

1 PENELOPE A. PREOVOLOS (SBN 87607)  
 PPreovolos@mofo.com  
 2 TIFFANY CHEUNG (SBN 211497)  
 TCheung@mofo.com  
 3 SUZANNA P. BRICKMAN (SBN 250891)  
 SBrickman@mofo.com  
 4 MORRISON & FOERSTER LLP  
 425 Market Street  
 5 San Francisco, California 94105-2482  
 Telephone: 415.268.7000  
 6 Facsimile: 415.268.7522

7 *Attorneys for Defendant*  
 APPLE INC.

8 JOSEPH J. TABACCO, JR. (SBN 75484)  
 jtabacco@bermandevalerio.com  
 9 CHRISTOPHER T. HEFFELFINGER (SBN  
 10 118058)  
 cheffelfinger@bermandevalerio.com  
 11 ANTHONY D. PHILLIPS (SBN 259688)  
 aPhillips@bermandevalerio.com  
 12 BERMAN DEVALERIO  
 One California Street, Suite 900  
 13 San Francisco, California 94111  
 Telephone: 415.433.3200  
 14 Facsimile: 415.433.6382

15 *Liaison Counsel for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**  
 18 **SAN JOSE DIVISION**

19  
 20 ROBERT HERSKOWITZ, et al., )  
 21 )  
 22 \_\_\_\_\_ )  
 23 PHOEBE JUEL, et al. )  
 Plaintiffs, )  
 24 v. )  
 25 APPLE INC., )  
 26 Defendant. )

No. 5:12-cv-02131-LHK  
 No. 5:12-cv-03124-LHK

**~~PROPOSED~~ STIPULATED  
 PROTECTIVE ORDER**

1 Plaintiffs and Defendant Apple Inc. (“Apple”) anticipate that documents, testimony, or  
2 information containing or reflecting confidential, proprietary, trade secret, and/or commercially  
3 sensitive information are likely to be disclosed or produced during the course of discovery, initial  
4 disclosures, and any supplemental disclosures in this case and request that the Court enter this  
5 Order setting forth the conditions for treating, obtaining, and using such information.  
6 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for  
7 entering the following Stipulated Protective Order Regarding the Disclosure and Use of  
8 Discovery Materials (“Stipulation and Protective Order”).

9 **1. PURPOSES AND LIMITATIONS**

10 Disclosure and discovery activity in these actions are likely to involve production of  
11 confidential, proprietary, or private information for which special protection from public  
12 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
13 Accordingly, the parties hereby stipulate to and petition the Court to enter the following  
14 Stipulated Protective Order.

15 The parties acknowledge that this Stipulation and Protective Order governs discovery in  
16 the consolidated actions *Herskowitz v. Apple Inc.*, Case No. 12-CV-02131-LHK and *Juel v. Apple*  
17 *Inc.*, Case No. 12-CV-03124-LHK. The parties also acknowledge that this Stipulation and  
18 Protective Order does not confer blanket protections on all disclosures or responses to discovery  
19 and that the protection it affords extends only to the limited information or items that are entitled  
20 under the applicable legal principles to treatment as confidential. The parties further  
21 acknowledge, as set forth in Paragraph 11 below, that this Stipulation and Protective Order  
22 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth  
23 the procedures that must be followed and reflects the standards that will be applied when a party  
24 seeks permission from the Court to file material under seal.

25 **2. DEFINITIONS**

26 2.1 “Action” or “Actions” mean the above-captioned consolidated actions,  
27 presently pending in the United States District Court for the Northern District of California.  
28

1           2.2    Party: Any party to these Actions, including all of its officers, directors,  
2 employees, consultants, retained experts, and outside counsel (and their support staff).

3           2.3    Disclosure or Discovery Material: All items or information, regardless of  
4 the medium or the manner in which it is generated, stored or maintained (including, among other  
5 things, testimony, transcripts, or tangible things), that is produced or generated in disclosures or  
6 responses to discovery in this matter.

7           2.4    “CONFIDENTIAL” Information or Items: Disclosure or Discovery  
8 Material that is non-public and that a Party or non-party in good faith believes must be held  
9 confidential to protect personal privacy interests or confidential, proprietary, and/or commercially  
10 sensitive information, including trade secrets, or otherwise have a compelling need for privacy.

11          2.5    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
12 Information or Items: Disclosure or Discovery Material that is extremely confidential and/or  
13 sensitive in nature, disclosure of which to another Party or non-party the Producing Party  
14 reasonably believes is likely to cause economic harm or competitive disadvantage to the  
15 Producing Party, is highly personal non-public information, or will otherwise compromise or  
16 jeopardize the Producing Party’s business interests. The parties agree that the following  
17 information, if nonpublic, shall be presumed to merit the “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data,  
19 sales information, sales or marketing forecasts or plans, business plans, sales or marketing  
20 strategy, product development information, engineering documents, testing documents, employee  
21 information, and other nonpublic information of similar competitive and business sensitivity.

22          2.6    Receiving Party: A Party that receives Disclosure or Discovery Material  
23 provided, produced or made available for inspection by a Producing Party.

24          2.7    Producing Party: A Party or non-party that provides, produces or makes  
25 available for inspection Disclosure or Discovery Material in the course of these Actions.

26          2.8    Designating Party: A Party or non-party that designates information or  
27 items that it produces in disclosures or in responses to discovery as CONFIDENTIAL or  
28 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

1                   2.9    Protected Material: Any Disclosure or Discovery Material that is  
2 designated as or deemed to be CONFIDENTIAL or HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY.

