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

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

17 APPLE INC.,
 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.
 24

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

**REPLY DECLARATION OF
 ERIC R. ROBERTS IN SUPPORT
 OF APPLE'S MOTION TO
 ENFORCE JANUARY 27, 2012
 ORDER AS TO FINANCIAL
 DOCUMENTS**

Date: April 3, 2012
 Time: 10:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

26 PUBLIC REDACTED VERSION

1 I, Eric R. Roberts, declare as follows:

2 1. I am the Director of Forensic Accounting Services at Morrison & Foerster LLP. As
3 explained in more detail in my declaration in support of Motion to Enforce January 27, 2012
4 Order as to Financial Documents, I have over 40 years of financial and accounting experience,
5 including 19 years as a partner at Deloitte, one of the largest international accounting firms, and I
6 have been recognized as an expert in accounting and damages by federal and state courts.

7 2. In the above referenced declaration I discussed numerous issues regarding the
8 [REDACTED] document that Samsung produced on February 3, 2012 [REDACTED]
9 [REDACTED]), which Samsung argues provides all of the information that Apple and its damages
10 experts need to calculate Samsung's consolidated profits derived from infringing sales of the
11 accused products. Samsung states that it has since amended [REDACTED] three times, once on
12 February 10th, again on February 28th, and yet again on March 8th. I discuss these revisions
13 below¹.

14 3. I have reviewed the declaration of Timothy Sheppard in support of Samsung's
15 opposition to Apple's motion for rule 37(b)(2) sanctions for Samsung's alleged violations of the
16 January 27, 2012 damages discovery order ("Sheppard declaration"). I have also reviewed
17 [REDACTED] produced by Samsung on February 28, 2012 and March 8, 2012 ([REDACTED]
18 [REDACTED]) as well various other Samsung produced-
19 documents. In addition I have reviewed the transcripts of Mr. Sheppard's 30(b)(6) deposition
20 taken on February 29, 2012 and Mr. Jaehwang Sim's 30(b)(6) deposition taken on March 9, 2012
21 (Pacific time).

22 4. For ease of reference, I have divided this declaration into five major sections:
23 (I) confirmation by Mr. Sheppard of the errors and problems that I previously identified;
24 (II) background information on consolidated profits and intercompany transactions; (III)

25 _____
26 ¹ As discussed in my prior declaration (Dkt. No. 759-5 at ¶4 n.1). [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 responses to Mr. Sheppard's declaration; (IV) documents required by Apple that Samsung has not
2 produced, and; (V) why the documents produced to date are not sufficient.

3 **I. Confirmation of the Errors Identified in the February 3rd Spreadsheet**
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5 5. To begin, Mr. Sheppard acknowledges that I was correct regarding many of the
6 criticisms that I raised about [REDACTED]. Notably, Mr. Sheppard attempts to
7 rebut those criticisms by relying on documents and materials produced between twenty-five and
8 thirty-four days after the Court's deadline for Samsung to complete its rolling production of
9 financial documents. As discussed in more detail below, not even those belated materials solve
10 many of the most important concerns that I raised.

11 6. Mr. Sheppard admits that [REDACTED]
12 [REDACTED] (See Declaration of Timothy
13 Sheppard in Support of Samsung's Opposition ¶ 19 (Dkt. No. 801-22).) Mr. Sheppard never
14 explains why this basic and fundamental accounting error occurred. This, by itself, casts
15 significant doubt on Samsung's work.

16 7. Mr. Sheppard admits that it is not possible to determine which sales are made to
17 which carriers from the documents produced on February 3. (Dkt. No. 801-22 ¶ 16.)

18 8. Mr. Sheppard admits that the data included on [REDACTED]
19 concerning the Galaxy Tab 7.0 was incomplete. (Dkt. No. 801-22 ¶ 28.)

20 9. Mr. Sheppard admits that three products—the Galaxy S II Skyrocket, Galaxy S II
21 Epic 4G, and Galaxy Tab 10.1 LTE—have never been included. (Dkt. No. 801-22 ¶ 14.)

