

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE, INC., a California corporation,)	Case Nos.: 11-CV-01846-LHK
)	12-CV-00630-LHK
Plaintiff,)	
)	ORDER DENYING SAMSUNG'S
v.)	MOTIONS FOR RELIEF FROM
)	MAGISTRATE JUDGE GREWAL'S
SAMSUNG ELECTRONICS CO., LTD., a)	NONDISPOSITIVE PRETRIAL
Korean corporation; SAMSUNG)	ORDERS AND DENYING SAMSUNG'S
ELECTRONICS AMERICA, INC., a New York)	MOTION TO STAY
corporation; SAMSUNG)	
TELECOMMUNICATIONS AMERICA, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	

Samsung has filed three motions which are the subject of this order: (1) motion for relief from Magistrate Judge Grewal's nondispositive pretrial order compelling discovery; (2) motion for relief from Magistrate Judge Grewal's nondispositive pretrial order approving the Nokia-Samsung stipulation; and (3) motion to stay both Magistrate Judge Grewal's nondispositive pretrial orders pending resolution of Samsung's motions for relief from these orders and pending the resolution of any petition for writ of mandamus that Samsung may file with the Federal Circuit Court of Appeals. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court DENIES the motions for relief and DENIES the motion to stay.

1 **I. Procedural History**

2 On October 2, 2013, Magistrate Judge Paul Grewal issued a nondispositive pretrial order
3 compelling discovery. ECF No. 2483, Case No. 11-CV-01846 (“Order One”). On October 2,
4 2013, Magistrate Judge Paul Grewal issued a nondispositive pretrial order approving the Nokia-
5 Samsung stipulation. ECF No. 785, Case No. 12-CV-00630 (“Order Two”).

6 On October 7, 2013, Samsung filed three motions: (1) Samsung’s motion for relief from
7 Order One, ECF No. 2495, Case No. 11-CV-01846 (“Samsung Motion One”); (2) Samsung’s
8 motion for relief from Order Two, ECF No. 790, Case No. 12-CV-00630 (“Samsung Motion
9 Two”); and (3) Samsung’s motion to stay Orders One and Two pending resolution of Samsung’s
10 motions for relief from these orders and pending the resolution of any petition for writ of
11 mandamus Samsung may file, ECF No. 789, Case No. 12-CV-00630; ECF No. 2494, Case No. 11-
12 CV-01846.

13 On October 7, 2013, Samsung accompanied its three motions with a motion to shorten time
14 for briefing on the motions for relief and to stay. ECF No. 788, Case No. 12-CV-00630; ECF No.
15 2493, Case No. 11-CV-01846. In its motion to shorten time, Samsung asked that the Court order
16 Apple to file on October 7, 2013, Apple’s opposition to Samsung’s motion to stay, and to file on
17 October 9, 2013, Apple’s oppositions to Samsung’s motions for relief. ECF No. 2493, Case No.
18 11-CV-01846, at 1. Samsung also waived its replies to Apple’s opposition briefs. ECF No. 788,
19 Case No. 12-CV-00630, at 3.

20 On October 7, 2013, the Court ordered Apple to file its oppositions to all three of
21 Samsung’s motions on October 9, 2013. ECF No. 2498, Case No. 11-CV-1846. In its October 7,
22 2013 Order, the Court stated: “There is no stay of Judge Grewal’s orders while these motions are
23 pending unless otherwise ordered by the Court.” *Id.* at 2.

24 Apple filed its oppositions to all three Samsung motions on October 9, 2013. ECF No. 800-
25 1, Case No. 12-CV-00630. Non-party Nokia Corporation (“Nokia”) also filed its oppositions on
26 October 9, 2013. ECF Nos. 2500 and 2502, Case No. 11-CV-01846.

