative. I am hopeful that you can help facilitate additional meetings/ interviews either this afternoon or tomorrow. Although we are scheduled to depart tomorrow afternoon, we could delay that until Wednesday morning if we are able to schedule some things for tomorrow afternoon.

I'm hopeful that we can work out a productive set of meetings and interviews for December 4-6.

Speak to you soon.

Best regards.

MRB

From: Noreen Krall [nkrall@apple.com]
Sent: Monday, November 18, 2013 7:08 PM
To: Michael R. Bromwich
Cc: Matthew J. Reilly; Cirincione, Maria
Subject: Re: Interviews

Hi Michael,

It was nice to meet with you and Maria this morning, and I trust the meetings today have started us down a productive path. Due to preexisting schedule conflicts, I am unable to set up further meetings for tomorrow. However we have already started working on calendar holds for Dec. 4-6. A full agenda will be forthcoming.

Best regards,
Noreen

Sent from my iPhone

> On Nov 18, 2013, at 1:30 PM, "Michael R. Bromwich" <michael.bromwich@bromwichgroup.com>
> wrote:
>
> Dear Noreen,
>
> It was good to meet you this morning. As Matt will confirm, our interviews of Tom and Gene went very smoothly and were very informative. I am hopeful that you can help facilitate additional meetings/ interviews either this afternoon or tomorrow. Although we are scheduled to depart tomorrow afternoon, we could delay that until Wednesday morning if we are able to schedule some things for tomorrow afternoon.
>
> I'm hopeful that we can work out a productive set of meetings and interviews for December 4-6.
>
> Speak to you soon.
>
> Best regards.
>
> MRB

From: Michael Bromwich [michael.bromwich@bromwichgroup.com]
Sent: Tuesday, November 19, 2013 12:28 PM
To: Matthew J. Reilly; nkrall@apple.com; Theodore J. Boutrous Jr.
Cc: Cirincione, Maria; Nigro, Barry; Carroll, Sarah
Subject: Interview Requests

I am going to be in New York on Thursday and Friday and would very much like to meet with Andrea Jung of the Apple Board. I am going to be in DC on Monday and would very much like to meet with Ronald Sugar, the Chair of the Audit and Finance Committee. I agree to limit the meetings to an hour so as not to impose on their time. I know they are busy. If they are unavailable those dates, please propose alternative dates.

Thanks very much.

MRB

From: Noreen Krall [nkrall@apple.com]
Sent: Thursday, November 21, 2013 8:46 AM
To: Michael Bromwich
Cc: Matthew J. Reilly; Theodore J. Boutrous Jr.; Cirincione, Maria; Nigro, Barry; Carroll, Sarah
Subject: Re: Interview Requests

Michael,

We are checking Mr. Sugar's availability to meet with you when you return to California for interviews Dec. 4 - 6. As I mentioned during our meeting on Monday, Nov. 18, and in my follow up email that same day, a full agenda of meetings and interviews will be forthcoming. Please be patient as we check schedules, we should have something to you by the end of this week.

Best regards,
Noreen

On Nov 21, 2013, at 5:28 AM, Michael Bromwich <michael.bromwich@bromwichgroup.com> wrote:

I would appreciate a response.

Thank you.

MRB

On Tue, Nov 19, 2013 at 12:27 PM, Michael Bromwich <michael.bromwich@bromwichgroup.com> wrote:
I am going to be in New York on Thursday and Friday and would very much like to meet with Andrea Jung of the Apple Board. I am going to be in DC on Monday and would very much like to meet with Ronald Sugar, the Chair of the Audit and Finance Committee. I agree to limit the meetings to an hour so as not to impose on their time. I know they are busy. If they are unavailable those dates, please propose alternative dates.

Thanks very much.

MRB

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

From: Cirincione, Maria <Maria.Cirincione@friedfrank.com>
Sent: Friday, November 22, 2013 10:05 PM
To: 'Noreen Krall'
Cc: 'Michael Bromwich'; Nigro, Barry; Carroll, Sarah; 'Matt.Reilly@stblaw.com'; 'Boutrous Jr., Theodore J.'
Subject: Apple - Letter to the Board
Attachments: Apple -- Letter to Board of Directors -- 11-22-13.pdf

Dear Noreen,

Please see the attached letter from Mr. Bromwich to the Apple Board of Directors. We request that you circulate it to them as promptly as possible. We will separately send it to their business addresses. Please advise regarding hardcopy mailing procedures to avoid disclosure to anyone other than the intended Board member.

