SETTLEMENT AGREEMENT BY AND AMONG
PENGUIN GROUP (USA), INC.
AND PLAINTIFF STATES AND SETTLEMENT CLASS

This Settlement Agreement is made and entered into on May 20, 2013, by and among Plaintiff States (as defined below), by and through their respective Attorneys General or Corporation Counsel ("Plaintiff States"), Settlement Class Plaintiffs (as defined below), on behalf of themselves and in their respective capacities as representative of the Settlement Class (as defined below) and Penguin Group (USA), Inc. ("Penguin") by and through its undersigned counsel (collectively "Parties").

WHEREAS, a subset of Plaintiff States filed a complaint against Penguin and others in the United States District Court for the Western District of Texas on April 11, 2012; that action was transferred to the United States District Court for the Southern District of New York ("the Court"), on April 30, 2012 as *Texas and Connecticut, et al. v. Penguin Group (USA) et al.*, Case No. 12-cv-03394 (DLC); the complaint was twice amended, with the current complaint ("Second Amended Complaint") filed by all Plaintiff States on May 11, 2012; the Second Amended Complaint was brought both in Plaintiff States' sovereign capacity and as *parens patriae,* on behalf of natural persons residing in such States at the time of their eligible E-book purchase(s); and

WHEREAS, Settlement Class filed a Consolidated Amended Class Action Complaint against Penguin and others on January 20, 2012, in the Court on behalf of themselves and as representatives of Consumers; and

WHEREAS, both Plaintiff States and the Settlement Class have alleged an unlawful agreement to fix, maintain or stabilize prices of E-books in violation of federal and state antitrust

laws and are seeking, among other relief, damages, injunctive relief and costs of investigation and litigation; and

WHEREAS, this Settlement Agreement does not constitute any admission by Penguin that any law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in both Plaintiff States' and Settling Class's complaints (collectively "Complaints") are true; and

WHEREAS, Plaintiff States, Settlement Class and Penguin have determined it to be in their best interests to resolve this dispute and enter into this Settlement Agreement;

NOW, THEREFORE, **WITNESSETH:**

I. DEFINITIONS

As used herein:

A. "Plaintiff States" means the following States, Commonwealths and Territories of the United States, in their sovereign capacity and as *parens patriae* on behalf of Consumers residing in such Plaintiff States: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

B. "Penguin" means Penguin Group (USA) Inc., a Delaware corporation with its principal place of business in New York, NY, any of its successors and assigns, and its subsidiaries, and divisions.

C. "Claims" means all claims, counterclaims, set-offs, demands, actions, rights, liabilities, costs, debts, expenses, attorneys' fees, and causes of action of any type, whether or not accrued in whole or in part, including, without limitation, past, present, and future claims arising under federal or state antitrust, unfair competition or consumer protections laws, or state common or equitable law, and that were asserted or that could have been asserted, known or unknown, against Penguin, Penguin's parent or affiliated entities, and/or their officers, directors, employees and attorneys, arising from any of the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged in Plaintiffs' Complaints. For purposes of this Settlement Agreement, "affiliated entities" shall mean entities that are currently or were formerly directly or indirectly controlling, controlled by or under common control with Penguin.

D. "Consumers" means natural persons who have purchased E-books published by Named Publishers (as defined in M. below) during the period from April 1, 2010 until May 21, 2012.

E. "Counsel for the Settlement Class" means Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC.

F. "Distribution Plan" means the plan or method of allocation of the Penguin Consumer Compensation Account (as described in Section IV.A.) among Consumers who have not filed with the Court valid and timely requests for exclusion from this Settlement. The Distribution Plan will be submitted to the Court separate from the Settlement Agreement and is not part of this Settlement Agreement.

G. "Effective Date" means the date on which this Settlement Agreement becomes effective. The Effective Date shall occur when all of the following conditions have been satisfied, unless one or more of such conditions is modified in a writing signed by the Parties:

1. Execution of this Settlement Agreement;
2. Entry by the Court of a Preliminary Approval Order;
3. Expiration of the period within which Consumers must exercise their rights to be excluded from *parens patriae* or class representation;
4. Final approval by the Court of the settlement embodied herein;
5. Entry by the Court of the Final Judgment;
6. Entry by the Court of the Order and Stipulated Injunction (as required in Section III); and
7. The Final Judgment shall have become Final (as defined in J, below).

H. "Escrow Agent" means Fifth Third Bank.

I. "E-book" means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books. For purposes of this Settlement Agreement, the term E-book does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or "app" sold through an "app store" rather than through an E-book store (*e.g.*, through Apple Inc.'s "App Store" rather than through its "iBookstore" or "iTunes") and not designed to be executed or read by or through a dedicated E-book reading device; or (3) a media file containing an electronically formatted book for which most of the value to Consumers is derived from audio or video content contained in the file that is not included in the print version of the book.

J. "Final" means: (1) final affirmance on an appeal of the Final Judgment, the expiration of the time for a petition for, or a denial of, a writ of certiorari to review the Final Judgment and, if certiorari is granted, the date of final affirmance for the Final Judgment following review pursuant to that grant; or (2) final dismissal of any appeal from the Final Judgment or the final dismissal of any proceedings on certiorari to review the Final Judgment; or (3) if no appeal is filed, the time for the filing or noticing of any appeal from the Court's Final Judgment approving the Settlement Agreement has expired (i.e., thirty (30) days after entry of the Final Judgment). Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to the Distribution Plan and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the Final Judgment from becoming Final.

K. "Final Judgment" means the judgment to be rendered by the Court in this matter, as further described in Section VII.D.

L. "Including" means including, but not limited to.

M. "Named Publishers" means Penguin (as defined in B. above) and Hachette Book Group, Inc. and Hachette Livre SA ("Hachette"), HarperCollins Publishers LLC ("HarperCollins"), Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc. ("Simon & Schuster"), and Holtzbrinck Publishers, LLC, d/b/a Macmillan ("Macmillan") and their respective successors and assigns, and their respective subsidiaries and divisions.

N. "Notice Period" means the period during which notice shall be disseminated to Consumers. The Notice Period shall be a minimum of forty-five (45) days or such other time period set by the Court.

O. "Notice Plan" means the plan specifying the manner and content of the program whereby Consumers are notified of this Settlement Agreement and informed of their rights to

object to or exclude themselves from the settlement. The Notice Plan shall specify the manner in which Consumers are to be notified of this settlement, which shall consist, at a minimum, of direct notice to each Consumer whose e-mail address can be voluntarily obtained by Plaintiffs from E-book retailers.

P. "Plaintiffs" means collectively the Plaintiff States and the Settlement Class Plaintiffs.

Q. "Purchase" means a Consumer's acquisition of one or more E-books as a result of a Sale.

R. "Released Claims" shall mean all Claims as defined in Section VIII.

S. "Sale" means delivery of access to a Consumer to read one or more E-books (purchased alone, or in combination with other goods or services) in exchange for payment.

T. "Settlement Accounts" mean the Penguin Consumer Compensation Settlement Account, the States' Compensation Settlement Account, and the Penguin Settlement Cost Account described in Section IV. The Settlement Accounts shall be held in interest-bearing escrow accounts established by Plaintiffs and administered by Fifth Third Bank, the Escrow Agent appointed pursuant to Section V.A. for the purpose of implementing this Settlement Agreement.

U. "Settlement Administration Costs" means all actual reasonable and customary costs to be paid from the Penguin Settlement Cost Account in connection with the administration of this Settlement Agreement, including all actual reasonable and customary costs and fees incurred (1) in compiling necessary Consumer information and providing direct notice as well as such notice by publication or paid media as may be needed to effectuate adequate notice, (2) in completing necessary administrative tasks, (3) in processing and paying claims, including

distributing credits and/or cash to Consumers, (4) for employment of an Escrow Agent and/or claims administrator, and (5) to secure Court approval of the Settlement agreement, such as expert affidavits. Settlement Administrative Costs will not include any fees or costs payable to or incurred by any Plaintiffs' attorneys.

