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9 Attorneys for Plaintiff and  
Counterclaim-Defendant APPLE INC.

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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 APPLE INC., a California corporation,

16 Plaintiff,

17 v.

18 SAMSUNG ELECTRONICS CO., LTD., a  
Korean corporation; SAMSUNG  
19 ELECTRONICS AMERICA, INC., a New  
York corporation; and SAMSUNG  
20 TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,

21 Defendants.  
22

Case No. 11-cv-01846-LHK (PSG)

**APPLE'S RENEWED MOTION TO  
SEAL**

1 In accordance with Civil Local Rules 7-11 and 79-5, and General Order No. 62, Apple  
2 submits this renewed motion to seal relating to certain documents ordered filed publicly in the  
3 Court's February 1 Order (Dkt. No. 2222). Apple requests that the Court permit the following  
4 documents or portions thereof to be filed under seal:

- 5 1. Exhibits 1, 7, and 10 to the Price Declaration in Support of Samsung's Opposition  
6 to Apple's 37(b)(2) Motion (Dkt. No. 801).
- 7 2. Exhibit C to the Price Declaration in Support of Samsung's Supplemental  
8 Response to Apple's 37(b)(2) Motion (Dkt. No. 857).
- 9 3. Samsung's Motion to Strike (Dkt. No. 934).
- 10 4. Exhibits P, Q, R, S, T, U, V, W, Y, Z, AA, BB, CC, DD, FF and GG to the Price  
11 Declaration in Support of Samsung's Motion to Strike (Dkt. No. 934).
- 12 5. Exhibits U and X to the Ward Declaration in Support of Samsung's Motion to  
13 Strike (Dkt. No. 934).
- 14 6. Exhibit 34 to the Pernick Declaration in Support of Apple's Motion to Strike (Dkt.  
15 No. 939).
- 16 7. Exhibits 1-5 to the Supplemental Price Declaration (Dkt. 984).
- 17 8. Exhibits 1-5 to the Corrected Supplemental Price Declaration (Dkt. 990).
- 18 9. Second Supplemental Price Declaration (Dkt. 994).
- 19 10. Exhibits B-E to the Second Supplemental Price Declaration (Dkt. 994).
- 20 11. Exhibits A, B and C to the Musika Declaration in Support of Apple's Opposition  
21 to Samsung's Motion to Strike (Dkt. No. 996).
- 22 12. Exhibits 9, 24, 25, 26, 28 and 32 to the Pernick Declaration in Support of Apple's  
23 Opposition to Samsung's Motion to Strike (Dkt. No. 996).

24 As discussed further below, some of the Apple confidential financial information included  
25 in the request stated above is identical to information that is presently the subject of Apple's  
26 appeal to the Federal Circuit. For the reasons stated below, Apple requests that the Court order  
27 the information filed under seal or, if the Court denies Apple's renewed motion to seal, stay the  
28

1 disclosure of any information until a ruling by the Federal Circuit on the related appeal. Oral  
2 argument in that appeal has been scheduled for March 26, 2013.

3 Also discussed further below, many of these exhibits are license agreements between  
4 Apple and third parties, which Apple seeks to seal in full for the reasons set forth below. Apple  
5 has sent notice to each of the license counterparties affected by the February 1, 2013 Order that  
6 the Court denied, without prejudice, Apple's initial motion to seal these agreements. Apple  
7 requests the Court defer ruling on this renewed motion to seal, at least as it relates to any third  
8 party information, for an additional two weeks to allow any third parties that wish to be heard an  
9 opportunity to make a submission to the Court.

10 **I. THE COURT SHOULD SEAL FINANCIAL AND CAPACITY INFORMATION,  
11 THIRD PARTY RESEARCH DATA, AND ROYALTY AND PAYMENT  
12 INFORMATION IN LICENSES**

13 The Court should grant Apple's renewed motion to seal the material listed above,  
14 narrowly chosen from over 300 documents at issue in the February 1 Order. The "good cause"  
15 standard applies with respect to the non-dispositive motions underlying the motions to seal  
16 addressed in the February 1 Order. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135  
17 (9th Cir. 2003); *Philips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th  
18 Cir. 2002).