4                   2.10   Outside Counsel: Attorneys who are not employees of a Party but who are  
5 employed at law firms that appear on the pleadings as counsel for a Party in these actions.

6                   2.11   In-House Counsel: Attorneys who are employees of a Party.

7                   2.12   Counsel (without qualifier): Outside Counsel and In-House Counsel (as  
8 well as their support staffs).

9                   2.13   Expert: A person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert  
11 witness or as a consultant in these actions and who is not a past or a current employee of a Party  
12 or of any entity on the Restricted Competitors List and who, at the time of retention, is not  
13 anticipated to become an employee of a Party or any entity on the Restricted Competitors List.  
14 This definition includes any professional jury or trial consultant retained in connection with this  
15 litigation but does not include mock jurors. A list of Apple Inc.’s (“Apple”) restricted  
16 competitors will be separately produced to Outside Counsel (“Restricted Competitors List”).

17                   2.14   Professional Vendors: Persons or entities that provide litigation support  
18 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;  
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
20 subcontractors.

21                   **3.    SCOPE**

22                   This Protective Order shall govern all Protected Material in whatever form, including  
23 documents, data, information, interrogatory responses, deposition testimony, deposition  
24 transcripts, responses to requests for admission, and any other Protected Material provided,  
25 produced, or made available for inspection in response to any method of discovery conducted in  
26 these Actions. The protections conferred by this Stipulation and Protective Order cover not only  
27 Protected Material (as defined above) but also any information copied or extracted therefrom, as  
28 well as all copies, excerpts, summaries or compilations thereof, plus testimony, conversations or

1 presentations by Parties or Counsel to or in court or in other settings that might reveal Protected  
2 Material.

3 Nothing herein shall be construed to prevent a Producing Party from reviewing, using or  
4 disclosing its own Protected Material in any manner that it deems appropriate.

5 This Protective Order is without prejudice to the right of any Party to seek further or  
6 additional protection of any Discovery Material or to modify this Order in any way, including,  
7 without limitation, an order that certain matter not be produced at all.

8 The parties agree that this Protective Order does not address the production of source code  
9 (including source code and source code listings, object code and object code listings, executable  
10 code and similar sensitive software code, whether in printed or electronic form). Should such  
11 source code be identified for production, the party requesting the source code will provide notices  
12 to all other parties before engaging the Producing party in negotiations regarding a source code  
13 protective order and all parties will collectively negotiate a protective order governing the  
14 production of source code.

15 **4. DURATION**

16 After the termination of these Actions, the confidentiality obligations imposed by this  
17 Stipulation and Protective Order shall remain in effect until a Designating Party agrees otherwise  
18 in writing or a Court order otherwise directs.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Procedures for Designating Material for Protection: Any Party to this  
21 litigation, or any non-party who produces Disclosure or Discovery Material, shall have the right  
22 to designate as CONFIDENTIAL or HIGHLY CONFIDENTIAL — ATTORNEYS' EYES  
23 ONLY any Protected Material it produces. All Protected Material shall bear a legend on each  
24 page stating that the material is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL —  
25 ATTORNEYS' EYES ONLY." Materials designated as or deemed to be CONFIDENTIAL or  
26 HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY consistent with this Stipulation and  
27 Protective Order are subject to the provisions of this Stipulation and Protective Order and shall be  
28

1 protected, used, handled and disposed of in accordance with the provisions of this Stipulation and  
2 Protective Order.

3 Each Party or non-party that designates information or items for protection under this  
4 Order must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards set forth herein. A Designating Party must take care to designate for  
6 protection only those materials, documents, items, or oral or written communications that so  
7 qualify.

8 5.2 Manner and Timing of Designations: Except as otherwise provided in this  
9 Stipulation and Protective Order (*see, e.g.*, second paragraph of 5.2(a), below) or as otherwise  
10 stipulated or ordered, material that qualifies for protection under this Stipulation and Protective  
11 Order must be clearly designated as such before the material is disclosed or produced.

12 Designation in conformity with this Stipulation and Protective Order requires:

13 (a) For Information in Documentary Form (apart from transcripts of  
14 depositions or other pretrial proceedings): That the Producing Party affix the legend  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each  
16 page that contains Protected Material. In order to speed up the process of producing large  
17 volumes of Protected Material, multi-page documents in which Protected Material is pervasive  
18 may be marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
19 ONLY” throughout. Where it is not possible to affix a legend to particular Protected Material,  
20 the Producing Party shall take reasonable steps to give all Receiving Parties notice of the  
21 Protected Material’s status as such. Except as otherwise agreed, within 45 days after receipt of  
22 Disclosure or Discovery Material, any Receiving Party may designate the material as  
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24 A Party or non-party that makes original documents or materials available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated which  
26 material it would like copied and produced. During the inspection and before the designation, all  
27 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
28 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents qualify for protection  
2 under this Order. Then, before producing the specified documents, the Producing Party must  
3 affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY”) on each page that contains Protected Material, except that multi-  
5 page documents may be designated in accordance with the preceding paragraph.

6 (b) For Testimony Given in Deposition or in Other Pretrial  
7 Proceedings: Any Party or non-party offering or sponsoring the testimony may identify on the  
8 record, before the close of the deposition, hearing or other proceeding, all protected testimony and  
9 may further specify any portions of the testimony that qualify as “CONFIDENTIAL” or  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Alternatively, within thirty (30)  
11 days of receipt of a transcript or recording of a deposition or other pretrial proceeding, the  
12 offering or sponsoring Party or non-party may designate such transcript or recording or any  
13 portion thereof as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
14 ONLY” by notifying all Parties, in writing, of the specific pages and lines of the transcript or  
15 recording that should be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY.” All transcripts or recordings of depositions or other pretrial  
17 proceedings shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for  
18 thirty (30) days after receipt of the transcript or recording, or until written notice of a designation  
19 is received, whichever occurs first. In the case of a non-party witness, testimony can be  
20 designated as containing “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
21 EYES ONLY” information by a Party, the non-party witness or upon agreement of the Parties.

