## 

1 2 3 4 5 6 7 8 9	HAROLD J. MCELHINNY (CA SBN 66781) hmcelhinny@mofo.com MICHAEL A. JACOBS (CA SBN 111664) mjacobs@mofo.com RACHEL KREVANS (CA SBN 116421) rkrevans@mofo.com ERIK J. OLSON (CA SBN 175815) ejolson@mofo.com MORRISON & FOERSTER LLP 425 Market Street San Francisco, California 94105-2482 Telephone: (415) 268-7000 Facsimile: (415) 268-7522  Attorneys for Plaintiff and Counterclaim-Defendant APPLE INC.	WILLIAM F. LEE william.lee@wilmerhale.com WILMER CUTLER PICKERING HALE AND DORR LLP 60 State Street Boston, MA 02109 Telephone: (617) 526-6000 Facsimile: (617) 526-5000  MARK D. SELWYN (SBN 244180) mark.selwyn@wilmerhale.com WILMER CUTLER PICKERING HALE AND DORR LLP 950 Page Mill Road Palo Alto, California 94304 Telephone: (650) 858-6000 Facsimile: (650) 858-6100
11		
12	UNITED STATES DISTRICT COURT	
13	NORTHERN DISTRICT OF CALIFORNIA	
14	SAN JOSE DIVISION	
15	APPLE INC., a California corporation,	Case No. 11-cv-01846-LHK
16	Plaintiff, v.	DECLARATION OF CYNDI WHEELER IN SUPPORT OF SAMSUNG'S ADMINISTRATIVE MOTION TO FILE
17	SAMSUNG ELECTRONICS CO., LTD., a	DOCUMENTS UNDER SEAL
18 19	Korean corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; and SAMSUNG TELECOMMUNICATIONS AMERICA,	
20	LLC, a Delaware limited liability company,	
21	Defendants.	
22		
23	EXHIBIT SUBMITTED UNDER SEAL	
24		
25		
26		
27		
28	DECLARATION OF CYNDI WHEELER IN SUPPORT OF SAMS CASE NO. 11-CV-01846-LHK sf-3305329	SUNG'S ADMIN. MOT. TO SEAL

- I, Cyndi Wheeler, hereby declare as follows:
- 1. I am an attorney for Apple Inc. ("Apple"). I submit this declaration in support of Samsung's Administrative Motion to File Documents Under Seal (Dkt. No. 2326) pursuant to Local Rules 7-11 and 79-5. I have personal knowledge of the matters set forth below. If called as a witness I could and would competently testify as follows.
- 2. Exhibit 2 to the Declaration of Anthony P. Alden in Support of Samsung's Administrative Motion for Relief from April 29, 2013 Case Management Order ("Alden Exhibit 2") consists of excerpts from the June 24, 2013 Expert Report of Julie L. Davis, CPA. It includes industry-wide market share information from the confidential report of a third party, IDC, in paragraphs 83 and 85; Apple profit/loss information in paragraph 88; and detailed month-bymonth Apple capacity, margin, and profit information in Exhibits 17.2-PT and 17.2-PT-B. Proposed redactions are attached hereto as Exhibit 1.

## **Financial and Capacity Information**

- 3. Apple has previously moved to seal the types of financial and capacity information contained in Alden Exhibit 2. Apple provided a detailed supporting declaration at that time from its Vice President of Worldwide Planning and Analysis, Jim Bean. (Dkt. No. 1502.)
- 4. As Mr. Bean stated in his declaration, Apple goes to extensive lengths to protect the confidentiality of its financial data, which is on par with source code from a confidentiality perspective. Profit information and capacity information are among the most highly confidential of Apple's financial documents. Armed with capacity information, Apple's competitors could increase production of competing products when Apple typically has constrained capacity, or lower prices of competing products when Apple has excess capacity and would be more vulnerable to a price cut. Manufacturers with Apple's capacity data would be able to harm Apple by negotiating exorbitant rates with unfairly gained knowledge. Profit/loss information would give competitors a substantial advantage over Apple as competitors could tailor offerings and pricing to undercut Apple. And profits or margins alone allow competitors to approximate Apple's cost.

1	5. The above information is highly confidential and trade secret. If disclosed, the	
2	information in the materials described above could be used by Apple's competitors to Apple's	
3	disadvantage. The requested relief is necessary and narrowly tailored to protect the	
4	confidentiality of this information.	
5	6. Apple has previously moved to seal IDC material, and supported its request with a	
6	declaration at that time. (Dkt. No. 1408-2.) As Apple explained, Apple is contractually obligated	
7	to defend the interests of third parties who sell Apple their proprietary consumer and market	
8	studies, and disclosure of this material would severely harm such third parties and damage	
9	Apple's relationship with them. Each report sold by a company such as IDC costs thousands of	
10	dollars. Alden Exhibit 2 contains major pieces of industry-wide data from such reports, including	
11	industry-wide forward-looking estimates in paragraph 83 of Alden Exhibit 2 and recent market	
12	information in paragraph 85, which may undercut the market for those reports.	
13	7. Apple does not maintain a claim of confidentiality with respect to the text of	
14	Samsung's underlying Administrative Motion for Relief from April 29, 2013 Case Management	
15	Order.	
16	I declare under penalty of perjury under the laws of the United States of America that the	
17	foregoing is true and correct. Executed this 8th day of July, 2013 at Cupertino, California.	
18	/ / C 1: WI 1	
19	<u>/s/ Cyndi Wheeler</u> Cyndi Wheeler	
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	ATTESTATION OF E-FILED SIGNATURE	
2	I, Erik J. Olson, am the ECF User whose ID and password are being used to file this	
3	Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Cyndi Wheeler has	
4	concurred in this filing.	
5	Dated: July 8, 2013 /s/ Erik J. Olson	
6	Erik J. Olson	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		