19 **A. The Court should seal detailed capacity and financial information**

20 Apple's confidential financial information and capacity details qualify as trade secret,  
21 and certainly meet the "good cause" standard. Apple seeks to seal the following documents  
22 because they contain sensitive financial and/or capacity information:

- 23 • Exhibit 1 to the Price Declaration in Support of Samsung's Opposition to Apple's  
24 37(b)(2) Motion (Dkt. No. 801), consisting of 171 pages of gross margin reports,  
25 should be sealed in its entirety.
- 26 • Exhibit 7 to the Price Declaration in Support of Samsung's Opposition to Apple's  
27 37(b)(2) Motion (Dkt. No. 801), consisting of a report with product-line specific  
28 and reseller-specific sales information should be sealed in its entirety.

- 1           • Exhibit 10 to the Price Declaration in Support of Samsung’s Opposition to Apple’s  
2           37(b)(2) Motion (Dkt. No. 801), consisting of a detailed search engine revenue  
3           report setting out specific search engine revenue for each individual search engine  
4           provider, divided into individual months, should be sealed in its entirety.
- 5           • Exhibit C to the Price Declaration in Support of Samsung’s Supplemental  
6           Response to Apple’s 37(b)(2) Motion (Dkt. No. 857), consisting of the Expert  
7           Report of Terry L. Musika, should be sealed in part as identified in the Declaration  
8           of Erica Tierney in Support of Apple’s Renewed Motion to Seal (“Tierney  
9           Declaration”). It contains financial and capacity information, as well as third-party  
10          information as discussed below.
- 11          • Exhibit A to the Musika Declaration in Support of Apple’s Opposition to  
12          Samsung’s Motion to Strike (Dkt. No. 996), consisting of the Rebuttal Expert  
13          Report of Terry L. Musika, should be sealed in part as identified in the Tierney  
14          Declaration. It contains financial information, as well as third-party and licensing  
15          information as discussed below.
- 16          • Exhibit B to the Musika Declaration in Support of Apple’s Opposition to  
17          Samsung’s Motion to Strike (Dkt. No. 996), consisting of excerpts from the Expert  
18          Report of Terry L. Musika discussed above as Exhibit C to the Price Declaration,  
19          should be sealed in part as identified in the Tierney Declaration. It contains both  
20          financial and capacity information.
- 21          • Exhibit C to the Musika Declaration in Support of Apple’s Opposition to  
22          Samsung’s Motion to Strike (Dkt. No. 996), consisting of excerpts from the  
23          deposition transcript of Mark Buckley, should be sealed in part as identified in the  
24          Tierney Declaration.
- 25          • Exhibit 34 to the Pernick Declaration in Support of Apple’s Motion to Strike (Dkt.  
26          No. 939), consisting of the May 11 Supplemental Expert Report of Michael J.  
27          Wagner, should be sealed in part as identified in the Tierney Declaration.
- 28

- 1           • Exhibit 32 to the Pernick Declaration in Support of Apple's Opposition to  
2           Samsung's Motion to Strike (Dkt. No. 996), consisting of excerpts from the  
3           April 20, 2012 Corrected Expert Report of Michael J. Wagner, should be sealed in  
4           part as identified in the Tierney Declaration.

