



1 the August 9 Order, the Court laid out several categories of information that were sealable under  
2 Ninth Circuit law. Specifically, the Court addressed Apple's request to seal its financial  
3 information, including product-specific profits, profit margins, unit sales, revenue, and costs. *See*  
4 August 9 Order at 5. The Court ruled that it was "not persuaded that Apple's interest in sealing its  
5 financial data outweighs the public's interest in accessing this information," *id.*, and that "the  
6 financial information that Apple seeks to seal is essential to each party's damages calculations,"  
7 thus increasing its value to the public. *Id.* at 6. Accordingly, the Court denied Apple's motion to  
8 seal a range of documents containing this type of financial information.

9 Apple then appealed this denial to the Federal Circuit. This Court stayed its August 9  
10 Order with regard to the financial information until the Federal Circuit ruled on the parties'  
11 motions to stay. ECF No. 1754. The Federal Circuit stayed this Court's August 9 Order pending  
12 final resolution of the Appeal. Federal Circuit Case No. 12-1600, Dkt. No. 39. Thus, as of now,  
13 the information remains sealed.

## 14 II. Legal Standard

15 As this Court has explained in its previous sealing orders in this case, courts have  
16 recognized a "general right to inspect and copy public records and documents, including judicial  
17 records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978).  
18 "Unless a particular court record is one 'traditionally kept secret,' a 'strong presumption in favor of  
19 access' is the starting point. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th  
20 Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).  
21 In order to overcome this strong presumption, a party seeking to seal a judicial record must  
22 articulate justifications for sealing that outweigh the public policies favoring disclosure. *See id.* at  
23 1178-79. Because the public's interest in non-dispositive motions is relatively low, a party seeking  
24 to seal a document attached to a non-dispositive motion need only demonstrate "good cause."  
25 *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (applying "good cause" standard  
26 to all non-dispositive motions, because such motions "'are often unrelated, or only tangentially  
27 related, to the underlying cause of action'" (citing *Kamakana*, 447 F.3d at 1179)).

1           Conversely, “the resolution of a dispute on the merits, whether by trial or summary  
2 judgment, is at the heart of the interest in ensuring the ‘public’s understanding of the judicial  
3 process and of significant public events.’” *Kamakana*, 447 F.3d at 1179 (quoting *Valley*  
4 *Broadcasting Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)). Thus,  
5 a party seeking to seal a judicial record attached to a dispositive motion or presented at trial must  
6 articulate “compelling reasons” in favor of sealing. *See id.* at 1178. “In general, ‘compelling  
7 reasons’ . . . exist when such ‘court files might have become a vehicle for improper purposes,’ such  
8 as the use of records to . . . release trade secrets.” *Id.* at 1179 (citing *Nixon*, 435 U.S. at 598). The  
9 Ninth Circuit has adopted the Restatement’s definition of “trade secret” for purposes of sealing,  
10 holding that “[a] ‘trade secret may consist of any formula, pattern, device or compilation of  
11 information which is used in one’s business, and which gives him an opportunity to obtain an  
12 advantage over competitors who do not know or use it.” *In re Electronic Arts*, 298 Fed. App’x  
13 568, 569-70 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt. b). Additionally,  
14 “compelling reasons” may exist if sealing is required to prevent judicial documents from being  
15 used “as sources of business information that might harm a litigant’s competitive standing.” *Id.* at  
16 569 (9th Cir. 2008) (citing *Nixon*, 435 U.S. at 598).

17           As this Court has previously ruled, motions concerning the remedies to be awarded in this  
18 case cannot fairly be characterized as “unrelated, or only tangentially related, to the underlying  
19 cause of action.” *Kamakana*, 447 F. 3d at 1179. To the contrary, these motions implicate the very  
20 core of Apple’s claims and Apple’s desired relief in bringing suit against Samsung. As evidenced  
21 by the plethora of media and general public scrutiny of the preliminary injunction proceedings and  
22 the trial, the public has a significant interest in these court filings, and therefore the strong  
23 presumption of public access applies. Accordingly, the “compelling reasons” standard applies to  
24 Apple’s Damages Motion, and to documents supporting it.

