

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 JENNIFER LEE TAYLOR (CA SBN 161368)
 jtaylor@mofo.com
 4 ALISON M. TUCHER (CA SBN 171363)
 atucher@mofo.com
 5 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 6 JASON R. BARTLETT (CA SBN 214530)
 jasonbartlett@mofo.com
 7 MORRISON & FOERSTER LLP
 425 Market Street
 8 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

WILLIAM F. LEE
 william.lee@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 60 State Street
 Boston, MA 02109
 Telephone: (617) 526-6000
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
 mark.selwyn@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 950 Page Mill Road
 Palo Alto, California 94304
 Telephone: (650) 858-6000
 Facsimile: (650) 858-6100

10
 11 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16
 17 APPLE INC., a California corporation,
 18 Plaintiff,

19 v.

20 SAMSUNG ELECTRONICS CO., LTD., A
 Korean business entity; SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New York
 corporation; SAMSUNG
 22 TELECOMMUNICATIONS AMERICA, LLC, a
 Delaware limited liability company.,
 23 Defendants.

Case No. 11-cv-01846-LHK (PSG)

**APPLE'S REPLY IN SUPPORT
 OF MOTION TO SHORTEN
 TIME FOR BRIEFING AND
 HEARING ON APPLE'S MOTION
 TO COMPEL DEPOSITIONS OF
 14 OF SAMSUNG'S PURPORTED
 "APEX" WITNESSES**

Date: February 28, 2012
 Time: 10:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

1 Samsung has unjustifiably refused to produce key witnesses for deposition and now seeks
2 to delay even further by requiring Apple's Motion to Compel to be heard *after* the close of
3 discovery. Samsung's opposition fails to tell the whole story. In truth:

4 **It was not until February 3 that Samsung notified Apple that it was pursuing apex**
5 **objections to 22 out of its 23 witnesses.** With one exception, Samsung had asserted boilerplate
6 objections to the 23 witnesses, including boilerplate apex objections for some of those witnesses.
7 Samsung then purported to engage with Apple in attempting to schedule those depositions. The
8 sole exception was the head of Samsung Telecommunications America. Samsung sent a letter on
9 January 13 claiming apex protection for this single witness and asking Apple to withdraw his
10 deposition notice. As Apple moved forward to pursue scheduling of the other noticed Samsung
11 witnesses' depositions, Apple did not pursue scheduling of the STA head's deposition. Apple
12 resumed seeking this witness's deposition only after taking three depositions of lower-level
13 witnesses who failed to provide useful testimony about Samsung's finances. Samsung gave no
14 comparable notice for any other witness until it sent its February 3 letter. (Mazza Reply Decl. in
15 Supp. of Mot. to Shorten Time ("Mazza Reply Decl.") ¶ 2.)

16 **Apple diligently pursued this issue once Samsung sent its February 3 letter regarding**
17 **purported apex witnesses.** Once Samsung sent its February 3 letter as to the 23 purported apex
18 witnesses, Apple (1) raised the issue at the February 6, lead trial counsel meet and confer,
19 (2) followed up with a detailed thirteen-page letter on February 9 explaining its grounds for
20 deposing those witnesses, and (3) sent an additional letter on February 12. (Mazza Shortening
21 Decl. ¶¶ 5–7.) Apple then (4) made the issue its highest priority at the February 14 and 15 lead
22 trial counsel meet and confers. (Mazza Reply Decl. ¶ 3.) Samsung's assertion that Apple did not
23 meet and confer in good faith is disingenuous. Apple's letters set forth its position on each
24 witness in detail. Samsung does not suggest what purpose it would have served for Apple to
25 restate its position over and over again during the meet and confers (except of course to cause
26 further delay).

1 **Samsung has had notice of Apple’s arguments and purportedly “thin evidence” since**
2 **February 9 and can respond on February 20.** Samsung’s Opposition never says it cannot file
3 its brief on February 20, just that it doesn’t want to. Apple’s thirteen-page letter on February 9
4 and follow-up letter on February 11 gave Samsung ample notice of Apple’s position. Samsung
5 should have no problem responding to Apple’s supposedly “thin evidence.” Apple has sought a
6 schedule that would complete the parties’ briefing on the apex issue as early as February 20 to
7 allow the Court’s clerks substantial time to review the parties’ papers in advance of the proposed
8 February 28 hearing date. Apple’s proposed schedule does not include a reply brief. (Mazza
9 Shortening Decl. ¶ 4.)

10 **Samsung spurned Apple’s offer to suggest an alternative briefing schedule.** Apple
11 advised Samsung of its proposed briefing schedule on February 9, the morning of February 15,
12 and the morning of February 16. Samsung never suggested an alternative. On the morning of
13 February 16, Apple notified Samsung that it would propose a hearing date on February 28 rather
14 than February 21, and invited Samsung to propose an alternative briefing schedule. Apple
15 postponed its filing of its papers from 9:00 a.m. until noon so that it could receive a suggested
16 briefing schedule from Samsung. Samsung, however, declined to propose an alternative to
17 Apple’s proposed schedule. (Mazza Shortening Decl ¶¶ 13–16; Mazza Reply Decl. ¶ 4 & Ex. A.)
18 Nor does its Opposition propose an alternative.

19 **Apple is mindful of the Court’s admonitions about shortened time.** Apple’s Motion to
20 Shorten Time acknowledged that shortened time places burdens on the Court and showed that the
21 need for shortened time is due to Samsung’s unjustified refusal to produce 14 witnesses for
22 deposition so close to the close of discovery.

23 Dated: February 17, 2012

MORRISON & FOERSTER LLP

24
25 By: /s/ Michael A. Jacobs
26 MICHAEL A. JACOBS

27 Attorneys for Plaintiff
28 APPLE INC.