22 Transcript pages containing Protected Material must be separately bound by the court  
23 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as instructed by the Party or non-  
25 party offering or sponsoring the witness or presenting the testimony.

26 In the event the deposition is videotaped, the original and all copies of the videotape shall  
27 be marked by the video technician to indicate that the contents of the videotape are subject to this  
28 Stipulation and Protective Order, substantially along the lines of “This videotape contains

1 confidential testimony used in this case and is not to be viewed or the contents thereof to be  
2 displayed or revealed except pursuant to the terms of the operative Stipulation and Protective  
3 Order in this matter or pursuant to written stipulation of the parties.”

4 Counsel for any Producing Party shall have the right to exclude from oral depositions,  
5 other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person  
6 who is not authorized by this Stipulation and Protective Order to receive or access Protected  
7 Material based on the designation of such Protected Material. Such right of exclusion shall be  
8 applicable only during periods of examination or testimony regarding such Protected Material.

9 (c) For Information Produced in A Form Other than Documentary, and  
10 for Any Other Tangible Items: The Producing Party shall affix in a prominent place on the  
11 exterior of the container or containers in which the information or item is stored the legend  
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 (d) For Inspection of Things or Premises: The Producing Party shall  
14 state in writing prior to the inspection that “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” information or material will be revealed.

16 5.3 Contractual Obligations to Non-Parties: During the course of these actions,  
17 a Party or non-party may be requested to produce information that is subject to contractual or  
18 other obligations of confidentiality owed to a non-party. The Party or non-party subject to the  
19 contractual or other obligation of confidentiality shall promptly contact the person to whom the  
20 obligation is owed to determine whether that person is willing to permit disclosure of the  
21 confidential information under the terms of this Stipulation and Protective Order. If that person is  
22 so willing, the information, if otherwise discoverable, shall be produced in accordance with this  
23 Stipulation and Protective Order. If the person to whom the obligation is owed is not willing to  
24 permit disclosure of the confidential information under the terms of this Stipulation and  
25 Protective Order, or fails to respond before responses or production is due, the Party seeking the  
26 information in this litigation shall be so notified and given a description of the documents  
27 withheld, the reason for withholding the documents, the person to whom the obligation of  
28



1 confidentiality is owed and the person's contact information. This description shall be produced  
2 as promptly as practicable.

3           5.4     Upward Designation of Information or Items Produced by Other Parties or  
4 Non-Parties. A Party may upward designate (i.e., change any documents or other material  
5 produced without a designation to a designation of "CONFIDENTIAL" or "HIGHLY  
6 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or change any Protected Material produced  
7 as "CONFIDENTIAL" to a designation of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
8 ONLY,") any Disclosure or Discovery Material produced by any other Party or non-party,  
9 provided that said Disclosure or Discovery Material contains the upward designating Party's own  
10 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY information,  
11 or otherwise is entitled to protective treatment under Fed. R. Civ. P. 26(c). Upward designation  
12 shall be accomplished by providing written notice to all Parties identifying (by Bates number or  
13 other individually identifiable information) the Disclosure or Discovery Material to be re-  
14 designated within sixty (60) days of production by the Producing Party. Failure to upward  
15 designate within sixty (60) days of production, alone, will not prevent a Party from obtaining the  
16 agreement of all Parties to upward designate certain Disclosure or Discovery Material or from  
17 moving the Court for such relief. Any Party may object to the upward designation of Disclosure  
18 or Discovery Material pursuant to the procedures set forth herein regarding challenging  
19 designations.

20           5.5     Inadvertent Failures to Designate and Redesignation: A Producing Party  
21 that inadvertently fails to designate Disclosure or Discovery Material as "CONFIDENTIAL" or  
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to this Stipulation and  
23 Protective Order at the time of its production shall be able to make a correction to its designation,  
24 with the Receiving Party reserving the right to assert such re-designation is improper pursuant to  
25 the procedures set forth herein regarding challenging designations. Such failure shall be  
26 corrected by providing to the Receiving Party written notice of the error and substituted copies of  
27 the inadvertently unmarked or mis-marked Disclosure or Discovery Materials. Any party  
28 receiving such inadvertently unmarked or mis-marked Disclosure or Discovery Materials shall,

1 within five (5) days of receipt of the substitute copies, destroy or return to the law firm  
2 representing the Producing Party all copies of such mis-designated documents. The Producing  
3 Party shall comply with Paragraph 5.2 when redesignating Disclosure or Discovery Material as  
4 Protected Material. Following any redesignation of Disclosure or Discovery Material as  
5 Protected Material (or redesignation of “CONFIDENTIAL” material as “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”), the Party receiving such Protected Material  
7 shall take reasonable steps to comply with the redesignation, including, without limitation,  
8 retrieving all copies and excerpts of any redesignated Protected Material from persons not entitled  
9 to receive it as re-designated.