27 **II. Legal Standards**

1 **A. Relief from Magistrate Judge’s Order Pursuant to Federal Rule of Civil**
2 **Procedure 72**

3 The district court may designate any nondispositive pretrial matter to be determined by a
4 magistrate judge, whose ruling on the matter will be modified or set aside only if “clearly
5 erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); FED. R. CIV. P. 72(a); *Grimes v. City &*
6 *Cnty. of S.F.*, 951 F.3d 236, 241 (9th Cir. 1991). Samsung argues that the *de novo* standard applies
7 to Order One because rulings “regarding privilege” are reviewed *de novo*. Samsung Motion One at
8 2 (citing *Aronson v. McKesson HBOC, Inc.*, No. 99-CV-20743, 2005 WL 934331 at *3 (N.D. Cal.
9 Mar. 31, 2005)). Samsung is incorrect. In Order One, in contrast to *Aronson*, Magistrate Judge
10 Grewal did not make any “determinations regarding the scope of the attorney-client privilege” and
11 thus this Court is not reviewing any finding by Magistrate Judge Grewal regarding privilege.
12 *Aronson*, 2005 WL 934331 at *3.

13 In reviewing for clear error, the district judge may not simply substitute his or her judgment
14 for that of the magistrate judge. *See Grimes*, 951 F.3d at 241. Rather, a magistrate judge’s
15 nondispositive ruling is clearly erroneous only when the district judge is left with a “definite and
16 firm conviction that a mistake has been committed.” *Burdick v. Comm’r Internal Rev. Serv.*, 979
17 F.2d 1369, 1370 (9th Cir. 1992). “[A]ny motion not listed [under §636(b)(1)(A)], nor analogous to
18 a motion listed in this category, falls within the nondispositive group of matters which a magistrate
19 may determine.” *Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 748 (9th Cir. 1990) (citations
20 omitted).

21 **B. Motion for Stay of Magistrate Judge Grewal’s Orders**

22 Federal Rule of Civil Procedure 62(c) vests the power to stay an order pending appeal with
23 the district court. *See* FED. R. CIV. P. 62(c). For both the appellate court and the district court, “the
24 factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has
25 made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be
26 irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other
27 [parties’ interest] in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*,
28 481 U.S. 770, 776 (1987). Deciding whether to grant a stay of an order pending an appeal is an

1 equitable inquiry, and each factor in the analysis need not be given equal weight. *Standard Havens*
2 *Prods. v. Gencor Indus.*, 897 F.2d 511, 512 (Fed. Cir. 1990).

3 **III. Motions to Seal**

4 In connection with Samsung's motions for relief, Samsung and Apple have filed
5 administrative motions to file documents under seal. Samsung filed an administrative motion to
6 seal portions of Exhibit A to Susan Estrich's declaration in support of Samsung's motions for
7 relief. ECF No. 2496, Case No. 11-CV-01846 (motion to file under seal); ECF No. 2497-1
8 (Exhibit A to Estrich Declaration). The portions Samsung seeks to seal include royalty rates for
9 various licensing agreements to which Apple and Samsung are parties. *Id.* The Court GRANTS
10 Samsung's administrative motion to seal, as the Court has already held that "'pricing terms, royalty
11 rates, and guaranteed minimum payment terms' of a license agreement" are sealable. ECF No.
12 1649 at 7, 10-11 (quoting *In re Elec. Arts*, 298 F. App'x 568, 569 (9th Cir. 2008)).

13 Apple also filed an administration motion to seal Exhibit 2 to Mark D. Selwyn's declaration
14 in support of Apple's opposition to Samsung's motions for relief and motion to stay. ECF No. 801,
15 Case No. 12-CV-00630 (motion to file under seal); ECF No. 800-4, Case No. 12-CV-00630
16 (Exhibit 2 to Selwyn declaration). The portions Apple seeks to seal include confidential terms of
17 Apple's licensing agreements. *Id.* The Court GRANTS Apple's motion, as the Court has already
18 held that that "'pricing terms, royalty rates, and guaranteed minimum payment terms' of a license
19 agreement" are sealable. *See* ECF No. 1649, Case No. 11-CV-01846, at 7, 10-11.

