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 NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

CPK

Apple Inc., a California corporation,
 Plaintiff,

v.

Paul S. Devine, an individual; CPK
 Engineering, Inc., a California corporation;
 and Does 1-25, inclusive,

Defendants.

Case No. **CV 10-03563** **PVT**

COMPLAINT FOR:

- (1) VIOLATION OF RICO, 18 U.S.C. § 1962(c)
- (2) VIOLATIONS OF THE ROBINSON-PATMAN ACT, 15 U.S.C. § 13(c)
- (3) FRAUD
- (4) BREACH OF CONTRACT
- (5) BREACH OF FIDUCIARY DUTY
- (6) MISAPPROPRIATION OF TRADE SECRETS
- (7) COMMON LAW MISAPPROPRIATION
- (8) RESTITUTION AND UNJUST ENRICHMENT
- (9) CONVERSION
- (10) CALIFORNIA B&P CODE §§ 17200 ET SEQ.
- (11) MONEY HAD AND RECEIVED
- (12) AN ACCOUNTING;

DEMAND FOR JURY TRIAL

COMPLAINT

1 For its Complaint, Plaintiff Apple Inc. ("Apple") alleges as set forth below. The factual
2 allegations set forth below have evidentiary support or, to the extent they are contained in a
3 paragraph made on information and belief, likely will have evidentiary support after a reasonable
4 opportunity for further investigation and discovery.

5 INTRODUCTION

6 1. Defendant Paul S. Devine, a Global Supply Manager in Apple's iPod and
7 Accessories Procurement Operations Department, has abused his position, violated Apple
8 policies, and broken the law by stealing Apple's proprietary, trade secret and other confidential
9 information and converting it to his own benefit. Over a period of years, Devine has demanded
10 and received over a million dollars in illicit payments, kickbacks, bribes, and other things of
11 value from companies supplying mechanical parts for Apple's products. In exchange, Devine
12 has provided these companies with Apple's proprietary, trade secret and other confidential
13 information to help them secure lucrative supply agreements with Apple or otherwise benefit
14 their business interests. As part of this scheme, Devine has entered into covert side agreements
15 with suppliers, opened overseas and domestic bank accounts, and, in an effort to avoid detection,
16 insisted on cash transfers in low amounts and conducted surreptitious e-mail exchanges using
17 coded language. Through these unlawful arrangements Devine has personally profited at
18 Apple's expense.

19 2. Apple undertakes rigorous and extensive measures to safeguard information
20 about its product development, forecasts, pricing and specifications. Interactions between Apple
21 employees and Apple's suppliers are governed by strict policies and agreements to ensure that
22 the contracting process is perceived to be, and is in fact, equitable and fair, thereby serving the
23 best interests of Apple and its customers. Devine's actions, which were concealed from Apple
24 for several years, undermined Apple's procurement process, misappropriated and disclosed
25 Apple's proprietary, trade secret and confidential information, and caused harm to Apple's
26 economic interests.

27 3. Apple brings this action to seek the full measure of damages and other remedies
28 permitted by law.

PARTIES

4. Apple is a corporation organized and existing under the laws of the State of California. Apple's headquarters and principal place of business are located at 1 Infinite Loop, Cupertino, California. Apple is engaged in the business of designing, developing, manufacturing, and selling a broad range of innovative products, including, among other things, personal computers, computer-related hardware, mobile communication devices, portable digital music and video players, software, and peripherals.

5. Apple is informed and believes, and on that basis alleges, that Defendant Paul S. Devine ("Devine") is a resident of Sunnyvale, California. At all times relevant to this Complaint, Devine was an employee of Apple in its Operations Department. Devine was responsible for selecting suppliers and apportioning opportunities to supply mechanical parts for Apple's products. Because Apple typically used multiple suppliers for each commodity, Devine was responsible for allocating Apple's demand for a particular commodity across multiple suppliers.

6. Apple is informed and believes, and on that basis alleges, that at all relevant times herein Defendant CPK Engineering, Inc. ("CPK Engineering") was a California corporation, sole proprietorship or other business entity, doing business in the State of California. At various times relevant herein, Defendant CPK Engineering may also have been known as and/or done business as "CPK Engineering." Defendant CPK Engineering has succeeded to the obligations and liabilities of any and all of its predecessor entities. Defendant Devine is the agent for service of process for Defendant CPK Engineering. At all times relevant herein, Defendant CPK Engineering was an independent business entity with legal status separate from that of its individual owner(s).

7. Apple does not know the true names or capacities, whether individual, associate, corporate, or otherwise, of the Defendants sued herein as Does 1-25, inclusive, and Apple therefore sues said Defendants by such fictitious names. Apple will amend this Complaint to state the true names and capacities of these Defendants once they have been discovered. Apple is informed and believes, and on that basis alleges, that each Defendant sued herein by a

1 fictitious name is in some way liable and responsible to Apple on the facts alleged herein for
2 Apple's damages.

3 **JURISDICTION AND VENUE**

4 8. This Court has subject matter jurisdiction over the claims alleged in this
5 Complaint pursuant to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §
6 1961, *et seq.*, and the Robinson-Patman Act, 15 U.S.C. § 13, *et seq.* This Court has jurisdiction
7 of this action under 28 U.S.C. § 1331 and has supplemental jurisdiction over Apple's related
8 claims for relief under California law pursuant to 28 U.S.C. § 1367(a). This Court has the power
9 to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

10 9. Venue is proper in the Northern District of California under 28 U.S.C. §
11 1391(b)(1)-(2) and § 1391(c), 18 U.S.C. § 1965(a), and 15 U.S.C. § 15(a).

12 **INTRADISTRICT ASSIGNMENT**

13 10. Assignment to the San Jose Division is proper pursuant to Civil Local Rule 3-
14 2(c) and (e) because a substantial part of the events or omissions that give rise to Apple's claims
15 occurred in Santa Clara County, California. Apple's corporate headquarters are located in Santa
16 Clara County, California, and Defendants' wrongful actions were specifically and purposefully
17 directed at and intended to affect Apple in Santa Clara County, California, as discussed herein.

18 **DEVINE'S EMPLOYMENT AT APPLE**

19 11. At all times relevant to this Complaint, Devine was an employee in Apple's iPod
20 and Accessories Procurement Operations Department. Apple's Operations personnel, who are
21 the key communication link between Apple and its suppliers, play a critical role in ensuring that
22 Apple is a model of business ethics and professional integrity. Apple relies on its Operations
23 personnel's expertise, skill, judgment and loyalty to purchase mechanical parts as Apple's
24 representative from numerous competing suppliers at the most advantageous price and delivery
25 terms for Apple.

26 12. On or about July 18, 2005, Devine began working at Apple as a Global Supply
27 Manager in Apple's iPod and Accessories Procurement Operations Department.

28 13. As a Global Supply Manager, Devine was responsible for developing and

1 managing relationships with various companies that supply Apple with parts and materials for
2 Apple iPod and headset enclosures, and for selecting the suppliers that would be awarded
3 business to supply Apple with these parts and materials. Apple typically selected more than one
4 supplier to supply Apple with a particular part or material. Thus, in selecting suppliers, Devine
5 also determined how Apple's supply business would be allocated among competing suppliers.
6 Factors that Apple's Supply Managers should consider when selecting and apportioning
7 business among suppliers include the suppliers' capabilities, historical quality and cost
8 performance, and manufacturing capacity.

9 14. As a Global Supply Manager, Devine had access to confidential information
10 regarding Apple's new products, including, but not limited to, product volume forecasts, product
11 component forecasts, product pricing, product specifications, and confidential component,
12 design and pricing information from Apple's suppliers (collectively, Apple's "Confidential
13 Information"). Apple's Confidential Information as described herein is of a confidential,
14 proprietary and secret nature and/or constitutes Apple's trade secrets.

15 15. Apple paid Devine over \$614,000 in salary and \$51,076 in bonus compensation,
16 and issued 4,500 Apple stock options and 900 shares of Apple restricted stock to Devine over
17 the course of approximately five years, in exchange for his loyal services as an employee.
18 Devine also received a relocation package from Apple.

19 16. In April 2010, Apple undertook an investigation into suspected violations of
20 Apple's policies by Devine. In the course of that investigation, Apple discovered an Entourage
21 database and cache of e-mails from Devine's personal Hotmail and Gmail e-mail accounts
22 stored on Devine's Apple-supplied laptop hard drive. These e-mails contained discussions with
23 third parties regarding Apple's Confidential Information in violation of Apple's policies. These
24 e-mails also confirmed that Devine had demanded and received over a million dollars in illicit
25 payments, kickbacks, bribes, and other things of value (which Devine sometimes refers to in e-
26 mail correspondence as "samples") from numerous suppliers, and had concealed his scheme
27 from Apple over the course of several years.

28 17. The causes of action alleged herein did not accrue until Apple discovered these

1 Hotmail and Gmail e-mail accounts on the imaged copy of Devine's laptop hard drive. Apple
2 did not discover and could not have discovered through the exercise of reasonable diligence the
3 factual basis of the causes of action alleged herein at any earlier point in time. Devine made
4 extensive efforts to conceal his unlawful acts. Devine obtained and used Hotmail and Gmail e-
5 mail accounts to conduct his fraudulent scheme, and warned suppliers who were making illicit
6 payments to him not to use his Apple e-mail address. For example, on September 16, 2008,
7 Devine e-mailed Andy Yang of Cresyn Co., Ltd., a company with which Devine had entered
8 into a covert side agreement to provide unlawfully Apple's Confidential Information in
9 exchange for illicit payments: "I received your email on my Apple email account. Please avoid
10 using that email as Apple IT team will randomly scan emails for suspicious email
11 communications for forecast, cost and new model information." Devine also repeatedly warned
12 suppliers that his illicit payoffs should be wired in amounts less than \$10,000 to avoid detection,
13 apparently aware of bank reporting regulations that would trigger inquiries into the source of
14 funds where transfers exceeded this threshold amount. For example, on October 5, 2007,
15 Devine e-mailed Yang: "I still haven't received Sept payment. Can you check with your
16 Accounting Dept? Please do not send the Sept and Oct payment together in one wire transfer.
17 Anything over \$10,000 wired could draw too much attention." Because Devine knowingly and
18 actively concealed from Apple the facts alleged in this Complaint, Apple only recently
19 discovered the information forming the basis of the causes of action alleged herein, without any
20 fault or lack of diligence on Apple's part.

21 **DEVINE'S SCHEME TO DEFRAUD APPLE**

22 18. From July 2005 through the filing of this Complaint, Devine, through his
23 employment at Apple, developed relationships with various companies that supply mechanical
24 parts for and/or assemble certain Apple products, and/or design or manufacture accessories for
25 Apple products. In furtherance of his illegal scheme, Devine targeted numerous suppliers and/or
26 other third parties, including at least the following: Cresyn Co., Ltd. ("Cresyn"), Kaedar
27 Electronics Co., Ltd ("Kaedar"), Jin Li Mould Manufacturing Pte. Ltd. ("Jin Li Mould"),
28 Glocom/Lateral Solutions Pte. Ltd. ("Glocom"), Nishoku Technology, Inc. ("Nishoku"), and

1 Fastening Technologies Pte. Ltd. ("Fast Tech") (collectively, the "Targeted Suppliers").

2 19. As one of Apple's Global Supply Managers, Devine interacted with suppliers as
3 Apple's representative and evaluated these companies as potential sources for mechanical parts
4 and assembly of certain Apple products. Devine had access to Apple's Confidential
5 Information, including Apple's proprietary information about new products and confidential
6 component and pricing information from many of Apple's suppliers. Devine was entrusted with
7 and authorized to use Apple's Confidential Information during the procurement process only in
8 a manner that served the best interests of Apple and its customers. Devine was expressly
9 prohibited from using Apple's Confidential Information for his own benefit or for the benefit of
10 third parties.

