

14-60

**United States Court of Appeals
for the Second Circuit**

UNITED STATES OF AMERICA,

Appellee-Respondent,

v.

APPLE INC.,

Appellant-Movant.

On Appeal from the United States District Court
for the Southern District of New York
No. 12-2826 (DLC)

REPLY DECLARATION OF THEODORE J. BOUTROUS, JR.

I, THEODORE J. BOUTROUS, JR., pursuant to 28 U.S.C. § 1746, declare:

1. I am an attorney duly licensed to practice law in the State of California. I am admitted to practice before the United States Court of Appeals for the Second Circuit. I am a partner at Gibson, Dunn & Crutcher LLP and am one of the attorneys representing Apple Inc. in the above-captioned matter. I respectfully submit this declaration in support of Defendant Apple Inc.'s Reply in Support of Emergency Motion to Stay Injunction Pending Appeal filed on January 31, 2014. I have personal knowledge of the matters stated herein and, if called upon to do so, could and would competently testify thereto.

2. Attached hereto as Exhibit BBB is a true and correct copy of the Order dated November 21, 2013 [Dkt410], signed by the Honorable Denise Cote.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 31st day of January, 2014, at Los Angeles, California.

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.

EXHIBIT BB

USDC SDNY
DOCT. CLERK
ELECTRONIC CASE
DATE FILED 11/21/2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 :
 UNITED STATES OF AMERICA, :
 :
 Plaintiff, : 12 Civ. 2826 (DLC)
 -v- :
 :
 APPLE INC., et al., :
 :
 Defendants. : ORDER
 :
 -----X

THE STATE OF TEXAS, et al., :
 :
 Plaintiffs, : 12 Civ. 3394 (DLC)
 -v- :
 :
 PENGUIN GROUP (USA) INC., et al., :
 :
 Defendants. :
 :
 -----X

DENISE COTE, District Judge:

Notice is hereby given of the following proposed amendment to the October 16, 2013 Order appointing Michael Bromwich as the External Monitor ("Monitor") provided for in Section VI of the September 5, 2013 Order Entering Permanent Injunction in this case. Pursuant to Federal Rule of Civil Procedure 53(b)(4), the amendment is proposed as follows:

1. The Monitor is directed to proceed with all reasonable diligence, as required by Fed. R. Civ. P. 53(b)(2).
2. The Monitor's duties are as set forth in the September 5, 2013 Order Entering Permanent Injunction in this case.

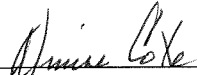
3. The Monitor may communicate with a party or a party's agent on an ex parte basis if reasonably necessary to carry out his duties.
4. The Monitor shall provide the Court with ex parte oral briefings at least once a month, or more frequently as the Monitor or Court decide in the exercise of their discretion is appropriate.
5. The Monitor shall make reasonable efforts to preserve all materials materially related to his duties and the Court may, on notice to the parties and the Monitor, order such materials publicly filed when in the interest of justice.
6. The Monitor's time to complete his duties is as set forth in the September 5, 2013 Order Entering Permanent Injunction.
7. The Court's standard of review in considering the Monitor's findings and recommendations is de novo.
8. The method of fixing the Monitor's compensation is as set forth in the September 5, 2013 Order Entering Permanent Injunction in this case.

It is hereby

ORDERED that any objection to the terms of the above proposed amendment to the October 16, 2013 Order appointing Michael Bromwich as Monitor is due by **November 27, 2013**.

SO ORDERED:

Dated: New York, New York
November 20, 2013



DENISE COTE
United States District Judge