20 **IV. Samsung's Motion for Relief from Order One**

21 Samsung moves for relief from Order One. Samsung Motion One at 1. As explained
22 below, the Court DENIES Samsung's motion because the conclusions in Order One are well-
23 supported, and Order One is not clearly erroneous or contrary to law.

24 First, the Court summarizes the substance of Order One. In essence, as a result of
25 Samsung's alleged violation of the protective order, Magistrate Judge Grewal ordered Samsung to
26 produce to Apple emails and communications by Samsung employees that would shed light on the
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1 scope of the violation and to make available for deposition various witnesses by October 16, 2013.
2 Order One at 5. Before mandating this discovery, Magistrate Judge Grewal described the factual
3 circumstances which led him to believe that there may have been a violation. *Id.* at 2-4. First,
4 Judge Grewal described how Apple had given to Samsung, during discovery, copies of four of
5 Apple’s patent license agreements, all of which were designated “Highly Confidential –Attorney
6 Eyes’ Only” pursuant to the protective order. *Id.* at 2; ECF No. 687, Case No. 11-CV-01846, at 3
7 (protective order). One of these licenses was a June 2011 license between Apple and Nokia. Order
8 One at 2. During expert discovery, Samsung’s outside counsel, Quinn Emanuel Urquhart &
9 Sullivan, LLP (“Quinn Emanuel”), sent Samsung an expert report which should have redacted, but
10 critically did not, some confidential information regarding Apple’s license agreements. *Id.*
11 Magistrate Judge Grewal cited how Quinn Emanuel then posted that report “on an FTP site that
12 was accessible by Samsung personnel” and that the information was also “sent, over several
13 different occasions, to over fifty Samsung employees, including high-ranking licensing executives.
14 Specifically, on at least four occasions between March 24, 2012 and December 21, 2012,
15 Samsung’s outside counsel emailed a copy of some version of the report to Samsung employees, as
16 well as various counsel representing Samsung in courts and jurisdictions outside the United
17 States.” *Id.* at 3.

18 Critically, Magistrate Judge Grewal went on to describe how a declaration from Nokia’s
19 Chief Intellectual Property Officer noted that in June 2013, during a meeting between Samsung and
20 Nokia licensing executives, Dr. Seungho Ahn, a Samsung executive who leads the Intellectual
21 Property Center of Samsung Electronics, *see* ECF No. 1843, Case No. 11-CV-01846, at 3547:17-
22 20, “informed Nokia that the terms of the Apple-Nokia license were known to him.” Order One at
23 3. Magistrate Judge Grewal wrote that according to the declaration, “Dr. Ahn stated that Apple
24 had produced the Apple-Nokia license in its litigation with Samsung, and that Samsung’s outside
25 counsel had provided his team with the terms of the Apple-Nokia license. [The declaration]
26 recounts that to prove to Nokia that he knew the confidential terms of the Apple-Nokia license, Dr.
27 Ahn recited the terms of the license, and even went so far as to tell Nokia that ‘all information

1 leaks.’ [The declaration] also reports that Dr. Ahn and Samsung then proceeded to use his
2 knowledge of the terms of the Apple-Nokia license to gain an unfair advantage in their negotiations
3 with Nokia, by asserting that the Apple-Nokia terms should dictate terms of a Samsung-Nokia
4 license.” *Id.*

5 After describing these events, Magistrate Judge Grewal noted that Samsung had provided
6 insufficient information to rebut this declaration, as Samsung had not provided any sworn
7 testimony by Dr. Ahn or any evidence regarding other uses by Samsung of the four Apple licensing
8 agreements, despite acknowledging that “dozens of individuals at Samsung and its other counsel
9 have knowledge of confidential license terms that they had no right to access.” *Id.* Magistrate
10 Judge Grewal further noted that at the hearing on Apple’s motion for sanctions for Samsung’s
11 alleged violation of the protective order, Samsung’s counsel denied any violation and was unable
12 to provide even basic information about who had and now has access to Apple’s confidential
13 information. *Id.* at 3-4.