10 A Receiving Party shall not be in breach of this Stipulation and Protective Order for any  
11 use of such inadvertently-non-designated or inadvertently-mis-designated material before the  
12 Receiving Party receives notice of the inadvertent failure to designate, unless an objectively  
13 reasonable person would have realized that the material should have been appropriately  
14 designated with a confidentiality designation under this Stipulation and Protective Order. Once a  
15 Receiving Party has received notice of the inadvertent failure to designate pursuant to this  
16 provision, the Receiving Party shall treat such material at the appropriately designated level  
17 pursuant to the terms of this Stipulation and Protective Order, reserving all rights to assert that  
18 such re-designation is not proper under the procedures set forth herein regarding challenging  
19 designations.

20 **6. DISCLOSURE OF DISCOVERY MATERIALS PROTECTED BY THE**  
21 **ATTORNEY-CLIENT PRIVILEGE OR WORK PRODUCT DOCTRINE**

22 (a) Each party shall make efforts that are ‘reasonably designed’ to protect its  
23 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What  
24 constitutes efforts that are reasonably designed to protect privileged materials depends on the  
25 circumstances; the law does not require ‘strenuous or Herculean efforts,’ just ‘reasonable efforts.’  
26 *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.* 2008 WL 350641, \*1–2 (N.D. Cal., Feb. 2,  
27 2008); *see also*, FED. R. CIV. PRO. 26(f)(3) advisory committee’s notes to 2006 amendments  
28 (discussing the substantial costs and delays that can result from attempts to avoid waiving

1 privilege, particularly when discovery of electronic information is involved). When a particular  
2 Rule 34 request requires a production or inspection that is too voluminous, expedited or complex  
3 (such as certain electronic productions) to allow for an adequate preproduction review, the parties  
4 may enter into non-waiver agreements for that particular production. If the requesting party is  
5 unwilling to enter into such an agreement, the Producing Party may move the court for a non-  
6 waiver order.

7 (b) The inadvertent production by a Party of Discovery Material subject to the  
8 attorney-client privilege, work-product protection, or any other applicable privilege or protection,  
9 despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to  
10 production, will not waive the applicable privilege and/or protection if a request for return of such  
11 inadvertently produced Discovery Material is made promptly after the Producing Party learns of  
12 its inadvertent production.

13 (c) Upon a request from any Producing Party who has inadvertently produced  
14 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall  
15 immediately return such Protected Material or Discovery Material, and all copies, to the  
16 Producing Party, except for any pages containing privileged markings by the Receiving Party  
17 which shall instead be destroyed and certified as such by the Receiving Party to the Producing  
18 Party.

19 (d) Nothing herein shall prevent the Receiving Party from preparing a record  
20 for its own use containing the date, author, addresses, and topic of the inadvertently produced  
21 Discovery Material and such other information as is reasonably necessary to identify the  
22 Discovery Material and describe its nature to the Court in any motion to compel production of the  
23 Discovery Material.

## 24 7. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 7.1 Timing of Challenges: The Receiving Party must challenge the  
26 Designating Party's designations within ninety (90) days of receipt of the challenged information.

27 7.2 Meet and Confer: A Party that elects to initiate a challenge to a  
28 Designating Party's confidentiality designation must do so in good faith and must begin the

1 process by conferring directly (in voice-to-voice dialogue; other forms of communication are not  
2 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
3 identify the specific Bates range(s) for the challenged document(s), explain the basis for its belief  
4 that the confidentiality designation was not proper and must give the Designating Party a  
5 reasonable opportunity to review the designated material, reconsider the circumstances and, if no  
6 change in designation is offered, explain the basis for the chosen designation. A challenging  
7 Party may proceed to the next stage of the challenge process only if it has first engaged in this  
8 meet-and-confer process.

9           7.3     Judicial Intervention: A Party that elects to press a challenge to a  
10 confidentiality designation after considering the justification offered by the Designating Party  
11 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local  
12 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis  
13 for the challenge. Each such motion must be accompanied by a competent declaration affirming  
14 that the movant has complied with the meet-and-confer requirements imposed in the preceding  
15 paragraph and setting forth with specificity the justification for the confidentiality designation  
16 that was given by the Designating Party in the meet-and-confer dialogue.

17           Nothing in this Stipulation and Protective Order shall preclude or prejudice either party  
18 from arguing for or against any designation, establish any presumption that a particular  
19 designation is valid, or alter the burden of proof that would otherwise apply in a dispute over  
20 discovery or disclosure of information. Until the Court rules on the challenge, all parties shall  
21 continue to afford the material in question the level of protection to which it is entitled under the  
22 Designating Party's designation.

## 23           8.     ACCESS TO AND USE OF PROTECTED MATERIAL

24           8.1     Basic Principles: A Receiving Party may use Protected Material that is  
25 disclosed or produced by another Party or by a non-party in connection with these Actions only  
26 for this case or any related appellate proceeding. A Receiving Party may not use Protected  
27 Material for any other purpose, including, without limitation, any other litigation or any business  
28 or competitive function. Such Protected Material may be disclosed only to the categories of

1 persons and under the conditions described in this Order and may not be disclosed to the media.  
2 For purposes of this Stipulation and Protective Order, and specifically as utilized in the preceding  
3 sentence, “disclosed” or “disclose” shall mean any physical or electronic showing of the  
4 Protected Materials to any person, including communication in any form of the contents (in whole  
5 or in part) or existence of the Protected Materials. When this litigation has been terminated, a  
6 Receiving Party must comply with the provisions of Paragraph 12 below (FINAL  
7 DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a location and  
9 in a secure manner ensuring that access is limited to the persons authorized under this Order.

