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12	Counterclaim-Defendant APPLE INC.	
13		
14	UNITED STATES DI	STRICT COURT
15	NORTHERN DISTRICT	T OF CALIFORNIA
16	SAN JOSE D	IVISION
17	APPLE INC.,	Case No. 11-cv-01846-LHK (PSG)
18	Plaintiff,	REPLY DECLARATION OF ERIC R. ROBERTS IN SUPPORT
19	V.	OF APPLE'S MOTION TO ENFORCE JANUARY 27, 2012
20	SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG	ORDER AS TO FINANCIAL DOCUMENTS
21	ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG	Date: April 3, 2012
22 23	TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company.,	Time: 10:00 a.m. Place: Courtroom 5, 4th Floor Judge: Hon. Paul S. Grewal
24	Defendants.	Judge. Holl. I auf 5. Glewar
25		
26	PUBLIC REDACT	ED VERSION
J.		
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Reply Roberts Declaration ISO Apple's Motion to Enforce Jan. 27 Order Case No. 11-cv-01846-LHK (PSG) pa-1518087

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7	11. Mr. Sheppard admits that
8	For the reasons discussed in Paragraphs
9	15-20 and 23 below, this difference is significant and prevents the calculation of an accurate
10	consolidated gross profit or consolidated operating profit for the accused products. (Dkt. No.
11	801-22 ¶¶ 17-18.)
12	12. Mr. Sheppard admits that
13	. He fails to explain the reasons for the
14	amounts included in the examples that I identified. His response that it "likely represents"
15	, and that certain events may "possibly" be
16	is entirely unsatisfactory from an accounting standpoint. Mr. Sheppard has access to the actual
17	data and apparently has done nothing to research the answer to this issue. Apple is entitled to
18	evaluate what the data truly represents not just what it "likely" represents. (Dkt. No. 801-22
19	¶ 27.)
20	13. Mr. Sheppard admits that it is not possible to
21	(Dkt. No. 801-22 ¶ 21.)
22	the accounting concept
23	of "tying" data is to actually match the numbers to within a small variance to verify their
24	accuracy. This still cannot be done, and Mr. Sheppard does not say that it can be done.
25	14. Mr. Sheppard suggests that it is possible to
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27	(Dkt. No. 801-22 ¶ 12.) For the reasons described below, and as also explained by Mr.
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Sim at his 30(b)(6) deposition (*see* Olson Reply Decl. Ex. D at 148:12-151:24), it is not correct that

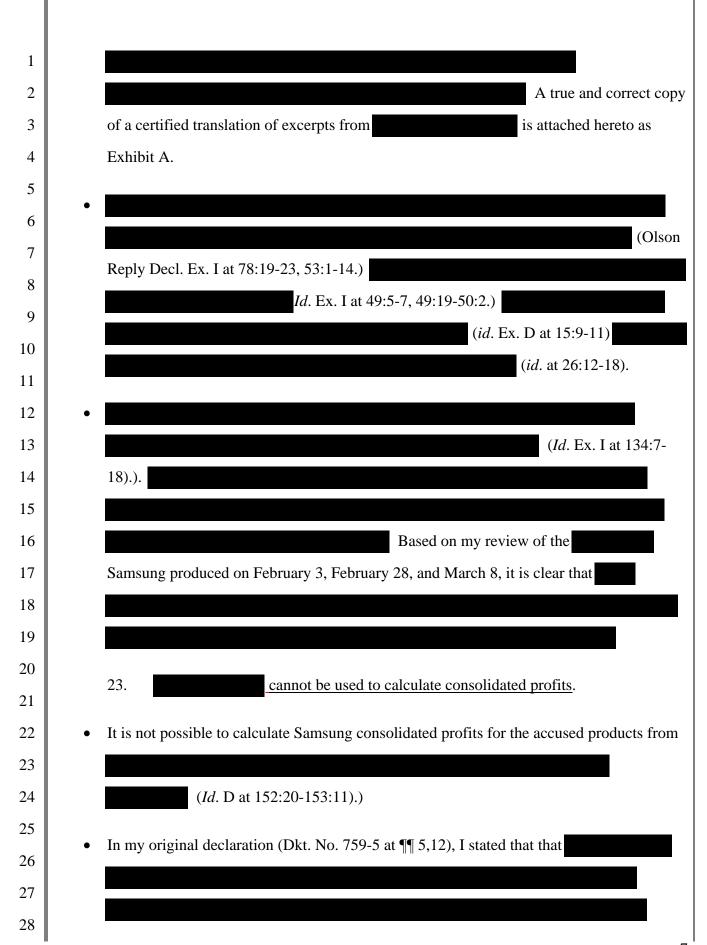
II. Background Information on Consolidated Profits and Intercompany Transactions