14 Because Magistrate Judge Grewal could not determine whether sanctions were appropriate
15 without more information, he ordered Samsung to produce to Apple emails and communications
16 sent or received by Samsung employees who received the confidential information, and to make
17 available for deposition Dr. Ahn; a witness to “speak to the dissemination of and use by Samsung
18 of the confidential information, including the use of the confidential information in any proceeding
19 before the United States International Trade Commission and in any court or jurisdiction outside
20 the United States”; and “[u]p to five additional Samsung employees” who could address any
21 communications they have had regarding Apple’s licenses. *Id.* at 5.

22 Samsung’s motion for relief from Order One raises the following three arguments: (1)
23 Order One would “improperly abrogate privilege and work-product protection,” (2) Order One
24 may “require Samsung to violate other protective orders,” and (3) Order One’s “scope of
25 compelled information is grossly overbroad.” Samsung Motion One at 2-5. The Court addresses
26 each of these arguments in turn.

1 Samsung's first argument is that Order One is contrary to law because it either "ignore[d]
2 Samsung's objections based on attorney-client privilege and work-product protection" or "*sub*
3 *silentio* rejected Samsung's privilege and work product assertions." Samsung Motion One at 2.
4 Samsung's argument lacks merit.

5 First, Magistrate Judge Grewal did not make *any* ruling on privilege, either on the record at
6 the hearing or in Order One. Citing one of Magistrate Judge Grewal's statements at the hearing,
7 Samsung argues that Judge Grewal suggested that allowing Samsung's e-discovery third party
8 vendor Stroz Friedberg to access the documents waived the attorney-client privilege. Samsung
9 Motion One at 4 (citing Hearing Transcript, ECF No. 2485, Case No. 11-CV-01846, at 41-42
10 which is a statement by Magistrate Judge Grewal: "You are telling me [Stroz is] independent on
11 the one hand, and on the other hand you are saying you can disclose all sorts of privilege and work
12 product information to them without any waiver [of privilege] whatsoever.") The Court finds that
13 this statement does not constitute a ruling on privilege and does not provide a basis upon which to
14 infer that Order One *sub silentio* found a waiver of privilege. Samsung's claim that Order One
15 abrogates Samsung's claim for privilege or applies the crime-fraud exception to privilege, *see*
16 Samsung Motion One at 2-3, is unfounded because Magistrate Judge Grewal did not issue any
17 privilege ruling.

18 Second, contrary to Samsung's claim, Magistrate Judge Grewal did not ignore Samsung's
19 objections based on privilege. Samsung appears to have asserted broad, blanket privilege
20 objections that were not tied to any specific document or testimony. Thus, Magistrate Judge
21 Grewal was under no obligation to issue prospective, broad, blanket privilege rulings not tied to
22 any specific document or testimony. Moreover, Samsung has cited no authority requiring
23 Magistrate Judge Grewal to do so.

24 Finally, and most importantly, Samsung may assert privilege objections during the course
25 of the compelled discovery and follow the normal protocol regarding privilege disputes, as set forth
26 in the protective order. *See* ECF No. 687, Case No. 11-CV-01846, at 27-28. Any court rulings on
27 privilege disputes will be decided according to the protocol set forth in the protective order. Thus,
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1 the Court need not reach the question of whether there is any basis for waiver of privilege at this
2 time.

3 For the reasons stated above, the Court rejects Samsung’s first argument that Order One
4 improperly abrogated privilege and work product protection. The Court finds that Order One is not
5 clearly erroneous or contrary to law on this basis.

6 Samsung’s second argument is similarly unavailing. Samsung objects to providing
7 information and testimony about the use of confidential information in proceedings before the ITC
8 or other courts on the grounds that “[t]hese proceedings are subject to their own protective orders.”
9 Samsung Motion One at 4. The Court is not persuaded. To the extent that these other proceedings
10 have their own protective orders, the Court finds that the interests underlying Order One, namely
11 investigating and remedying alleged protective order violations and preventing and deterring
12 ongoing or future protective order violations in this case, outweigh any possible dilemma Samsung
13 will face by having “to choose between coordinate courts.” Samsung Motion One at 4 (citation
14 omitted). Samsung cites no law in the Ninth Circuit that holds that a magistrate judge or district
15 judge may not order discovery regarding information that is allegedly covered by a protective order
16 in another tribunal. Thus, the Court rejects Samsung’s second argument and finds that Order One
17 is not clearly erroneous or contrary to law on this basis.