11 20. Devine, in direct violation of Apple's policies and federal and state law,
12 demanded and received illicit payments, kickbacks, bribes and other things of value from the
13 Targeted Suppliers and, in exchange, provided the Targeted Suppliers with Apple's Confidential
14 Information. In designing and carrying out this unlawful scheme, Devine engaged in domestic
15 and international travel, utilized the internet and other means of interstate electronic
16 communications, and made numerous bank wire transfers in interstate and international
17 commerce, all with the intent to execute his scheme.

18 21. Apple is informed and believes, and on that basis alleges, that knowing that he
19 would receive illicit payments, kickbacks, bribes, and other things of value from the Targeted
20 Suppliers, and as an inducement and in exchange therefore, Devine provided the Targeted
21 Suppliers with Apple's Confidential Information at various times from October 2006 through
22 the filing of this Complaint. Devine disclosed Apple's Confidential Information to the Targeted
23 Suppliers with the intent that they would use the information to construct offers to Apple to
24 supply mechanical parts for and/or assemble certain Apple products, or to otherwise benefit the
25 Targeted Suppliers' business interests. Devine knew that with Apple's Confidential
26 Information, the Targeted Suppliers would be able to craft offers to Apple on terms more
27 favorable to the Targeted Suppliers, and less favorable to Apple.

28 22. Apple is informed and believes, and on that basis alleges, that the Targeted

1 Suppliers used Apple's Confidential Information given to them by Devine at various times from
2 October 2006 through the filing of this Complaint to construct their offers to Apple to supply
3 mechanical parts for and/or assemble certain Apple products, or to otherwise benefit the
4 Targeted Suppliers' business interests. With Apple's Confidential Information, the Targeted
5 Suppliers were able to construct offers on terms more favorable to the Targeted Suppliers, and
6 less favorable to Apple.

7 23. Apple is informed and believes, and on that basis alleges, that knowing that he
8 would receive illicit payments, kickbacks, bribes, and other things of value from the Targeted
9 Suppliers if the Targeted Suppliers were awarded supply agreements, Devine took steps to
10 ensure that Apple would accept business offers from the Targeted Suppliers, the terms of which
11 were, unbeknownst to Apple, based at least in part on Apple's Confidential Information that
12 Devine had unlawfully disclosed.

13 24. Apple is informed and believes, and on that basis alleges, that Devine structured
14 and received payments from the Targeted Suppliers in ways designed to avoid detection.
15 Devine has opened as many as 14 deposit accounts in the United States and overseas in order to
16 accept and receive illicit payments, bribes, and kickbacks from the Targeted Suppliers. Devine
17 opened numerous bank accounts in the names of Defendant CPK Engineering, Inc. and Jung
18 Hyun Yun, his wife, and has caused illicit payments, bribes and kickbacks that he received from
19 the Targeted Suppliers to be deposited and/or wired into these bank accounts.

20 25. In reliance on Devine's purported expertise, skill, judgment, loyalty and
21 trustworthiness as a fiduciary and an employee, Apple entered into supply agreements with the
22 Targeted Suppliers for mechanical parts or for the assembly of Apple products at various times
23 from October 2006 through the filing of this Complaint.

24 26. Apple is informed and believes, and on that basis alleges, that had Devine not
25 demanded and received illicit payments, kickbacks, bribes, and other things of value from the
26 Targeted Suppliers, and had Devine not unlawfully disclosed Apple's Confidential Information
27 to the Targeted Suppliers, Apple would have ultimately paid less for mechanical parts or for the
28 assembly of Apple products.

27. Apple is informed and believes, and on that basis alleges, that Devine's unlawful disclosures of Apple's Confidential Information damaged Apple.

28. Apple is informed and believes, and on that basis alleges, that Devine carried out his fraudulent scheme with the Targeted Suppliers in the following manner:

Cresyn

29. Cresyn is a foreign company with its headquarters in South Korea. Cresyn has entered into agreements with Apple to assemble headsets for new Apple products using parts received from other suppliers. At all times relevant herein, Cresyn has competed with at least one other supplier for Apple's business.

30. From at least February 2007 through the filing of this Complaint, Devine demanded and received illicit payments, kickbacks, bribes and other things of value from Cresyn and, in exchange, Devine provided Cresyn with Apple's Confidential Information.

31. Apple is informed and believes, and on that basis alleges, that Devine entered into covert side agreements with Cresyn wherein Devine provided Cresyn with Apple's Confidential Information. In exchange, Cresyn provided Devine with illicit payments, kickbacks, bribes, and other things of value. For example, on or around March 2007, Devine entered into a written covert side agreement with Cresyn, whereby Cresyn was obligated to make monthly payments of \$6,000 to Devine. In exchange, Devine agreed to provide Cresyn with certain "consulting services," that entailed the disclosure of Apple Confidential Information to Cresyn. (*See generally* Exhibit A.) Article 3 of the agreement lists more than 30 types of Apple Confidential Information that Devine would provide to Cresyn, including, but not limited to, Apple sales volume forecast information, product specifications, competitors' target prices, and guidance and updates on the approval of Cresyn's and its competitors' bids. (*See* Exhibit A, §§ 1-3.) The stated purpose of the covert side agreement was for Devine to provide "consulting services to support the sale of products manufactured by [Cresyn] to Apple Inc. customers, thus supporting the business activities of [Cresyn]." (*See* Exhibit A, § 1.)

32. According to its terms, Devine's March 2007 covert side agreement with Cresyn expired after 12 months. Devine entered into virtually identical covert side agreements with

1 Cresyn in or around March 2008 and March 2009 whereby Cresyn was obligated to make
2 monthly payments to Devine in exchange for Devine providing Cresyn with Apple's
3 Confidential Information. (*See generally* Exhibits B and C.)

4 33. Apple was not a party to these covert side agreements between Devine and
5 Cresyn, and had no knowledge of their existence.

6 34. Devine did not give to Apple and Apple did not receive the illicit payments made
7 to Devine pursuant to these covert side agreements.

8 35. E-mail correspondence between Devine (from his Hotmail and/or Gmail e-mail
9 accounts) and Cresyn employees confirms that Devine, at various times from 2007 through the
10 filing of this Complaint and pursuant to the various agreements with Cresyn described above,
11 received illicit payments, kickbacks, bribes and other things of value from Cresyn in exchange
12 for Devine providing Cresyn with Apple's Confidential Information. Such conduct included,
13 without limitation:

- 14 a. On November 30, 2007, Devine e-mailed Andy Yang of Cresyn
15 information regarding pricing offered to Apple by a Cresyn competitor, and
16 a roadmap for certain Apple projects. On December 3, 2007, Devine wrote
17 to Yang: "In the meantime, can you check with your Accounting dept? I
18 have not received the Nov payment yet."
- 19 b. On January 11, 2008, Devine e-mailed Yang Apple's confidential sales
20 forecast information concerning multiple Apple products, including the
21 iPod and iPhone, and information regarding actual sales for 2007.
- 22 c. On March 23, 2008, Devine e-mailed Yang Apple's confidential sales
23 forecast information for 2008 concerning multiple Apple products,
24 including the new unreleased iPod and iPhone.
- 25 d. On August 4, 2008, Devine e-mailed Apple management from his Apple e-
26 mail address that he "would like to get Cresyn qualified [*i.e.*, approved to
27 supply]" for a new product. On August 5, 2008, Devine forwarded this
28 same e-mail to Yang and requested that Yang "talk to [Cresyn's]
Accounting Dept for August." Yang replied that this conversation should
continue on Hotmail e-mail accounts.
- e. On September 8, 2008, Devine e-mailed Yang Apple's confidential iPod
Shuffle forecast sales for 2008.
- f. On September 23, 2008, Devine e-mailed Yang Apple's confidential actual
sales and forecast information for the iPod and iPhone for 2008.

- g. On January 8, 2009, Devine e-mailed Yang a list of production problems experienced by a competing supplier, which would allow Cresyn to strengthen its bargaining position over Apple.
- h. On January 29, 2009, Devine e-mailed Yang confidential Apple information regarding proposed engineering material changes and estimated demand for Apple's iPod and iPhone projects. Attached to this e-mail was an internal Apple Confidential-Strictly-Need-to-Know document that showed the project status, projected cost and roadmap for all of Apple's iPod and iPhone accessories programs. On January 30, 2009, a bank account in the name of Devine's wife received a wire transfer in the amount of \$6,000 from Cresyn.
- i. On February 2, 2009, Devine e-mailed Yang highly confidential Apple information regarding actual sales of various Apple products in 2008, projected sales in 2009 and estimated product costs. On February 19, 2009 a bank account in the name of Devine's wife received a wire transfer in the amount of \$6,000.
- j. On February 4, 2009, Devine e-mailed Yang confidential 2008 iPod volumes by various manufacturers and forecasted 2009 volumes.
- k. On March 6, 2009, Devine e-mailed Yang information regarding pricing offered to Apple by a Cresyn competitor.
- l. On June 25, 2009, Devine e-mailed Yang Apple's confidential sales forecast information concerning Apple's iPhone. Devine wrote: "Please be careful as this is highly confidential." On July 15, 2009, a bank account in the name of Devine's wife received a wire transfer in the amount of \$4,000 from Cresyn.
- m. On August 27, 2009, Devine e-mailed Apple employee Lane Kato and requested cost information for various suppliers, including a Cresyn competitor, purportedly for purposes of an accuracy review with Devine's supervisor. This statement was false because there was no such review with Devine's supervisor. On September 24, 2009, Devine e-mailed the confidential cost information provided by Kato to Yang.

36. All of Apple's Confidential Information provided by Devine to Cresyn in exchange for the illicit payments, kickbacks, and bribes described above was of a confidential, proprietary and secret nature and/or constituted Apple's trade secrets.

37. Devine concealed his illegal relationship with Cresyn by structuring and receiving payments in ways designed to avoid detection. For example, on February 8, 2007, Devine e-mailed Yang: "I prefer to do the transaction in Travelers Checks or by cash, without involving any banks. Can you see if that is possible? I know it's a bit more work but working

1 with Travelers checks have [sic] been very effective in my past experience.” Later, Devine
2 arranged to have Cresyn send payments via bank wire. Devine and Yang exchanged at least 19
3 e-mails between April 24, 2007 and March 18, 2010 regarding Cresyn’s monthly payments to
4 Devine. For example, on October 5, 2007, Devine e-mailed Yang: “I still haven’t received Sept
5 payment. Can you check with your Accounting Dept? Please do not send the Sept and Oct
6 payment together in one wire transfer. Anything over \$10,000 wired could draw too much
7 attention.” Devine also arranged for Cresyn to send payments to bank accounts in the name of
8 his wife or Defendant CPK Engineering in order to avoid detection. For example, a bank
9 account in the name of Devine’s wife received at least 11 wire transfer deposits from Cresyn
10 totaling \$46,000 in 2009. In November 2009, Devine e-mailed Yang and requested that Cresyn
11 “move the wiring of monthly consulting fees to [CPK Engineering’s bank] account”

12 38. Devine undertook other significant measures to conceal his fraudulent scheme
13 from Apple. For example, on September 16, 2008, Devine e-mailed Andy Yang of Cresyn: “I
14 received your email on my Apple email account. Please avoid using that email as Apple IT
15 team will randomly scan emails for suspicious email communications for forecast, cost and new
16 model information.” In this same e-mail, Devine then provided Cresyn with confidential
17 forecast information for several Apple products. In order to avoid using his Apple e-mail
18 account to deliver this information to Cresyn, Devine took images of his internal Apple e-mail
19 and e-mailed those images to Cresyn via his Hotmail account. Also, on May 16, 2008, after e-
20 mailing confidential supplier information and pricing for iPhone cameras to Cresyn, Devine
21 instructed Cresyn to “not mention that you received the contact window from me. It makes the
22 internal discussion very complex for me.”

23 39. Apple is informed and believes, and on that basis alleges, that Devine disclosed
24 Apple’s Confidential Information to Cresyn with the intent that Cresyn would use the
25 information to construct its offers to Apple to assemble certain Apple products, to gain an unfair
26 advantage in the contracting process, or to otherwise benefit Cresyn’s business interests, not
27 Apple’s. With Apple’s Confidential Information, Cresyn was able to construct offers to Apple
28 on terms more favorable to Cresyn, and less favorable to Apple. At all relevant times herein,

1 Devine was contractually prohibited from disclosing Apple's Confidential Information to
2 Cresyn for this purpose.

3 **Jin Li Mould**

4 40. Jin Li Mould is a foreign company with its headquarters in Singapore. It is
5 affiliated with E'Mold Manufacturing Co. Ltd., which has its headquarters in China. Jin Li
6 Mould has entered into agreements with Apple to supply mechanical parts for certain Apple
7 products. At all times relevant herein, Jin Li Mould has competed with a number of other
8 suppliers for Apple's business.

9 41. From at least October 2006 through the filing of this Complaint, Devine
10 demanded and received illicit payments, kickbacks, bribes and other things of value from Jin Li
11 Mould and, in exchange, Devine provided Jin Li Mould with Apple's Confidential Information.

12 42. Apple is informed and believes, and on that basis alleges, that Devine entered
13 into covert side agreements with Jin Li Mould wherein Devine provided Jin Li Mould with
14 Apple's Confidential Information. In exchange, Jin Li Mould paid Devine "commissions" on
15 Apple's purchases of Jin Li Mould's tooling and mechanical parts. Devine split these
16 "commissions" with Jin Li Mould employee Andrew Ang, who served as a broker in these
17 unlawful transactions between Jin Li Mould and Devine, as well as between other suppliers and
18 Devine. In May or June 2009, subsequent to the departure of Ang from Jin Li Mould, Devine
19 entered into an agreement with Jacky Chua of Jin Li Mould to maintain the covert side
20 agreements with Jin Li Mould. In furtherance of this agreement, Devine e-mailed Ang on May
21 1, 2009 a message for Chua regarding "the sample [*i.e.*, payment] plan we discussed a few
22 weeks ago" and proposed that Devine and Chua meet in person in China.

23 43. Apple is informed and believes, and on that basis alleges, that from October 2006
24 through the filing of this Complaint, Jin Li Mould paid Devine approximately \$1,000,000 in
25 "commissions," of which approximately 15-20% was shared with Ang. Devine and Ang
26 maintained an Excel spreadsheet to track their illegal profits. The spreadsheet tracked and
27 detailed illicit payments to Devine and Ang from October 2006 through March 2009.

28 44. Apple was not a party to these covert side agreements between Devine and Jin Li

1 Mould, Devine and Ang, or Devine and Chua, and had no knowledge of their existence.

2 45. Devine did not give to Apple and Apple did not receive the illicit payments made
3 to Devine pursuant to these covert agreements.

4 46. E-mail correspondence between Devine (from his Hotmail and/or Gmail e-mail
5 accounts), Ang, Chua, and other Jin Li Mould employees confirms that Devine, at various times
6 from 2006 through the filing of this Complaint and pursuant to the agreements with Jin Li
7 Mould alleged above, received illicit payments from Jin Li Mould in exchange for Devine
8 providing Jin Li Mould with Apple's Confidential Information. Such conduct included, without
9 limitation:

- 10 a. On March 25, 2007, Devine forwarded to Ang price quotes from a Jin Li
11 Mould competitor for parts and tools for the iPod Touch.
- 12 b. On July 2, 2007, Devine e-mailed Ang a Jin Li Mould competitor's
13 photographs of iPhone packaging fixtures.
- 14 c. On November 1, 2007, Devine e-mailed Ang information regarding the
15 iPod Classic pricing offered to Apple by a Jin Li Mould competitor.
- 16 d. On or about February 5, 2008, Devine e-mailed Ang confidential Apple
17 information regarding the allocation of Apple's supply agreements among
18 its various suppliers.
- 19 e. On February 16, 2008, Devine e-mailed Ang confidential drawings of
20 Apple's USB Power Adapter for the European Union.
- 21 f. On April 11, 2008, Devine e-mailed Ang information regarding a Jin Li
22 Mould competitor's tooling capacity for stereo headset parts.
- 23 g. On July 3, 2008, Devine e-mailed Ang information regarding iPod Touch
24 packaging pricing offered to Apple by a competing supplier.
- 25 h. On July 17, 2008, Devine e-mailed Ang information regarding power
26 adaptor pricing offered to Apple by a Jin Li Mould competitor.
- 27 i. On August 4, 2008, Devine e-mailed Ang information regarding headset
28 pricing offered to Apple by a Jin Li Mould competitor.
- j. On October 28, 2008, Devine e-mailed Ang information regarding iPod
Shuffle pricing offered to Apple by a Jin Li Mould competitor.
- k. On November 10, 2008, Devine e-mailed Ang an image of Apple's
eApproval system, which showed confidential tooling quotes for the iPod

Shuffle from a Jin Li Mould competitor.

1. On November 14, 2008, Devine and Ang e-mailed regarding the allocation of Apple's supply agreements between Jin Li Mould and Kaedar. Ang requested that he and Devine contact Betty Wu of Kaedar "to work together now to stand on pricing." Devine confirmed to Ang the price quoted by Kaedar and his desired allocation of Apple's business for this part, which would "be fair to all parties." Devine continued: "I do not want Kaedar to take 100% allocation. That's not good for sample plan [i.e., payments]."
- m. On December 17, 2008, Devine e-mailed Ang information regarding a Jin Li Mould competitor's production schedule for stereo headset parts.
- n. On March 9, 2009, Devine e-mailed Ang information regarding pricing offered to Apple by a Jin Li Mould competitor. Devine informed Ang that the competitor offered Apple a price of \$0.04 for certain parts, and that Apple "is looking for 0.01" but "0.02 might be ok."
- o. On March 31, 2009, Devine e-mailed Ang Apple's confidential target pricing and competitor pricing on projects for iPod and iPhone stereo headsets, which would allow Jin Li Mould to strengthen its bargaining position over Apple.
- p. On May 11, 2009, Devine e-mailed Chua a proposal for the structure and frequency of Jin Li Mould's payments to Devine. Devine and Chua agreed that Jin Li Mould would pay Devine \$700,000 over a five-month period.
- q. On June 15, 2009, Devine e-mailed Ang to inform him that Devine "received 80K [Singapore Dollars]" from an Apple supplier and that Ang's portion was \$12,200 Singapore Dollars.
- r. On June 16, 2009, Devine e-mailed Chua that Devine "will continue to provide [Jin Li Mould] with information & opportunities to keep your business growing." Devine then thanked Chua for the payment of \$90,000 and informed him that the outstanding balance owed was \$310,000 and Jin Li Mould shares of stock worth \$400,000. On the same day, Devine e-mailed Chua and Andric Ng of Jin Li Mould pricing information from a Jin Li Mould competitor.
- s. On July 29, 2009, Devine e-mailed Chua confidential information concerning the machine rates that certain Jin Li Mould competitors had provided to Apple. Devine wrote: "Pls be careful with the data."

47. All of Apple's Confidential Information provided by Devine to Jin Li Mould in exchange for the illicit payments, kickbacks, and bribes described above was of a confidential, proprietary and secret nature and/or constituted Apple's trade secrets.

48. Devine concealed his illegal relationship with Jin Li Mould by structuring and

1 receiving payments in ways designed to avoid detection. Apple is informed and believes, and on
2 that basis alleges, that Devine and Ang coordinated meetings in Asia wherein Ang and Devine
3 exchanged payments. For example, on January 22, 2008, Ang and Devine e-mailed regarding
4 scheduling a meeting in Macau: "Have check [sic] with my boss that we probably have to meet
5 in macau for the samples [*i.e.*, payments]." On October 14, 2008, Ang stated in an e-mail that
6 Devine would "be in macau for the collection" and that Ang would "collect from him [unknown
7 individual] whatever amount he prepare [sic] and will pass to you on our next meeting." Devine
8 also evaded detection by arranging for illegal commissions to be deposited in overseas accounts.
9 For example, on July 21, 2009, Devine e-mailed Ang wire information for a bank account in
10 Singapore into which Ang should deposit \$7,000.

11 49. Apple is informed and believes, and on that basis alleges, that Devine disclosed
12 Apple's Confidential Information to Jin Li Mould with the intent that Jin Li Mould would use
13 the information to construct offers to Apple to supply mechanical parts for certain Apple
14 products, to gain an unfair advantage in the contracting process, or to otherwise benefit Jin Li
15 Mould's business interests, not Apple's. With Apple's Confidential Information, Jin Li Mould
16 was able to construct offers to Apple on terms more favorable to Jin Li Mould, and less
17 favorable to Apple. At all relevant times herein, Devine was expressly prohibited from
18 disclosing Apple's Confidential Information to Jin Li Mould for this purpose.

19 **Kaedar**

20 50. Kaedar is a foreign company with its headquarters in China. Kaedar has entered
21 into agreements with Apple to supply mechanical parts for certain Apple products. At all times
22 relevant herein, Kaedar has competed with a number of other suppliers for Apple's business.

23 51. From at least March 2008 through the filing of this Complaint, Devine demanded
24 and received illicit payments, kickbacks, bribes and other things of value from Kaedar and, in
25 exchange, Devine provided Kaedar with Apple's Confidential Information.

26 52. Apple is informed and believes, and on that basis alleges, that Devine entered
27 into covert side agreements with Kaedar wherein Devine provided Kaedar with Apple's
28 Confidential Information. In exchange, Kaedar provided Devine with illicit payments,

1 kickbacks, bribes, and other things of value.

2 53. Apple was not a party to these covert side agreements between Devine and
3 Kaedar, and had no knowledge of their existence.

4 54. Devine did not give to Apple and Apple did not receive the illicit payments made
5 to Devine pursuant to these covert side agreements.

6 55. E-mail correspondence between Devine (from his Hotmail and/or Gmail e-mail
7 accounts) and Betty Wu, a Kaedar employee, confirms that Devine, at various times from 2008
8 through the filing of this Complaint and pursuant to the agreements with Kaedar alleged above,
9 received illicit payments from Kaedar in exchange for Devine providing Kaedar with Apple's
10 Confidential Information. Such conduct included, without limitation:

- 11 a. On July 8, 2008, Devine e-mailed Betty Wu of Kaedar confidential
12 information related to Apple's iPhone, including information regarding
13 unreleased models and potential suppliers for parts: "At the moment,
14 Apple is considering to work with [competing suppliers] for iPhone [sic].
15 Apple will likely have 2 or 3 iPhone models in 2009."
- 16 b. On or about February 4, 2009, Devine e-mailed Wu to inquire about the
17 status of a payment from Kaedar to Devine: "Will there be any transfer to
18 Korea this month? Let me know." On or about February 3, 2009, Wu
19 replied to Devine: "The transfer will be made this week." On or about
20 February 9, 2009, Devine again e-mailed Wu regarding payment: "[C]an
21 you check on transfer? I did not see any transfer this week." Wu
22 responded on February 10, 2009: "This week will transfer four time, I will
23 sent to you bank note [sic]." Wu then attached the bank note for the first
24 transfer.
- 25 c. On March 1, 2009, Devine e-mailed Wu a product design and price quote
26 provided to Apple by a Kaedar competitor.
- 27 d. On March 2, 2009, Devine e-mailed Wu a Design for Manufacturing
28 presentation provided to Apple by a Kaedar competitor, which summarized
the competitor's manufacturing plans for a component part.
- e. On or about March 4, 2009, Devine e-mailed Wu to inquire about the status
of a payment from Kaedar to Devine: "Transfer this week?" Wu replied:
"My colleague has begun to work on it. will [sic] be out in several days."
- f. On or about March 9, 2009, Devine e-mailed Wu to inquire about the status
of a payment from Kaedar to Devine: "[A]ny news on the transfer for this
month?" Wu replied: "The transfer was made on Monday Chinese Time.
It was break [sic] into 4 payments."

- 1 g. On May 11, 2009, Devine e-mailed Wu step-by-step instructions on how
2 Kaedar should negotiate with Apple in order to obtain money from Apple
3 for purchasing new manufacturing tools. Devine wrote: "I am trying to
4 get some money for the new tools. I will propose 5 new sets. 1) I will ask
5 you to send me a quote for 5 new sets at full price (\$120k x 5 = \$600K). 2)
6 I will then say too expensive 3) I will suggest that you pay for 2 tool sets
7 (\$240K) and Apple pay for 3 tool sets (\$360K). Which means I will try to
8 get about \$360K USD for Kaedar. What do you think?"
- 9 h. On June 3, 2009, Devine e-mailed Wu to inquire about the status of a
10 payment from Kaedar to Devine: "Any transfer this month?" Wu replied:
11 "The transfer will be made next week." On June 12, 2009, Devine again
12 inquired about the payment: "Can you check with your bank about
13 transfer? My side is not showing receipt." Wu replied: "I have called my
14 colleague and their confirmation is that the transfer will be only made once
15 a month, 17th of each month, so you are expected to receive the next
16 Thursday [sic]."
- 17 i. On June 17, 2009, Devine e-mailed Wu the prices paid by Apple for iPod
18 Touch parts, as well as the allocation of Apple business among various
19 suppliers.
- 20 j. On July 9, 2009, Devine e-mailed Wu to request that Kaedar make a
21 transfer into an HSBC bank account that Devine opened in Korea: "I
22 opened an HSBC account in Korea. But I was a bit short of funds to be the
23 Premier status. Can you possibly send \$30K USD to my new HSBC
24 account as soon as possible? Perhaps two transfers in the amount of
25 \$15k?"
- 26 k. On July 10, 2009, Devine e-mailed Wu to request that all future payments
27 from Kaedar to Devine be transferred to a Shinhan Bank account that
28 Devine opened in Korea: "I also have a new monthly account in Korea.
For future monthly transfers, please send to this account. Bank Name:
Shinhan Bank."
- l. On August 3 2009, Devine e-mailed Wu a Design for Manufacturing
presentation provided to Apple by a Kaedar competitor, which summarized
the competitor's manufacturing plans for a component part.
- m. On August 20, 2009, Devine e-mailed Wu requesting the schedule of
payments from Kaedar to Devine: "Can you send me sample [i.e.,
payment] schedule when you have a chance? Please send to this email
[Devine's hotmail e-mail account address]." On September 11, 2009, Wu
replied that \$11,548 was transferred into Devine's bank account on July
20; \$16,288 was transferred into Devine's bank account on August 21; and
\$19,260 was transferred into Devine's bank account on September 3. Later
that same day, Devine replied: "Thanks for your input. But my banks [sic]
statement shows only 7/20 transfer. Can you tell me the account number
for 8/21 and 9/3 transferred [sic]?" Wu responded by identifying a bank
account at Shinhan Bank in Seoul, South Korea, and by identifying the
account holder as "Paul Devine." On September 13, 2009, Devine
responded: "The bank account number is correct but my bank states that it

has only received a transfer on JULY 22nd in the amount of \$11,448[.] The Aug and Sept transfers are missing. But, I will ask my banker to personally check the status one more time and get back to you.” On September 16, 2009, Devine e-mailed Wu and confirmed that “[e]verything has been received by my bank.” Devine and Wu then agreed that Wu would send an additional \$45,000 in multiple payments. Wu then arranged to send \$57,052 in transfers between September 16 and September 23, 2009.

- n. On December 17, 2009, Devine e-mailed Wu regarding a new bank account into which Kaedar should wire its payments to Devine: “I met with a banker because they want to upgrade me to VIP member. So, I had to change my account number. Can you inform your bank to use the new account number for sample [i.e., payment] transfer?” Devine’s e-mail included information for a bank account at Shinhan Bank in Korea. On December 27, 2009, Wu replied that, between December 15, 2009 and December 21, 2009, Kaedar had already transferred \$36,481.68 to Devine’s former bank account.
- o. On January 27, 2010, Devine e-mailed Wu information regarding pricing offered to Apple by a Kaedar competitor for the iPhone 4 case. Devine asked Wu: “Can you compare [Kaedar’s] pricing vs [the competitor’s] and send me a summary table to this email?” Wu responded by comparing Kaedar’s prices to the competitor’s prices.
- p. On February 22, 2010, Devine e-mailed Wu information regarding pricing offered to Apple by a Kaedar competitor for tooling parts. Wu later replied: “So do you think it is necessary to adjust my tooling quotation?” Approximately ten days later, Devine informed Wu that Apple’s demand for the part declined, and that Kaedar and the competitor would both provide four sets of parts.
- q. On March 9, 2010, Wu e-mailed Devine: “The bank begins to inquire about the fixed monthly transfer to a personal account, so is it possible for you to give me a registered company bank account which is safe?” On March 18, 2010, Devine replied: “I understand. I will find a solution for it in Korea soon. In the meantime, can you send to this account? I set up this account in USA. But the tax is very high so I will need to find a solution in Korea very soon.” Devine’s e-mail included information for a Chase Bank account in Santa Clara, California in the name of CPK Engineering, Inc.

56. All of Apple’s Confidential Information provided by Devine to Kaedar in exchange for the illicit payments, kickbacks, and bribes described above was of a confidential, proprietary and secret nature and/or constituted Apple’s trade secrets.

57. Devine concealed his illegal relationship with Kaedar by structuring and receiving payments in ways designed to avoid detection. For example, on April 30, 2009, Devine e-mailed Chan: “[P]lease find the bank information for Korea. If you can make the

1 transfers below \$10K (like \$9K) would be good to avoid some attention [sic].”

2 58. Apple is informed and believes, and on that basis alleges, that Devine disclosed
3 Apple’s Confidential Information to Kaedar with the intent that Kaedar would use the
4 information to construct offers to Apple to supply component materials for certain Apple
5 products, to gain an unfair advantage in the contracting process, or to otherwise benefit Kaedar’s
6 business interests, not Apple’s. With Apple’s Confidential Information, Kaedar was able to
7 construct offers to Apple on terms more favorable to Kaedar, and less favorable to Apple. At all
8 relevant times herein, Devine was expressly prohibited from disclosing Apple’s Confidential
9 Information to Kaedar for this purpose.

10 **Glocom**

11 59. Glocom and its affiliate Lateral Solutions (collectively, “Glocom”) are foreign
12 companies with their headquarters in Singapore. Glocom has entered into agreements with
13 Apple to supply mechanical parts for certain Apple products. At all times relevant herein,
14 Glocom has competed with a number of other suppliers for Apple’s business.

15 60. From at least December 2007 through the filing of this Complaint, Devine
16 demanded and received illicit payments, kickbacks, bribes and other things of value from
17 Glocom and, in exchange, Devine provided Glocom with Apple’s Confidential Information.

18 61. Apple is informed and believes, and on that basis alleges, that Devine entered
19 into covert side agreements with Glocom wherein Devine provided Glocom with Apple’s
20 Confidential Information. In exchange, Glocom paid Devine “commissions” on Apple’s
21 purchases of Glocom commodities. Devine split these “commissions” with Andrew Ang, who
22 served as a broker in transactions between Glocom and Devine, as well as between other
23 suppliers and Devine. Devine and Ang maintained an Excel spreadsheet to track at least some
24 portion of their illegal profits from Glocom. The spreadsheet tracked and detailed illicit
25 payments to Devine and Ang from December 2008 through at least March 2009. For example,
26 the spreadsheet shows that Devine received \$16,000 from Glocom on December 15, 2008. Ang
27 received \$4,000.

28 62. Apple was not a party to these covert side agreements between Devine and

1 Glocom and between Devine and Ang, and had no knowledge of their existence.

2 63. Devine did not give to Apple and Apple did not receive the illicit payments made
3 to Devine pursuant to these covert side agreements.

4 64. E-mail correspondence between Devine (from his Hotmail and/or Gmail e-mail
5 accounts), Ang and Glocom employees confirms that Devine, at various times from 2007
6 through the filing of this Complaint and pursuant to the agreement with Glocom alleged above,
7 received illicit payments from Glocom in exchange for Devine providing Glocom with Apple's
8 Confidential Information. Such conduct included, without limitation:

- 9 a. On December 27, 2007, a different Global Supply Manger from Apple
10 contacted Lionel Chan from Glocom to determine whether Glocom could
11 supply certain component materials for Apple's iPod Touch. On January 7,
12 2008, Chan forwarded the e-mail to Ang, who then forwarded the e-mail to
13 Devine.
- 14 b. On January 7, 2008, Chan sent Ang an e-mail from his personal e-mail
15 account that attached a spreadsheet containing information regarding Apple
16 component parts, including project part numbers, descriptions and
17 quantities per day. On that same day, Ang forwarded the e-mail and
18 spreadsheet to Devine. Later that same day, Devine replied to Ang: "I
19 have added December (current pricing) in column H." The "current
20 pricing" supplied by Devine was confidential.
- 21 c. On February 26, 2008, Chan e-mailed Ang Glocom's price quotation that it
22 planned to make to Apple for headphone component parts. On February
23 27, 2008, Ang forwarded Chan's e-mail and wrote to Devine: "please
24 review accordingly. I guess Lionel [Chan] has put in extra cost . . . so we
25 need something from here . . . please advise." Later that same day, Devine
26 replied: "Looks ok. I will try to get this accepted by Micah [an Apple
27 Global Supply Manager]." On or about February 28, 2008, Devine advised
28 Ang that "Micah wants 12 cents [but] 17 would do."
- d. On April 15, 2008, Ang e-mailed Devine information regarding pricing
that Glocom was considering offering to Apple. Ang wrote to Devine:
"Please see below quoted pricing from Glocom . . . Need some indication
on pricing." Ang also stated that the "samples [i.e., payments]" that Ang
and Devine would receive should Glocom be awarded the contract would
be "US\$0.03 each part." On April 18, 2008, Devine replied to Ang:
"Micah [an Apple Global Supply Manager] is expecting 10~12 cents so 22
[cents] may be too high. Can they do 18?" Later that same day Devine
again replied to Ang's e-mail: "Disregard my earlier email about 18 cents.
22 is ok."
- e. On September 4, 2008, Devine e-mailed Ang information regarding pricing
offered to Apple by a competitor of Glocom.

- 1 f. On December 3, 2008, Devine e-mailed Chan confidential information
2 regarding component parts for Apple's iPod Touch, the suppliers that
3 provided those component parts to Apple, and the cost.
- 4 g. On December 15, 2008, Devine e-mailed Chan confidential information
5 regarding component parts for Apple's iPod Shuffle, the suppliers that
6 provided those component parts to Apple, and the cost.
- 7 h. On February 15, 2009, an Apple Operations Program Manager e-mailed
8 Chan and asked that Glocom provide Apple with a price quote for an Apple
9 part. Chan forwarded the request to a team of Glocom employees, but
10 blind copied Devine. On February 16, 2009, Devine replied to Chan: "I
11 think we want to fly under the radar as discussed. No more than \$0.02 per
12 piece."
- 13 i. On March 24, 2009, Devine and Ang e-mailed regarding the collection of
14 payments from Glocom, and the tracking of such payments in their
15 spreadsheet.

16 65. All of Apple's Confidential Information provided by Devine to Glocom in
17 exchange for the illicit payments, kickbacks, and bribes described above was of a confidential,
18 proprietary and secret nature and/or constituted Apple's trade secrets.

19 66. Apple is informed and believes, and on that basis alleges, that Devine disclosed
20 Apple's Confidential Information to Glocom with the intent that Glocom would use the
21 information to construct offers to Apple to supply component materials for certain Apple
22 products, to gain an unfair advantage in the contracting process, or to otherwise benefit
23 Glocom's business interests, not Apple's. With Apple's Confidential Information, Glocom was
24 able to construct offers to Apple on terms more favorable to Glocom, and less favorable to
25 Apple. At all relevant times herein, Devine was expressly prohibited from disclosing Apple's
26 Confidential Information to Glocom for this purpose.

27 **Nishoku**

28 67. Nishoku is a foreign company with its headquarters in Taiwan. Nishoku has
entered into agreements with Apple to supply mechanical parts for certain Apple products. At
all times relevant herein, Nishoku has competed with a number of other suppliers for Apple's
business.

68. From at least March 2009 through the filing of this Complaint, Devine demanded

1 and received illicit payments, kickbacks, bribes and other things of value from Nishoku and, in
2 exchange, Devine provided Nishoku with Apple's Confidential Information.

3 69. Apple is informed and believes, and on that basis alleges, that Devine entered
4 into covert side agreements with Nishoku wherein Devine provided Nishoku with Apple's
5 Confidential Information. In exchange, Nishoku provided Devine with illicit payments,
6 kickbacks, bribes, and other things of value.

7 70. Apple was not a party to these covert side agreements between Devine and
8 Nishoku, and had no knowledge of their existence.

9 71. Devine did not give to Apple and Apple did not receive the illicit payments made
10 to Devine pursuant to these covert side agreements.

11 72. E-mail correspondence between Devine (from his Hotmail and/or Gmail e-mail
12 accounts) and Yvonne Wu, a Nishoku employee, confirms that Devine, at various times from
13 2009 through the filing of this Complaint and pursuant to the agreements with Nishoku alleged
14 above, received illicit payments from Nishoku in exchange for Devine providing Nishoku with
15 Apple's Confidential Information. Such conduct included, without limitation:

- 16 a. On May 7, 2009, Devine e-mailed Wu wire information for a Shinhan
17 Bank account in Seoul, South Korea in Devine's wife's name.
- 18 b. On June 9, 2009, Devine e-mailed Wu to inquire about a payment from
19 Nishoku to Devine: "Yvonne, Can you let me know the amount that was
20 transferred?" Wu replied: "TransferDear [sic] Paul, amount = \$27,700.84,
21 maybe deduced [sic] some handling fee"
- 22 c. On July 10, 2009, Devine e-mailed Wu regarding logistics for future
23 payments by Nishoku to Devine: "Hello Yvonne, How are you? For
24 future samples [i.e., payments], can you send to this new account? Bank
25 Name Shinhan Bank . . . Also, can you make sure that each sample [i.e.,
26 payment] transfer is less than 20K?" On July 27, 2009, Devine again e-
27 mailed Wu: "By the way, the account holder name is Paul Devine."
- 28 d. On August 4, 2009, Wu e-mailed Devine regarding Nishoku's plans for a
future offer to Apple: "Plan to provide around 2% cost down for [various
headsets], pls advise if any idea [sic] about the proposal. By the way, we
heard that there might be 2nd source for [project part], right?" Devine
replied: "I think 2% should be fine. We are looking at [another Apple
supplier] for [queried project part]."

73. All of Apple's Confidential Information provided by Devine to Nishoku in

1 exchange for the illicit payments, kickbacks, and bribes described above was of a confidential,
2 proprietary and secret nature and/or constituted Apple's trade secrets.

3 74. Apple is informed and believes, and on that basis alleges, that Devine disclosed
4 Apple's Confidential Information to Nishoku with the intent that Nishoku would use the
5 information to construct offers to Apple to supply component materials for certain Apple
6 products, to gain an unfair advantage in the contracting process, or to otherwise benefit
7 Nishoku's business interests, not Apple's. With Apple's Confidential Information, Nishoku was
8 able to construct offers to Apple on terms more favorable to Nishoku, and less favorable to
9 Apple. At all relevant times herein, Devine was expressly prohibited from disclosing Apple's
10 Confidential Information to Nishoku for this purpose.

11 **Fast Tech**

12 75. Fast Tech is a foreign company with its headquarters in Singapore. Fast Tech has
13 entered into agreements with Apple to supply tooling materials for certain Apple products. At
14 all times relevant herein, Fast Tech has competed with a number of other suppliers for Apple's
15 business.

16 76. Based upon the e-mail correspondence cited hereafter, the pattern of Devine's
17 scheme, and Devine's course of conduct, Apple is informed and believes, and on that basis
18 alleges, that from at least November 2008 through the filing of this Complaint, Devine entered
19 into covert side agreements with Fast Tech wherein Devine provided Fast Tech with Apple's
20 Confidential Information. In exchange, Fast Tech provided Devine with illicit payments,
21 kickbacks, bribes, and other things of value. Devine split these illicit payments, kickbacks,
22 bribes and other things of value with Andrew Ang, who served as a broker in transactions
23 between Fast Tech and Devine, as well as between other suppliers and Devine. Ang became an
24 employee of Fast Tech in or around February 2010.

25 77. Apple was not a party to these covert side agreements between Devine and Fast
26 Tech and Devine and Ang, and had no knowledge of their existence.

27 78. Devine did not give to Apple and Apple did not receive the illicit payments made
28 to Devine pursuant to these covert side agreements.

79. E-mail correspondence between Devine, Ang and Fast Tech employees confirms that Devine, at various times from 2008 through the filing of this Complaint and pursuant to the agreement with Fast Tech alleged above, received illicit payments from Fast Tech in exchange for Devine providing Fast Tech with Apple's Confidential Information. Such conduct included, without limitation:

- a. On or about November 4, 2008, Devine and Ang exchanged e-mails regarding an agreement to assist Simon Song, who had secured future employment with Fast Tech, with a project to supply components for new Apple products. Devine agreed to provide Song with competitor price quotes and other confidential information regarding new Apple products. In exchange, Ang and Devine would enter into an agreement with Fast Tech "per promise [to Ang] from [Fast Tech] big boss."
- b. On or about February 11, 2009, Ang advised Fast Tech on its offer price to Apple based on Apple's Confidential Information provided by Devine.
- c. On April 9, 2009, Devine e-mailed Song a drawing of a USB power adaptor and the related pricing from a competitor of Fast Tech.
- d. On June 17, 2009, Devine e-mailed Song regarding Apple's intention to consolidate the suppliers for an Apple product power adapter. Devine later forwarded this e-mail to Ang, who appeared to disapprove of Devine's direct contact with Song: "you, me will discuss the cost as I will ask [Fast Tech] to quote first and then we decide. So in this way, we could control their pricing."
- e. On or about November 18, 2009, Devine instructed Marvin Chuow of Fast Tech how to conduct Fast Tech's negotiations with Apple concerning machinery investments. Devine advised Fast Tech via SMS text that Fast Tech should require a 50 machine investment from Apple and request information regarding 2010 volume.

80. All of Apple's Confidential Information provided by Devine to Fast Tech in exchange for the illicit payments, kickbacks, and bribes described above was of a confidential, proprietary and secret nature and/or constituted Apple's trade secrets.

81. Apple is informed and believes, and on that basis alleges, that Devine disclosed Apple's Confidential Information to Fast Tech with the intent that Fast Tech would use the information to construct offers to Apple to supply component materials for certain Apple products, to gain an unfair advantage in the contracting process, or to otherwise benefit Fast Tech's business interests, not Apple's. With Apple's Confidential Information, Fast Tech was

able to construct offers to Apple on terms more favorable to Fast Tech, and less favorable to Apple. At all relevant times herein, Devine was expressly prohibited from disclosing Apple's Confidential Information to Fast Tech for this purpose.

Unidentified Targeted Supplier(s) Associated with Nelson Lee

82. Apple is informed and believes, and on that basis alleges, that Nelson Lee was an employee of or associated with one or more unidentified Targeted Suppliers.

83. Apple is informed and believes, and on that basis alleges, that Lee used personal e-mail accounts to conceal the identities of the Apple suppliers with which he associated.

84. Apple is informed and believes, and on that basis alleges, that from at least May 2007 to the filing of this Complaint, Devine entered into covert side agreements with unidentified Targeted Suppliers wherein Devine provided unidentified Targeted Suppliers with Apple's Confidential Information. In exchange, unidentified Targeted Suppliers provided Devine with illicit payments, kickbacks, bribes, and other things of value.

85. Apple is informed and believes, and on that basis alleges, that Lee acted as a broker in the unlawful transactions between Devine and unidentified Targeted Suppliers.

86. Apple was not a party to these covert side agreements between Devine and unidentified Targeted Suppliers, and had no knowledge of their existence.

87. Devine did not give to Apple and Apple did not receive the illicit payments made to Devine pursuant to these covert side agreements.

88. E-mail correspondence between Devine and Lee confirms that Devine disclosed Apple's Confidential Information through Lee to unidentified Targeted Suppliers. Such conduct included, without limitation:

- a. On May 13, 2007, Lee informed Devine that he had the "green light" to provide Lee "with a device drawing along with photos of the device" in exchange for payment.
- b. On May 20, 2008, Lee requested that Devine provide him with "detail information. . . from colors, launch dates and so on" because "[t]hey have accepted and it is go go go." Lee also requested that he and Devine schedule a time to discuss payment information and said that if Devine provided an address, "I will arrange some samples [*i.e.*, payments]."

- 1 c. On May 20, 2008, Lee again e-mailed Devine and asked: "is it possible to
2 provide me the phone 2 information?" On May 21, 2008, Devine replied
3 that he "will provide the information regarding the phone if they want but
4 not this year. We will need to agree on per product payment as well before
5 I release the info."
- 6 d. On June 25, 2008, Devine and Lee e-mailed regarding the drawings and
7 dimensions of the yet-to-be-released iPhone. Devine asked Lee: "Do you
8 still want the [iPhone] display drawings/dimensions?" Lee informed
9 Devine that the purchaser became "too worry [sic] about advance
10 information that might cause them trouble." But Lee was "still looking for
11 other potential partners to take this deal." Lee told Devine that "[i]f you
12 can provide dimension and diagram of new Iphone [sic] display, it will
13 help me a lot."
- 14 e. On July 22, 2009, Devine e-mailed Lee confidential CAD drawings for an
15 unreleased iPod Touch model.

16 89. Apple is informed and believes, and on that basis alleges, that all of Apple's
17 Confidential Information provided by Devine to unidentified Targeted Suppliers through Lee in
18 exchange for the illicit payments, kickbacks, and bribes described above was of a confidential,
19 proprietary and secret nature and/or constituted Apple's trade secrets.

20 90. Apple is informed and believes, and on that basis alleges, that Devine disclosed
21 Apple's Confidential Information to unidentified Targeted Suppliers with the intent that
22 unidentified Targeted Suppliers would use the information to construct offers to Apple to supply
23 component materials for certain Apple products, to gain an unfair advantage in the contracting
24 process, or to otherwise benefit their business interests, not Apple's. At all relevant times
25 herein, Devine was expressly prohibited from disclosing Apple's Confidential Information for
26 this purpose.

27 **APPLE'S POLICIES REGARDING EMPLOYEE CONDUCT**

28 91. Apple is informed and believes, and on that basis alleges, that Devine accepted
illicit payments, kickbacks, bribes, and other things of value from the Targeted Suppliers in
violation of Apple's policies. Under no circumstances would payments from the Targeted
Suppliers to Devine be legitimate or proper under Apple's policies. By accepting illicit
payments, kickbacks, bribes, and other things of value from the Targeted Suppliers, Devine's
interests were made directly adverse to Apple's interests.

1 92. Apple's Business Conduct Policy ("BCP") prohibits all Apple employees from
2 receiving kickbacks, defined as "payments or items of value given to individuals in connection
3 with the purchase or sale of products or services" The BCP also prohibits employees from
4 entering into any business commitments outside of Apple's formal contracting process, through
5 "side deals, 'side letters,' or otherwise." The BCP further prohibits employees from taking other
6 employment without a manager's permission, and from using Apple's assets for outside business
7 or their position at Apple to solicit work for an outside business or other employer. Apple's
8 BCP also prohibits employees from disclosing any "confidential operational, financial, trade
9 secret, or other business information without verifying with [their] manager that such disclosure
10 is appropriate." The BCP is, and at all relevant times has been, accessible to employees via
11 Apple's intranet. All employees are provided with a copy of the BCP during new-hire training
12 and must comply with all requirements outlined in the BCP as a condition of employment.
13 Employees are also given annual e-mail reminders of the BCP's terms along with a link to the
14 policy's then-current wording, and are required to complete a bi-annual training course
15 regarding the terms of the BCP. Devine agreed to comply with all of Apple's company
16 policies, including but not limited to the BCP. Devine received a copy of the BCP during his
17 new-hire training and completed a bi-annual training course regarding the BCP on August 12,
18 2008 and on August 5, 2010.

19 93. Through its Conflict of Interest—Outside Business Activities Policy ("Conflict of
20 Interest Policy"), Apple prohibits employees from engaging in "any activity that is inconsistent
21 with or opposed to Apple's best interests or that gives the appearance of such impropriety."
22 Accordingly, the Conflict of Interest Policy forbids employees from taking on "any other
23 employment, occupations, consulting or other business activities or commitments directly
24 related to Apple's business or products or to its actual or demonstrably anticipated research or
25 development." The Conflict of Interest Policy is, and at all relevant times has been, accessible
26 to employees via Apple's intranet. All employees must comply with all requirements outlined in
27 the Conflict of Interest Policy as a condition of employment. Devine agreed to comply with all
28 of Apple's company policies, including but not limited to the Conflict of Interest Policy.

1 94. Apple's Operations Code of Conduct Policy ("OCCP") establishes ethical
2 standards of conduct that apply to all Apple employees working in Apple's Operations
3 Department. Because Operations personnel interact with suppliers and have access to Apple's
4 and its suppliers' confidential information, these employees are held to higher standards than the
5 general employee population at Apple. The principle underlying the OCCP is that "Apple's
6 interactions with its Suppliers must be 'beyond reproach.'" Among other things, Apple's OCCP
7 requires "all Apple Operations personnel to avoid any situation that creates a real or perceived
8 conflict of interest," defined as "any activity that is inconsistent with or opposed to Apple's best
9 interests, or that gives the appearance of impropriety or divided loyalty." In accordance with
10 these principles, "Operations personnel shall not give or receive any gifts from Apple suppliers,
11 or anyone associated with suppliers, regardless of the value of the proposed gift." Similarly,
12 Operations personnel must "protect and maintain the confidentiality of [suppliers'] information."
13 The OCCP is, and at all relevant times has been, accessible to Operations employees via Apple's
14 intranet. All Operations employees must comply with all requirements outlined in the OCCP as
15 a condition of employment. Devine agreed to comply with all of Apple's company policies,
16 including but not limited to the OCCP. Devine received training on the OCCP most recently in
17 July 2009. In September 2009, all Operations employees were required to complete a
18 Procurement Operations/Business Conduct Questionnaire requiring disclosure of any knowledge
19 of business conduct policy violations. Devine submitted his completed questionnaire on
20 September 4, 2009, in which he declared that he was unaware of any violations of the OCCP or
21 the BCP.

22 95. Apple has implemented a policy regarding Confidential, Proprietary and Trade
23 Secret Information (the "Confidential Information Policy"). Apple's Confidential Information
24 Policy requires all Apple employees to "[p]rotect Apple's confidential, proprietary and trade
25 secret information and that of third parties." Among other things, the Confidential Information
26 Policy also provides: (a) that "[n]o Apple employee may disclose Apple confidential
27 information to an outside party unless a written agreement or license has been previously signed
28 and approved by the division vice president," (b) that "Apple respects the confidential

1 information of others” and that “[n]o Apple employee may use or disclose any such third-party
2 information unless that employee is authorized by the third party to do so and until the employee
3 has signed a confidentiality agreement with Apple,” and (c) that “Apple’s non-disclosure
4 agreements cover both disclosure of Apple information to another party and disclosure of the
5 other party’s information to Apple.” Apple’s Confidential Information (as defined in this
6 Complaint) includes, but is not limited to, the information covered by Apple’s Confidential
7 Information Policy. The Confidential Information Policy also expressly informs employees that
8 Apple’s confidential, proprietary and trade secret information constitutes Apple’s “competitive
9 advantage in the marketplace” and that a violation of the “policy is grounds for disciplinary
10 action, up to and including termination of employment,” and “[c]ivil and/or criminal penalties.”
11 The Confidential Information Policy is, and at all relevant times has been, accessible to
12 employees via Apple’s intranet. All employees must comply with all requirements outlined in
13 the Confidential Information Policy as a condition of employment. Devine agreed to comply
14 with all of Apple’s company policies, including but not limited to the Confidential Information
15 Policy.

16 96. When hired, all Apple employees are required to agree to and sign an Intellectual
17 Property Agreement that requires employees to protect Apple’s “Proprietary Information.” That
18 agreement informs employees that “Proprietary Information” includes “any information of a
19 confidential, proprietary and secret nature that may be disclosed to you or otherwise learned by
20 you in the course of your employment at Apple, including but not limited to any confidential
21 information of third parties.” As examples of Proprietary Information, the agreement
22 specifically includes “information and material relating to past, present or future inventions,
23 marketing plans, manufacturing and product plans, technical specifications, hardware designs
24 and prototypes, business strategies, financial information, and forecasts.” The agreement
25 prohibits an employee from disclosing such information to anyone outside of Apple at any time.
26 Among other things, the agreement provides: “You understand and agree that your employment
27 by Apple requires you to keep all Proprietary Information in confidence and trust for the tenure
28 of your employment and thereafter, and that you will not use or disclose Proprietary Information

1 without the written consent of Apple” Apple’s Confidential Information (as defined in this
2 Complaint) includes, but is not limited to, the Proprietary Information covered by this
3 agreement. The agreement also provides: “You agree that during the tenure of your
4 employment by Apple you will not plan or engage in any other employment, occupations,
5 consulting or other business activities or commitments directly related to Apple’s business or
6 products, or to its actual or demonstrably anticipated research or development, nor will you
7 engage in any other activities that conflict with your employment obligations to Apple.” Devine
8 signed a copy of the Intellectual Property Agreement on May 20, 2005.

9 97. At all times relevant to this Complaint, Apple has informed employees through
10 its intranet that, as an Apple employee, they are responsible for understanding and abiding by all
11 Apple policies and for keeping informed of the additions and changes to the policies. Apple
12 employees are informed that a “[v]iolation of an Apple policy could result in disciplinary
13 actions, up to and including termination.”

14 **APPLE’S REASONABLE EFFORTS TO PROTECT ITS**
15 **CONFIDENTIAL INFORMATION**

16 98. Apple’s Confidential Information is not commonly known to the public or to
17 other persons who can obtain economic value from its disclosure or use. The secrecy of Apple’s
18 Confidential Information provides Apple a substantial business advantage. Consequently, Apple
19 maintains that some, if not all, of Apple’s Confidential Information is a trade secret.

20 99. Apple takes all reasonable steps under the circumstances to maintain the
21 confidentiality of Apple’s Confidential Information. Apple secures all of its computer networks
22 behind a firewall. Persons outside of Apple cannot obtain access to Apple’s computers without
23 Apple’s authorization. Apple also limits access to Apple’s Confidential Information to
24 individuals under non-disclosure obligations who have a need to know.

25 100. Apple’s facilities are secured. All doors leading into the main facility are locked
26 at all times. To gain access to Apple’s facilities, persons must have keycards issued by Apple
27 that include their photographs. Only Apple employees, temporary employees and eligible
28 vendors, associates, and contractors receive keycards. Any person lacking a keycard must be

1 escorted by an Apple employee while within Apple's facilities.

2 101. At all relevant times herein, Apple's relationships with its suppliers and their
3 representatives were governed by Confidentiality Agreements, which generally prohibit the
4 unauthorized disclosure of confidential information shared among Apple and its suppliers. The
5 confidential information covered by these Confidentiality Agreements specifically includes
6 nonpublic information received from the other party regarding product costs and/or prices.
7 These Confidentiality Agreements expressly prohibit Apple and its suppliers from using
8 confidential information received from the other for any other purpose than that for which the
9 information was disclosed, and from using confidential information received from the other for
10 their own or any third party's benefit without prior written consent.

11 **APPLE'S CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **(18 U.S.C. § 1962(c) Against Defendant Devine)**

14 102. Apple realleges each and every allegation set forth in Paragraphs 1 through 101,
15 inclusive, and incorporates them by reference herein.

16 103. Devine's unlawful, tortious and otherwise actionable conduct constitutes violation
17 of 18 U.S.C. § 1962(c).

18 104. From October 2006 through the filing of this Complaint, Devine engaged in
19 activities with the following companies: Cresyn, Kaedar, Jin Li Mould, Glocom, Nishoku, and
20 Fast Tech. At all times relevant herein, each company constituted a RICO enterprise and was
21 engaged in, and its activities affected, interstate and foreign commerce. Each enterprise
22 functioned individually and as continuing units operating the fraudulent scheme to defraud Apple
23 as alleged above from approximately October 2006 through the filing of this Complaint. Devine,
24 for the purpose of executing the scheme to defraud Apple, by means of tortious, fraudulent and
25 criminal conduct, did unlawfully, willfully and knowingly conduct and participate, directly and
26 indirectly, in the affairs of Cresyn, Kaedar, Jin Li Mould, Glocom, Nishoku, and Fast Tech
27 through racketeering activity.

28 105. Devine committed multiple violations of the predicate acts of wire fraud, 18

1 U.S.C. § 1343, of the Travel Act, 18 U.S.C. § 1952, and of commercial bribery in violation of
 2 Cal. Penal Code § 641.3, through his scheme. The pattern of racketeering constitutes both a
 3 history of criminal conduct and a distinct threat of continuing criminal activity.

4 106. As described in Paragraphs 18 through 90, inclusive, a scheme to defraud Apple
 5 existed whereby Devine accepted and received illicit payments, kickbacks, bribes, and other
 6 things of value from the Targeted Suppliers in exchange for Apple's Confidential Information.
 7 Devine concealed these facts from Apple when he had a duty to disclose such facts. The scheme
 8 defrauded Apple by means of false or fraudulent pretenses, representations or promises, within
 9 the meaning of 18 U.S.C. § 1343. Devine participated in this scheme with the specific intent to
 10 defraud Apple.

11 107. Apple is informed and believes, and on that basis alleges, that interstate and
 12 international wire communications were used in the scheme to defraud Apple. Each such use of
 13 interstate and international wire communications constituted a predicate act of wire fraud in
 14 violation of 18 U.S.C. § 1962(c). Devine received payments, kickbacks, bribes or other things of
 15 value via wire and structured such payoffs so as to avoid detection of his scheme:

- 16 a. On February 8, 2007, Devine e-mailed Yang of Cresyn: "I prefer to do the
 17 transaction in Travelers Checks or by cash, without involving any banks.
 18 Can you see if that is possible? I know it's a bit more work but working
 with Travelers checks have been very effective in my past experience."
- 19 b. On October 5, 2007, Devine e-mailed Yang of Cresyn: "I still haven't
 20 received Sept payment. Can you check with your Accounting Dept?
 Please do not send the Sept and Oct payment together in one wire transfer.
 21 Anything over \$10,000 wired could draw too much attention."
- 22 c. On April 30, 2009, Devine e-mailed Chan of Glocom: "Below, please find
 23 the bank information for Korea. If you can make the transfers below \$10K
 (like \$9K) would be good to avoid some attention."
- 24 d. On September 16, 2009, Betty Wu and Devine e-mailed regarding the
 structuring of wire transfers in amounts under \$10,000.
- 25 e. As set forth above in Paragraphs 35, 46, 55, 64, 72, 79, and 88, Devine
 26 used the interstate wires numerous times in furtherance of his scheme.

27 108. Devine and his accomplices used interstate and international wire communications
 28 over the Internet in furtherance of the scheme to defraud Apple. Devine avoided using his Apple

1 e-mail address as part of his scheme so as to avoid detection. Instead, he created and used
2 separate Hotmail and Gmail e-mail accounts to carry out and conceal his fraudulent scheme. On
3 September 16, 2008, Devine e-mailed Yang of Cresyn from his Hotmail e-mail account: "I
4 received your email on my Apple email account. Please avoid using that email as Apple IT team
5 will randomly scan emails for suspicious email communications for forecast, cost and new model
6 information."

7 109. Devine violated the Travel Act, 18 U.S.C. § 1952, multiple times by traveling in
8 interstate and international commerce and using facilities in interstate commerce, with the intent
9 and effect of promoting, managing, establishing, carrying on, or facilitating the promotion,
10 management, establishment or carrying on of the commercial bribery scheme, in violation of
11 California Penal Code § 641.3. For example, on January 22, 2008, Ang and Devine e-mailed
12 regarding scheduling a meeting in Macau: "Have check [sic] with my boss that we probably have
13 to meet in macau for the samples [i.e., payments]." On October 14, 2008, Ang stated in an e-mail
14 that Devine would "be in macau for the collection" and that Ang would "collect from him
15 [unknown individual] whatever amount he prepare [sic] and will pass to you on our next
16 meeting."

17 110. Devine violated California Penal Code § 641.3 multiple times by accepting or
18 agreeing to accept money or other things of value from the Targeted Suppliers, in exchange for
19 Devine using or agreeing to use his position as an employee of Apple for the benefit of the
20 Targeted Suppliers. Devine did so with the specific intent to injure or defraud Apple. This
21 occurred without the knowledge or consent of Apple.

22 111. Each violation of 18 U.S.C. § 1343, 18 U.S.C. § 1952, and Cal. Penal Code §
23 641.3 constitutes a separate instance of "racketeering activity" as defined in 18 U.S.C. § 1961(1)
24 and was committed in furtherance of Devine's scheme to defraud Apple. These violations
25 constitute a pattern of racketeering activity in that they have the same or similar purposes, results,
26 participants, victims and/or methods of commission, as set forth above in Paragraphs 18 through
27 90, inclusive. The pattern of racketeering activities affected interstate and foreign commerce.

28 112. Apple has been injured in its business and/or property as a direct and proximate

1 result of Devine's violation of 18 U.S.C. § 1962(c), including injury by reason of the predicate
2 acts constituting the pattern of racketeering activity.

3 113. As a result of the violation of 18 U.S.C. § 1962(c), Apple has suffered substantial
4 damages, in an amount to be proven at trial. Pursuant to 18 U.S.C. § 1964(c), Apple is entitled to
5 recover treble its general and special compensatory damages, plus interest, costs and attorneys'
6 fees, incurred by reason of Devine's violation of 18 U.S.C. § 1962(c). Devine's actions were
7 undertaken with fraud, malice or oppression, or with a conscious disregard of Apple's rights.
8 Therefore, Apple is entitled to an award of exemplary and punitive damages against Devine, in an
9 amount according to proof at trial.

10 SECOND CAUSE OF ACTION

11 (15 U.S.C. § 13(c) Against Defendant Devine)

12 114. Apple realleges each and every allegation set forth in Paragraphs 1 through 113,
13 inclusive, and incorporates them by reference herein.

14 115. Devine, in violation of his fiduciary and contractual duties to Apple as its agent
15 and employee, received compensation in the form of illicit payments, bribes, kickbacks,
16 commissions and other things of value from the Targeted Suppliers. The payments accepted by
17 Devine from the Targeted Suppliers were illegal kickbacks and/or bribes, in violation of 15
18 U.S.C. § 13(c).

19 116. These payments were not for bona fide services rendered by Devine in
20 connection with the sale or purchase of goods but were in the nature of commercial bribes or
21 kickbacks to Devine, which directly undermined the fiduciary duties Devine owed to Apple.

22 117. From October 2006 through the filing of this Complaint, the Targeted Suppliers
23 paid to Devine and Devine accepted, without the knowledge and consent of Apple, illicit
24 payments, kickbacks, bribes and other things of value. In return, Devine used or agreed to use
25 his position as an employee of Apple for the benefit of those persons and entities. Knowing that
26 he would receive illicit payments, kickbacks, bribes, and other things of value, Devine
27 influenced Apple's buying, contracting and allocation decisions in transactions between Apple
28 and the Targeted Suppliers for sales of goods.

1 118. The unlawful payments to Devine from the Targeted Suppliers corruptly
2 influenced transactions between Apple and the Targeted Suppliers for sales of goods that were
3 in the flow of interstate commerce.

4 119. The unlawful payments between Devine, who resides in California, and the
5 Targeted Suppliers, who reside in countries in Asia, occurred in the course of commerce among
6 the several states and/or with foreign nations.

7 120. As a result of the illegal payments made to Devine, Apple suffered injury in the
8 form of monetary losses. This scheme precluded the realization of Apple's maximum profit
9 potential. As a result of Devine's fraudulent scheme to obtain illicit payments, kickbacks,
10 bribes, and other things of value from the Targeted Suppliers in exchange for Apple's
11 Confidential Information, Apple acquired goods at a higher price than it would have paid
12 without Devine's unlawful and fraudulent conduct.

13 121. As a result of the violations of 15 U.S.C. § 13(c), Apple has suffered substantial
14 damages, in an amount to be proven at trial. Pursuant to 15 U.S.C. § 15(a), Apple is entitled to
15 recover treble its compensatory damages, plus interest, costs and attorneys' fees, incurred by
16 reason of Devine's violations of 15 U.S.C. § 13(c). Devine's actions were undertaken with
17 fraud, malice or oppression, or with a conscious disregard of the rights of Apple and, therefore,
18 Apple is entitled to an award of exemplary and punitive damages against Devine, in an amount
19 according to proof at trial.

20 **THIRD CAUSE OF ACTION**

21 **(Fraud Against Defendant Devine)**

22 122. Apple realleges each and every allegation set forth in Paragraphs 1 through 121,
23 inclusive, and incorporates them by reference herein.

24 123. Devine misrepresented and concealed material facts regarding the scheme he
25 designed and executed to demand and receive illicit payments, kickbacks, bribes and other
26 things of value from the Targeted Suppliers and, in exchange, to provide the Targeted Suppliers
27 with Apple's Confidential Information. This conduct began in or around October 2006 and
28 continued until the filing of this Complaint.

1 124. Pursuant to agreements entered into with Apple and the fiduciary duty owed to
2 Apple as its employee, Devine had a duty to disclose these material facts to Apple. The OCCP
3 required Devine to report “any conduct that is in violation of Apple’s Business Conduct Policy,
4 or legal or regulatory requirements,” including “real or apparent conflicts of interest, actions that
5 may compromise relationships or confidential and proprietary information, lack of impartiality
6 between suppliers, reciprocity and self-dealing.” Devine failed to discharge his duty by
7 fraudulently concealing his illegal scheme as described herein.

8 125. Devine also made false representations to Apple regarding his non-compliance
9 with Apple’s OCCP and BCP, described above, in an effort to conceal his fraudulent scheme
10 from Apple.

11 126. On or around September 4, 2009, Devine submitted a written statement to Apple
12 that he was unaware of any Procurement Operations or Business Conduct violations. This
13 representation made by Devine was false. The true fact was that Devine had committed
14 numerous material violations of the OCCP and BCP.

15 127. Also, Devine made false representations to Apple in order to obtain Apple’s
16 Confidential Information for the purpose of providing it to the Targeted Suppliers.

17 128. On August 27, 2009, Devine e-mailed Apple employee Lane Kato and requested
18 cost information for various suppliers, including a Cresyn competitor, purportedly for purposes
19 of an accuracy review with Devine’s supervisor. This representation made by Devine was false
20 because there was no such review with Devine’s supervisor. The true fact was that Devine
21 sought this information in furtherance of his illegal scheme. On September 24, 2009, Devine e-
22 mailed to Andy Yang of Cresyn the confidential cost information provided by Kato.

23 129. When Devine made these misrepresentations, he knew them to be false. Devine
24 made these misrepresentations with the intent to deceive and defraud Apple and to induce Apple
25 to act in reliance on his representation.

26 130. In reliance on Devine’s representations and in ignorance of the material facts he
27 concealed, Apple entered into supply agreements—on terms less favorable as they would have
28 been otherwise—with the Targeted Suppliers for component materials for certain Apple

1 products at various times from at least October 2006 through the filing of this Complaint.

2 131. In reliance on Devine's representations and in ignorance of the material facts he
3 concealed, Apple entrusted Devine with Apple's Confidential Information and continued to
4 employ Devine.

5 132. As a proximate result of the fraudulent conduct of Devine, Apple has been
6 injured in its business or property.

7 133. As a proximate result thereof, Apple has been damaged in an amount to be
8 proven at trial.

9 134. Devine's actions were undertaken with fraud, malice or oppression, or with a
10 conscious disregard of the rights of Apple and, therefore, Apple is entitled to an award of
11 exemplary and punitive damages against Devine, in an amount according to proof of trial.

12 **FOURTH CAUSE OF ACTION**

13 **(Breach of Contract Against Defendant Devine)**

14 135. Apple realleges each and every allegation set forth in Paragraphs 1 through 134,
15 inclusive, and incorporates them by reference herein.

16 136. At all relevant times, Devine agreed to abide by and comply with all Apple
17 policies governing his employment, and his employment was conditioned upon his agreement.
18 These policies included Apple's Confidential Information Policy, the Conflict of Interest Policy,
19 the OCCP and the BCP. At all relevant times, the foregoing policies, and Devine's agreement to
20 abide by them, were valid and in effect.

21 137. Apple has performed all of its duties owed to Devine.

22 138. Through Devine's scheme set forth above, Devine materially breached Apple's
23 policies that Devine agreed to abide by. In breach of his contractual obligations, Devine made
24 unauthorized use and disclosure of Apple's Confidential Information, technical data, trade
25 secrets, or know-how; conducted activity that is inconsistent with and opposed to Apple's best
26 interests; received illicit payments, kickbacks, bribes and other things of value in connection
27 with the unauthorized disclosure of Apple's Confidential Information; and created real and
28 perceived conflicts of interest.

1 139. Apple is entitled to recover from Devine the damages sustained as a result of
2 these breaches of Apple's policies governing his employment. The amount of damages cannot
3 be determined at this time but will be proven at trial. Apple is further entitled to recover from
4 Devine the gains, profits and advantages that Devine obtained as a result of these breaches.
5 Apple is currently unable to ascertain the full extent of these gains, profits, and advantages, but
6 will prove the value thereof at trial.

7 **FIFTH CAUSE OF ACTION**

8 **(Breach of Fiduciary Duty Against Defendant Devine)**

9 140. Apple realleges each and every allegation set forth in Paragraphs 1 through 139,
10 inclusive, and incorporates them by reference herein.

11 141. Devine, as an employee of Apple, owed Apple a duty of loyalty to act solely for
12 Apple's benefit in all matters connected with his employment, including in any dealings he
13 might have with Apple's suppliers and other third parties.

14 142. Pursuant to the duty of loyalty owed to Apple, Devine had a duty to disclose to
15 Apple the personal and financial arrangements that Devine had with the Targeted Suppliers or
16 other third parties and to refrain from activities and transactions that were in conflict with or
17 adverse to Apple's best interests.

18 143. Pursuant to the duty of loyalty owed to Apple, Devine had a duty to disclose,
19 account for and remit to Apple any profit, compensation, consideration or benefit that Devine
20 received in connection with the transaction of Apple's business, beyond his salary from Apple.