V. "Settlement Class Plaintiffs" means Anthony Petru, Marcus Mathis, Christian Gilstrap, Cynthia J. Tyler, Thomas Friedman, Jeremy Sheppeck, Aloysius J. Brown, III, Anne M. Rinaldi, Laura J. Warner, Barbara Heath, Kathleen Linda Pitlock, Kathleen Weiss, Matthew A. Hosking, Diane Urbanec, Ed Macauley, Ronna Hamelin, James L. Nesmith, Lauren Albert, Sue Roberts, Shane S. Davis, Sue Ellen Gordon, Charles Leonard Pelton, Sr., Kimberly Whiteside Brooks, Steven D. Campbell, and Jessica Moyer.

W. "Settlement Class" means, for purposes of this Settlement Agreement only, all Consumers who resided in any State, Commonwealth or Territory of the United States, other than Plaintiff States, at the time of their E-book purchase.

X. "Liaison Counsel for Plaintiff States" mean the designated representatives for the Attorneys General of the States of Texas, Connecticut, and Ohio.

Y. "Written Direction" means a written notification directed to the Escrow Agent and/or claims administrator relating to disbursements from the Penguin Settlement Cost Account, signed by at least two Liaison Counsel for Plaintiff States and counsel for Penguin. Each Written Direction shall include a certification by Liaison Counsel for Plaintiff States and counsel for Penguin that the instructions in the notification are being made pursuant to the Settlement Agreement. Liaison Counsel for Plaintiff States and counsel for Penguin shall provide notice to Lead Counsel for the Settlement Class regarding any disbursements from the Penguin Settlement

Cost Account contemporaneously with providing notification to the Escrow Agent and/or claims administrator.

II. AGREEMENT

It is stipulated and agreed by and among counsel for Plaintiff States, Settlement Class and Penguin that, subject to Final Approval by the Court, the litigation initiated by the Complaints and the Released Claims shall be finally and fully compromised, settled and released, upon and subject to the terms and conditions of this Settlement Agreement.

III. ORDER AND STIPULATED INJUNCTION

As part of this Settlement Agreement, Plaintiff States, the Settlement Class and Penguin have agreed to the entry of an Order and Stipulated Injunction in the form of Attachment A, the terms and conditions of which are incorporated into this Settlement Agreement as though set forth in this Section III in full. The Order and Stipulated Injunction shall be modified to take into account any changes made to the language of the United States Department of Justice's Proposed Final Judgment against Penguin as entered in *United States of America v. Apple, Inc., et al.*, Case No. 12-cv-2826, in the United States District Court for the Southern District of New York, so that the requirements and prohibitions of the Order and Stipulated Injunction are in substance the same as the Final Judgment entered against Penguin in *United States of America v. Apple, Inc., et al.* (the "DOJ Final Judgment"), and, irrespective of the Effective Date of the Order and Stipulated Injunction, coterminous with said DOJ Final Judgment The terms set forth in the Order and Stipulated Injunction shall govern the enforcement of this Section III.

IV. MONETARY PAYMENTS

A. Penguin agrees to pay to the Plaintiffs the total sum of $75 million for Consumer compensation for alleged actual losses arising from the acts alleged in the Complaints. This amount shall be paid to the Plaintiffs, c/o Fifth Third Bank, Escrow Agent, within thirty (30) days of the Court entering the Preliminary Approval Order or July 5, 2013, whichever is later. The Escrow Agent shall establish the Penguin Consumer Compensation Settlement Account from the monies received from Penguin under this Section IV.A. These monies, plus any accrued interest, shall be used to fund the Consumer distribution as described in Section VI.A. The Escrow Agent shall distribute funds in the Penguin Consumer Compensation Settlement Account only pursuant to a Court-approved Distribution Plan which has become Final within the meaning of Section I.J.

B. Penguin further agrees to pay to Plaintiff States the sum of $7 million for their costs of investigation and litigation and other related costs as provided in Section VI.B. This amount shall be paid to Plaintiff States, c/o Fifth Third Bank, Escrow Agent, within thirty (30) days of the Court entering the Preliminary Approval Order or July 5, 2013, whichever is later. The Escrow Agent shall establish the States' Compensation Settlement Account from the monies received from Penguin under this Section IV.B. and hold such funds in escrow until the terms of Section V.B. are met. These monies, plus any accrued interest, shall be apportioned among Plaintiff States in a manner to be determined among and between them as set forth in Section VI.B.

C. Penguin further agrees to pay to Counsel for the Settlement Class the sum of $8 million for their attorneys' fees, costs of investigation, litigation and other related costs (the "Fee and Expense Award"). Counsel for the Settlement Class agree not to seek a Fee and Expense

Award in excess of this amount. The Fee and Expense Award shall be paid by Penguin to an account designated by Counsel for Settlement Class, as awarded by the Court, within 30 days after the Court executes an order awarding such fees and expenses. In the event that the settlement does not become Final, or the Final Judgment is reversed or modified, or the order making the fee and expense award is reversed or modified, or the Settlement Agreement is canceled or terminated for any other reason, and in the event that the Fee and Expense Award has been paid to any extent, then Counsel for the Settlement Class Counsel shall within ten (10) business days from receiving notice from Penguin's counsel or from a court of appropriate jurisdiction, refund to Penguin the Fee and Expense Award or any portion thereof previously paid to them plus interest thereon at the same rate as earned by the Settlement Accounts.

D. Penguin further agrees to pay a service award as awarded by the Court for the Settlement Class Plaintiffs up to a maximum of $1000 each. This amount shall be paid into an account designated by Counsel for the Settlement Class, as awarded by the Court, within thirty (30) days after the Court executes an order awarding such service awards. Settlement Class Plaintiffs agree not to seek a service award in excess of this amount. The service awards will be payable from the Settlement Accounts thirty (30) days after the settlement becomes Final.

E. Penguin will also pay all reasonable Settlement Administration Costs. The Escrow Agent shall establish the Penguin Settlement Cost Account from the monies received from Penguin under Section IV.F. These monies, plus any accrued interest, shall be used to pay the Settlement Administration Costs pursuant to the terms of this Settlement Agreement. The Escrow Agent shall pay invoices only as provided by an order of the Court, or pursuant to Written Direction. If Penguin wishes to challenge any Settlement Administration Cost as being unreasonable or not customary, it shall file an application with the Court and any such

challenged Settlement Administration Costs will not be due and payable unless and until the Court rules upon the application.

F. Payments for the Penguin Settlement Cost Account will be made as follows:

1. $750,000 shall be paid by Penguin to the Plaintiffs c/o Fifth Third Bank, Escrow Agent, within ten (10) business days after the execution of this Settlement Agreement by counsel for Liaison States, Settlement Class and Penguin.

2. Upon notice by counsel for the Liaison States and Settlement Class that additional funds are necessary to pay Settlement Administration Costs, Penguin shall make a supplemental deposit of such additional amount into the Settlement Cost Account within ten (10) business days after such notice.

3. After counsel for the Liaison States and Settlement Class have confirmed in writing that all incurred, committed or anticipated Settlement Administration Costs have been paid or accounted for, the Escrow Agent shall refund to Penguin all unused funds in the Penguin Settlement Cost Account, if any, within twenty (20) business days after such confirmation.

G. Penguin warrants that, as of the date of this Settlement Agreement, it is not insolvent, nor will its payment to the Settlement Accounts render it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code. If a case is commenced with respect to Penguin under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the payment of the principal amount of the Settlement Accounts and any accrued interest, or any portion thereof, by or on behalf of Penguin, to be a preference, voidable transfer, fraudulent transfer or similar transaction, and if pursuant to an order of a court of competent jurisdiction monies paid by Penguin pursuant to this Settlement

Agreement are either not delivered or are returned to Penguin or the trustee, receiver, or conservator appointed by a court in any bankruptcy proceeding with respect to Penguin, the releases given and judgment entered in favor of Penguin pursuant to this Settlement Agreement shall be null and void.

H. The payments hereunder do not constitute nor shall they be treated as payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures.

