

1 Pursuant to Federal Rule of Civil Procedure 37 and Local Rule 37-4, Apple Inc. (“Apple”)
2 seeks certain remedies based on Samsung Electronics Co., Ltd.’s, Samsung Electronics
3 America, Inc.’s, and Samsung Telecommunications America, LLC’s (collectively, “Samsung”)
4 spoliation of evidence.

5 Having considered the arguments of the parties and the papers submitted, and GOOD
6 CAUSE HAVING BEEN SHOWN, IT IS ORDERED that Apple’s Motion for Adverse Inference
7 Jury Instructions Due to Samsung’s Spoliation of Evidence is GRANTED.

8 The Court issues the following findings and orders:

- 9 1. The Court finds that Samsung spoliated evidence.
- 10 2. The Court will instruct the jury that:

- 11 (a) Samsung had a duty to preserve relevant evidence, including emails;
12 Samsung failed to preserve large volumes of relevant emails and other
13 documents; Samsung acted in bad faith in failing to preserve the relevant
14 documents; and the jury may presume that the documents that Samsung failed
15 to preserve would have been favorable to Apple’s case and unfavorable to
16 Samsung; and
- 17 (b) if the jury finds infringement of any Apple patent, trademark, or trade
18 dress, the jury may infer that the infringement was intentional, willful, and
19 without regard to Apple’s rights.

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21 **IT IS SO ORDERED.**

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23 Dated: May ____, 2012

24 HONORABLE LUCY H. KOH
25 United States District Judge
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