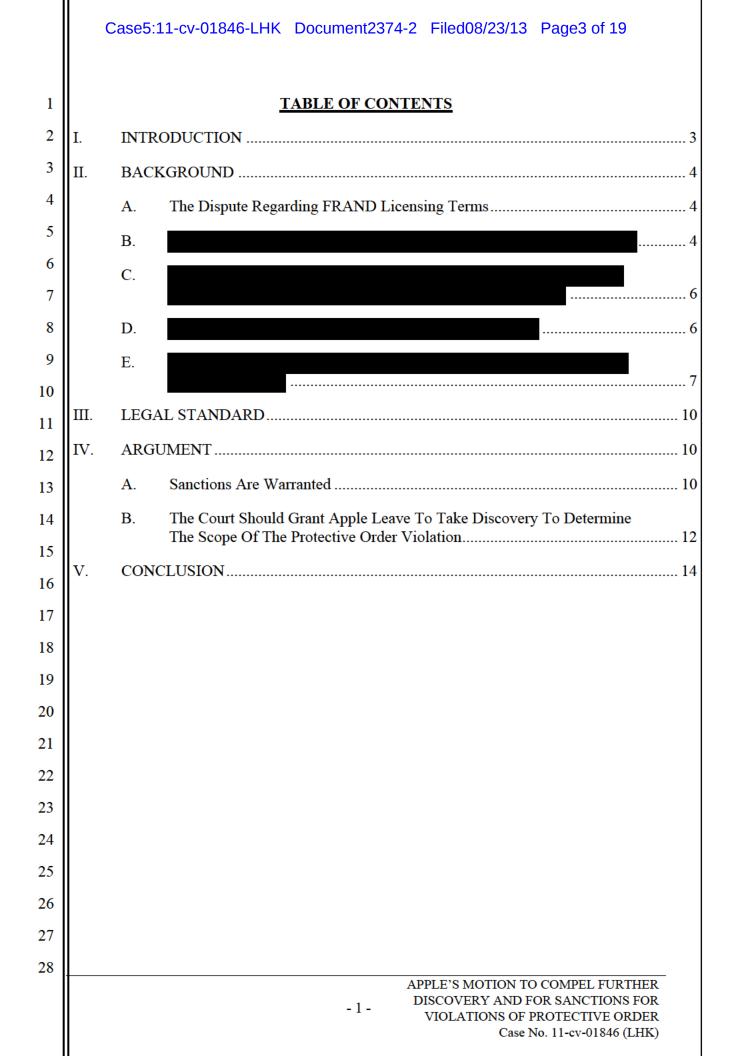
EXHIBIT A

	Case5:11-cv-01846-LHK Document	2374-2 Filed08/23/13 Page2 of 19
1 2 3 4 5 6 7 8 9 10	HAROLD J. MCELHINNY (SBN 66781) hmcelhinny@mofo.com MICHAEL A. JACOBS (SBN 111664) mjacobs@mofo.com RACHEL KREVANS (SBN 116421) rkrevans@mofo.com ERIC J. OLSON (SBN 175815) ejolson@mofo.com MORRISON & FOERSTER LLP 425 Market Street San Francisco, California 94105-2482 Telephone: (415) 268-7000 Facsimile: (415) 268-7522 Attorneys for Plaintiff and Counterclaim-Defendant APPLE INC.	 WILLIAM F. LEE (pro hac vice) william.lee@wilmerhale.com WILMER CUTLER PICKERING HALE AND DORR LLP 60 State Street Boston, Massachusetts 02109 Telephone: (617) 526-6000 Facsimile: (617) 526-5000 MARK D. SELWYN (SBN 244180) mark.selwyn@wilmerhale.com WILMER CUTLER PICKERING HALE AND DORR LLP 950 Page Mill Road Palo Alto, California 94304 Telephone: (650) 858-6000 Facsimile: (650) 858-6100
11		
12	NORTHERN DISTRIC	
13	SAN JOSE 1	DIVISION
14	APPLE INC., a California corporation,	Case No. 11-cv-01846-LHK (PSG)
15	Plaintiff,	
	v.	PUBLIC VERSION
16 17	SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG	APPLE INC.'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF
18	ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG	PROTECTIVE ORDER
19	York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,	PROTECTIVE ORDERDate :October 1, 2013 Time :10:00 a.m.
19 20	York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA,	PROTECTIVE ORDERDate: October 1, 2013
19 20 21	York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,	PROTECTIVE ORDERDate :October 1, 2013 Time :10:00 a.m. Place :Courtroom 5, 4 th Floor
19 20 21 22	York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,	PROTECTIVE ORDERDate :October 1, 2013 Time :10:00 a.m. Place :Courtroom 5, 4 th Floor
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 19 20 21 22 23 24 	York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,	PROTECTIVE ORDERDate :October 1, 2013 Time :10:00 a.m. Place :Courtroom 5, 4 th Floor
 19 20 21 22 23 24 25 	York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,	PROTECTIVE ORDERDate :October 1, 2013 Time :10:00 a.m. Place :Courtroom 5, 4 th Floor
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NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

3 PLEASE TAKE NOTICE that on October 1, 2013 at 10 a.m., or as soon as the matter may be heard by the Honorable Paul S. Grewal in Courtroom 5, United States 4 5 District Court for the Northern District of California, 280 South 1st Street, San Jose, California 85113, Apple Inc. ("Apple") shall and hereby does move pursuant to Federal 6 7 Rule of Civil Procedure 37(b)(2) for sanctions for Samsung's violations of the 8 Agreed Upon Protective Order Regarding Disclosure and Use of Discovery Materials 9 entered by the Court on January 30, 2012 ("Protective Order"), for further discovery to 10 determine the full scope of the violations that Samsung has committed, and for remedial 11 action arising from these violations once their full scope is known.