10 8.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless otherwise  
11 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
12 disclose any information or item designated “CONFIDENTIAL” only to:

13 (a) The Receiving Party’s Outside Counsel and such Outside Counsel’s  
14 immediate paralegals and staff, and any copying or clerical litigation support services working at  
15 the direction of such counsel, paralegals, and staff, to whom it is reasonably necessary to disclose  
16 the information for these Actions;

17 (b) the former and current officers, directors, and employees (including  
18 In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for these  
19 Actions and who have signed the “General Acknowledgment of Confidentiality and Agreement to  
20 Be Bound by Protective Order” that is attached hereto as Exhibit A-1;

21 (c) Any outside expert or consultant retained by the Receiving Party to  
22 assist in these actions, provided that disclosure is only to the extent necessary to perform such  
23 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions of  
24 the Protective Order by signing a copy of Exhibit A-2; (b) such expert or consultant is not a  
25 current officer, director, or employee of a Party or any entity on the Restricted Competitors List,  
26 nor anticipated at the time of retention to become an officer, director or employee of a Party or  
27 any entity on the Restricted Competitors List; (c) such expert or consultant is not involved in  
28 competitive decision-making on behalf of a Party or any entity on the Restricted Competitors

1 List; and (d) such expert or consultant otherwise complies with the requirements set forth in  
2 Paragraphs 8.6 and 8.7 below;

3 (d) any insurer or indemnitor of any defendant in these actions;  
4 (e) the Court and any mediators or arbitrators and their respective  
5 personnel;

6 (f) court reporters, their staffs, and professional vendors to whom  
7 disclosure is reasonably necessary for these Actions and who have signed the “General  
8 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order” that is  
9 attached hereto as Exhibit A-1;

10 (g) mock jurors, subject to the provisions of Paragraph 8.5 below; and  
11 (h) the author(s) and recipient(s) of the “CONFIDENTIAL” Material  
12 who have signed the “General Acknowledgment of Confidentiality and Agreement to Be Bound  
13 by Protective Order” that is attached hereto as Exhibit A-1;

14 (i) any other person with the prior written consent of the Producing  
15 Party.

16 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
17 ONLY” Information or Items: Unless otherwise ordered by the Court or permitted in writing by  
18 the Designating Party, a Receiving Party may disclose any information or item designated  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

20 (a) In-House Counsel of the Receiving Party to whom disclosure is  
21 reasonably necessary for these Actions and who have signed the “General Acknowledgment of  
22 Confidentiality and Agreement to Be Bound by Protective Order” that is attached hereto as  
23 Exhibit A-1;

24 (b) The Receiving Party’s Outside Counsel of record in these Actions  
25 and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation  
26 support services working at the direction of such counsel, paralegals, and staff, to whom it is  
27 reasonably necessary to disclose the information for these Actions;

1 (c) Any outside expert or consultant retained by the Receiving Party to  
2 assist in these actions, provided that disclosure is only to the extent necessary to perform such  
3 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions of  
4 the Protective Order by signing a copy of Exhibit A-2; (b) such expert or consultant is not  
5 currently, and within the last two years prior to the date of retention as an Expert in these  
6 proceedings, was not an officer, director, or employee of a Party or any entity on the Restricted  
7 Competitors List, nor anticipated at the time of retention to become an officer, director or  
8 employee of a Party or any entity on the Restricted Competitors List; (c) such expert or consultant  
9 is not involved in competitive decision-making on behalf of a Party or any entity on the  
10 Restricted Competitors List; and (d) such expert or consultant otherwise complies with the  
11 requirements set forth in Paragraphs 8.6 and 8.7 below;

12 (d) the Court, and any mediators or arbitrators, and their respective  
13 personnel;

14 (e) court reporters, their staffs, and professional vendors to whom  
15 disclosure is reasonably necessary for these Actions and who have signed the “General  
16 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order” that is  
17 attached hereto as Exhibit A-1; and

18 (f) the author(s) and recipient(s) of the “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY” Material who have signed the “General Acknowledgment of  
20 Confidentiality and Agreement to Be Bound by Protective Order” that is attached hereto as  
21 Exhibit A-1.

22 8.4 General Procedure for Disclosure of “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:

24 (a) Before any information or item designated “CONFIDENTIAL,” or  
25 substance or summary thereof, shall be disclosed to the persons or entities identified in sub-  
26 paragraphs (b), (d), (f), (g), (h), and (i) of paragraph 8.2 above, the Parties are hereby ordered to  
27 tender a copy of this Stipulation and Protective Order to each such person and witness in order  
28 that each such entity or person to whom such disclosure of “CONFIDENTIAL” information or

1 item is made shall be on notice and fully informed that the existence and substance of the  
2 Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her.  
3 Before any information or item designated “CONFIDENTIAL,” or substance or summary  
4 thereof, is disclosed to any such person, each such person shall sign and abide by the terms of the  
5 General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order,  
6 attached hereto as Exhibit A-1, or, if the person to whom the “CONFIDENTIAL” information or  
7 item is to be disclosed is an Expert (as defined herein), that person shall sign and abide by the  
8 terms of the Expert/Consultant Acknowledgment of Confidentiality and Agreement to Be Bound  
9 by Protective Order, attached hereto as Exhibit A-2, and shall otherwise comply with the  
10 requirements of Paragraph 8.6. The person to whom the “CONFIDENTIAL” information or item  
11 is disclosed shall not give, show, or otherwise divulge any of the “CONFIDENTIAL” information  
12 or item to any entity or person except as specifically provided for by this Stipulation and  
13 Protective Order.