I. The payments made by Penguin to the Settlement Accounts (including the additional payments contemplated pursuant to Section IV.F.2) shall be the total amount to be paid by Penguin under this Settlement Agreement or in connection with Released Claims.

J. Except as provided in Section IV.F.3, upon the Effective Date all remaining interest or right of Penguin in or to the funds in the Settlement Accounts shall be absolutely and forever extinguished.

V. SETTLEMENT ADMINISTRATION

A. The Escrow Agent for the Settlement Accounts shall be Fifth Third Bank. Penguin will pay the reasonable and customary costs of the Escrow Agent in accordance with Sections IV.E and F. Other than maintaining an account to meet short-term obligations, the Escrow Agent shall invest the funds in the Settlement Accounts in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, to obtain the highest available return on investment, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Escrow Agent shall bear all risks related to the investment of the escrow funds.

B. The Escrow Agent shall not disburse the funds of the Settlement Accounts except by an order of the Court or pursuant to Written Direction.

C. All funds held by the Escrow Agent shall be deemed to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until the funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

D. In addition to the Escrow Agent, Plaintiff States and the Settlement Class have employed Rust Consulting, Inc., as the claims administrator, to facilitate the provision of notice and to distribute and/or administer the distribution of the funds in the Penguin Consumer Compensation Settlement Account in accordance with the terms of this Settlement Agreement. Penguin will pay the reasonable and customary costs of such claims administrator in accordance with Sections IV.E and F.

E. If this Settlement Agreement is not approved or fails to become effective, all monies paid by Penguin under this Settlement Agreement, including any interest accrued thereon, shall be refunded to Penguin, reduced by the amount of actual reasonable and customary out-of-pocket costs and expenses incurred or committed for Settlement Administration Costs as of the date of disapproval, or the date of failure to become effective. In the case of disapproval by the Court, refund shall occur within five (5) business days of the Court's decision becoming Final, as defined in Section I.J. In all other cases, refund shall occur within five (5) business days after the occurrence of the event resulting in the refund.

F. If this Settlement Agreement is not approved or fails to become effective, Plaintiffs shall retain full rights to assert any and all causes of action against Penguin, including the right to amend the Complaints to include additional allegations, claims, causes of action and requests for relief and Penguin shall retain any and all defenses thereto.

G. <u>Tax Treatment of Settlement Accounts</u>

1. Parties and Escrow Agent agree to treat the Settlement Accounts as being, at all times, a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1(a). In addition, the Escrow Agent and, as required, Parties shall jointly and timely make such elections as necessary or advisable to carry out the provisions of this Section V.G., including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)(ii)), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and thereafter to cause the appropriate filing to occur.

2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Accounts (including without limitation the returns described in Treas. Reg. § 1.468B-2(k) and (l)). Such returns (as well as the election described in Section V.G.1.) shall be consistent with this Section V.G and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Accounts shall be paid out of the Settlement Accounts.

3. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Accounts, including any taxes that may be imposed upon Penguin with respect to any income earned by the Settlement Accounts for any period during which the Settlement Accounts do not qualify as a "qualified settlement fund" for federal, state, or local income tax purposes ("Taxes") shall be paid out of the Settlement Accounts and in all events Penguin and its insurers shall have no liability or responsibility for

such Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority in respect of such Taxes. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Agreement and shall be timely paid by the Escrow Agent out of the Settlement Accounts without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Plaintiff States any funds necessary to pay such amounts including the establishment for adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)); Penguin and its insurers are not responsible and shall have no liability therefor or for any reporting requirements that may relate thereto. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section V.G. For purposes of this Section V.G., references to the Settlement Accounts shall include the Settlement Accounts and any earnings thereon. In no event will any Taxes be treated as Settlement Administration Costs, and no Taxes will be paid out of the Penguin Settlement Cost Account.

VI. SETTLEMENT DISBURSEMENTS

A. Distribution to Consumers: All funds in the Penguin Consumer Compensation Settlement Account shall be distributed, according to a Court-approved Distribution Plan, for the benefit of Consumers who have not filed with the Court valid and timely requests for exclusion from this settlement. Parties agree that if the Final Judgment becomes Final, the funds in this Account may be transferred to an escrow account which will combine all consumer monies from all related settlements for the purpose of consumer distribution.

1. The Distribution Plan shall be submitted to the Court for approval in connection with Plaintiff States' and the Settlement Class's Motion for Preliminary Approval of the Settlement ("Motion for Preliminary Approval"). To the extent practicable, the Distribution Plan to be submitted will track the provisions of the Distribution Plan previously approved by the Court in the prior settlements in this case.

2. Any funds not initially distributed will be distributed pursuant to subsequent consumer distributions, if feasible, or, if approved by the Court, will be distributed *cy pres* to one or more charitable organizations whose purposes relate to reading, literacy or access by the public to electronic books. Plaintiff States and Settlement Class will propose specific *cy pres* recipients to the Court prior to the time for objections or requests for exclusion from class members.

3. Funds remaining due to uncashed checks or unused or unactivated credits will similarly be used for additional consumer distributions to the fullest extent possible. To the extent state law prohibits any portion of such distributions, Plaintiffs will submit proposed plans for alternative distributions for Court approval.

4. The Parties agree and understand that any proposed Distribution Plan is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in the Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel the Settlement Agreement or affect the finality of the Court's Final Judgment approving the Settlement Agreement and the settlement set forth herein, or any other orders entered pursuant to the Settlement Agreement.

B. Distribution of Compensation to Plaintiff States: The States' Compensation Settlement Account shall be used to reimburse counsel for Plaintiff States for payment of attorneys' fees, costs, and administrative expenses incurred by Plaintiff States, and as other payments. Such Account shall be apportioned among Plaintiff States at their sole discretion. Such apportionments shall then be used collectively or individually by Plaintiff States' Attorneys General for one or more of the following purposes:

1. Reimbursement for Plaintiff States' consultant or expert fees, including reimbursement of any grants paid to Plaintiff States in connection with the National Association of Attorneys General Milk Fund Account ("NAAG Milk Fund" or "Fund") for consultant and expert fees expended from the Fund;

2. Reimbursement of attorneys' fees, and investigation, litigation and settlement administration cost expenses incurred by any Plaintiff State;

3. Payment for the ongoing investigation and litigation involving the E-books market;

4. Antitrust or consumer protection enforcement by the Attorney General of such State;

5. Deposit into a state antitrust or consumer protection account, (*e.g.*, revolving account, trust account), for use in accordance with the state laws governing that account;

6. Deposit into a fund exclusively dedicated to assisting the state Attorney General to defray the cost of experts, economists, and consultants in multistate antitrust investigations and litigations; or

7. As otherwise required or provided by the applicable state law in effect as

of the Effective Date of this Settlement Agreement.[1]

C. Disbursement for Payment of Administrative Costs: Upon Written Direction or Court Order, the Penguin Settlement Cost Account shall be used by the Escrow Agent to pay the Settlement Administration Costs.

VII. NOTICE AND SETTLEMENT HEARING

A. Within sixty (60) days after execution of this Settlement Agreement by the Parties, Plaintiffs shall file the Motion for Preliminary Approval with the Court. The motion shall request entry of a preliminary approval order (the "Preliminary Approval Order"). Such Preliminary Approval Order shall include, among other things: (1) the preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable and adequate and in the best interests of Consumers, (2) approval of a Notice Plan, including when the Notice shall be disseminated and the length of the Notice Period, (3) approval of a Distribution Plan that includes the time period during which eligible Consumers can object, exclude themselves, and/or obtain credits and/or a check, and (4) a schedule for a hearing by the Court after notice is given (the "Settlement Hearing") to approve the settlement of the litigation initiated by the Complaint, as set forth herein. At least five (5) days prior to filing their Motion for Preliminary Approval, Plaintiffs shall provide a copy of such motion (including all exhibits and attachments of such motion) to Penguin for review and comment.

B. Plaintiffs will provide Penguin a substantially final copy of the Notice Plan, including the Notice, at least five (5) business days prior to filing the Motion for Preliminary Approval.