- 15. I turn now to the issue of the calculation of consolidated profits for companies that operate in multiple countries.
- 16. It is important to give some background information on intercompany sales and transactions at multinational companies like Samsung. This will help put in context why none of the financial documents Samsung has produced to date—including the spreadsheets discussed in my prior declaration and below—allow Apple to calculate Samsung's consolidated profits on an accused-product level.
- 17. At Samsung, as at many multinational companies, product is made in one part of the world but sold all over the world. Generally, the manufacturing function in one country is separately incorporated, as is the sales company in another country. In the instant matter, Samsung manufactures in China and Korea and provides product to be sold in the U.S. (Olson Reply Decl. Ex. D at 44:11-18.) Typically, as in this case, the product is sold by a non U.S. company directly to the U.S. company.² A sale price called a transfer price is "charged" by the manufacturing company but is not the full wholesale (or market) price. Rather, it is a negotiated price that has the effect of allocating profits to the various countries and tax authorities involved. It does not reflect a company's actual consolidated profits, but rather an artificial amount created solely for tax purposes.
- 18. As a simple and quick example, assume the following: (1) it costs \$100 to make a product in China; (2) the Chinese company sells the product to the U.S. company for \$150, (3) the U.S. company sells the product to its customers for \$160; (4) there are no other expenses incurred. Using this example, there will be a total of \$60 of consolidated profit,³ but \$50 of this

² In some instances, the sale is first made to the parent company who in turn sells it to the U.S. company.

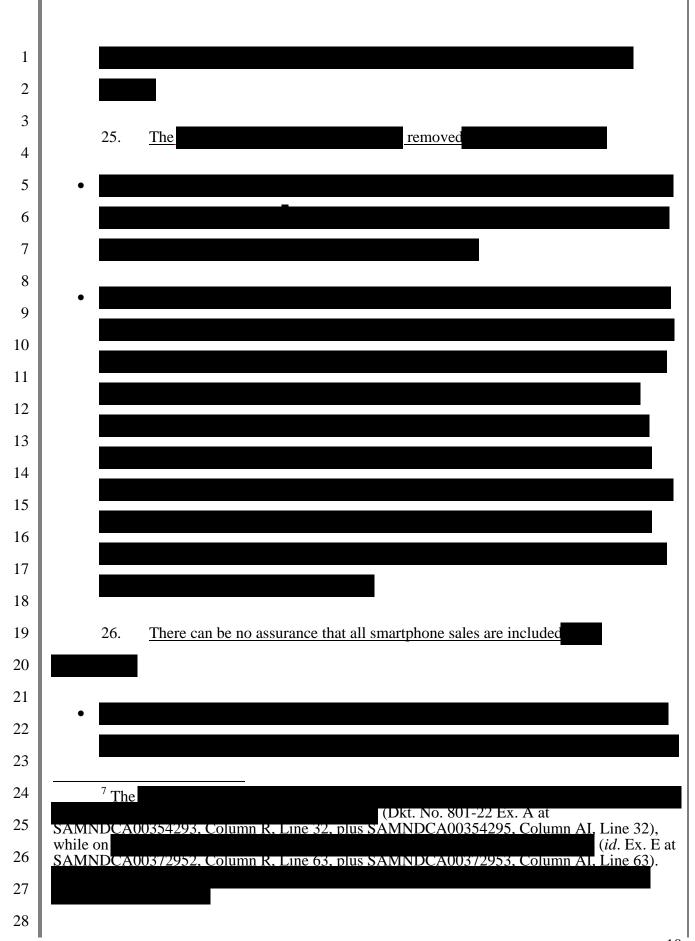
³ Sale to customer at \$160 less cost of product of \$100, or \$160 - \$100 = \$60.

1 consolidated financial statements for 2010: "All inter-company transactions and balances are 2 eliminated as part of the consolidation process." (http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/d 3 ownloads/consolidated/2010 con quarter04 note.pdf and http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/IR 4 AuditedConsolidated.html) 5 Responses to Mr. Sheppard's declaration III. 6 7 21. Mr. Sheppard's response to my declaration fails to address all the following issues 8 regarding my criticism of Samsung's production and the new information provided by Samsung 9 were not created in ordinary course of business, (2) that: (1) 10 cannot be used to calculate Samsung's consolidated profits, (3) lack detail 11 improperly and artificially needed to analyze expenses, (4) 12 removed , and (5) there can be no assurance that all smartphone sales are 13 included I discuss each of these issues below. 14 22. were not created in ordinary course of business. 15 None of the to which Mr. Sheppard and I have referred are 16 (Olson Reply Decl. Ex. I at 39:15-40:3.) 17 (Olson Reply Decl. Ex. I at 39:4-9, 18 44:15-17); *id.* Ex. D at 18:19-21.) 19 (Olson Reply Decl. 20 Ex. I at 52:22-23, 40:19-20, 40:25-41:1; id. Ex. D at 21:16-22, 24:2-24:24.) 21 22 In fact, 23 (Olson 24 Reply Decl. Ex. D at 53:6-54:7.) 25 26 27 28