14 (b) Before any information or item designated “HIGHLY  
15 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or substance or summary thereof, shall be  
16 disclosed to the persons or entities identified in sub-paragraphs (b), (c), (e) and (f) of paragraph  
17 8.3 above, the Parties are hereby ordered to tender a copy of this Stipulation and Protective Order  
18 to each such person and witness in order that each such entity or person to whom such disclosure  
19 of “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information or item is made  
20 shall be on notice and fully informed that the existence and substance of the Stipulation and  
21 Protective Order is, and is intended to be, equally binding upon it, him or her. Before any  
22 information or item designated “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or  
23 substance or summary thereof, is disclosed to any such person, each such person shall sign and  
24 abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be  
25 Bound by Protective Order, attached hereto as Exhibit A-1, or, if the person to whom the  
26 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information or item is to be  
27 disclosed is an Expert, that person shall sign and abide by the terms of the Expert/Consultant  
28 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order, attached



1 hereto as Exhibit A-2, and shall otherwise comply with the requirements of Paragraph 8.6. The  
2 person to whom the “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information  
3 or item is disclosed shall not give, show, or otherwise divulge any of the “HIGHLY  
4 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information to any entity or person except as  
5 specifically provided for by this Stipulation and Protective Order.

6           8.5     Procedure for Disclosure of “CONFIDENTIAL” Information or Items to  
7 Mock Jurors: A Receiving Party may disclose to mock jurors materials prepared by its outside  
8 counsel that are derived from information or items designated “CONFIDENTIAL” (but not  
9 materials that are derived from information or items designated “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY”), so long as the derivative materials do not include the as-  
11 produced information itself. Before providing such material to a mock juror, the Receiving Party  
12 must, in compliance with Paragraph 8.4(a) above, tender a copy of this Stipulation and Protective  
13 Order to each mock juror in order that each person to whom such disclosure is made shall be on  
14 notice and fully informed that the existence and substance of the Stipulation and Protective Order  
15 is, and is intended to be, equally binding upon it, him or her, as well as upon the Parties and their  
16 counsel. Before any materials prepared by outside counsel that are derived from information or  
17 items designated “CONFIDENTIAL” are disclosed to a mock juror, each such person shall sign  
18 and abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be  
19 Bound by Protective Order, attached hereto as Exhibit A-1. The mock juror to whom the material  
20 is disclosed shall not give, show, or otherwise divulge any of the information contained therein to  
21 any entity or person except as specifically provided for by this Stipulation and Protective Order.

22           8.6     Procedure for Disclosure of “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts: Before any  
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”  
25 information, or substance or summary thereof, shall be disclosed to an Expert, the Expert shall  
26 sign and abide by the terms of the “Expert/Consultant Acknowledgment of Confidentiality and  
27 Agreement to Be Bound by Protective Order,” attached as Exhibit A-2, confirming that he or she  
28 is not presently employed by, and within the two years prior to the date of retention as an Expert

1 in these proceedings, has not been employed by, and has not provided any form of consulting  
2 services to, any of the entities identified on the Restricted Competitors List, and that he or she  
3 will not accept employment with, consult with, or provide services to, any of the entities  
4 identified on the Restricted Competitors List during the pendency of the Expert's retention in  
5 these proceedings. An Expert may make an application to the Court with advance notice and  
6 based upon a showing of good cause for modification of, or relief from, the obligations of  
7 Expert/Consultant Acknowledgment of Confidentiality and Agreement to Be Bound by Protective  
8 Order (Exhibit A-2) prior to the review of any "CONFIDENTIAL" or "HIGHLY  
9 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information.

10 8.7 The Party's Counsel who discloses "CONFIDENTIAL" or "HIGHLY  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material shall be responsible for assuring  
12 compliance with the terms of this Stipulation and Protective Order with respect to persons to  
13 whom such Protected Material is disclosed and shall obtain and retain the originals of the  
14 "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order"  
15 and "Expert/Consultant Acknowledgment of Confidentiality and Agreement to Be Bound by  
16 Protective Order" executed by qualified recipients of Protected Material (if such execution was  
17 required by terms of this Stipulation and Protective Order).

18 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
19 **IN OTHER LITIGATION**

20 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
21 would compel disclosure of any information or items designated in these actions as  
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the  
23 Receiving Party must so notify the Designating Party in writing (by email, if possible)  
24 immediately and in no event more than three court days after receiving the subpoena or order.  
25 Such notification must include a copy of the subpoena or Court order.

26 The Receiving Party must also immediately inform in writing the party who caused the  
27 subpoena or order to issue in the other litigation that some or all of the material covered by the  
28 subpoena or order is the subject of this Stipulation and Protective Order. In addition, the

1 Receiving Party must deliver a copy of this Stipulation and Protective Order promptly to the party  
2 in the other action that caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of  
4 this Stipulation and Protective Order and to afford the Designating Party in this case an  
5 opportunity to try to protect its confidentiality interests in the court from which the subpoena or  
6 order issued. The Designating Party shall bear the burden and expense of seeking protection in  
7 that court of its Protected Material. Nothing in these provisions should be construed as  
8 authorizing or encouraging a Receiving Party in these actions to disobey a lawful directive from  
9 another court.

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
12 Material to any person or in any circumstance not authorized under this Stipulation and Protective  
13 Order, the Receiving Party must immediately: (a) notify the Designating Party in writing of the  
14 unauthorized disclosure (by email, if possible) immediately and in no event more than three court  
15 days after learning of the disclosure; (b) use its best efforts to retrieve all copies of the Protected  
16 Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the  
17 terms of this Order; and (d) request such person or persons to execute the “General  
18 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order”  
19 (Exhibit A-1). Unauthorized or inadvertent disclosure does not change the status of Discovery  
20 Material or waive the right to maintain the disclosed document or information as Protected.