18 Samsung’s last argument is that Order One is “overly broad” because Order One requires
19 Samsung to produce all emails and communications relating not just to the Apple-Nokia license
20 that was apparently disclosed to Samsung employees, but also to Apple’s other three license
21 agreements that Apple produced to Samsung during discovery. Samsung Motion One at 5.
22 Samsung claims that the “millions of dollars” Samsung will spend to comply with Order One
23 would be disproportionate to the benefit of this discovery in terms of shedding light on the alleged
24 violation of the protective order. *Id.* at 1, 5. The Court rejects Samsung’s argument, as Magistrate
25 Judge Grewal’s decision regarding the scope of the discovery was not clearly erroneous or contrary
26 to law. On the contrary, Order One is a highly appropriate and necessary mechanism for
27 determining answers to basic questions that Samsung has been unable to provide thus far. Namely,

1 the discovery compelled by Order One has been necessitated by Samsung's deficient investigation
2 into the improper disclosures for the past three months. Quinn Emanuel was placed on notice of its
3 alleged violation of the protective order when Nokia filed a motion for a protective order on July 1,
4 2013, along with the accompanying declaration from Nokia's Chief Intellectual Property Officer
5 which highlighted how Dr. Ahn had told Nokia that Dr. Ahn had knowledge of the terms of the
6 Apple-Nokia licensing agreement. ECF No. 647, Case No. 12-CV-00630; Hearing Transcript,
7 ECF No. 2485, Case No. 11-CV-01846, at 8, 10, 35, 50. Despite the fact that three months had
8 passed since the alleged violation came to Quinn Emanuel's attention, Samsung and Quinn
9 Emanuel still had no answers for Magistrate Judge Grewal at the hearing regarding the extent of
10 the disclosures, to whom they were made and what was disclosed, and how the disclosed
11 information has been used and is currently being used. *See generally* Hearing Transcript, ECF No.
12 2485, Case No. 11-CV-01846, at 24-70. As Magistrate Judge Grewal noted, "[E]ven though three
13 months [have passed], Samsung is unable to provide evidence on even the most basic questions,
14 such as: who has now had access to the confidential licensing information? For what purpose?
15 When? Where? How? Has Samsung relied on any of the confidential information in taking any
16 position before any other court or jurisdiction? Exactly what steps has Samsung taken to prevent
17 dissemination and use of the confidential information in the future? In each instance, the only
18 response available seems to be, 'We're working on it.'" Order One at 4. Samsung's lack of
19 information after three months is inexcusable, and necessitates Court-supervised discovery.

20 Further, Magistrate Judge Grewal did not err by requiring discovery regarding the other
21 three Apple license agreements. Apple's counsel claims that Quinn Emanuel failed to redact
22 information relating to the other three licenses in Quinn Emanuel's communications with
23 Samsung's employees.¹ Hearing Transcript, ECF. No. 2485, Case No. 11-CV-01846, at 11. In

24 ¹ Samsung's exhibits to its motions for relief show that Quinn Emanuel did in fact improperly
25 disclose information about the other Apple licenses to Samsung's employees. Exhibit A to Susan
26 Estrich's declaration in support of Samsung's motions for relief is the expert report with the
27 confidential information that was sent to Samsung's employees. ECF No. 2497-1, Case No. 11-
28 CV-01846 (Exhibit A to Estrich Declaration); ECF No. 2497, Case No. 11-CV-01846, at 1 (Estrich
noting that this report was the "incompletely redacted report" sent to Samsung employees). That

1 response, Samsung has not provided the Court with “any sworn declarations from its employees, or
2 even its lawyers, stating that no breach occurred with respect” to these other licenses. Apple Opp.
3 at 9. Moreover, at the hearing Samsung was unable to answer Judge Grewal’s questions about the
4 full extent of Quinn Emanuel’s improper disclosures to Samsung’s employees. Thus, Magistrate
5 Judge Grewal’s decision to require Samsung to produce all communications relating to Apple’s
6 other licenses was eminently reasonable, as it was intended to assist the Court in discovering the
7 extent to which information about these other license agreements had been disclosed to and used
8 by Samsung employees or others, in violation of the protective order.