### 25           **III. ANALYSIS**

#### 26           A. Motion Pursuant to Civil Local Rule 79-5(d)

27  
28

1 Apple has indicated that many of the documents it seeks to seal have been designated as  
2 confidential by Samsung. Specifically, Samsung designated as confidential the proposed  
3 redactions to the Damages Motion; the proposed redactions to the Musika Declaration; Exhibits 6-  
4 9, 12-14, 21, 24-26, 37, 48-49, 52, and 62-63 to the Musika Declaration; the proposed redactions to  
5 the Robinson Declaration; and Exhibit 30 to the Robinson Declaration. Civil Local Rule 79-5(d)  
6 governs motions to seal documents designated as confidential by another party. It requires that  
7 “the designating party must file with the Court and serve a declaration establishing that the  
8 designated information is sealable” within seven days of the motion. Samsung has not filed a  
9 declaration supporting Apple’s motion. Accordingly, Apple’s motion to seal documents pursuant  
10 to Civil Local Rule 79-5(d) is DENIED without prejudice.

11 Some of these documents, however, may be sealable on other grounds. Specifically, Apple  
12 seeks to seal the proposed redactions on page 27 of the Damages Motion; the proposed redactions  
13 on pages 8-9 of the Musika Declaration; Exhibit 2 to the Musika Declaration; and the proposed  
14 redactions on page 9 of the Robinson Declaration. These documents will be addressed below.

15 B. IDC Information

16 Apple has moved to seal a few sentences and a graph included in the Musika Declaration,  
17 as well as Exhibit 2 to the Musika Declaration, which consists of data in graph and table form, on  
18 grounds that they contain market share data, including projections, from third party IDC. This  
19 Court has previously considered a request from Apple that IDC information be sealed. In the  
20 August 9 Order, the Court agreed that because, pursuant to an agreement between IDC and Apple,  
21 a limited amount of IDC data would be introduced at trial, disclosure of IDC’s full report and  
22 underlying data spreadsheet would not be necessary to inform the public, and could be very  
23 harmful to IDC, whose business depends on selling such information. August 9 Order at 10. The  
24 same reasoning applies here. The documents Apple now seeks to seal, like the full reports the  
25 Court previously found sealable, relate to the entire smartphone market, and not specifically to  
26 Apple’s or Samsung’s market shares. Though they are far less extensive than the full reports the  
27 Court previously ordered sealed, they present data in summary form, allowing the reader to deduce  
28

1 a significant amount of information about the content of the full reports. Their release could harm  
2 IDC in so far as it might reduce IDC's ability to sell its reports to other customers, and the public's  
3 interest in this information about the smartphone market generally is not especially great, and could  
4 be satisfied by the information disclosed at trial. These documents containing IDC information  
5 thus meet the "compelling reasons" standard. Accordingly, consistent with the August 9 Order, the  
6 Court GRANTS Apple's motion to seal the portions of the Musika Declaration identified on pages  
7 8-9 and Exhibit 2 to the Musika Declaration.

8 C. Confidential Financial Information

9 Finally, Apple seeks to redact product-specific unit sales, revenue, profit, profit margin, and  
10 cost data from its Damages Motion, as well as from the Robinson Declaration and Exhibit 8 to the  
11 Robinson Declaration. As this Court explained in the August 9 Order, Apple has not established  
12 that public availability of its product-specific unit sales, revenue, profit, profit margin, and cost  
13 data would actually provide its competitors with an advantage, as would be required to find the  
14 information sealable under the "compelling reasons" standard. August 9 Order at 5-6.

15 In seeking the very large damages award it sought at trial, Apple stipulated to the  
16 introduction of JX1500, a partial summary of its damages calculations, which contains some  
17 product-specific unit sales and revenue information. *See* ECF No. 1597. As Apple appears to have  
18 realized in introducing that exhibit, it cannot both use its financial data to seek multi-billion dollar  
19 damages and insist on keeping it secret.