22 10. Mr. Sheppard admits that [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] (Dkt. No. 801-22 ¶ 14.) He offers no explanation as to
26 why this was done or how counsel or I would know that [REDACTED]

27 [REDACTED] In addition, Mr. Sheppard's
28 statements in his declaration on this point are incorrect. [REDACTED]

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[REDACTED]

11. Mr. Sheppard admits that [REDACTED]

[REDACTED] For the reasons discussed in Paragraphs 15-20 and 23 below, this difference is significant and prevents the calculation of an accurate consolidated gross profit or consolidated operating profit for the accused products. (Dkt. No. 801-22 ¶¶ 17-18.)

12. Mr. Sheppard admits that [REDACTED]

[REDACTED]. He fails to explain the reasons for the amounts included in the examples that I identified. His response that it “likely represents” [REDACTED], and that certain events may “possibly” be [REDACTED], is entirely unsatisfactory from an accounting standpoint. Mr. Sheppard has access to the actual data and apparently has done nothing to research the answer to this issue. Apple is entitled to evaluate what the data truly represents not just what it “likely” represents. (Dkt. No. 801-22 ¶ 27.)

13. Mr. Sheppard admits that it is not possible to [REDACTED]

[REDACTED] (Dkt. No. 801-22 ¶ 21.) [REDACTED] the accounting concept of “tying” data is to actually match the numbers to within a small variance to verify their accuracy. This still cannot be done, and Mr. Sheppard does not say that it can be done.

14. Mr. Sheppard suggests that it is possible to [REDACTED]

[REDACTED] (Dkt. No. 801-22 ¶ 12.) For the reasons described below, and as also explained by Mr.

1 Sim at his 30(b)(6) deposition (*see* Olson Reply Decl. Ex. D at 148:12-151:24), it is not correct
2 that [REDACTED]

3
4 **II. Background Information on Consolidated Profits and Intercompany Transactions**

5 15. I turn now to the issue of the calculation of consolidated profits for companies that
6 operate in multiple countries.

7 16. It is important to give some background information on intercompany sales and
8 transactions at multinational companies like Samsung. This will help put in context why none of
9 the financial documents Samsung has produced to date—including the spreadsheets discussed in
10 my prior declaration and below—allow Apple to calculate Samsung’s consolidated profits on an
11 accused-product level.

12 17. At Samsung, as at many multinational companies, product is made in one part of
13 the world but sold all over the world. Generally, the manufacturing function in one country is
14 separately incorporated, as is the sales company in another country. In the instant matter,
15 Samsung manufactures in China and Korea and provides product to be sold in the U.S. (Olson
16 Reply Decl. Ex. D at 44:11-18.) Typically, as in this case, the product is sold by a non U.S.
17 company directly to the U.S. company.² A sale price – called a transfer price – is “charged” by
18 the manufacturing company but is not the full wholesale (or market) price. Rather, it is a
19 negotiated price that has the effect of allocating profits to the various countries and tax authorities
20 involved. It does not reflect a company’s actual consolidated profits, but rather an artificial
21 amount created solely for tax purposes.

22 18. As a simple and quick example, assume the following: (1) it costs \$100 to make a
23 product in China; (2) the Chinese company sells the product to the U.S. company for \$150, (3)
24 the U.S. company sells the product to its customers for \$160; (4) there are no other expenses
25 incurred. Using this example, there will be a total of \$60 of consolidated profit,³ but \$50 of this

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

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

1 profit will remain at the Chinese company,⁴ while \$10 will recorded at the U.S company.⁵ The
2 transfer price of \$150 is based on a combination of legal, political, financial, and tax reasons,
3 although tax is often the primary driver.