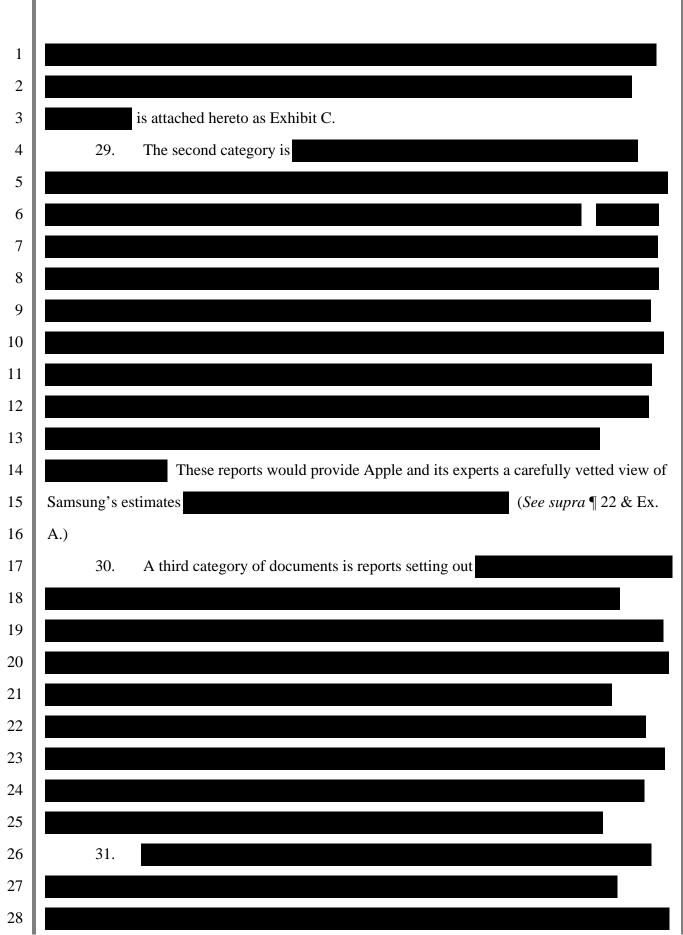


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7	(Dkt. No. 801-22 ¶ 17).	
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9	Mr. Sheppard's answer corresponds to what Apple had surmised. However, this means	
10	that	
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12		_
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14	W/L4	
15	What	
16	Apple needs are the documents that were discussed in relation to the January 27 order.	
17	• It should be noted that Mr. Sheppard's attempt to explain away the differences between	
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24	These differences matter in	
25	accounting and financial reporting.	
26	24. lack detail to needed to analyze expenses.	
27	Lack detail to needed to unaryze expenses.	
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1	•	The already insufficient
2		(Olson
3		Reply Decl. Ex. D at 60:6-62:4, 92:23-93:13), making impossible a determination of,
4		among other things,
5	•	Even with the minimal additional detail in
6		(Dkt. No. 801-22 ¶ 30), there is insufficient detail for Apple or its experts to evaluate
7		whether
8		·
9		,
10	•	Counsel for Samsung stated that Mr. Sim would not answer questions regarding the cost
11		of goods sold details provided in . (Olson Reply Decl. Ex. D
12		at 94:5-96:15, 99:15-100:11, 131:9-132:14.)
13	•	Mr. Sheppard maintains that Apple has all the detail it needs
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16		However, Mr. Sheppard misses the mark for two
17		important reasons. First, as Apple and I have explained many times,
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10	IV. Documents Required by Apple That Samsung Has Not Produced
11	27. There are documents created in the ordinary course of business at Samsung that
12	would allow Apple to calculate Samsung's consolidated profits. I describe a number of those
13	documents below.
14	28. The first category of documents is
15	
16	This type of document was specifically requested by Apple (see
17	Apple's Opening Brief, Appendix A at 8 (Dkt. No. 759-2)) and discussed in the hearing on
18	January 19, 2012 (see Olson Reply Decl. Ex. I at 155:25-156:9, 167:16-18, 168:22-169:3).
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1	sale of accused devices. The other financial documents attached to Mr. Martin's declaration are
2	(See Dkt. No. 801-9 Ex. 2 ; Ex. 3
3	Ex. 4
4	
5	35. The only financial document referenced by Mr. Martin that <i>might</i> not be limited to
6	STA is Exhibit 8. However, Exhibit 8 contains
7	
8	(See Dkt. No. 801-9 Ex. 8.)
9	
10	36. As I discussed earlier, Samsung has also failed to provide documents that include
11	information sufficient to calculate SEC's cost of goods sold. Without SEC's cost of goods sold,
12	Apple will be unable to calculate Samsung's consolidated profit. According to Mr. Martin,
13	
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15	
16	(Id. Ex. 3.) Consequently, Apple is left without the data needed to calculate Samsung's
17	consolidated profits and to quantify damages it has suffered.
18	I declare under penalty of perjury that the foregoing is true and correct. Executed this
19	20th day of March, 2012 at San Francisco, California.
20	/s/ Eric R. Roberts
21	Eric R. Roberts
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ATTESTATION OF E-FILED SIGNATURE I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Declaration. In compliance with General Order 45, X.B., I hereby attest that Eric R. Roberts has concurred in this filing. Dated: March 20, 2012 /s/ Michael A. Jacobs Michael A. Jacobs