A response to your November 21 letter will be forthcoming.

Thank you,

Maria

Maria R. Cirincione
maria.cirincione@friedfrank.com | Tel: +1.202.639.7044

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th St., NW, Washington, DC 20006
friedfrank.com

 Please consider the environment before printing this email

Confidentiality Notice: The information contained in this e-mail and any attachments may be legally privileged and confidential. If you are not an intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender and permanently delete the e-mail and any attachments immediately. You should not retain, copy or use this e-mail or any attachment for any purpose, nor disclose all or any part of the contents to any other person. Thank you.

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

Members of the Apple Inc. Board of Directors
November 22, 2013
Page 2

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

Members of the Apple Inc. Board of Directors
November 22, 2013
Page 3

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.

Members of the Apple Inc. Board of Directors
November 22, 2013
Page 4

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.

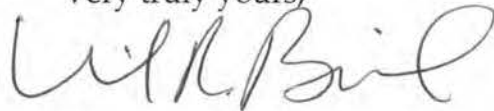
Members of the Apple Inc. Board of Directors
November 22, 2013
Page 5

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,

A handwritten signature in black ink, appearing to read "Michael R. Bromwich", written in a cursive style.

Michael R. Bromwich

From: Reilly, Matt <Matt.Reilly@stblaw.com>
Sent: Friday, November 22, 2013 10:32 PM
To: 'Michael Bromwich'
Cc: Nigro, Barry; Carroll, Sarah; 'Boutrous Jr., Theodore J.'; 'Cirincione, Maria'; Arquit, Kevin; 'Noreen Krall'; Reilly, Matt
Subject: Letter and Confidentiality Agreement
Attachments: Letter from M. Reilly to M. Bromwich 11-22-13.pdf; Confidentiality Agreement.pdf

Michael,

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

Best,
Matt

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.

Michael R. Bromwich

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November 22, 2013

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

Michael R. Bromwich

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November 22, 2013

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.

Michael R. Bromwich

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November 22, 2013

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 Officer¹

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.

Michael R. Bromwich

-5-

November 22, 2013

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,

A handwritten signature in black ink, appearing to read "Matt J. Reilly / SS".

Matthew J. Reilly

Encl.

From: **Bruce Sewell** <bsewell@apple.com>
Date: Mon, Nov 25, 2013 at 3:32 PM
Subject: Apple Board of Directors Notification
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

From: **Michael Bromwich** <michael.bromwich@bromwichgroup.com>

Date: Mon, Nov 25, 2013 at 4:16 PM

Subject: Re: Apple Board of Directors Notification

To: Bruce Sewell <bsewell@apple.com>

Dear Bruce,

Thanks very much for your note. We are looking forward to meeting with the people identified in Matt Reilly's November 22 letter when we come out to California the week of December 2. Several of the names on the list are not familiar to me (Doug Vetter, Annie Pesampieri), and others on the list are people we've met with but did not request to interview (Kyle Andeer, Noreen Krall). I am hopeful that we will learn in advance the reasons that they are on the list so that we can prepare more efficiently and make the best use of our time with them. We have also asked whether these will be interviews or presentations because that will determine how we staff the trip.

I am very sorry that you will not be available to meet with us that week, but I understand we will be speaking with you by phone the week of December 9. I am very much looking forward to it. I'm also hopeful that you can help set up interviews with the other senior executives and Board members we have requested to interview. I think it's very much to the company's advantage to help facilitate those interviews as soon as reasonably possible.

Thanks again.

Best regards.

MRB

On Mon, Nov 25, 2013 at 3:32 PM, Bruce Sewell <bsewell@apple.com> wrote:
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

From: Cirincione, Maria <Maria.Cirincione@friedfrank.com>
Sent: Sunday, December 01, 2013 6:52 PM
To: Buterman, Lawrence; Kully, David; McCuaig, Daniel; Sutton, Nathan; gabriel.gervery@texasattorneygeneral.gov; eric.lipman@texasattorneygeneral.gov; joseph.nielsen@ct.gov; Gary.Becker@ct.gov; eric.stock@ag.ny.gov; Robert.Hubbard@ag.ny.gov; 'Noreen Krall'; 'TBoutrous@gibsondunn.com'; 'Matt.Reilly@stblaw.com'
Cc: michael.bromwich@bromwichgroup.com; Nigro, Barry; Carroll, Sarah
Subject: Apple
Attachments: Emails.pdf

Attached are communications received by Mr. Bromwich following Apple's November 27 filing.