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[1] With respect to the State of Colorado, its apportionment shall be used first for reimbursement of Colorado's actual costs and attorneys' fees, and second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement efforts.

C. Plaintiffs shall disseminate Notice of the Settlement Agreement to potentially affected Consumers as soon as practicable after entry of the Preliminary Approval Order. The Parties contemplate a Notice Period of at least forty-five (45) days, unless another time period is set by the Court.

D. Within forty-five (45) days following the conclusion of the Notice Period, Plaintiffs shall file with this Court a motion seeking final approval of the Settlement Agreement, including a determination by the Court (1) that the Settlement Agreement is approved finally as fair, reasonable and adequate, (2) that a Final Judgment approving the Settlement Agreement should be entered, (3) that the Order and Stipulated Injunction, substantially in the form of Attachment A, should be entered, (4) that an award of attorneys' fees, expenses and other payments should be made from the States' Compensation Settlement Account to counsel for Plaintiff States pursuant to Sections IV.B and VI.B, (5) that an award of attorneys' fees and expenses should be made to Counsel for the Settlement Class pursuant Section IV.C.; and (6) that service awards should be made to the Settlement Class Plaintiffs pursuant to Section IV.D.

VIII. RELEASED CLAIMS

A. In consideration of the monetary and injunctive provisions contained in this Settlement Agreement, each Plaintiff State will be deemed, upon the Effective Date, to have (and by operation of the Final Judgment shall have), fully, finally, and forever released Penguin, Penguin's parent and affiliated entities, their successors and assigns, and their officers, directors, employees, and attorneys (collectively "Releasees") from all Claims that were asserted or could have been asserted by or on behalf of any Consumer residing in a Plaintiff State at the time of their E-book purchase(s) who did not timely file with the Court a valid request for exclusion from this settlement.

B. In further consideration of the monetary and injunctive provisions contained in this Settlement Agreement, each Settlement Class member who has not timely and validly excluded themselves, will be deemed, upon the Effective Date, to have (and by operation of the Final Judgment shall have), fully, finally, and forever released the Releasees from all Claims tha were asserted or could have been asserted by any such Settlement Class member.

C. In further consideration of the monetary and injunctive provisions contained in this Settlement Agreement, each Plaintiff State will be deemed, upon the Effective Date, to have released the Releasees from all Claims that were asserted or could have been asserted by each Plaintiff State's Attorney General in his or her sovereign capacity as chief law enforcement officer of his or her respective State.

D. In further consideration of the monetary and injunctive provisions contained in this Settlement Agreement, each Plaintiff State's Attorney General covenants and agrees, to the fullest extent permitted by law, that it shall not hereafter seek to establish liability or assert Claims, in whole or in part, on behalf of itself or any other person or entity or class thereof, against the Releasees.

E. In further consideration of the monetary and injunctive provisions contained in this Settlement Agreement, the Final Judgment shall be deemed *res judicata* as to any such released Claim.

F. Plaintiffs and Penguin expressly agree that they do not intend this Settlement Agreement nor any documents executed or submitted pursuant to this Settlement Agreement to be construed as a release or otherwise affect any rights Plaintiffs have or may have against any other entity whosoever, including Hachette, HarperCollins, Simon & Schuster, Macmillan, Apple, Inc., or any of their parents, affiliated entities, officers, directors, employees, or attorneys.

The Final Judgment approving this Settlement Agreement shall include a provision that this Settlement Agreement and anything done pursuant thereto shall not constitute a release except as to Releasees. Plaintiffs and Consumers reserve their rights as aforesaid.

G. To the fullest extent permitted by law, the Parties each expressly waive any right or benefit available to them under Section 1542 of the California Civil Code, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to Section 1542 of the California Civil Code.

IX. COOPERATION AND IMPLEMENTATION

A. The Parties, and their respective counsel, agree to cooperate fully to implement the terms and conditions of this Settlement Agreement.

B. If a Plaintiff determines that Penguin is not in compliance with the terms of the Settlement Agreement, it shall give Penguin written notice of such non-compliance and Penguin shall have fifteen (15) business days to respond in writing. If the Plaintiff is not satisfied with Penguin's response, it shall notify Penguin in writing and Penguin shall have fifteen (15) business days to cure such non-compliance. If after such time a Plaintiff shall determine that Penguin is still not in compliance, such Plaintiff may seek the civil remedies available to it under the terms of the Final Judgment and Order and Stipulated Injunction.

C. This Settlement Agreement shall not be used or construed by any person as an admission of liability by Penguin to any party or person, or be deemed evidence of any violation

of any statute or law or admission of any liability or wrongdoing by Penguin or of the truth of any of the claims or allegations contained in the Complaint.

X. AGREEMENT VOIDABLE

This Agreement shall be voidable if, and only if, the settlement embodied herein is not approved by the Court.

XI. BENEFIT AND BINDING EFFECT

A. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of the Parties and their respective successors and assigns. The Parties expressly disclaim any intention to create rights under this Settlement Agreement which may be enforced by any other person under any circumstances whatsoever.

XII. MISCELLANEOUS

A. Within 24 hours of the execution of this Settlement Agreement by all parties, Penguin shall withdraw its Petition for a Writ of Mandamus seeking review of the court's decision on its motion for a jury trial in the Plaintiff States' action, which is currently pending in the United States Court of Appeals for the Second Circuit as *In re Penguin Group USA, Inc.*, No. 13-1744.

B. Within 24 Hours of the execution of this Settlement Agreement by all parties, Penguin shall dismiss its appeal of the court's decision on its motion to compel arbitration in the consolidated class action, which is currently pending in the United States Court of Appeals for the Second Circuit as *In re Electronic Books Antitrust Litigation*, No. 12-2999.

C. Penguin may file the Settlement Agreement and/or the Final Judgment in any action that may be brought against it in order to support a defense or counterclaim based on

principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment, bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

D. Liaison Counsel for Plaintiff States are expressly authorized by Plaintiff States to take all appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

E. Each counsel or other person executing the Settlement Agreement or any of its Attachments on behalf of any party hereto warrants that such person has full authority to do so.

F. This Settlement Agreement and the Attachment contain the entire agreement and understanding of the Parties. There are no additional promises or terms of the Settlement Agreement other than those contained herein. This Settlement Agreement shall not be modified except in writing signed by counsel for Liaison States, Settlement Class and Penguin or by their authorized representatives.

G. All dates and time periods in this Settlement Agreement shall be calculated pursuant to the Federal Rules of Civil Procedure. All such dates and time periods may be modified if mutually agreed upon, in writing, signed by counsel for Liaison States, Settlement Class and Penguin or by their authorized representatives.

H. The Settlement Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

I. The captions contained in this Settlement Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Settlement Agreement or the intent of any provision hereof.

J. The Settlement Agreement may be executed in one or more counterparts. Scanned signatures, digital signatures or signatures received by facsimile shall be treated the same as originals for the Settlement Agreement and any written, agreed modification thereof. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

K. The Settlement Agreement and any related documents shall be subject to, governed by and construed, interpreted and enforced pursuant to the internal laws of the State of New York.

L. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement and all Parties hereby submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the Settlement Agreement.

M. Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be given personally, by express courier, or by postage prepaid mail, or by facsimile or electronic transmission followed by postage prepaid mail, and shall be addressed as follows:

For Plaintiff States:

Office of the Attorney General of Texas
Chief, Antitrust Section
300 W. 15th St., 7th Floor
Austin, TX 78701

Office of the Attorney General of Connecticut
Chief, Antitrust Department
55 Elm Street
PO Box 120
Hartford, CT 06141-0120

Office of the Attorney General of Ohio
Chief, Antitrust Section
150 E. Gay St., 23rd Floor
Columbus, OH 43215-3428

For Settlement Class:

Jeff D. Friedman
Hagens Berman Sobol Shapiro LLP
715 Hearst Avenue, Suite 202
Berkeley, California 94710

For Penguin:

Daniel Ferrel McInnis
Akin Gump Strauss Hauer & Feld
Robert S. Strauss Building
1333 New Hampshire Avenue, NW
Washington, DC 20036-1564

with a copy to

Legal Department
Penguin Group (USA) Inc.
375 Hudson Street
New York, New York 10014

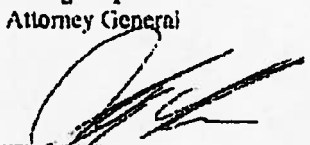
Any one of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided, ten (10) calendar days before the change is effective.