21 **11. FILING PROTECTED MATERIAL**

22 Without written permission from the Designating Party or a Court order secured after  
23 appropriate notice to all interested persons, a Party may not file any Protected Material in the  
24 public record in these actions. A Party that seeks to file under seal any Protected Material must  
25 comply with Civil Local Rule 79-5. A Party who seeks to introduce Protected Material at a  
26 hearing, pretrial or other proceeding shall advise the Court at the time of introduction that the  
27 information sought to be introduced is protected. If the Party who designated the information as  
28 Protected Material requests the protection be continued, the Court will review the information to

1 determine if the information is entitled to continued protection. Prior to disclosure of Protected  
2 Material at a hearing, the Producing Party may seek further protections against public disclosure  
3 from the Court.

4 **12. FINAL DISPOSITION**

5 Unless otherwise ordered or agreed in writing by the Producing Party, within 90 days after  
6 the final termination of these Actions and upon receiving a written request to do so from the  
7 Producing Party or Designating Party, each Receiving Party must destroy all Protected Material,  
8 return it to the Producing Party, or make the Protected Material available for pick-up by the  
9 Producing Party. As used in this order, “final termination” shall be deemed to be the later of  
10 (1) dismissal of all claims and defenses in these Actions, with or without prejudice, and (2) final  
11 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
12 reviews of these Actions, including the time limits for filing any motions or applications for  
13 extension of time pursuant to applicable laws. As used in this paragraph, “all Protected Material”  
14 includes all copies, abstracts, compilations, summaries or any other form of reproducing or  
15 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed  
16 upon request by the Producing Party, the Receiving Party must submit a written certification to  
17 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 90-day  
18 deadline that represents that all Protected Material that was returned or destroyed and affirms that  
19 the Receiving Party has not retained any copies, abstracts, compilations, summaries, or other  
20 forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
21 Counsel are entitled to retain copies of all pleadings, motion papers, transcripts, legal memoranda,  
22 correspondence, and attorney work product (but not document productions), even if such  
23 materials contain Protected Material, for archival purposes. Any such copies of pleadings,  
24 motion papers, transcripts, legal memoranda, correspondence, and attorney work product that  
25 contain or constitute Protected Material remain subject to this Stipulation and Protective Order as  
26 set forth in Paragraph 4 (DURATION), above.

1           **13.     DISCOVERY FROM EXPERTS OR CONSULTANTS**

2           (a)     Testifying experts shall not be subject to discovery with respect to any  
3 draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports  
4 developed and drafted by the testifying expert and/or his or her staff are also exempt from  
5 discovery.

6           (b)     Discovery of materials provided to testifying experts shall be limited to  
7 those materials, facts, consulting expert opinions, and other matters actually relied upon by the  
8 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in  
9 this case. No discovery can be taken from any non-testifying expert except to the extent that such  
10 non-testifying expert has provided information, opinions, or other materials to a testifying expert  
11 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition  
12 testimony or any opinion in this case.

13          (c)     No conversations or communications between counsel and any testifying or  
14 consulting expert will be subject to discovery unless the conversations or communications are  
15 relied upon by such experts in formulating opinions that are presented in reports or trial or  
16 deposition testimony in this case.

17          (d)     Materials, communications, and other information exempt from discovery  
18 under the foregoing Paragraphs 13 (a)–(c) shall be treated as attorney-work product for the  
19 purposes of this litigation and Order.

20           **14.     MISCELLANEOUS**

21          14.1    Right to Further Relief: Nothing in this Order abridges the right of any  
22 person to seek its modification by the Court in the future.

23          14.2    Right to Assert Other Objections: By stipulating to the entry of this  
24 Protective Order, no Party waives any right it would otherwise have to object to disclosing or  
25 producing any information or item on any ground not addressed in this Stipulation and Protective  
26 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
27 the material covered by this Stipulation and Protective Order.  
28

1                   14.3 Computation of Time: The computation of any period of time prescribed  
2 or allowed by this Order shall be governed by the provisions for computing time set forth in  
3 Federal Rules of Civil Procedure 6.

4                   14.4 Fact of Designation Not Admissible: The fact of designation, or failure to  
5 designate, Disclosure or Discovery Materials as CONFIDENTIAL or HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY pursuant to this Stipulation and Protective  
7 Order shall not be admissible for any purpose in a trial on the merits or at any other proceeding  
8 other than at a proceeding arising from or related to this Stipulation and Protective Order.

9                   14.5 Successors: This Order shall be binding upon the Parties hereto, their  
10 attorneys, and their successors, executors, heirs, assigns, and employees.

11                   14.6 The provisions of this Stipulation and Protective Order do not apply to any  
12 trial proceedings in these Actions. The Parties will separately request the Court to enter an Order  
13 governing the handling of such materials at trial.

14                   14.7 The Court shall retain jurisdiction to enforce the terms of this Stipulation  
15 and Protective Order.

16                   14.8 Nothing in this Stipulation and Order shall alter the requirements for and  
17 scope of expert discovery in accordance with Federal Rule of Civil Procedure 26, local rules, and  
18 case law.

19 ///

20 ///

21 ///

22

23

24

25

26

27

28

1                   14.9 The procedures set forth in this Stipulation and Order shall apply to every  
2 action that is subject to this proceeding, whether filed in or transferred to this Court for so long as  
3 such actions are pending.