20 Further, this Court previously found that the financial information was essential to Apple's  
21 damages calculations, thus increasing the public's interest in access. August 9 Order at 6. Apple's  
22 present Damages Motion also requires detailed financial analysis, and the public's interest in  
23 accessing Apple's financial information is now perhaps even greater than it was at trial. Apple's  
24 motion seeks to permanently enjoin the sale of 26 Samsung products that have already been on the  
25 market for varying lengths of time, and seeks an enhancement of \$535 million on top of the \$1.05  
26 billion in damages awarded by the jury. Such remedies would have a profound effect on the  
27 smartphone industry, consumers, and the public. As the extensive media coverage indicates, this is  
28

1 a truly extraordinary case of exceptional interest to the public. Apple's reasons would have to be  
2 very compelling indeed to overcome the unusually robust public interest in access.

3 Beyond continuing to assert that its financial data are "trade secrets," Apple has not  
4 provided any new arguments for why this information should be protected. Accordingly,  
5 consistent with the August 9 Order, this Court finds that Apple's unit sales, revenue, profit, profit  
6 margin, and cost data do not meet the "compelling reasons" standard. Apple's motion to seal is  
7 DENIED as to the proposed redactions on page 27 of the Damages Motion, page 9 of the Robinson  
8 Declaration, and Exhibit 8 to the Robinson Declaration. For the reasons explained below, this  
9 denial is without prejudice.

10 D. Stay

11 The Federal Circuit has stayed this Court's prior Order denying Apple's request to seal its  
12 confidential financial information. Though the documents at issue in the present motion are not the  
13 same documents considered in the August 9 Order, they are subject to exactly the same analysis.  
14 Thus, the outcome of the appeal of the August 9 Order bears on the present Order. If the present  
15 Order were to have immediate effect, it would undermine the stay that both this Court and the  
16 Federal Circuit have imposed pending the Federal Circuit's resolution of the issue.

17 As this Court explained in granting the stay of the August 9 Order, Federal Rule of Civil  
18 Procedure 62(c) vests the power to stay an order pending appeal with the district court. *See* Fed. R.  
19 Civ. P. 62(c). For both the appellate court and the district court "the factors regulating the issuance  
20 of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he  
21 is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a  
22 stay; (3) whether issuance of the stay will substantially injure the other [parties' interest] in the  
23 proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).  
24 Deciding whether to grant a stay of an order pending an appeal is an equitable inquiry. Each factor  
25 in the analysis need not be given equal weight. *Standard Havens Prods. v. Gencor Indus.*, 897  
26 F.2d 511, 512 (Fed. Cir. 1990). "When harm to applicant is great enough, a court will not require  
27  
28

1 'a strong showing' that applicant is 'likely to succeed on the merits.'" *Id.* (citing *Hilton*, 481 U.S.  
2 at 776).

3 Although this Court does not believe that the partial denial of the parties' sealing request  
4 was erroneous either in the August 9 Order or in this Order, this Court nonetheless recognizes that  
5 should the Federal Circuit disagree, the parties will be deprived of any remedy if this Court does  
6 not stay its Order. When the information is publicly filed, what once may have been trade secret  
7 no longer will be. Thus, the parties may be irreparably injured absent a stay. In contrast, the  
8 public interest, which favors disclosure of relevant information in order to understand the  
9 proceedings, is not unduly harmed by a short stay.

10 Accordingly, the Court GRANTS Apple's request to stay disclosure of the unredacted  
11 versions of the Damages Motion, the Robinson Declaration, and Exhibit 8 to the Robinson  
12 Declaration. This stay applies only to those redactions made pursuant to Apple's claim of  
13 confidential financial information, as identified in Apple's sealing motion and in this Order. The  
14 denial regarding redactions made pursuant to Samsung's designations, for which Samsung did not  
15 file a declaration in support of sealing, is not subject to this stay. The stay shall be in effect  
16 pending a decision by the Federal Circuit on the parties' appeals of this Court's August 9, 2012  
17 Order Granting-in-Part and Denying-in-Part the parties' motion to seal. As the Federal Circuit's  
18 ruling on the appeal may alter the appropriate analysis for sealing confidential financial  
19 information, the denial of Apple's motion to seal as to the proposed redactions on page 27 of the  
20 Damages Motion, page 9 of the Robinson Declaration, and Exhibit 8 to the Robinson Declaration  
21 is without prejudice.

22 **IT IS SO ORDERED.**

23 Dated: October 17, 2012

24   
25 LUCY H. KOH  
26 United States District Judge