5           The Court has previously approved sealing of capacity information, including the exact  
6           information at issue in Price Ex. C, which consists of the Musika expert report. (Dkt. No. 1649  
7           at 12-13.) As the Court held at that time:

8                     [D]isclosure of this information would cause substantial  
9                     competitive harm to Apple. Competitors and suppliers armed with  
10                    knowledge of Apple's capacity would be able to alter their business  
11                    and pricing models to gain an unfair advantage over Apple in such  
12                    a way that would harm its competitive standing. Suppliers, for  
13                    instance, could predict when Apple would most need to increase  
14                    supply and leverage this knowledge to exact substantial price  
15                    increases. Similarly, competitors could lower their prices during  
16                    periods when Apple has excess capacity and is therefore most  
17                    vulnerable to a price cut. Although Apple seeks to seal *past*  
18                    capacity data, such data is cyclical and would allow competitors  
19                    and suppliers to discover the patterns in Apple's capacity that  
20                    would make it easy to predict Apple's current and future capacity  
21                    constraints.

22           (*Id.* at 4 (internal quotations and citations omitted).)

23           Apple's sensitive financial information also warrants sealing. Trade secrets, as defined in  
24           the Restatement of Torts, include information used in a business that gives an advantage over  
25           competitors who do not know or use it. *Restatement (First) of Torts* § 757, cmt. B. Detailed  
26           profits and costs are precisely this type of information. *See, e.g., SI Handling Sys., Inc. v.*  
27           *Heisley*, 753 F.2d 1244, 1260 (3d Cir. 1985) (concluding that data relating to profit margin  
28           constituted trade secrets); *Den-Tal-Ez, Inc. v. Siemens Capital Corp.*, 566 A.2d 1214, 1230 (Pa.  
Super. Ct. 1989) (finding profit margin data protectable as trade secret). For this reason, courts  
consistently recognize that detailed financial information constitutes a trade secret and a  
compelling need exists for maintaining its confidentiality. *See AMC Tech., LLC v. Cisco Sys.*,  
2012 U.S. Dist. LEXIS 9934 (N.D. Cal. Jan. 27, 2012) (finding compelling reasons to seal  
information that would have allowed public to determine profit margins); *TriQuint*  
*Semiconductor v. Avago Techs. Ltd.*, 2011 U.S. Dist. LEXIS 143942, at \*10, 11, 21 (D. Ariz.

1 Dec. 12, 2011) (sealing confidential financial information including market analysis information,  
2 cost information, capacity information and profit margins for specific products). The irreparable  
3 harm that would result from disclosure of trade secrets is undeniable. *See Am. Standard Inc. v.*  
4 *Pfizer Inc.*, 828 F.2d 734, 741 (Fed. Cir. 1987) (recognizing harms of disclosure of confidential  
5 business information to competitors and collecting cases). Indeed, “[a] trade secret once lost is, of  
6 course, lost forever.” *North Atl. Instruments, Inc. v. Haber*, 188 F.3d 38, 49 (2d Cir. 1999)  
7 (quotation omitted). And vigorous protection of such information is essential to maintaining a  
8 competitive business environment. *See Rockwell Graphic Sys., Inc. v. DEV Indus. Inc.*, 925 F.2d  
9 174, 180 (7th Cir. 1991).

10 Apple takes extensive steps to protect the secrecy of its critical financial and capacity  
11 information. (Tierney Decl. ¶ 11.) Even within Apple, very few people have access to this  
12 information. Access is on a “need to know” basis and must be approved in advance by one of  
13 Apple’s Vice Presidents of Finance. (Dkt. No. 1502 ¶ 3.) The list of approved individuals is  
14 reviewed quarterly to remove employees who no longer require access do not receive that  
15 information. (*Id.*) On the rare occasions that Apple must disclose its non-public financial and  
16 capacity information to those outside Apple, it marks the information “confidential” and  
17 distributes it subject to highly restrictive nondisclosure agreements or protective orders. (*Id.*)