9 Of further concern to the Court is that not only is there evidence that Samsung employees
10 received confidential information and used it in their licensing negotiations with Nokia in violation
11 of the protective order, but also this information may have been used by Samsung’s lawyers in
12 other courts. Apple’s counsel noted at the hearing that “information from these disclosures was
13 used to craft arguments at the ITC The ITC issued an opinion on the licensing negotiations
14 that specifically accepted Samsung’s argument in which this confidential information was used.”
15 Hearing Transcript, ECF No. 2485, Case No. 11-CV-01846, at 70. Such use of this information, if
16 true, is particularly egregious, given that the protective order states that “Protected Material
17 designated under the terms of this Protective Order shall be used by a Receiving Party solely for
18 this case, and shall not be used directly or indirectly for any other purpose whatsoever” and that
19 “[a]ll Protected Material shall be used solely for this case or any related appellate proceeding, and
20 not for any other purpose whatsoever, including without limitation any other litigation, patent
21 prosecution or acquisition, patent reexamination or reissue proceedings” ECF No. 687, Case
22 No. 11-CV-01846, at 3, 5.

23 In light of the fact that Samsung has been unable to produce satisfactory answers to any
24 questions about the extent and use of the improper disclosures despite having three months to

25 report contains unredacted information not only relating to the Apple-Nokia license agreement, but
26 also confidential information about the other Apple licenses. ECF No. 2497-1, Case No. 11-CV-
01846, at ¶¶ 89, 191-193.

1 investigate, this Court finds that it was necessary for Magistrate Judge Grewal to order Court-
2 supervised discovery and that the scope of his order was not “overly broad.”

3 For all these reasons, Magistrate Judge Grewal’s decision to require Court-supervised
4 discovery was not clearly erroneous or contrary to law, and the Court DENIES Samsung’s motion
5 for relief from Order One.

6 **V. Samsung’s Motion for Relief from Order Two**

7 Samsung moves the Court to vacate Order Two. Samsung Motion Two at 1. As set forth
8 below, Samsung’s motion is DENIED because the Court finds that Order Two is not clearly
9 erroneous or contrary to law.

10 In Order Two, Magistrate Judge Grewal adopted a stipulation entered between Nokia and
11 Samsung. Order Two at 1. After Nokia filed its July 1, 2013 motion for a protective order because
12 of Quinn Emanuel’s disclosure of the confidential terms of the Apple-Nokia licensing agreement to
13 Samsung’s employees, Nokia withdrew its motion, and Samsung and Nokia filed a stipulation,
14 which Magistrate Judge Grewal granted in full, providing that Samsung would investigate the
15 disclosures. The stipulation provided that Samsung would hire a third party computer forensics
16 firm, Stroz Friedberg, to “conduct an independent audit of the files of the Samsung employees
17 identified [by Samsung] as recipients of the Disclosed Information,” for the purpose of collecting
18 and preserving any documents within Samsung evidencing “(i) receipt or dissemination of the
19 Disclosed Information and/or (ii) any use of, or reference to, the Disclosed Information by
20 Samsung.” *Id.* at ¶ 5. The stipulation also noted that Stroz Friedberg would “prepare a log of all
21 instances in which the Disclosed Information was disseminated or in which the Disclosed
22 Information was referenced or used in any Documents by Samsung employees,” including by
23 identifying “the author or sender and all recipients of any identified Documents; the date and time;
24 the subject line and a description of the subject matter of the Document sufficient to understand the
25 nature of the use of or reference to the Disclosed Information.” *Id.* at ¶ 7. The stipulation also
26 states that “[n]othing contained in this Stipulation will constitute a waiver of any claim of attorney-
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1 client privilege, attorney work product or other claims of confidentiality, and Nokia will not argue
2 that this Stipulation constitutes any such waiver” *Id.* at ¶ 11.

3 Samsung seeks relief from Order Two granting the stipulation on the grounds that the
4 stipulation is (1) “redundant” of Order One, and (2) would “put Samsung’s privileged documents at
5 risk” by “giv[ing] Apple a basis to argue (incorrectly) that Samsung has waived the privilege by
6 disclosing documents to Stroz.” Samsung Motion Two at 2-3, 5. For reasons provided below, the
7 Court rejects Samsung’s arguments.

8 The Court first addresses Samsung’s claim that Order Two should be vacated because “the
9 processes set forth in the stipulation are wholly subsumed by the requirements in [] [Order One].”
10 Samsung Motion Two at 5. While there may be some overlap, the stipulation and thus Order Two
11 impose obligations on Samsung above and beyond what is required in Order One. For example,
12 the stipulation requires Stroz Friedberg to use computer forensics to audit the files of Samsung
13 employees. Order Two at ¶¶ 5-7. Order One does not require a forensic audit. Furthermore, the
14 stipulation and Order Two require that Stroz Friedberg “conduct an independent review of Quinn
15 Emanuel’s investigation and collection process as is necessary to ensure that Quinn Emanuel’s
16 search of its own firm Documents is complete and accurate.” *Id.* at ¶ 8. Order One does not
17 require such a review of Quinn Emanuel’s search.

18 The stipulation and Order Two also require that a partner from Quinn Emanuel “provide
19 Nokia with a sworn statement . . . identifying any further dissemination of the Disclosed
20 Information” by other Samsung law firms and “also explain the reasons why the Disclosed
21 Information was forwarded” to the firms. *Id.* at ¶ 4. Order One does not require such a sworn
22 statement. In the stipulation and Order Two, Samsung agrees that “[i]f Nokia seeks the courts [*sic*]
23 assistance to enforce the stipulation or resolve disputes regarding its implementation, Nokia shall
24 be entitled to its reasonable attorneys’ fees and costs associated with the any [*sic*] such meritorious
25 motions.” *Id.* at ¶ 10. Order One does not provide for such fees and costs.

26 Samsung negotiated for, agreed to, and jointly proposed the procedures set forth in the
27 stipulation that Magistrate Judge Grewal adopted in full in Order Two. ECF No. 798, Case No. 12-

1 CV-630, at 8. Samsung has not provided any valid basis to vacate Samsung’s own stipulation.
2 Magistrate Judge Grewal’s Order adopting Samsung’s stipulation which imposes additional
3 obligations beyond Order One was not clearly erroneous or contrary to law.

4 Samsung’s second argument is that “the stipulation should be vacated to protect privilege.”
5 Samsung Motion Two at 5. In support of its argument, Samsung claims Magistrate Judge Grewal
6 “materially altered one of the fundamental conditions upon which the Stipulation was based
7 through his statements at the hearing that it may not preserve privilege with respect to non-
8 signatories such as Apple.” *Id.* Samsung cites Magistrate Judge Grewal’s question at the hearing
9 that “[Nokia] may have agreed [to the stipulation, which provides that Samsung does not waive any
10 privilege by giving the third party company Stroz Friedberg access to documents], but what does
11 that say vis a vi[s] other parties.” *Id.* at 4 (citing Hearing Transcript, ECF No. 2485, Case No. 11-
12 CV-01846, at 41). The Court rejects Samsung’s argument that this Court must vacate Order Two
13 in order to protect the attorney-client privilege Samsung claims it has over certain documents.
14 Samsung’s argument boils down to an assertion that Magistrate Judge Grewal’s question at the
15 hearing means Samsung has lost its opportunity to assert that it has privilege over documents vis-à-
16 vis Apple. This argument fails for two reasons. First, Magistrate Judge Grewal’s question does
17 not constitute an actual ruling on the issue of whether Samsung’s transmission of documents to
18 Stroz Friedberg will constitute a waiver of any assertions of privilege Samsung wants to advance
19 against Apple. Thus, Samsung will still have the chance to argue that its documents are privileged
20 vis-à-vis Apple even after giving information to Stroz Friedberg pursuant to the stipulation.
21 Second, to the extent that Magistrate Judge Grewal’s question suggests he may eventually rule
22 against Samsung by finding waiver of privilege vis-à-vis Apple, Samsung was on notice when it
23 entered the stipulation that the stipulation’s language only stated that Nokia, not any other party
24 like Apple, could not argue waiver of privilege based on Samsung’s transfer of documents to Stroz
25 Friedberg.

