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 12 Attorneys for Plaintiff and  
 Counterclaim-Defendant APPLE INC.

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION

18 APPLE INC., a California corporation,  
 19 Plaintiff,  
 20 v.  
 21 SAMSUNG ELECTRONICS CO., LTD., a  
 Korean business entity; SAMSUNG  
 22 ELECTRONICS AMERICA, INC., a New York  
 corporation; SAMSUNG  
 23 TELECOMMUNICATIONS AMERICA, LLC, a  
 Delaware limited liability company,  
 24 Defendants.  
 25

Case No. 11-cv-01846-LHK

**APPLE'S PARTIAL OPPOSITION  
 TO SAMSUNG'S  
 ADMINISTRATIVE MOTION TO  
 FILE DOCUMENTS UNDER  
 SEAL AND FOR AN ORDER  
 PROHIBITING THE PARTIES  
 FROM COMMUNICATING  
 WITH JURORS [DKT. NO. 1990]**

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1 Continuing the attack on the jury and the jury process that Samsung has waged in the  
2 press worldwide, Samsung has filed a motion for a new trial based on alleged juror misconduct.  
3 Samsung seeks to seal the arguments and certain supporting declarations and exhibits concerning  
4 the alleged misconduct, citing concern for the jurors' privacy and the integrity of the proceedings.  
5 But Samsung's actions belie its words, as it has publicly filed documents that reveal the very facts  
6 that it seeks to seal. As a result, the media were quickly able to discern not only that Samsung  
7 had accused the jury of misconduct but also *which* juror it accused.

8 Nonetheless, because it is the province of the Court to determine whether undue burdens  
9 are placed on those who serve on the Court's juries, Apple would not object if the Court  
10 determines in its discretion that sealing Samsung's allegations of misconduct is the best way to  
11 prevent such burdens.

12 Samsung also moves for an order "prohibiting the parties from any further communication  
13 with jurors" until after the matters raised in its post-trial motions have been "finally resolved."  
14 (Dkt. No. 1099 ("Mot.") at 2.) Apple objects because there is no valid basis for Samsung's  
15 request, which is not supported by any of the authority Samsung cites and is not the proper  
16 subject of an administrative motion in any event. Nor does Samsung reveal whether it has  
17 already contacted jurors. Apple has not done so to date, yet Samsung is seeking to preclude  
18 Apple from equal access to information. Nevertheless, despite the lack of any merit to Samsung's  
19 request, Apple will not contact any jurors until the Court resolves this administrative motion.

20 Finally, as to the portion of Samsung's motion that addresses sealing of documents that  
21 Apple has designated as confidential, Apple already has made the appropriate showing as to the  
22 two documents that it seeks to have sealed.

23 **I. APPLE DOES NOT OBJECT IF THE COURT DETERMINES THAT**  
24 **SAMSUNG'S JUROR MISCONDUCT ALLEGATIONS SHOULD BE**  
25 **SEALED.**

26 Samsung seeks to seal the entirety of its jury misconduct arguments, as well as the  
27 evidence submitted in support of that argument. (Mot. at 1.) All of that evidence is publicly  
28 available information. (*See* Estrich JMOL Decl. Exs. A-O.) Yet at the same time Samsung  
purported to seek privacy for the jury it attacked, it revealed that it was accusing the jury of