18 Apple goes to such lengths because, like its capacity information, the financial  
19 information that Apple seeks to keep confidential is competitively sensitive and derives enormous  
20 value from the fact that it is not shared with the general public or others who could derive  
21 economic benefit from this data – Apple’s competitors and suppliers. (Dkt. No. 1502 at ¶¶ 4-8;  
22 Tierney Decl. ¶ 11.) Apple’s competitors could use profits and margins data to undercut Apple’s  
23 prices by determining the products for which Apple has substantial profits, low costs, and wide  
24 margins and thus would be most susceptible to a price cut. (Dkt. No. 1502 at ¶ 7; Tierney Decl.  
25 ¶ 11.) Competitors’ products—particularly if released with pricing designed to take advantage of  
26 unfair knowledge of Apple’s bottom line—will substantially affect demand for Apple’s products.  
27 Competitors could use the information to develop a slightly less advanced smartphone or tablet  
28 and sell that product successfully at a price strategically below Apple’s margins. The facts of this

1 case substantiate this risk, as Samsung may be in a position to undercut Apple's prices for  
2 smartphones and tablets, having already economized on design costs by free-riding off Apple's  
3 innovation. Moreover, Apple's suppliers could use quarterly profits, costs, and margins data to  
4 determine when Apple has the lowest margins and is thus more vulnerable to a cost increase.  
5 (Dkt. No. 1502 at ¶ 8; Tierney Decl. ¶ 11.)

6 Because Apple's confidential financial data constitute invaluable trade secrets, and a  
7 compelling need exists for maintaining their confidentiality, Apple meets the "good cause"  
8 standard for sealing. *See, e.g., Jazz Photo*, 439 F.3d at 1357-1358 (affirming order denying  
9 competitor access to a trial to avoid disclosure of confidential "documents and information  
10 relating to [litigant's] customers, suppliers, manufacturing processes, financial condition, and the  
11 quantity and value of its imports"); *TriQuint Semiconductor*, 2011 WL 6182346, at \*2-4, 6-7  
12 (sealing confidential financial information including market analysis information, cost  
13 information, capacity information, and profit margins for specific products). In light of the great  
14 volume of information already disclosed, there is no public need for disclosure of Apple's  
15 narrowly identified trade secret information. Any further disclosure would provide  
16 "comparatively little value to the public in terms of enhancing its 'understanding [of] the judicial  
17 process.'" *Richardson v. Mylan Inc.*, 2011 WL 837148, at \*2 (S.D. Cal. Mar. 9, 2011) (noting  
18 that sealed portions of record "do not include any information vital to understanding the nature of  
19 the underlying proceedings"); *see also MMI, Inc. v. Baja, Inc.*, 743 F. Supp. 2d 1101, 1106  
20 (D. Ariz. 2010) (moving party demonstrated good cause to seal licensing agreement in patent  
21 infringement case in part since "public has a diminished need for th[e] document because it is  
22 'only tangentially related to the underlying cause of action'" (quoting *Kamakana*, 447 F.3d  
23 at 1179)).

24 Product-line specific information, i.e., financial details with information as to specific  
25 versions of a given product, is also critically sensitive and valuable. (Dkt. No. 1502 ¶ 7; Tierney  
26 Decl. ¶ 12.) Product line sales and revenue information reveal to competitors what Apple's most  
27 and least successful products are, and therefore provide unfair intelligence into which markets are  
28 ripe for competition and which markets may be more difficult to approach. (Dkt. No. 1502 ¶ 7;

1 Tierney Decl. ¶ 12.) Highly specific search engine revenue is analogous and confidential for the  
2 same reason; revealing precisely how much Apple receives in individual quarters from individual  
3 search engines would competitively damage Apple by revealing to its competitors what its most  
4 and least successful search engine relationships are, and provide intelligence into which markets  
5 they should focus their competitive efforts. (Tierney Decl. ¶ 12.)