26 Because the Court finds that Magistrate Judge Grewal’s order is not clearly erroneous or
27 contrary to law, the Court DENIES Samsung’s motion for relief from Order Two.

1 **VI. Samsung’s Motion to Stay Orders One and Two**

2 Pursuant to Local Rule 7-11, Samsung moves the Court to stay Order One and Order Two
3 pending resolution of Samsung’s motions for relief from these orders, and pending resolution of
4 any petition for a writ of mandamus to the Federal Circuit Court of Appeals. ECF No. 789, Case
5 No. 12-CV-00630; ECF No. 2494, Case No. 11-CV-01846. “[T]he factors regulating the issuance
6 of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he
7 is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a
8 stay; (3) whether issuance of the stay will substantially injure the other [parties’ interest] in the
9 proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

10 The Court hereby DENIES a stay pending resolution of any petition for a writ of mandamus
11 that Samsung may file with the Federal Circuit Court of Appeals. First, the Court finds that, for the
12 reasons set forth above, Samsung has not shown a likelihood of succeeding on the merits of its
13 motions, which is the first element of obtaining a stay. *Id.* at 776. Second, while Samsung claims
14 it will face “irreparable harm” absent the stay because Samsung will have to disclose privileged
15 information, which cannot be undone, the Court disagrees. Samsung will have the opportunity to
16 assert privilege as to specific documents and testimony, and Samsung may seek a stay from the
17 Federal Circuit if Samsung files a petition for writ of mandamus.

18 Third, an issuance of a stay will “substantially injure” the interests of all parties whose
19 confidential information Quinn Emanuel improperly disclosed to Samsung’s employees. These
20 parties’ interests require the determination of the full extent of the improper disclosures and the full
21 extent of the improper uses of the improper disclosures and the immediate termination and
22 remedying of such improper disclosures and uses.

23 Furthermore, a stay is not in the public interest. To preserve the integrity of protective
24 orders, which are essential to all litigation, the Court must act swiftly in ensuring that protective
25 orders are complied with and that violations are dealt with appropriately. Delaying such action
26 may undermine the authority of the Court and litigants’ confidence in our judicial system. *See*
27 *Valdez v. City & Cnty. of Denver*, 878 F.2d 1285, 1289 (10th Cir. 1989) (noting that the public has

1 an interest in enforcing court orders because that is “essential to the effective functioning of our
2 judicial process”).

3 Finally, the public and Apple have a strong interest in having the two Apple v. Samsung
4 cases proceed to a decision on the merits and to not have unresolved alleged protective order
5 violations pending after the trial in these two cases. The damages retrial in the first case, Case No.
6 11-CV-1846, will begin on November 12, 2013, and the pre-trial hearings in this case are on
7 October 10 and 17, 2013. The summary judgment hearing in the second case, Case No. 12-CV-
8 00630, will be on December 12, 2013, and trial will begin in that case in March 2014.

9 For the reasons set forth above, the Court DENIES Samsung’s motion to stay Orders One
10 and Two.

11 **VII. Conclusion**

12 For the foregoing reasons, the Court DENIES Samsung’s motions for relief and DENIES
13 Samsung’s motion to stay.

14 **IT IS SO ORDERED.**

15 Dated: October 15, 2013



LUCY H. KOH
United States District Judge