4 STIPULATED AND AGREED TO BY:

5 Dated: April 22, 2013

**MORRISON & FOERSTER LLP**  
*Attorneys for Defendant*  
APPLE INC.

8 By: /s/ Penelope A. Preovolos  
Penelope A. Preovolos

9 Penelope A. Preovolos  
10 PPreovolos@mofocom  
11 Tiffany Cheung, Esq.  
12 TCheung@mofocom  
13 Suzanna P. Brickman, Esq.  
14 SBrickman@mofocom  
15 San Francisco, California 94105  
16 Telephone: 415.268.7000  
17 Facsimile: 415.268.7522

15 Dated: April 22, 2013

**BERMAN DEVALERIO**  
*Liaison Counsel for Plaintiffs*

17 By: /s/ Anthony D. Phillips  
Anthony D. Phillips

18 Joseph J. Tabacco, Jr.  
19 jtabacco@bermandevalerio.com  
20 Christopher T. Heffelfinger  
21 cheffelfinger@bermandevalerio.com  
22 Anthony D. Phillips  
23 aPhillips@bermandevalerio.com  
24 One California St., Suite 900  
25 San Francisco, California 94111  
26 Telephone: 415.433.3200  
27 Facsimile: 415.433.6382

24 Robert J. Axelrod, Esq.  
25 rjAxelrod@pomlaw.com  
26 **POMERANTZ GROSSMAN HUFFORD**  
27 **DAHLSTROM & GROSS LLP**  
28 600 Third Avenue  
New York, New York 10016  
Telephone: 212.661.1100  
Facsimile: 212.661.1373

1 Judd B. Grossman, Esq. (*Pro Hac Vice*)  
jgrossman@grossmanllp.com  
2 **GROSSMAN LLP**  
590 Madison Avenue, 18th Floor  
3 New York, New York 10022  
Telephone: 646.770.7445  
4 Facsimile: 212.521.4044

5 Patrick J. Perotti (*Pro Hac Vice*)  
Michael R. Rudick (*Pro Hac Vice*)  
6 **DWORKEN & BERNSTEIN CO., L.P.A.**  
60 South Park Place  
7 Painesville, Ohio 44077  
Telephone: 440.352.3391  
8 Facsimile: 440.352.3469

9 John A. Kithas (SBN 64284)  
Chris D. Land (SBN 238261)  
10 **LAW OFFICES OF JOHN A. KITHAS**  
One Embarcadero Center, Suite 1020  
11 San Francisco, California 94111  
Telephone: 415.788.8100  
12 Facsimile: 415.788.8001

13  
14 **E-Filing Attestation**

15 I, Anthony D. Phillips, am the ECF User whose ID and password are being used to file  
16 this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Penelope A.  
17 Prevolos has concurred in this filing.

18 /s/ Anthony D. Phillips  
19 Anthony D. Phillips

20  
21  
22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23  
24 Date: April 23, 2013

Lucy H. Koh  
25 Hon. Lucy H. Koh  
United States District Judge  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A-1**

**GENERAL ACKNOWLEDGMENT OF CONFIDENTIALITY AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulation and Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_, 201\_\_ in the consolidated case of *Herskowitz v. Apple Inc.*, Case No. 5:12-CV-02131-LHK, and *Juel v. Apple Inc.*, Case No. 5:12-CV-03124-RMW, pending in the Northern District of California.

I agree to comply with and be bound by all the terms of the Stipulation and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulation and Protective Order to any person or entity except in strict compliance with the provisions of the Stipulation and Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of the Stipulation and Protective Order even if such enforcement proceedings occur after termination of this action.

Executed on at \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_

Name:

Address:

1 EXHIBIT A-2

2 EXPERT/CONSULTANT ACKNOWLEDGMENT OF CONFIDENTIALITY AND  
3 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

4 I, \_\_\_\_\_, declare:

5 1. I reside at \_\_\_\_\_.

6 2. I have read the Stipulated Protective Order (“Order”) in the consolidated case of  
7 *Herskowitz v. Apple Inc.*, Case No. 5:12-CV-02131-LHK, and *Juel v. Apple Inc.*, Case No. 5:12-  
8 CV-03124-RMW, pending in the Northern District of California.

9 3. I am familiar with the contents of the Order and agree to comply and be bound by  
10 the provisions thereof.

11 4. I will not divulge to persons other than those specifically authorized by the Order,  
12 and will not copy or use except solely for the purposes of this litigation and only as expressly  
13 permitted by the terms of the Order, any CONFIDENTIAL or HIGHLY CONFIDENTIAL  
14 INFORMATION obtained pursuant to the Order.

15 5. By signing below, I hereby agree to submit to the jurisdiction of the United States  
16 District Court for the Northern District of California for resolving any and all disputes regarding  
17 the Order and this Acknowledgment of Confidentiality. I further agree that any and all disputes  
18 regarding the Order and this Acknowledgment of Confidentiality shall be governed by the laws of  
19 the State of California, and that the district court for the Northern District of California shall be  
20 the sole and exclusive venue for resolving any disputes arising from the Order and this  
21 Acknowledgment of Confidentiality.

22 6. By signing below, I hereby confirm that I am not presently employed by, and  
23 within the two years prior to the date of retention as an Expert in these proceedings, have not been  
24 employed by, and have not provided any form of consulting services to, any of the entities  
25 identified on the Restricted Competitors List, and further agree that: (1) during the pendency of  
26 my retention as an Expert in this case, I shall not accept employment with, consult with, or  
27 provide services to any of the entities identified on the Restricted Competitors List; and (2) that I  
28 shall not at any time, either during the pendency of these proceedings or after conclusion of these

1 proceedings, use or divulge any of the CONFIDENTIAL or HIGHLY CONFIDENTIAL  
2 INFORMATION made available to me pursuant to the Order.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Executed on at \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_

Name:

Address: