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July 29, 2012

The Honorable Lucy H. Koh
United States District Court Judge
Northern District of California
San Jose Courthouse, Courtroom 8-4th Floor
280 South 1st Street
San Jose, CA 95113

Case: *Apple v. Samsung Electronics*, CV 11-01846-LHK

Re: Subpoena for testimony and appearance at trial to Shin Nishibori

Dear Judge Koh,

I have been retained as local counsel for Mr. Shin Nishibori, who is represented by Glen T. Melchinger of Alston, Hunt, Floyd & Ing in Honolulu, Hawai'i.

Attached to this letter is a subpoena that was given to Mr. Nishibori along with a \$60 check. The subpoena was issued by counsel for Samsung Electronics and purports to require Mr. Nishibori to appear in your courtroom on July 30, 2012 at 8:00 a.m. Mr. Nishibori was served in Kailua, Hawai'i, which is located over 2,000 miles from San Jose and in a different state from where the trial is being held. Mr. Nishibori is a former Apple designer. He is not a party nor is he a party's officer. He lives in Hawai'i, where he is trying to recover from several health issues.

The subpoena was not properly served under Rule 45(b)(2) of the Federal Rules of Civil Procedure. With the assistance of counsel, Mr. Nishibori intends to rely upon this rule and not appear at the time and place listed on the subpoena.

I am writing this letter to notify the Court of Mr. Nishibori's intention not to appear on July 30. Mr. Nishibori does not wish to offend the Court by taking this action, but rather has been advised by counsel that he is not required to appear. I remain available to respond to the Court should there be any concern about Mr. Nishibori's decision to rely on Rule 45(b)(2) rather than filing a motion to quash pursuant to Rule 45(c)(3)(A).

Additionally, I have reviewed Samsung's recently filed witness list, Dkt. # 1278 (July 23, 2012). Mr. Nishibori's contact information is listed as "Apple c/o Morrison & Foerster LLP," followed

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by Morrison & Foerster's address and telephone number in San Francisco. *Id.* at 15. At this time, Mr. Nishibori is not an employee of Apple, he is not represented by Morrison & Foerster, and, as explained above, he does not work or reside in California.

Respectfully submitted,

/s/

Thomas J. Nolan

Cc: Glenn T. Melchinger, Alston, Hunt, Floyd & Ing
Attorneys for Apple and Samsung Electronics, Co. Ltd via Pacer