Agreed to by:

Penguin Group (USA), Inc.

Daniel Ferrel McInnis
Akin Gump Strauss Hauer & Feld
Robert S. Strauss Building
1333 New Hampshire Avenue, NW
Washington, DC 20036-1564

State of Connecticut
George Jepsen
Attorney General



Gary M. Becker
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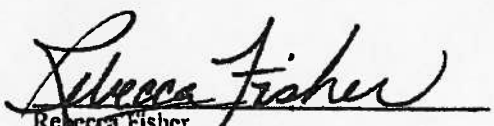
State of Texas
Greg Abbott
Attorney General



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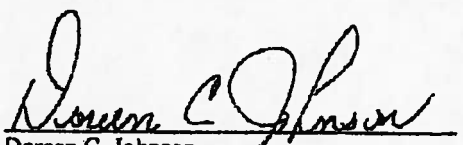

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E-BOOKS SETTLEMENT WITH PENGUIN GROUP (USA), INC.

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LUTHER STRANGE
ATTORNEY GENERAL

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Antitrust Section Chief
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STATE OF ALASKA
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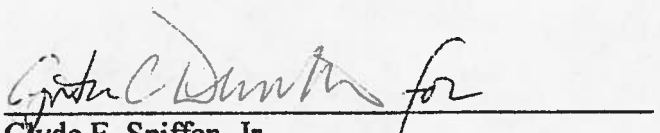

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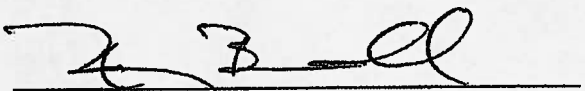

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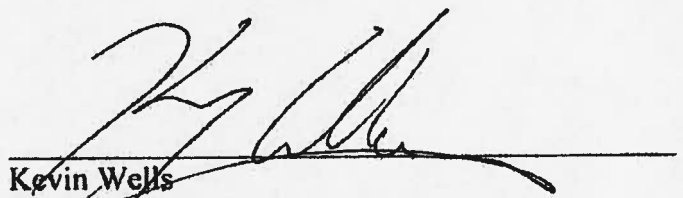

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DISTRICT OF COLUMBIA
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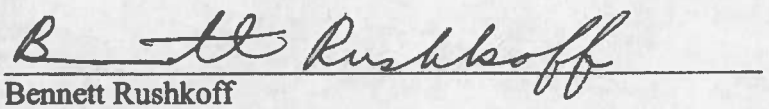
ATTORNEY GENERAL

ELLEN S. EFROS
DEPUTY ATTORNEY GENERAL, PUBLIC INTEREST DIVISION



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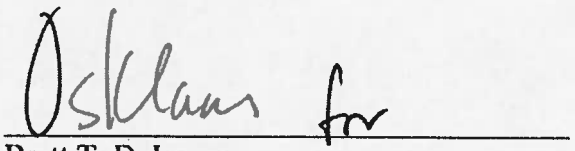

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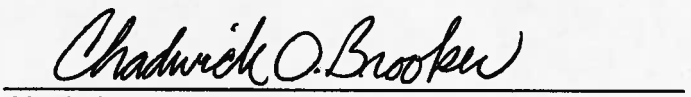

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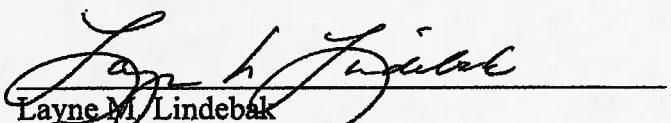

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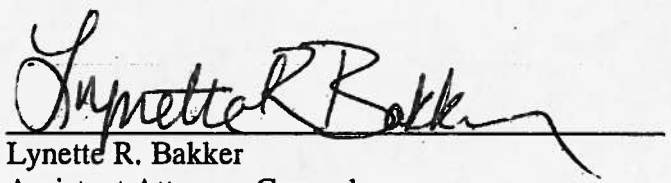

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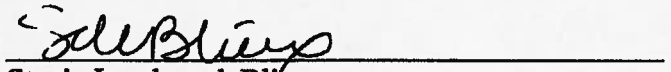

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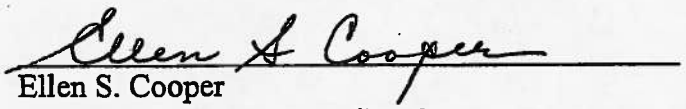

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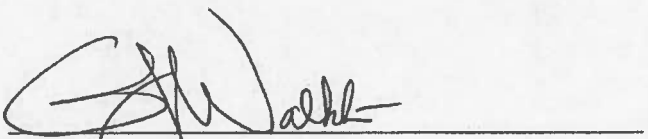

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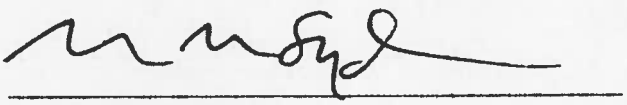

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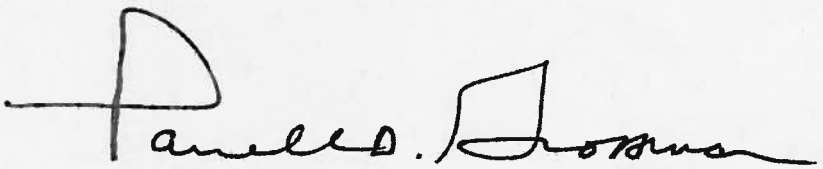

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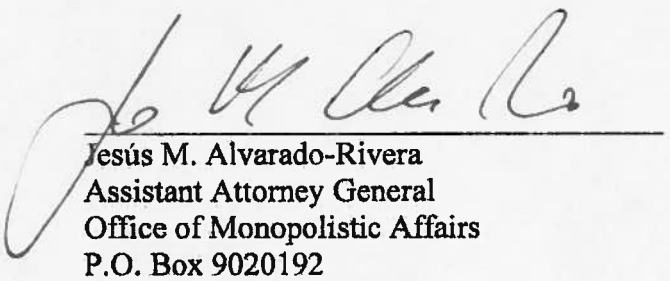

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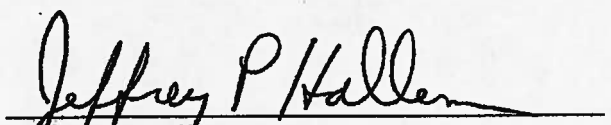

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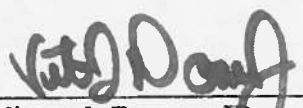

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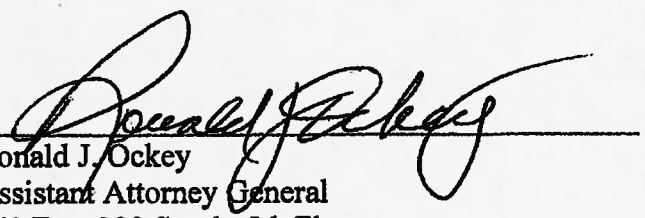

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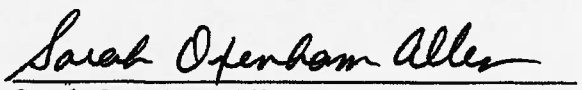

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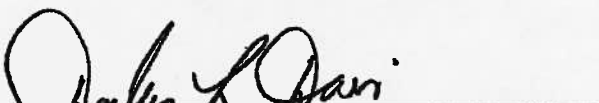

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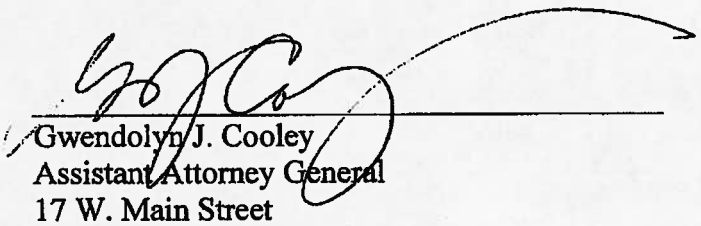

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ATTORNEYS FOR THE STATE OF WISCONSIN

ATTACHMENT A

TO SETTLEMENT AGREEMENT
BETWEEN PLAINTIFFS AND PENGUIN GROUP, (U.S.A), INC.

ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

This Document Relates to:

IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION	)	**No. 11-md-02293 (DLC) ECF Case**
THE STATE OF TEXAS, et al.,	)	
Plaintiffs,	)	**Civil Action No.12-cv-03394**
v.	)	
PENGUIN GROUP (USA) INC., et al.,	)	

[PROPOSED] ORDER AND STIPULATED INJUNCTION

WHEREAS, Plaintiff States[1] filed their Second Amended Complaint on May 11, 2012 and Settlement Class[2] filed its Complaint on January 20, 2012, with both Complaints alleging that Penguin (as hereinafter defined) and others conspired to raise retail prices of E-books in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1;

And WHEREAS Plaintiff States and Settlement Class ("Plaintiffs") and Penguin, by their respective attorneys, have consented to the entry of this Order and Stipulated Injunction without trial or adjudication of any issue of fact or law;

[1] "Plaintiff States" are the States and Commonwealths of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.
[2] "Settlement Class" includes all Consumers who resided in any State, Commonwealth or Territory of the United States, other than Plaintiff States, at the time of their E-book purchase.

AND WHEREAS, this Order and Stipulated Injunction does not constitute any admission by Penguin that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaints are true;

AND WHEREAS, this Order and Stipulated Injunction shall be modified to take into account changes, if any, made to the language of the United States Department of Justice's Final Judgment as to Penguin, as entered in *United States of America v. Apple, Inc., et al.*, Case No. 12-cv-2826, in the United States District Court for the Southern District of New York on May 20, 2013 (the "DOJ Final Judgment") so that the requirements and prohibitions of this Order and Stipulated Injunction are in substance the same as and, irrespective of the Effective Date of this Order and Stipulated Injunction, coterminous with said DOJ Final Judgment.

AND WHEREAS, Penguin agrees to be bound by the provisions of this Order and Stipulated Injunction pending its approval by the Court;

AND WHEREAS, Plaintiffs require Penguin to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaints;

AND WHEREAS, Penguin has represented to Plaintiffs that the actions and conduct restrictions can and will be undertaken and that it will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Penguin, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over Penguin. The Complaints state a claim upon which relief may be granted against Penguin under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Order and Stipulated Injunction:

A. "Agency Agreement" means an agreement between an E-book Publisher and an E-book Retailer under which the E-book Publisher Sells E-books to consumers through the E-book Retailer, which under the agreement acts as an agent of the E-book Publisher and is paid a commission in connection with the Sale of one or more of the E-book Publisher's E-books.

B. "Apple" means Apple, Inc., a California corporation with its principal place of business in Cupertino, California, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Counsel for Settlement Class" means Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC.

D. "E-book" means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books. For purposes of this Order and Stipulated Injunction, the term E-book does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or "app" sold through an "app store" rather than through an e-book store (*e.g.*, through Apple's "App Store" rather than through its "iBookstore" or "iTunes") and not designed

to be executed or read by or through a dedicated E-book reading device; or (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book.

E. "E-book Publisher" means any Person that, by virtue of a contract or other relationship with an E-book's author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any E-book sufficient to distribute the E-book within the United States to E-book Retailers and to permit such E-book Retailers to Sell the E-book to consumers in the United States. Named Publishers are E-book Publishers. For purposes of this Order and Stipulated Injunction, E-book Retailers are not E-book Publishers.

F. "E-book Retailer" means any Person that lawfully Sells (or seeks to lawfully Sell) E-books to consumers in the United States, or through which a Named Publisher, under an Agency Agreement, Sells E-books to consumers. For purposes of this Order and Stipulated Injunction, Publishers and all other Persons whose primary business is book publishing are not E-book Retailers.

G. "Hachette" means Hachette Book Group, Inc., a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

H. "HarperCollins" means HarperCollins Publishers L.L.C., a Delaware limited liability company with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers,

managers, agents, and employees.

I. "Including" means including, but not limited to.

J. "Liaison Counsel for Plaintiff States" means the designated representatives for the Attorneys General of the States of Texas, Connecticut, and Ohio. All documents or information received by Liaison Counsel for Plaintiff States pursuant to this Order may be shared with all Plaintiff States pursuant to confidentiality provisions contained herein.

K. "Macmillan" means (1) Holtzbrinck Publishers, LLC d/b/a Macmillan, a New York limited liability company with its principal place of business in New York, New York; and (2) Verlagsgruppe Georg von Holtzbrinck GmbH ("VGvH"), a German corporation with its principal place of business in Stuttgart, Germany, its successors and assigns, and their parents, subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

L. "Named Publishers" means Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster. Where this Order and Stipulated Injunction imposes an obligation on an E-Book Publisher to engage in or refrain from engaging in certain conduct, that obligation shall apply to Penguin individually and to any joint venture or other business arrangement established by Penguin and one or more Named Publishers.

M. "Penguin" means (1) Penguin Group (USA), Inc., a Delaware corporation with its principal place of business in New York, New York, (2) The Penguin Group, a division of U.K. corporation Pearson plc with its principal place of business in London, England; (3) The Penguin Publishing Company Ltd, a company registered in England and Wales with its principal place of business in London, England; and (4) Dorling Kindersley Holdings Limited, a company registered in England and Wales with its principal place of business in London, England; and

each of their respective successors and assigns (expressly including Penguin Random House and any similar joint venture between Penguin and Random House, Inc.); each of their respective subsidiaries, divisions, groups, partnerships; and each of their respective directors, officers, managers, agents and employees. Where Section IV.A, IV.B, IV.D, or VII imposes an obligation on Penguin to engage in certain conduct by either a date certain or by a specified day after entry of this Final Judgment, any successor or assign whose acquisition of or combination or other relationship with Penguin is consummated after entry of this Final Judgment shall meet each such obligation within thirty days after consummation. The prohibitions of Section V.A of this Final Judgment shall expire for any successor or assign of Penguin on the dates on which such prohibitions would have expired for Penguin had the acquisition, combination, or other relationship not occurred. Where the Final Judgment imposes an obligation on Penguin to engage in or refrain from engaging in certain conduct, that obligation shall apply to Penguin and to any joint venture or other business arrangement established by Penguin and one or more Publisher Defendants.

N. "Penguin Random House" means the joint venture entities, which will operate under the name "Penguin Random House," that will be formed pursuant to the Contribution Agreement, dated October 29, 2012, by and between Pearson plc and Bertelsmann SE & Co. KGaA.

O. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

P. "Plaintiff States" means the States and Commonwealths of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois,

Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

Q. "Price MFN" means a term in an agreement between an E-book Publisher and an E-book Retailer under which:

1. the Retail Price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells one or more E-books to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other E-book Retailer or the E-book Publisher, under an Agency Agreement, through any other E-book Retailer Sells the same E-book(s) to consumers;

2. the Wholesale Price at which the E-book Publisher Sells one or more E-books to that E-book Retailer for Sale to consumers depends in any way on the Wholesale Price at which the E-book Publisher Sells the same E-book(s) to any other E-book Retailer for Sale to consumers; or

3. the revenue share or commission that the E-book Retailer receives from the E-book Publisher in connection with the Sale of one or more E-books to consumers depends in any way on the revenue share or commission that (a) any other E-book Retailer receives from the E-book Publisher in connection with the Sale of the same E-book(s) to consumers, or (b) that the E-book Retailer receives from any other E-book Publisher in connection with the Sale of one or more of the other E-book Publisher's E-books.