21 144. By his conduct as set forth above in demanding, accepting and receiving illicit
22 payments, kickbacks, bribes and other things of value from the Targeted Suppliers, without ever
23 disclosing the same to Apple, Devine has breached his obligations to Apple; has acted adversely
24 to the best interests of Apple; has obtained secret and undisclosed profits, compensation,
25 consideration and benefit during the transaction of Apple's business; and has never accounted
26 for the same to Apple, all to Apple's loss and damage.

27 145. As a direct and proximate result of the unlawful acts of Devine, Apple has
28 sustained and will continue to sustain damages. The amount of damages cannot be determined

1 at this time but will be proven at trial.

2 146. During the period in which he was engaged in the fraudulent scheme described
3 above and accepting illegal kickbacks, thus breaching his fiduciary duty to Apple, Devine was
4 not entitled to receive any compensation paid to him by Apple, and Apple is entitled to recover
5 from Devine the entire amount of compensation paid to him during this period.

6 SIXTH CAUSE OF ACTION

7 (Misappropriation of Trade Secrets Against Defendant Devine)

8 147. Apple realleges each and every allegation set forth in Paragraphs 1 through 146,
9 inclusive, and incorporates them by reference herein.

10 148. Apple's Confidential Information includes "trade secrets" under California Civil
11 Code § 3426.1 because it (1) is not generally known to the public or to other persons who can
12 obtain economic value from its disclosure or use, (2) derives independent economic value from
13 not being generally known, and (3) is subject to reasonable efforts by Apple to maintain its
14 secrecy.

15 149. Devine misappropriated Apple's Confidential Information by:

- 16 a. Acquiring those trade secrets by improper means, including theft, bribery,
17 misrepresentation, and/or breach or inducement of a breach of a duty to
maintain secrecy (hereinafter, "Improper Means");
- 18 b. Acquiring those trade secrets by Improper Means and disclosing them to
19 the public without Apple's express or implied consent;
- 20 c. Disclosing those trade secrets to the public without Apple's express or
21 implied consent and with knowledge or reason to know that the trade
22 secrets were derived from or through a person who had acquired them by
Improper Means;
- 23 d. Disclosing those trade secrets to the public without Apple's express or
24 implied consent and with the knowledge or reason to know that the trade
secrets were acquired under circumstances giving rise to a duty to maintain
the secrecy or limit the use of those trade secrets;
- 25 e. Disclosing those trade secrets to the public without Apple's express or
26 implied consent and with the knowledge or reason to know that the trade
27 secrets were derived from or through a person who had a duty to Apple to
maintain the secrecy or limit the use of the trade secrets; and/or
- 28 f. Disclosing those trade secrets to the public without Apple's express or

1 implied consent, without a material change in Devine's position, and with
2 the knowledge or reason to know that Apple's Confidential Information
3 was a trade secret and that knowledge of it had been acquired by mistake or
4 accident.

5 150. Apple is entitled to recover from Devine the damages sustained as a result of the
6 misappropriation described herein. The amount of such damages cannot be determined at this
7 time but will be proven at trial. Apple is further entitled to recover from Devine the gains,
8 profits, and advantages that Devine obtained as a result of the misappropriation alleged herein.
9 Apple is currently unable to ascertain the full extent of these gains, profits, and advantages, but
10 will prove the value thereof at trial.

11 151. Apple is informed and believes, and on that basis alleges, that Devine's acts of
12 misappropriation were both willful and malicious, entitling Apple to exemplary damages.

13 SEVENTH CAUSE OF ACTION

14 (Common Law Misappropriation Against Defendant Devine)

15 152. Apple realleges each and every allegation set forth in Paragraphs 1 through 151,
16 inclusive, and incorporates them by reference herein.

17 153. Apple owns the confidential and proprietary information and other non-trade
18 secret property at issue in this Complaint. Apple invested substantial time and money in
19 developing its confidential and proprietary information and property. Devine has appropriated
20 Apple's confidential and proprietary information and other non-trade secret property at little or
21 no cost to him.

22 154. Devine appropriated Apple's confidential and proprietary information and other
23 non-trade secret property at issue in this Complaint without Apple's authorization and consent.

24 155. By reason of the above-alleged acts and conduct of Devine, Apple has and will
25 continue to suffer great harm and damage.

26 156. Apple is entitled to recover from Devine the actual damages sustained by Apple
27 as a result of Devine's wrongful acts described in this Complaint. The amount of damages
28 cannot be determined at this time but will be proven at trial. Apple is further entitled to recover
from Devine the gains, profits, advantages, and unjust enrichment that he has obtained as a

1 result of his wrongful acts described herein. Apple is currently unable to ascertain the full extent
2 of these gains, profits, and advantages, but will prove the value thereof at trial.

3 **EIGHTH CAUSE OF ACTION**

4 **(Restitution and Unjust Enrichment Against All Defendants)**

5 157. Apple realleges each and every allegation set forth in Paragraphs 1 through 156,
6 inclusive, and incorporates them by reference herein.

7 158. Defendants received a benefit from Apple, in the form of monetary payments that
8 were associated with the operation of the scheme alleged above, and in the form of monetary
9 payments that were paid as compensation for Devine's employment.

10 159. In light of Defendants' conduct, it would be unjust for Defendants to retain the
11 benefits they obtained from operating the scheme alleged above or for Devine to retain the
12 compensation paid by Apple to Devine as compensation for his employment.

13 160. Defendants have been unjustly enriched by Apple's payments and should be
14 required in equity to make restitution of these payments to Apple.

15 **NINTH CAUSE OF ACTION**

16 **(Conversion Against Defendant Devine)**

17 161. Apple realleges each and every allegation set forth in Paragraphs 1 through 160,
18 inclusive, and incorporates them by reference herein.

19 162. At all times relevant herein, Apple owned the confidential and proprietary
20 information and other non-trade secret property at issue in this Complaint that Devine has taken
21 from Apple and converted to his own personal use.

22 163. Apple is informed and believes, and on that basis alleges, that Devine presently
23 maintains a copy or copies of Apple's Confidential Information in his immediate possession or
24 control and that he has transferred Apple's Confidential Information to other individuals.

25 164. Apple owned exclusively Apple's Confidential Information and all copies
26 thereof.

27 165. Devine's actions, as alleged, threaten to irreparably and immediately harm Apple.

28 166. Devine's actions, as alleged, have harmed Apple in an amount to be proven at

trial.

TENTH CAUSE OF ACTION

(Unfair Competition (Cal. Bus. & Prof. Code §§ 17200 *et seq.*) Against All Defendants)

167. Apple realleges each and every allegation set forth in Paragraphs 1 through 166, inclusive, and incorporates them by reference herein.

168. Defendants engaged in unlawful, unfair and/or fraudulent business practices. Defendants' actions violate California Business and Professions Code § 17200 *et seq.*

169. As discussed herein, Defendants' scheme was unlawful under state and federal laws, including but not limited to RICO, 18 U.S.C. § 1962(c), and the Robinson-Patman Act, 15 U.S.C. § 15(c), and constituted common law fraud and trade secret theft.

170. Defendants' conduct was also fraudulent and deceptive, and was unfair to Apple, in that it offended established public policy, and/or was immoral, unethical, oppressive, unscrupulous and substantially injurious to Apple.

171. As a direct result of Defendants' conduct, Apple has suffered an injury in fact and has lost money and/or property that have been wrongfully retained by Defendants.

172. Apple is entitled to recover from Defendants the gains, profits, advantages, and unjust enrichment that they have obtained as a result of the acts of unfair competition described herein.

ELEVENTH CAUSE OF ACTION

(Money Had and Received Against Defendant Devine)

173. Apple realleges each and every allegation set forth in Paragraphs 1 through 172, inclusive, and incorporates them by reference herein.

174. At all times during which Devine was employed by Apple, Apple paid Devine the compensation provided for by Devine's employment arrangement.

175. Devine failed to perform services pursuant to his employment arrangement by failing to act loyally for Apple's benefit in all matters connected with this arrangement.

176. In such circumstances, where compensation is received by an employee only because he or she fraudulently conceals his or her disloyalty from the employer, California law

1 recognizes that the employee forfeits the right to the compensation in question, and the employer
2 may recover the sums paid.

3 177. Accordingly, Apple is entitled to recover from Devine the full compensation
4 Apple paid to him during the employment arrangement. Apple paid Devine at least \$665,000,
5 over the course of approximately five years, as well as other compensation according to proof at
6 trial.

7 178. Wherefore Apple demands damages in the amount of \$665,000, in addition to the
8 value of all other compensation as proven at trial, plus interest and cost.

9 **TWELFTH CAUSE OF ACTION**

10 **(For An Accounting Against All Defendants)**

11 179. Apple realleges each and every allegation set forth in Paragraphs 1 through 178,
12 inclusive, and incorporates them by reference herein.

13 180. At all relevant times herein, Devine, as a fiduciary to Apple, owed Apple the
14 duties of good faith, care, candor and loyalty.

15 181. Apple seeks a complete accounting of all illicit payments, kickbacks, bribes and
16 other things of value received directly or indirectly by Devine, his employees, agents,
17 representatives, consultants, any fictitious businesses operated by Devine, or any pseudonyms
18 used by Devine from the time he became an Apple employee in 2005 to the present. An
19 accounting is necessary to determine the amount of money Devine received in exchange for his
20 unlawful disclosure of Apple's Confidential Information and other unlawful actions described
21 herein.

22 182. Apple seeks a complete accounting of all illicit payments, kickbacks, bribes and
23 other things of value made, disbursed, or paid out as a result of Devine's illegal scheme from the
24 time he became an Apple employee in 2005. An accounting is necessary to determine the
25 amount of money Devine received in exchange for his unlawful disclosure of Apple's
26 Confidential Information and other unlawful actions described herein.

27 183. Apple seeks a complete accounting of all payments made to Devine or Defendant
28 CPK Engineering, including any deposits or wire transfers made to any bank accounts

1 maintained or opened by Devine, in his name or any other name, and/or opened or maintained
 2 by or on behalf of CPK Engineering, or other entities owned or controlled by Devine. An
 3 accounting is necessary to determine the amount of money CPK Engineering and Devine
 4 received in exchange for Devine's unlawful disclosure of Apple Confidential Information and
 5 other unlawful actions described herein.

7 PRAYER FOR RELIEF

8 WHEREFORE, Plaintiff Apple Inc. prays for judgment against Defendants as follows:

- 9 1. Judgment in favor of Apple and against Defendants on all causes of action;
- 10 2. For compensatory damages in an amount to be determined at trial;
- 11 3. For exemplary and punitive damages in an amount to be determined at
 12 trial;
- 13 4. For treble damages against Defendant Devine pursuant to 18 U.S.C.
 14 Section 1964 according to proof at trial;
- 15 5. For treble damages against Defendant Devine pursuant to 15 U.S.C.
 16 Section 13(c) according to proof at trial;
- 17 6. Disgorgement of ill-gotten gains;
- 18 7. For a preliminary injunction restraining the misappropriation of Apple's
 19 Confidential Information;
- 20 8. For an injunction permanently restraining the misappropriation of Apple's
 21 Confidential Information;
- 22 9. For an accounting of the profits Defendants have gained as a result of
 23 Devine's wrongful conduct;
- 24 10. For interest;
- 25 11. For costs of suit and attorneys' fees incurred herein;
- 26 12. For exemplary and punitive damages; and
- 27 13. For such other relief as the Court deems just and proper.

1 Dated: August 12, 2010

2 GEORGE A. RILEY
3 SHARON M. BUNZEL
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6 O'MELVENY & MYERS LLP

7 By: 

8 Sharon M. Bunzel

9 Attorneys for Plaintiff
10 Apple Inc.

Apple respectfully requests a jury trial on all issues triable thereby.

Dated: August 12, 2010

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