6 **B. The Court should seal third party confidential research data**

7 Portions of the Musika expert report, filed as Exhibit C to the Price Declaration in Support  
8 of Samsung's Supplemental Response to Apple's 37(b)(2) Motion (Dkt. No. 857) and discussed  
9 above with respect to the financial and capacity information in the same document, contain  
10 market share data from third-party IDC. The Court has previously agreed that publication of  
11 extensive IDC data would significantly harm IDC's competitive standing, as IDC sells this data.  
12 (Dkt. No. 1649 at 10.) Specifically, Exhibits 11.1, 12, 12.1, and 13.1 of the Musika Expert  
13 Report contain full datasheets from market analysis reports prepared by IDC. The public interest  
14 in access to these charts is low, as they extend to market shares held by nonparties to their  
15 litigation. The risk of commercial harm to IDC from their publication is severe, as each report  
16 sold by a company such as IDC typically costs thousands of dollars and public disclosure  
17 completely supplants the market for that report. (Tierney Decl. ¶ 15.)

18 **C. The Court should seal license agreements and information in other**  
19 **documents that reflect license royalty and payment terms**

20 Apple seeks to seal the following portions of documents because they contain royalty and  
21 payment terms from third party licenses:

- 22 • Exhibit T to the Price Declaration in Support of Samsung's Motion to Strike (Dkt.  
23 No. 934), consisting of a discovery letter, should be sealed as to the discussion of  
24 Apple's license agreement negotiations and draft license agreement with a third  
25 party on page 3 and the dollar amount listed on page 4.
- 26 • Samsung's Motion to Strike (Dkt. No. 934) should be sealed as to the discussion  
27 of Apple's license agreement negotiations and draft license agreement with a third  
28 party on pages 13-14 and the dollar amount listed on page 14.



- 1 • Exhibit U to the Ward Declaration in Support of Samsung's Motion to Strike (Dkt.  
2 No. 934), consisting of an excerpt from the Rebuttal Expert Report of Terry L.  
3 Musika, should be sealed as to the dollar amount listed on page 13.
- 4 • Second Supplemental Price Declaration in Support of Samsung's Motion to Strike  
5 (Dkt. No. 994) should be sealed as to the discussion of the contents of Apple's  
6 draft license agreement with a third party in paragraph 2(a).
- 7 • Exhibit A to the Musika Declaration in Support of Apple's Opposition to  
8 Samsung's Motion to Strike (Dkt. No. 996), consisting of the Rebuttal Expert  
9 Report of Terry L. Musika, should be sealed as to the dollar amount and discussion  
10 of Apple's license agreement with a third party in paragraphs 46, 48 and 49. It also  
11 contains financial information and should be sealed in part as identified in the  
12 Tierney Declaration.
- 13 • Exhibits P, Q, R, S, Y, Z, AA, BB, CC and DD to the Price Declaration in Support  
14 of Samsung's Motion to Strike (Dkt. No. 934) are all license agreements between  
15 Apple and third parties and should be sealed in full.
- 16 • Exhibit U to the Price Declaration in Support of Samsung's Motion to Strike (Dkt.  
17 No. 934) contains emails between Apple and a third party negotiating a license  
18 agreement and should be sealed in full.
- 19 • Exhibit V to the Price Declaration in Support of Samsung's Motion to Strike (Dkt.  
20 No. 934) is a draft license agreement between Apple and a third party and should  
21 be sealed in full.
- 22 • Exhibit W to the Price Declaration in Support of Samsung's Motion to Strike (Dkt.  
23 No. 934) is a draft license agreement between Apple and a third party and should  
24 be sealed in full.
- 25 • Exhibits FF and GG to the Price Declaration in Support of Samsung's Motion to  
26 Strike (Dkt. No. 934) are both Made for iPod Licenses and should be sealed in full.
- 27 • Exhibits 1-5 to the Supplemental Price Declaration (Dkt. 984) are all license  
28 agreements between Apple and third parties and should be sealed in full.