4. For purposes of this Final Judgment, it will not constitute a Price MFN under subsection 3 of this definition if Penguin agrees, at the request of an E-book Retailer, to meet more favorable pricing, discounts, or allowances offered to the E-book Retailer by another

E-book Publisher for the period during which the other E-book Publisher provides that additional compensation, so long as that agreement is not or does not result from a pre-existing agreement that requires Penguin to meet all requests by the E-book Retailer for more favorable pricing within the terms of the agreement.

R. "Purchase" means a consumer's acquisition of one or more E-books as a result of Sale.

S. "Retail Price" means the price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells an E-book to a consumer.

T. "Sale" means delivery of access to a consumer to read one or more E-books (purchased alone, or in combination with other goods or services) in exchange for payment; "Sell" or "Sold" means to make or to have made a Sale of an E-book to a consumer.

U. "Settlement Class" means all Consumers who resided in any State, Commonwealth or Territory of the United States, other than Plaintiff States, at the time of their E-book purchase.

V. "Simon & Schuster" means Simon & Schuster, Inc., a New York corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

W. "Wholesale Price" means (1) the net amount, after any discounts or other adjustments (not including promotional allowances subject to Section 2(d) of the Robinson-Patman Act, 15 U.S.C. § 13(d)), that an E-book Retailer pays to an E-book Publisher for an E-book that the E-book Retailer Sells to consumers; or (2) the Retail Price at which an E-book Publisher, under an Agency Agreement, Sells an E-book to consumers through an E-book

Retailer minus the commission or other payment that E-book Publisher pays to the E-book Retailer in connection with or that is reasonably allocated to that Sale.

III. APPLICABILITY

This Order and Stipulated Injunction applies to Penguin and all other Persons in active concert or participation with Penguin who receive actual notice of this Order and Stipulated Injunction by personal service or otherwise.

IV. REQUIRED CONDUCT

A. Within seven days after entry of this Order and Stipulated Injunction, Penguin shall have terminated any agreement with Apple relating to the Sale of E-Books that was executed prior to Penguin's stipulation to the entry of the DOJ Final Judgment.

B. For each agreement between Penguin and an E-book Retailer other than Apple to whom Penguin provided notice (pursuant to Section IV. B of the DOJ Final Judgment), Penguin shall confirm to Liaison Counsel for Plaintiff States the dates on which it notified the E-book Retailer that the E-book Retailer may terminate the agreement with thirty-days' notice and shall, thirty days after the E-book Retailer provides such notice, release the E-book Retailer from the agreement. Penguin will provide such confirmation within seven days after entry of this Order and Stipulated Injunction. For each such agreement that the E-book Retailer has not terminated within ten days after entry of the DOJ Final Judgment, Penguin shall confirm to Liaison Counsel for Plaintiff States that it has terminated such agreement or taken each step required under the DOJ Final Judgment to cause the agreement to be terminated and not renewed or extended.

C. Penguin shall notify the Liaison Counsel for Plaintiff States in writing at least sixty days in advance of the formation or material modification of any joint venture or other business arrangement relating to the Sale, development, or promotion of E-books in the United

States in which Penguin and at least one other E-book Publisher (including another Named Publisher) are participants or partial or complete owners. Such notice shall describe the joint venture or other business arrangement, identify all E-book Publishers that are parties to it, and attach the most recent version or draft of the agreement, contract, or other document(s) formalizing the joint venture or other business arrangement. Within thirty days after Penguin provides notification of the joint venture or business arrangement, the Plaintiff States may make a written request for additional information. If the Plaintiff States make such a request, Penguin shall not proceed with the planned formation or material modification of the joint venture or business arrangement until thirty days after substantially complying with such additional request(s) for information. The failure of the Plaintiff States to request additional information or to bring an action under the antitrust laws to challenge the formation or material modification of the joint venture shall neither give rise to any inference of lawfulness nor limit in any way the right of the Plaintiff States to investigate the formation, material modification, or any other aspects or activities of the joint venture or business arrangement and to bring actions to prevent or restrain violations of the antitrust laws.

The notification requirements of this Section IV.C shall not apply to ordinary course business arrangements between Penguin and another E-book Publisher (not a Named Publisher) that do not relate to the Sale of E-books to consumers, or to business arrangements the primary or predominant purpose or focus of which involves: (i) E-book Publishers co-publishing one or more specifically identified E-book titles or a particular author's E-books; (ii) Penguin licensing to or from another E-book Publisher the publishing rights to one or more specifically identified E-book titles or a particular author's E-books; (iii) Penguin providing technology services to or receiving technology services from another E-book Publisher (not a Named Publisher) or

licensing rights in technology to or from another E-book Publisher; or (iv) Penguin distributing E-books published by another E-book Publisher (not a Named Publisher). The notification requirements of this Section IV.C shall also not apply to the formation of Penguin Random House.

D. Penguin shall furnish to the Liaison Counsel for Plaintiff States (1) within seven days after entry of this Order and Stipulated Injunction, one complete copy of each agreement, executed, renewed, or extended on or after January 1, 2012, between Penguin and any E-book Retailer relating to the Sale of E-books, and, (2) thereafter, on a quarterly basis, at the same times that such agreements are provided to the DOJ under the DOJ Final Judgment, each such agreement executed, renewed, or extended since Penguin's previous submission of agreements to the Plaintiffs.

V. PROHIBITED CONDUCT

A. For two years, Penguin shall not restrict, limit or impede an E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books, such two-year period to run separately for each E-book Retailer, at Penguin's option, from either:

1. the termination of an agreement between Penguin and the E-book Retailer that restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or

2. the date on which Penguin notifies the E-book Retailer in writing that Penguin will not enforce any term(s) in its agreement with the E-book Retailer that restrict, limit, or impede the E-book Retailer from setting, altering, or reducing the Retail Price of one or more

E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

Penguin shall notify the Liaison Counsel for Plaintiff States of the option it selects for each E-book Retailer within seven days of making its selection.

B. For two years after Penguin's stipulation of the entry of the DOJ Final Judgment, Penguin shall not enter into any agreement with any E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the Retail Price of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

C. Penguin shall not enter into any agreement with an E-book Retailer relating to the Sale of E-books that contains a Price MFN.

D. Penguin shall not retaliate against, or urge any other E-book Publisher or E-book Retailer to retaliate against, an E-book Retailer for engaging in any activity that Penguin is prohibited by Sections V.A, V.B, and VI.B.2 of this Order and Stipulated Injunction from restricting, limiting, or impeding in any agreement with an E-book Retailer. After the expiration of prohibitions in Sections V.A and V.B of this Order and Stipulated Injunction, this Section V.D shall not prohibit Penguin from unilaterally entering into or enforcing any agreement with an E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the Retail Price of any of Penguin's E-books or from offering price discounts or any other form of promotions to encourage consumers to Purchase any of Penguin's E-books.

E. Penguin shall not enter into or enforce any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any E-book Publisher (including another Named Publisher) to raise, stabilize, fix, set, or coordinate the Retail Price or Wholesale

Price of any E-book or fix, set, or coordinate any term or condition relating to the Sale of E-books.

This Section V.E shall not prohibit Penguin from entering into and enforcing agreements relating to the distribution of another E-book Publisher's E-books (not including the E-books of another Named Publisher) or to the co-publication with another E-book Publisher of specifically identified E-book titles or a particular author's E-books, or from participating in output-enhancing industry standard-setting activities relating to E-book security or technology.

F. Penguin (including each officer of each parent of Penguin who exercises direct control over Penguin's business decisions or strategies) shall not convey or otherwise communicate, directly or indirectly (including by communicating indirectly through an E-book Retailer with the intent that the E-book Retailer convey information from the communication to another E-book Publisher or knowledge that it is likely to do so), to any other E-book Publisher (including to an officer of a parent of a Named Publisher) any competitively sensitive information, including:

1. its business plans or strategies;

2. its past, present, or future wholesale or retail prices or pricing strategies for books sold in any format (*e.g.*, print books, E-books, or audio books);

3. any terms in its agreement(s) with any retailer of books Sold in any format; or

4. any terms in its agreement(s) with any author.