1 misconduct, both in portions of its filing that it made public and in its motion to seal. The public  
2 version of the jury misconduct motion referenced multiple cases involving juror misconduct and a  
3 bankruptcy court action involving a juror. (See Dkt. No.1990-3 at iii-ix.) Samsung also publicly  
4 filed excerpts from the voir dire trial transcript. (See Dkt. No. 1991-1.) Samsung’s motion to seal  
5 makes clear that its jury misconduct motion has the “potential to subject all of the jurors to extra-  
6 judicial scrutiny and public criticism” (Mot. at 1). As a result, the media are now widely  
7 reporting that Samsung is attacking the jury verdict based on alleged juror misconduct. See, e.g.,  
8 [http://www.mercurynews.com/business/ci\\_21621841/samsung-apple-seeks-new-trial-legal-feud-  
9 smartphone?IADID=Search-www.mercurynews.com-www.mercurynews.com](http://www.mercurynews.com/business/ci_21621841/samsung-apple-seeks-new-trial-legal-feud-smartphone?IADID=Search-www.mercurynews.com-www.mercurynews.com) (attached as  
10 Exhibit A to Declaration of Nathan Sabri (“Sabri Decl.”) filed herewith). One such article reports  
11 that the juror who is the subject of Samsung’s accusations recognizes that Samsung’s accusations  
12 are about him. [http://newsandinsight.thomsonreuters.com/Legal/News/ViewNews.aspx?  
13 id=57594&terms=%40ReutersTopicCodes+CONTAINS+%27ANV%27](http://newsandinsight.thomsonreuters.com/Legal/News/ViewNews.aspx?id=57594&terms=%40ReutersTopicCodes+CONTAINS+%27ANV%27) (Sabri Decl. Ex. B).

14 Samsung’s attack on the jury’s verdict began with Samsung’s issuance of a stinging press  
15 release after the reading of the verdict on August 24, see [http://news.cnet.com/8301-13579\\_3-  
16 57500159-37/jury-awards-apple-more-than-\\$1b-finds-samsung-infringed](http://news.cnet.com/8301-13579_3-57500159-37/jury-awards-apple-more-than-$1b-finds-samsung-infringed) (quoting Samsung press  
17 release) (Sabri Decl. Ex. C), and continues to this day. That attack is directed at, among other  
18 things, the same juror who is the target of Samsung’s jury misconduct motion. See  
19 [http://www.koreatimes.co.kr/www/news/nation/2012/08/182\\_118662.html](http://www.koreatimes.co.kr/www/news/nation/2012/08/182_118662.html) (Sabri Decl. Ex. D).

20 Samsung’s attacks are baseless, and its jury misconduct motion frivolous on its face.  
21 Among other failings, Samsung’s motion does not even address, let alone disclose, when  
22 Samsung learned the facts on which it bases its misconduct allegations, and in particular, whether  
23 Samsung impermissibly delayed raising this issue, as the facts Samsung does disclose suggest.  
24 See, e.g., *Robinson v. Monsanto Co.*, 758 F.2d 331, 335 (8th Cir. 1985) (party waived jury  
25 misconduct arguments where information disclosed at voir dire could have permitted discovery of  
26 information at issue).<sup>1</sup>

27  
28 <sup>1</sup> On the afternoon of September 24, Apple asked Samsung to disclose how and when it learned of  
each of the facts underlying its allegations and notified Samsung of its intent to file an expedited

1 Samsung's sealing motion is also defective, both because all the information it seeks to  
2 seal is public, and because Samsung failed to redact enough material from its jury misconduct  
3 motion and supporting papers to keep the substance of its allegations secret. Notwithstanding the  
4 flaws in Samsung's sealing motion, Apple understands that accusations like the ones Samsung  
5 has made, however unwarranted, could cause a significant invasion of privacy of all the jurors  
6 and place an undue burden upon them. If the Court concludes that that would be the case, Apple  
7 would not object to sealing of the juror misconduct portion of Samsung's JMOL Motion and  
8 related exhibits and to sealing of relevant portions of the opposition and reply on this issue.

9 **II. SAMSUNG'S "ADMINISTRATIVE" MOTION FOR AN ORDER**  
10 **PROHIBITING APPLE FROM COMMUNICATING WITH THE JURORS**  
11 **SHOULD BE DENIED.**

12 The jury issued its verdict more than a month ago. The Court advised the jurors at that  
13 time that they were "free to discuss [the case] with whomever [they'd] like," but "also free not to  
14 discuss the case with anyone." (Trial Tr. at 4317:12-14, 21-23.) The Court noted that "often the  
15 attorneys in a case find it useful to talk to jurors after the case is concluded to get their  
16 impressions," and "[t]here are also many members of the media here who would like to speak  
17 with you." (Trial Tr. at 4317:14-20.) A quick internet search reveals that *multiple* jurors have  
18 spoken with *multiple* media sources since that time. *See, e.g.,* [http://online.wsj.com/article/  
19 SB10000872396390444270404577612160843420578.html](http://online.wsj.com/article/SB10000872396390444270404577612160843420578.html) (Sabri Decl. Ex. E).