- 1           • Exhibits 1-5 to the Corrected Supplemental Price Declaration (Dkt. 990) are all  
2           license agreements between Apple and third parties and should be sealed in full.
- 3           • Exhibits B-E to the Second Supplemental Price Declaration (Dkt. 994) are all  
4           license agreements between Apple and third parties and should be sealed in full.
- 5           • Exhibits 24, 25, and 26 to the Pernick Declaration in Support of Apple’s  
6           Opposition to Samsung’s Motion to Strike (Dkt. No. 996) are all license  
7           agreements between Apple and IBM. All three should be sealed in part as  
8           identified in the Tierney Declaration. Redacted versions of Exhibits 25 and 26  
9           were approved under the “compelling reasons” standard during trial (Dkt. 1660).  
10          Exhibit 24 has been redacted in a manner consistent with the redactions in  
11          Exhibits 25 and 26.
- 12          • Exhibit 28 to the Pernick Declaration in Support of Apple’s Opposition to  
13          Samsung’s Motion to Strike (Dkt. No. 996) is a license agreement between Apple  
14          and Nokia. It should be sealed in part as identified in the Tierney Declaration.  
15          This agreement was also submitted under seal in connection with the parties’ post-  
16          trial briefing, and the Court, applying the “compelling reasons” standard  
17          applicable at that stage of the case, ordered that only “pricing, royalty, and  
18          payment terms” could be redacted (Dkt. 2168.) Accordingly, Apple is submitting  
19          a proposed redacted version of the Nokia license pursuant to discussions with  
20          Nokia seeking to seal royalty terms, payment terms, and terms related to the  
21          calculation of royalties and payments.

22           The license agreements at issue in this motion to seal were all attached to non-dispositive  
23          motions and therefore only a showing of “good cause” is required. Under the “good cause”  
24          standard, Apple’s license agreements with third parties should be sealed in full. (Dkt. 1649  
25          at 16.) This Court sealed in full the license agreements attached as Exhibits 2-6 and 13 to the  
26          Price Declaration in Support of Samsung’s Reply in Support of its Motion to Strike because these  
27          “agreements contain a whole host of terms (e.g. termination conditions, side- agreements,  
28          waivers) that are irrelevant to matters in this litigation” and “disclosure of these full documents

1 could result in significant competitive harm to the licensing parties as it would provide insight  
2 into the structure of their licensing deals, forcing them into an uneven bargaining position in  
3 future negotiations.” (Dkt. 1649 at 16; *see also* Dkt. 2168 at 6 (explaining why license  
4 agreements attached to permanent injunction motion could not be sealed in full, unlike those  
5 attached to motion to strike).) For the same reasons the license agreements attached to  
6 Samsung’s Reply in Support of its Motion to Strike were sealed in full, the license agreements,  
7 draft license agreements and negotiation related emails attached to Samsung’s Motion to Strike,  
8 Supplemental Declarations in Support of Samsung’s Motion to Strike and Apple’s Opposition to  
9 Samsung’s Motion to Strike should all be sealed. (Tierney Decl. ¶¶ 30-32.)

10 For the same reasons, the discussions of “pricing terms, royalty rates, and minimum  
11 payment terms” in a discovery letter, Samsung’s Motion to Strike, and the Rebuttal Expert Report  
12 of Terry L. Musika should be sealed. (Tierney Decl. ¶ 33.) (*See also* Dkt. 1649 at 10 (sealing  
13 “pricing terms, royalty rates, and minimum payment terms of the licensing agreements” in trial  
14 exhibits).) The discussion of Apple’s license agreement negotiations and draft license agreement  
15 with a third party in a discovery letter, Samsung’s Motion to Strike and the Second Supplemental  
16 Price Declaration in Support of Samsung’s Motion to Strike should also be sealed for the same  
17 reasons as the underlying draft license agreements and negotiation emails. (Tierney Decl. ¶ 31.)

