

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 Charles K. Verhoeven (Bar No. 170151)
 2 charlesverhoeven@quinnemanuel.com
 50 California Street, 22nd Floor
 3 San Francisco, California 94111
 Telephone: (415) 875-6600
 4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Bar No. 177129)
 kevinjohnson@quinnemanuel.com
 6 Victoria F. Maroulis (Bar No. 202603)
 victoriamaroulis@quinnemanuel.com
 7 555 Twin Dolphin Drive, 5th Floor
 Redwood Shores, California 94065-2139
 8 Telephone: (650) 801-5000
 Facsimile: (650) 801-5100
 9

10 Michael T. Zeller (Bar No. 196417)
 michaelzeller@quinnemanuel.com
 11 865 S. Figueroa St., 10th Floor
 Los Angeles, California 90017
 12 Telephone: (213) 443-3000
 Facsimile: (213) 443-3100
 13

14 Attorneys for SAMSUNG ELECTRONICS CO.,
 LTD., SAMSUNG ELECTRONICS AMERICA,
 15 INC. and SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC
 16

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
 19

20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

23 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity; SAMSUNG
 24 ELECTRONICS AMERICA, INC., a New
 York corporation; SAMSUNG
 25 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 26

27 Defendant.
 28

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S REPLY IN SUPPORT OF
 MOTIONS TO SEAL**

1 which would not even be noticed by the curious public, absent the attention given by Reuters, and
2 which would not materially constrain the public’s knowledge about this litigation.

3 Notwithstanding the potentially innocent public uses for the highly-sensitive information
4 Samsung seeks to seal, no amount of public interest can overcome the compelling reason to seal
5 that exists when a party's confidential information could be used improperly by competitors.
6 Reuters does not contest the case law presented on this issue. *See, e.g., Bean v. John Wiley &*
7 *Sons, Inc.*, No. CV 11–08028–PCT–FJM, 2012 WL 1078662, at *6-7 (D. Ariz. Mar. 30, 2012)
8 (production information and “precise revenue information results” and “exact sales and production
9 numbers” which could be used by competitors to calibrate their pricing and distribution methods
10 to undercut defendant also provide compelling reasons for sealing) and *Bauer Bros. LLC v. Nike,*
11 *Inc.*, No. 09cv500–WQH–BGS, 2012 WL 1899838, at *3-4 (S.D. Cal. May 24, 2012) (revenues
12 per product, revenue reductions, merchandise costs, royalty costs, promotional costs, personnel
13 costs, and costs of goods sold are sealable when a company’s business competitors could use the
14 information to replicate the company’s business practices).

15 Rather than addressing this on-point authority, Reuters makes three unsuccessful
16 arguments. First, Reuters cites to *Fraley v. Facebook*, Case no. 11-cv-01726-RS, Document 217
17 at 2:19-25 (N.D. Cal. Aug 1, 2012) (Order Denying Motion for Class Certification, Without
18 Prejudice; Denying Request to Expand List of Potential Cy Pres Recipients, Requiring Further
19 Meet and Confer Negotiations re: Sealing Motions) for the dicta that “it is far from apparent”
20 whether “relevant financial data” and information about how a Facebook feature worked “may
21 warrant sealing” on a motion for preliminary approval of a settlement. (Opp. at 3.) Judge
22 Seeborg did not evaluate whether any financial information qualified for sealing; he merely
23 suggested what this Court and the parties know – that not every type of financial information is
24 sealable. Samsung does not seek to seal every type of financial information at issue in this
25 litigation. The requests here, as explained fully in Samsung’s motions and supporting
26 declarations, are far narrower.

27 Next, Reuter accuses Samsung's supporting declarations of being “conclusory and lacking
28 in helpful specifics.” (Opp. at 4.) However, Reuters does not identify which declaration is

1 purportedly deficient or what information it claims is missing, nor can it. Samsung's declarations
2 describe in detail the documents Samsung seeks to seal and the competitive harm that would result
3 if the information were made public.

4 Finally, Reuters argues that “all of the cases on which the parties rely” are distinguishable
5 because no third party intervened requesting public access. (Opp. at 12.) Reuters' rationale
6 appears to be either that courts apply a different standard when third parties intervene, or that no
7 case law regarding sealing can be relied upon unless a third party has intervened. Either way,
8 Reuters is wrong. Tellingly, Reuters does not cite a single authority for the proposition that the
9 test for sealing highly-sensitive information somehow changes when a third party intervenes. As
10 this Court has recognized multiple times, the test is whether compelling reasons exist that
11 outweigh the public’s interest in disclosure, not whether a third party intervenes to compel
12 disclosure. See, e.g. Dkt. No. 1256 at 2; Dkt. No. 1269 at 2; see also *Kamakana v. City and*
13 *County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006); *Nixon v. Warner Commc’ns, Inc.*, 435
14 U.S. 589, 598 - 608 (1978) (holding that Warner Communications, a third party to the original
15 litigation, did not have a right to access the tapes at issue.)

16 When the Court considers the overwhelming amount of knowledge the public has already
17 received and will receive during the trial regarding Samsung's products, patents and business
18 practices, contrasted with Samsung's narrow sealing requests, whatever public interest there could
19 possibly be in Samsung sales figures, manufacturing costs, operating expenses, operating profit,
20 gross margins, and granular product-by-product costs and profits information, if any, is far
21 outweighed by the compelling business need for confidentiality.

22 **II. REUTERS AGREES WITH SAMSUNG’S PROPOSED TREATMENT OF**
23 **SOURCE CODE AND BUSINESS PLAN TRIAL EXHIBITS**

24 Samsung seeks to seal only the actual source code that is introduced into evidence in Trial
25 Exhibit 31, and not testimony or documents discussing the source code. (Dkt. No. 1488, at 5, 6.)
26 Reuters does not oppose this reasonable and narrowly tailored request. (Opp. at 17:26-28.)

27 In addition, Reuters does not oppose Samsung’s request to exclude from evidence and the
28 public record portions of certain documents that are not shown to the jury.