20 Despite this passage of time, Samsung now asks that the parties be "prohibit[ed] . . . from  
21 any *further* communications with jurors who served during the trial until the matters raised by  
22 [Samsung's JMOL] motion have been finally resolved." (Mot. at 1 (emphasis added).) This  
23 relief is not the proper subject of an administrative motion and can be denied on that ground alone.  
24 *See* Civil L. R. 7-11. Even if considered, Samsung's request should be denied on the merits.

25 First, Samsung's requested order would not serve Samsung's stated purpose of protecting  
26 jurors from "extra-judicial scrutiny and public criticism." (Mot. at 1.) Samsung asks that the  
27 *parties* be precluded from communicating with the jurors, but does not seek to bar the *media* from

28 motion to compel such disclosure if Samsung does not provide it voluntarily. Apple is waiting  
for Samsung's response.

1 communicating with the jurors—even though Samsung identifies “further inquiries from . . . the  
2 media and others” as a basis for its motion. (*Id.*; *see also* Dkt. No. 1990-2 (Proposed Order).)  
3 Apple has no intention of subjecting jurors to unwanted scrutiny or criticism, and Apple’s Rule  
4 50 and 59 motion did not provide any grounds for doing so. Samsung offers no basis for the  
5 Court to prevent Apple from contacting jurors until Samsung’s JMOL Motion is fully resolved,  
6 which presumably includes any appeal. Apple notes that Samsung does not state whether  
7 *Samsung* has already contacted any of the jurors and is thus seeking now to bar Apple from an  
8 opportunity of which Samsung has already taken advantage.

9 Second, Samsung’s authorities do not support its requested relief and actually contradict  
10 its position. *Kamakana v. City and County of Honolulu* did not involve juror interviews at all, but  
11 rather the “compelling reasons” standard for sealing. 447 F.3d 1172, 1179 (9th Cir. 2006).  
12 *Muhammad v. Woodford*, No. 04-cv-1856, 2008 U.S. Dist. LEXIS 119841, at \*6 (E.D. Cal. Apr.  
13 11, 2008), and *Bryson v. United States*, 238 F.2d 657, 655 (9th Cir. 1956), both specifically note  
14 that post-verdict interviews may be proper under certain circumstances. Samsung’s requested  
15 order should be denied.

16 **III. EXHIBITS 14 AND 28 TO THE PIERCE DECLARATION SHOULD**  
17 **REMAIN SEALED.**

18 Samsung also asks that the Court seal Exhibit Nos. 13, 14, 18, 19, and 28 to the  
19 Declaration of John Pierce in Support of Samsung’s JMOL Motion, which contain information  
20 previously designated as confidential by Apple and third party Intel.

21 Apple has submitted the required declaration to support sealing for Exhibit Nos. 14 and 28.  
22 (Dkt. No. 1994.) The Court previously ordered that both exhibits be sealed, in full or in part, as  
23 they relate to capacity information and source code. (*See* Trial Tr. 1993:18-19 (Ex. 14); Dkt. No.  
24 1649 at 8 (Ex. 28).) Apple no longer maintains a claim of confidentiality as to Exhibit Nos. 13  
25 and 18 and does not object to their public filing. (Dkt. No. 1994 ¶ 3.)

26 Samsung filed a corrected Exhibit No. 19 that does not require sealing, as the version  
27 admitted at trial was redacted of Intel-confidential information, and requested to remove the  
28 previous incorrectly-filed version. (Dkt. No. 2000-1.)

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Dated: September 25, 2012

MORRISON & FOERSTER LLP

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