This Section V.F shall not prohibit Penguin from communicating (a) in a manner and through media consistent with common and reasonable industry practice, the cover prices or wholesale or retail prices of books sold in any format to potential purchasers of those books; or

(b) information Penguin needs to communicate in connection with (i) its enforcement or assignment of its intellectual property or contract rights, (ii) a contemplated merger, acquisition, or purchase or sale of assets, (iii) its distribution of another E-book Publisher's E-books, or (iv) a business arrangement under which E-book Publishers agree to co-publish, or an E-book Publisher agrees to license to another E-book Publisher the publishing rights to, one or more specifically identified E-book titles or a particular author's E-books.

VI. PERMITTED CONDUCT

A. Nothing in this Order and Stipulated Injunction shall prohibit Penguin unilaterally from compensating a retailer, including an E-book Retailer, for valuable marketing or other promotional services rendered.

B. Notwithstanding Sections V.A and V.B of this Order and Stipulated Injunction, Penguin may enter into Agency Agreements with E-book Retailers under which the aggregate dollar value of the price discounts or any other form of promotions to encourage consumers to Purchase one or more of Penguin's E-books (as opposed to advertising or promotions engaged in by the E-book Retailer not specifically tied or directed to Penguin's E-books) is restricted; *provided that* (1) such agreed restriction shall not interfere with the E-book Retailer's ability to reduce the final price paid by consumers to purchase Penguin's E-books by an aggregate amount equal to the total commissions Penguin pays to the E-book Retailer, over a period of at least one year, in connection with the Sale of Penguin's E-books to consumers; (2) Penguin shall not restrict, limit, or impede the E-book Retailer's use of the agreed funds to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; and (3) the method of accounting for the E-book Retailer's promotional activity does not restrict, limit, or impede the E-book Retailer from engaging in any form of retail activity or promotion.

VII. ANTITRUST COMPLIANCE

Within thirty days after entry of the DOJ Final Judgment, Penguin shall have designated its general counsel or chief legal officer, or an employee reporting directly to its general counsel or chief legal officer, as Antitrust Compliance Officer with responsibility for ensuring Penguin's compliance with this Order and Stipulated Injunction. The Antitrust Compliance Officer shall be responsible for the following:

A. furnishing a copy of this Order and Stipulated Injunction, at the same time that a copy of the DOJ Final Judgment is furnished under Section VII.A. of the DOJ Final Judgment, to each of Penguin's employees engaged, in whole or in part, in the distribution or Sale of E-books;

B. furnishing a copy of this Order and Stipulated Injunction in a timely manner to each officer, director, or employee who succeeds to any position identified in Section VII.A of this Order and Stipulated Injunction;

C. ensuring that each person identified in Sections VII.A and VII.B of this Order and Stipulated Injunction receives at least four hours of training annually on the meaning and requirements of the DOJ Final Judgment, this Order and Stipulated Injunction, and the antitrust laws, such training to be delivered by an attorney with relevant experience in the field of antitrust law;

D. obtaining, within sixty days after entry of the DOJ Final Judgment and on each anniversary of the entry of the DOJ Final Judgment, from each person identified in Sections VII.A and VII.B of this Order and Stipulated Injunction, and thereafter maintaining, a certification that each such person (a) has read, understands, and agrees to abide by the terms of this Order and Stipulated Injunction; and (b) is not aware of any violation of this Order and

Stipulated Injunction or the antitrust laws or has reported any potential violation to the Antitrust Compliance Officer;

E. conducting an annual antitrust compliance audit covering each person identified in Sections VII.A and VII.B of this Order and Stipulated Injunction, and maintaining all records pertaining to such audits;

F. communicating annually to Penguin's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Order and Stipulated Injunction or the antitrust laws;

G. taking appropriate action, within three business days of discovering or receiving credible information concerning an actual or potential violation of this Order and Stipulated Injunction, to terminate or modify Penguin's conduct to assure compliance with this Order and Stipulated Injunction; and, within seven days of taking such corrective actions, providing to Liaison Counsel for Plaintiff States a description of the actual or potential violation of this Order and Stipulated Injunction and the corrective actions taken;

H. furnishing to Liaison Counsel for Plaintiff States, on a quarterly basis, at the same times as such copies are provided to the DOJ under the DOJ Final Judgment, electronic copies of any non-privileged communications with any Person containing allegations of Penguin's noncompliance with any provisions of this Order and Stipulated Injunction;

I. maintaining, and furnishing to the Liaison Counsel for Plaintiff States, on a quarterly basis, at the same times as such logs are provided to the DOJ under the DOJ Final Judgment, a log of all oral and written communications, excluding privileged or public communications, between or among (1) any of Penguin's officers, directors, or employees involved in the development of the Penguin's plans or strategies relating to E-books, and (2) any

person employed by or associated with another Named Publisher, relating, in whole or in part, to the distribution or sale in the United States of books sold in any format, including an identification (by name, employer, and job title) of the author and recipients of and all participants in the communication, the date, time, and duration of the communication, the medium of the communication, and a description of the subject matter of the communication (for a collection of communications solely concerning a single business arrangement that is specifically exempted from the reporting requirements of Section IV.C of this Order and Stipulated Injunction, Penguin may provide a summary of the communications rather than logging each communication individually); and

J. providing to Liaison Counsel for Plaintiff States annually, on or before the anniversary of the entry of the DOJ Final Judgment, a written statement as to the fact and manner of Penguin's compliance with Sections IV, V, and VII of this Order and Stipulated Injunction.

VIII. COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Order and Stipulated Injunction, or of determining whether the Order and Stipulated Injunction should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Plaintiff States, including consultants and other persons retained by the Plaintiff States, shall, upon written request of an authorized representative of Liaison Counsel for Plaintiff States, and on reasonable notice to Penguin, be permitted:

1. access during Penguin's office hours to inspect and copy, or at the option of the Plaintiff States, to require Penguin to provide to the Liaison Counsel for Plaintiff States hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Penguin, relating to any matters contained in this Order and

Stipulated Injunction; and

2. to interview, either informally or on the record, Penguin's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Penguin.

B. Upon the written request of an authorized representative of Liaison Counsel for Plaintiff States, Penguin shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Order and Stipulated Injunction as may be requested. Written reports authorized under this paragraph may, in the sole discretion of the Plaintiff States, require Penguin to conduct, at their cost, an independent audit or analysis relating to any of the matters contained in this Order and Stipulated Injunction.

C. No information or documents obtained by the means provided in this Section shall be divulged by the Plaintiffs to any person other than an authorized representative of the Plaintiff States, except in the course of legal proceedings to which one or more of the Plaintiff States are a party (including grand jury proceedings), or for the purpose of securing compliance with this Order and Stipulated Injunction, or as otherwise required by law.

D. If at the time information or documents are furnished by Penguin to the Liaison Counsel for Plaintiff States, Penguin represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Penguin marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the Plaintiffs shall give Penguin ten calendar days' notice prior to divulging such material in any civil or administrative proceeding.

E. Liaison Counsel for Plaintiff States will make reasonable good-faith efforts to coordinate inspections and demands under Paragraphs A and B above with the United States Department of Justice.

F. Plaintiffs will make reasonable good faith efforts to conform their interpretation of the terms of this Order and Stipulated Injunction to the DOJ's interpretation of the DOJ Final Judgment.

IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Order and Stipulated Injunction, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. NO LIMITATION ON GOVERNMENT RIGHTS

Nothing in this Order and Stipulated Injunction shall limit the right of the Plaintiff States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any past, present, or future conduct, policy, or practice of Penguin.

XI. EXPIRATION OF ORDER AND STIPULATED INJUNCTION

Unless this Court grants an extension, this Order and Stipulated Injunction shall expire five years from the date of the entry of the DOJ Final Judgment.

SO ORDERED this _____ day of _____, 2013.

_____
Hon. Denise Cote
United States District Judge
Southern District of New York