18 Apple has notified each of the third parties affected by the February 1, 2013 Order that the  
19 Court denied, without prejudice, Apple’s initial motion to seal these agreements in full. Apple  
20 requests that the Court defer ruling on this motion, at least with respect to third party information,  
21 for an additional two weeks in order to afford any third parties that wish to be heard an  
22 opportunity to make a submission to the Court.

23 **D. Source Code**

24 Apple seeks to seal the following portions of a document that contains information about  
25 Apple’s source code:

- 26 • Exhibit X to the Ward Declaration in Support of Samsung’s Motion to Strike (Dkt.  
27 No. 934), consisting of an excerpt from the Rebuttal Expert Report of Tony  
28 Givargis, should be sealed in part as identified in the Tierney Declaration.

- 1           • Exhibit 9 to the Pernick Declaration in Support of Apple’s Opposition to  
2           Samsung’s Motion to Strike (Dkt. No. 996), consistent of an excerpt from the  
3           Expert Report of Woodward Yang, should be sealed in part as identified in the  
4           Tierney Declaration.

5           This Court has previously allowed Apple to seal trial exhibits containing source code.  
6           (Dkt. No. 1649 at 8; Dkt. 2046 at 3.) In compliance with this Court’s February 1 Order, Apple’s  
7           renewed motion to seal portions of Exhibit X to the Ward Declaration in Support of Samsung’s  
8           Motion to Strike (Dkt. No. 934) and Exhibit 9 to the Pernick Declaration in Support of Apple’s  
9           Opposition to Samsung’s Motion to Strike (Dkt. No. 996) is narrowly tailored to the discussions  
10          of Apple’s propriety source code and highly confidential technical information that is closely  
11          related to Apple’s source code. Apple is not moving to seal the information in these two  
12          documents that was discussed in open court during the trial.

13          As detailed in the declarations from Henri Lamiroux, Apple’s Vice President of iOS Apps  
14          & Frameworks and Beth Kellerman, a Litigation eDiscovery Manager, which Apple submitted in  
15          support of sealing trial exhibits (Dkt. Nos. 1504, 1505), Apple’s source code is highly  
16          confidential. Apple’s source code is clearly the type of information that qualifies as a trade secret.  
17          *See Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal.  
18          2011). Apple’s declarants confirmed that Apple derives independent economic value from its  
19          source code, and that Apple goes to extraordinary lengths to maintain the secrecy and security of  
20          its source code. (Dkt. Nos. 1504 ¶¶ 5-8, 1505 ¶¶ 4-9.) If Apple’s source code were subject to  
21          disclosure and copying, it would amount to a transfer of Apple’s investment in developing the  
22          iOS source code from it to a competitor, providing an unfair competitive advantage. (Dkt.  
23          No. 1505 ¶¶ 6-9.) Apple respectfully requests that the Court confirm that, consistent with the  
24          prior Court Orders, Apple be permitted to file a redacted version of Exhibit X to the Ward  
25          Declaration in Support of Samsung’s Motion to Strike (Dkt. No. 934) and Exhibit 9 to the Pernick  
26          Declaration in Support of Apple’s Opposition to Samsung’s Motion to Strike (Dkt. No. 996).  
27          (Tierney Decl. ¶¶ 36-38.)

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**II. IF SEALING IS DENIED, THE COURT SHOULD STAY THE EFFECT OF ITS ORDER PENDING APPEAL**

Apple respectfully requests that if the Court denies sealing of any of the materials that are the subject of this motion, the Court continue its practice of staying effect of its order pending appeal. (Dkt. No. 2047 at 7.) As the Court has previously held, once information is publicly filed, “what once may have been trade secret no longer will be. Thus, the parties may be irreparably injured absent a stay. In contrast, the public interest, which favors disclosure of relevant information in order to understand the proceedings, is not unduly harmed by a short stay.” (*Id.*)

Dated: February 15, 2013

MORRISON & FOERSTER LLP

By: /s/ Richard S.J. Hung  
RICHARD S.J. HUNG

Attorneys for Plaintiff  
APPLE INC.