4 19. If all of the above transactions, referred to as intercompany transactions, took
5 place within the same month, [REDACTED]
6 [REDACTED] could possibly provide the necessary information to calculate the consolidated
7 profit. This is because one could safely assume that the product was manufactured for \$100 and
8 sold to a customer for \$160, generating \$60 of consolidated profit. However, this is not what is
9 reflected [REDACTED]. First, as Mr. Sheppard points out (Dkt. No. 801-22 ¶ 17), [REDACTED]

10 [REDACTED]
11 [REDACTED] Second, the spreadsheets show that numerous
12 [REDACTED]
13 [REDACTED] This all contributes to the fact, as Mr. Sim observed, that there is not enough
14 information on the spreadsheet to determine [REDACTED]
15 [REDACTED] consolidated profit.

16 (Olson Reply Decl. Ex. D at 152:20-153:11.) This means that [REDACTED]

17 [REDACTED]
18 [REDACTED] Without this information, it is not possible to
19 calculate the gross profit for the sale of the product on a consolidated basis (i.e. including all
20 subsidiaries and eliminating intercompany transactions).

21 20. Typically, consolidated profits are prepared after eliminating intercompany
22 transactions and balances. By doing this, companies show the equivalent of the \$100 cost and the
23 \$160 sales price in their audited consolidated financial statements. Samsung is no exception. For
24 example, it discloses the following when reporting its gross and operating profit in its audited

25 _____
26 ⁴ Sales price to U.S. from China of \$150 less cost of product of \$100, or $150 - 100 =$
\$50.

27 ⁵ Sale price to customer \$160 less the cost the U.S. paid of \$150, or $160 - 150 =$ \$10.
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1 consolidated financial statements for 2010: “All inter-company transactions and balances are
2 eliminated as part of the consolidation process.”
3 ([http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/d](http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/downloads/consolidated/2010_con_quarter04_note.pdf)
4 [ownloads/consolidated/2010_con_quarter04_note.pdf](http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/IR_AuditedConsolidated.html) and
5 [http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/IR](http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/IR_AuditedConsolidated.html)
6 [_AuditedConsolidated.html](http://www.samsung.com/us/aboutsamsung/ir/financialinformation/auditedfinancialstatements/IR_AuditedConsolidated.html))

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III. Responses to Mr. Sheppard’s declaration

21. Mr. Sheppard’s response to my declaration fails to address all the following issues regarding my criticism of Samsung’s production and the new information provided by Samsung that: (1) [REDACTED] were not created in ordinary course of business, (2) [REDACTED] cannot be used to calculate Samsung’s consolidated profits, (3) [REDACTED] lack detail needed to analyze expenses, (4) [REDACTED] improperly and artificially removed [REDACTED], and (5) there can be no assurance that all smartphone sales are included [REDACTED]. I discuss each of these issues below.

22. [REDACTED] were not created in ordinary course of business.

- None of the [REDACTED] to which Mr. Sheppard and I have referred are [REDACTED] [REDACTED]. (Olson Reply Decl. Ex. I at 39:15-40:3.) [REDACTED] [REDACTED] (Olson Reply Decl. Ex. I at 39:4-9, 44:15-17); *id.* Ex. D at 18:19-21.) [REDACTED] [REDACTED] (Olson Reply Decl. Ex. I at 52:22-23, 40:19-20, 40:25-41:1; *id.* Ex. D at 21:16-22, 24:2-24:24.)

- In fact, [REDACTED] [REDACTED] (Olson Reply Decl. Ex. D at 53:6-54:7.) [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED] A true and correct copy of a certified translation of excerpts from [REDACTED] is attached hereto as Exhibit A.

- [REDACTED] (Olson Reply Decl. Ex. I at 78:19-23, 53:1-14.) [REDACTED] [REDACTED] (*Id.* Ex. I at 49:5-7, 49:19-50:2.) [REDACTED] (*id.* Ex. D at 15:9-11) [REDACTED] (*id.* at 26:12-18).

- [REDACTED] (*Id.* Ex. I at 134:7-18). [REDACTED]

[REDACTED] Based on my review of the [REDACTED] Samsung produced on February 3, February 28, and March 8, it is clear that [REDACTED]

23. [REDACTED] cannot be used to calculate consolidated profits.

