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June 16, 2014

**Via ECF**

The Honorable Denise L. Cote  
United States District Court Judge  
Southern District of New York  
500 Pearl St., Room 1610  
New York, NY 10007-1312

Re: *In re: Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC);  
*The State of Texas v. Penguin Group (USA), Inc.*, No. 12-cv- 3394 (DLC)

The parties write to inform the Court that the Class Plaintiffs, State Plaintiffs, and Apple have executed a binding agreement in principle to resolve the Class litigation, and the damages phase of the States' litigation. The parties submit as a separate document under seal for the Court's review the binding memorandum of understanding, pending the parties' preparation and filing of the final settlement agreement to present to the Court for preliminary approval within thirty days. The parties acknowledge that Apple has appealed the District Court's July 10, 2013 Opinion and Order finding Apple liable for violating federal and state antitrust laws, and until final disposition of that appeal, a bona fide justiciable dispute remains as to the District Court's findings and conclusions on liability and injunctive relief. As set forth in the memorandum of understanding, any payment to be made by Apple under the settlement agreement will be contingent on the outcome of that appeal.

In light of the binding agreement among all parties, the parties respectfully request the Court immediately suspend the dissemination of interim notice, pending the Court's review of the memorandum of understanding. By doing so, the litigants, as well as several third-party retailers, will avoid incurring unnecessary notice costs and also avoid customer confusion if the Court finds the settlement terms fair, reasonable, and adequate. The parties also respectfully request the Court vacate the schedule in conjunction with suspending interim notice from being disseminated. This will allow the parties to focus their resources on expeditiously presenting the final agreement to the Court for preliminary approval. The parties submit a joint proposed order herewith.

If approved, the final settlement agreement will moot the pending motions before the Court, specifically Class Plaintiffs' motion for summary judgment (ECF No. 521 in 11-md-02293), Apple's motion for reconsideration of the Court's *Daubert* rulings excluding all or part

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of Apple's experts' testimony (ECF No. 606 in 11-md-02293), and Apple's motion for interlocutory appeal pursuant to 28 U.S.C. section 1292 (ECF No. 506 in 12-cv-03394).

Respectfully,

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Steve W. Berman

Steve W. Berman

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION</b>	)	11-md-02293 (DLC)
	)	ECF Case
<hr/>		
<b>THE STATE OF TEXAS; et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
<b>v.</b>	)	Civil Action No. 12-cv-03394 (DLC)
<b>PENGUIN GROUP (USA) INC.; et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
	)	
	)	
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**[PROPOSED] ORDER**

The parties having advised the Court that they have reached an agreement in principle resolving all claims in the Consolidated Class Action (11-md-02293) and resolving all claims for monetary relief in the State Action (12-cv-03394), and submitted for filing under seal a memorandum of understanding setting forth that agreement, the Court Orders as follows:

- 1) The Court’s Scheduling Order of June 3, 2014, as amended by the Scheduling Order of June 16, 2014, is VACATED and the parties are to suspend dissemination to eligible consumers of notice of litigation.
- 2) Plaintiffs shall, on or before July 16, 2014, file a motion for preliminary approval of the settlement, attaching a copy of the settlement agreement.
- 3) Apple’s pending motions for reconsideration (ECF No. 606 in 11-md-02293) and to certify interlocutory appeal (ECF No. 506 in 12-cv-03394), and Class Plaintiffs’ pending motion

for summary judgment (ECF No. 521 in 11-md-02293) shall be held in abeyance and, upon the Court's approval of the parties' settlement in a final order, be deemed withdrawn.

SO ORDERED.

Dated: June \_\_, 2014.

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Hon. Denise Cote  
United States District Judge