Maria R. Cirincione
maria.cirincione@friedfrank.com | Tel: +1.202.639.7044

Fried, Frank, Harris, Shriver & Jacobson LLP
801 17th St., NW, Washington, DC 20006
friedfrank.com

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Subject: apple case

Date: Saturday, November 30, 2013 12:36:40 PM Eastern Standard Time

From: j

To: info@bromwichgroup.com

WOW

*Just saw you people want over \$1,000
an hour.*

How do I apply?

thanks

John

Subject: Piece of Shit

Date: Saturday, November 30, 2013 12:17:54 PM Eastern Standard Time

From: My Site

To: info@bromwichgroup.com

Name: Steve

Email: Blowme@gmail.com

Subject: Piece of Shit

Comments:

You are a thieving schiester piece of shit. There enough misery that beset you for the rest of your life.

Steve Jobs

Subject: You make your profession proud!

Date: Saturday, November 30, 2013 12:01:21 PM Eastern Standard Time

From: My Site

To: info@bromwichgroup.com

Name: Charles Rost

Email: chuckrost@aol.com

Subject: You make your profession proud!

Comments:

From Bloomberg . . . \"Bromwichâs invoice for his first two weeks of work was \$138,432, the equivalent of 75 percent of a federal judgeâs annual salary . . . proposed hourly fee of \$1,100\"

Never has an \"officer of the court\" attempted to steal as much in \"one fell swoop\" as you.

HUGH BALLS! ABSOLUTELY HUMONGOUS!!!

Congratulations!

You have reaffirmed what everyone has always known.

Both about you, and your profession.

Subject: Would like to hire your firm

Date: Saturday, November 30, 2013 3:48:23 PM Eastern Standard Time

From: My Site

To: info@bromwichgroup.com

Name: Gary Whitley

Email: gary.whitley@gmail.com

Subject: Would like to hire your firm

Comments:

...never. You arrogant pieces of shit. You think we're going to hire your slimy firm after what sort of character you're truly showing with the Apple \"victory\" you scored. Honestly. Pieces of shit.

From: Leslie Sun <leslie.anointedhope@me.com>


Date: November 30, 2013 at 2:59:48 AM GMT

To: "mbromwich@goodwinprocter.com" <mbromwich@goodwinprocter.com>

No matter how good your resume looks like. It is already tarnished by the back and forth statements you exchanged with Apple. You are just *another* greedy lawyer. Precisely the character of Dolores Umbridge in Harry Potter.

Best Regards,

Sun



From: Frank Osborn <fosborn@windrunner.biz>
Date: November 29, 2013 at 5:56:56 PM GMT
To: "mbromwich@goodwinprocter.com" <mbromwich@goodwinprocter.com>
Subject: Racket

I'm shocked by your extortion racket at Apple.

Sent from my iPad

From: Michael R. Bromwich <michael.bromwich@bromwichgroup.com>
Sent: Tuesday, December 10, 2013 1:30 PM
To: Matt Reilly
Cc: barry.nigro@friedfrank.com; maria.cirincione@friedfrank.com; Carroll, Sarah
Subject: Apple

Dear Matt,

Thanks for your assistance in setting up the interviews we conducted last week. I thought they were constructive and very helpful in providing some of the necessary background to our work. They will serve as part of a strong foundation for the additional work we will be doing. We also very much appreciate the introduction to Deena Said and look forward to working with her.

In looking ahead to the next several weeks, I wanted to get the company's and your views on a schedule for the remainder of December and January that is most efficient and productive. The holiday season begins soon and will extend through the end of the year, and we are well aware that Apple's revised antitrust policies and procedures are due to be completed on January 14.

Please provide a proposal for when it would be convenient for us to schedule our next trip to Cupertino to conduct additional interviews; it may make sense to do so after January 14, but I wanted to give you the option of having some of them take place before that time. Whether or not you elect to have us conduct additional interviews between now and January 14, I suggest that we spend the some time between now and then focusing on some of the outstanding document issues we have discussed. If Apple wants, we are available to meet either in Washington or Cupertino before the 14th, and we certainly are amenable to discussing with you any issues or concerns Apple is encountering as it finalizes its antitrust policies.

Also, please advise the company that I would welcome the chance to discuss the fee-related issues at its earliest convenience to try to put those issues behind us.

Best regards.

MRB