- It is not possible to calculate Samsung consolidated profits for the accused products from [REDACTED] [REDACTED] (*Id.* D at 152:20-153:11.)

- In my original declaration (Dkt. No. 759-5 at ¶¶ 5,12), I stated that that [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED] (Dkt. No. 801-22 ¶ 17).

- Mr. Sheppard’s answer corresponds to what Apple had surmised. However, this means that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] What Apple needs are the documents that were discussed in relation to the January 27 order.

- It should be noted that Mr. Sheppard’s attempt to explain away the differences between [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] These differences matter in accounting and financial reporting.

24. [REDACTED] lack detail to needed to analyze expenses.

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25. The [REDACTED] removed [REDACTED]

- [REDACTED]
- [REDACTED]

26. There can be no assurance that all smartphone sales are included [REDACTED]

- [REDACTED]

⁷ The [REDACTED] (Dkt. No. 801-22 Ex. A at SAMNDCA00354293, Column R, Line 32, plus SAMNDCA00354295, Column AI, Line 32), while on [REDACTED] (*id.* Ex. E at SAMNDCA00372952, Column R, Line 63, plus SAMNDCA00372953, Column AI, Line 63). [REDACTED]

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[REDACTED]

IV. Documents Required by Apple That Samsung Has Not Produced

27. There are documents created in the ordinary course of business at Samsung that would allow Apple to calculate Samsung’s consolidated profits. I describe a number of those documents below.

28. The first category of documents is [REDACTED]

[REDACTED] This type of document was specifically requested by Apple (*see* Apple’s Opening Brief, Appendix A at 8 (Dkt. No. 759-2)) and discussed in the hearing on January 19, 2012 (*see* Olson Reply Decl. Ex. I at 155:25-156:9, 167:16-18, 168:22-169:3).

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit C.

29. The second category is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These reports would provide Apple and its experts a carefully vetted view of Samsung's estimates [REDACTED] (See *supra* ¶ 22 & Ex. A.)

30. A third category of documents is reports setting out [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

V. Why the Documents Produced to Date Are Not Sufficient

32. None of the other financial documents Samsung has produced to date would allow Apple to calculate Samsung’s consolidated profits. The Declaration of Joby Martin attached to Samsung’s Opposition lists documents produced that Samsung claims provide information sufficient to calculate numerous financial figures, including cost of goods sold and consolidated profits. (See Dkt. No. 801-9.) I do not believe that the listed documents provide the necessary data to do these calculations.

33. First, the financial documents produced by Samsung and discussed by Mr. Martin are almost exclusively limited to [REDACTED] (See Olson Reply Decl. ¶ 5.) For example, Mr. Martin references an excerpt of a produced document that he claims includes [REDACTED]

[REDACTED]

[REDACTED] (Dkt. No. 801-9 ¶ 7 & Ex. 2.) In fact, the document only provides [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As I have discussed above, it

is impossible for Apple to determine Samsung’s consolidated profits from sales of the accused devices based on these documents. Yet the consolidated profit is precisely what Apple needs to calculate damages.

34. As another example, Mr. Martin references a document produced by Samsung called [REDACTED]

[REDACTED] (Dkt. No. 801-9 ¶ 14, Ex. 9.) Again, while this document may show [REDACTED], for the reasons previously discussed, it contains no information from which Apple can derive Samsung’s consolidated profits recognized from the

1 sale of accused devices. The other financial documents attached to Mr. Martin's declaration are
2 [REDACTED] (See Dkt. No. 801-9 Ex. 2 [REDACTED]; Ex. 3 [REDACTED]

3 [REDACTED] Ex. 4 [REDACTED]
4 [REDACTED]

5 35. The only financial document referenced by Mr. Martin that *might* not be limited to
6 STA is Exhibit 8. However, Exhibit 8 contains [REDACTED]
7 [REDACTED]
8 [REDACTED] (See Dkt. No. 801-9 Ex. 8.)

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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 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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.

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21 /s/ Eric R. Roberts
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