



1 Pursuant to Federal Rule of Civil Procedure 37(b)(2), Local Rule 37-4, and the Court's  
2 inherent authority, Apple seeks specified further orders arising from conduct by Defendants  
3 Samsung Electronics Co., Ltd. ("SEC"), Samsung Electronics America, Inc. ("SEA"), and  
4 Samsung Telecommunications America, LLC ("STA") (collectively, "Samsung") that Apple  
5 contends materially violated the portion of the Court's January 27, 2011 Order re Discovery  
6 Motions (Dkt. No. 673) addressing "Sales and financial information relevant to establishing  
7 damages" (the "Order" or "January 27 Order"). Having considered the arguments of the parties  
8 and the papers submitted, and GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY  
9 ORDERED that Apple's Rule 37(b)(2) Motion re Samsung's Violation of January 27 Order is  
10 GRANTED.

11 The Court finds based on clear and convincing evidence that Samsung materially violated  
12 the January 27 Order by failing to produce highly relevant documents that were subject to the  
13 Order. The Order arose from Apple's Motion to Compel, filed on January 11, 2012, which was  
14 accompanied by a detailed proposed order that sought production of multiple categories of sales  
15 and financial documents relevant to Apple's damages case. Samsung opposed the motion on the  
16 ground that it was moot, and made numerous statements in its opposition papers and at the  
17 hearing that it would produce documents in all the categories that Apple was seeking. Relying on  
18 Samsung's assurances, the Court issued the January 27 Order, which set a deadline of February 3,  
19 2012 for Samsung to complete its production. On February 3, Samsung produced a document  
20 labeled "SAMNDCA00323946" in response to most of the categories in the Order, which  
21 Samsung contended fulfilled its obligations under the Order. Samsung refused to produce  
22 additional documents that Apple requested.

23 As detailed in Apple's motion and supporting declarations and exhibits, the document at  
24 issue does not satisfy all the categories of documents that Apple sought, which included for  
25 example, reports of financial information to Samsung management in the U.S. and Korea.  
26 Moreover, the document contains highly-summarized information that does not cover all of the  
27 categories of information that Apple requested, and does not provide Apple with the tools for  
28 Apple to test the accuracy of the summarized information or to create its own damages model.

1 The document also has a large number of errors and inconsistencies. Apple presented evidence  
2 that Samsung maintains in the ordinary course of business the types of documents that Apple  
3 seeks and that Samsung has produced such documents in other litigation. The Court finds that  
4 Samsung did not satisfy its obligations under the Order.

5 Apple has demonstrated that Samsung's violation of the Order has prejudiced and will  
6 continue to prejudice Apple, including because Apple did not have access to the documents it  
7 needed for its damages case at the time that it deposed Samsung's damages witnesses and when  
8 its experts prepared their damages reports.

9 In light of the quantity and obvious relevance of the withheld materials, Samsung's  
10 production in a different litigation of some of the kinds of documents that Apple seeks, and  
11 Samsung's refusal to produce the documents in this action notwithstanding its assurances to the  
12 Court and this Court's Order, the Court further finds that Samsung's violation of the Order was  
13 willful and in bad faith.

14 Where, as here, a party has violated a court's discovery order, Rule 37(b)(2)(A) permits  
15 the court to make "further just orders." Pursuant to Rule 37(b)(2)(A) and the Court's inherent  
16 authority, the Court orders and finds as follows:

- 17 1. Within one week of the entry of this Order, Samsung shall produce all the documents  
18 identified in Section V of Apple's [Proposed] Order Granting Apple's Motion to  
19 Compel Production of Documents and Things, Docket No. 616, entitled, "Financial  
20 Information Relevant to Damages."
- 21 2. Apple's damages experts may base their opinions to be offered at trial on the  
22 documents to be produced under Paragraph 1 above, without providing a new expert  
23 report and without being deposed after Samsung produces those documents. Samsung  
24 may not cross-examine Apple's damages experts based on their expert reports, which  
25 were prepared without access to those documents.
- 26 3. Apple may depose a Samsung Rule 30(b)(6) witness on the newly produced  
27 documents to be produced under Paragraph 1 above for a total of no more than 10  
28 hours, which hours will not count against Apple's allotted deposition hours.

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- 4. Samsung’s expert and any Samsung witnesses may not testify regarding Samsung’s sales or profitability based on any document other than the document labeled “SAMNDCA00323946.”
- 5. Samsung may not seek a continuance or extension of the trial date or any other case deadline, or seek to delay any other deadline Samsung faces in this action, based in whole or in part on orders issued in connection with this Motion or on any party’s actions in compliance with those orders.
- 6. The Court hereby finds that Samsung materially violated this Court’s January 27, 2012 Order re Discovery Motions (Dkt. No. 673) requiring Samsung to produce sales and financial information relevant to establishing damages by February 3, 2012.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2012.

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HONORABLE PAUL S. GREWAL  
United States Magistrate Judge