This motion is based on this notice of motion and supporting memorandum of points and authorities; the accompanying declaration of Joseph Mueller; and such other written and oral argument as may be presented at or before the time this motion is taken under submission by the Court.

RELIEF REQUESTED

Pursuant to Federal Rule of Civil Procedure 37(b)(2), Apple seeks (1) an order
sanctioning Samsung for violating the Protective Order

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20	(2) an order requiring Samsung
21	to provide the discovery described herein; and (3) appropriate remedial action, once the
22	full scope of Samsung's Protective Order violations are known.
23	STATEMENT OF ISSUES TO BE DECIDED
24	1. Whether Samsung should be sanctioned
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	- 1 - APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF PROTECTIVE ORDER
	Case No. 11-cv-01846 (LHK)

1 2 3 2. Whether Samsung should be ordered to provide further discovery to permit 4 Apple to learn of the full scope of the Protective Order violations; and 5 3. Whether Samsung should be required to take further remedial action and sanctioned, the precise remedies to be determined once the full scope of the Protective 6 7 Order violations is known. 8 Dated: August 23, 2013 /s/ William F. Lee 9 William F. Lee (admitted *pro hac vice*) (william.lee@wilmerhale.com) 10 WILMER CUTLER PICKERING 11 HALE AND DORR LLP 60 State Street 12 Boston, Massachusetts 02109 Telephone: (617) 526-6000 13 Facsimile: (617) 526-5000 14 Mark D. Selwyn (SBN 244180) 15 (mark.selwyn@wilmerhale.com) WILMER CUTLER PICKERING 16 HALE AND DORR LLP 950 Page Mill Road 17 Palo Alto, California 94304 Telephone: (650) 858-6000 18 Facsimile: (650) 858-6100 19 Harold J. McElhinny (SBN 66781) 20 (HMcElhinny@mofo.com) Michael A. Jacobs (SBN 111664) 21 (MJacobs@mofo.com) 22 Rachel Krevans (SBN 116421) rkrevans@mofo.com 23 **MORRISON & FOERSTER LLP** 425 Market Street 24 San Francisco, California 94105 Telephone: (415) 268-7000 25 Facsimile: (415) 268-7522 26 Attorneys for Plaintiff and 27 Counterclaim-Defendant Apple Inc. 28 APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR - 2 -VIOLATIONS OF PROTECTIVE ORDER Case No. 11-cv-01846 (LHK)

	Case5:11-cv-01846-LHK Document2374-2 Filed08/23/13 Page6 of 19
1	MEMORANDUM OF POINTS AND AUTHORITIES I. INTRODUCTION
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12	Some serious form of sanction is therefore warranted, with the precise sanctions
13	dependent on the full facts, once those facts are known.
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18 19	Apple also requests that the Court grant leave for Apple to take the discovery described herein so that Apple
20	and the Court may determine the full scope of violations that Samsung has committed, and
20	then the appropriate sanctions, including remedial actions tailored to those violations.
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	- 3 - APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF PROTECTIVE ORDER Case No. 11-cv-01846 (LHK)

II. BACKGROUND

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The Dispute Regarding FRAND Licensing Terms

3 In its Counterclaims filed on July 30, 2011, Samsung alleged that Apple infringed 4 seven patents that Samsung declared to the European Telecommunications Standards 5 Institute ("ETSI") to be essential to interoperability with UMTS wireless networks (collectively, "Samsung FRAND Patents"). (Samsung's Answer, Affirmative Defenses, 6 7 and Counterclaims to Apple's Amended Complaint (Docket No. 80), at pp. 45-52.) 8 Subsequently, Samsung dismissed four of these patents, without prejudice (see Docket No. 9 1880), and the Court granted Apple summary judgment of non-infringement on a fifth 10 (Docket No. 1156). Samsung proceeded to trial on two of these declared-essential patents, 11 U.S. Patent Nos. 7,675,941 ("'941 patent") and 7,447,516 ("'516 patent"). Both were 12 found not infringed by the jury. (Docket No. 1930.) In post-trial motions, the Court 13 upheld the jury's finding of non-infringement, and also granted Apple's JMOL motion of 14 invalidity on the '941 patent. (Docket Nos. 2219, 2220.)

15 Samsung concedes that it is obligated to license the Samsung FRAND Patents to Apple on fair, reasonable, and non-discriminatory ("FRAND") terms. Apple and Samsung 16 17 sharply disagree, however, on FRAND terms for the Samsung FRAND Patents. Thus, a 18 central disputed issue in this and the ongoing 12-cv-00630 case has been whether Samsung 19 has failed to comply with its obligation to license the Samsung FRAND Patents on 20 FRAND terms. In this case, Apple asserted claims for breach of contract, antitrust 21 violations, and unfair competition arising out of Samsung's failure to abide by its FRAND 22 obligations. (Apple's Counterclaims in Reply (Docket No. 124), ¶ 163-68; 176-93.) At trial, the jury, having determined the patents not infringed, found against Apple on its 23 24 claims for breach of contract and antitrust violations. (Docket No. 1931.)

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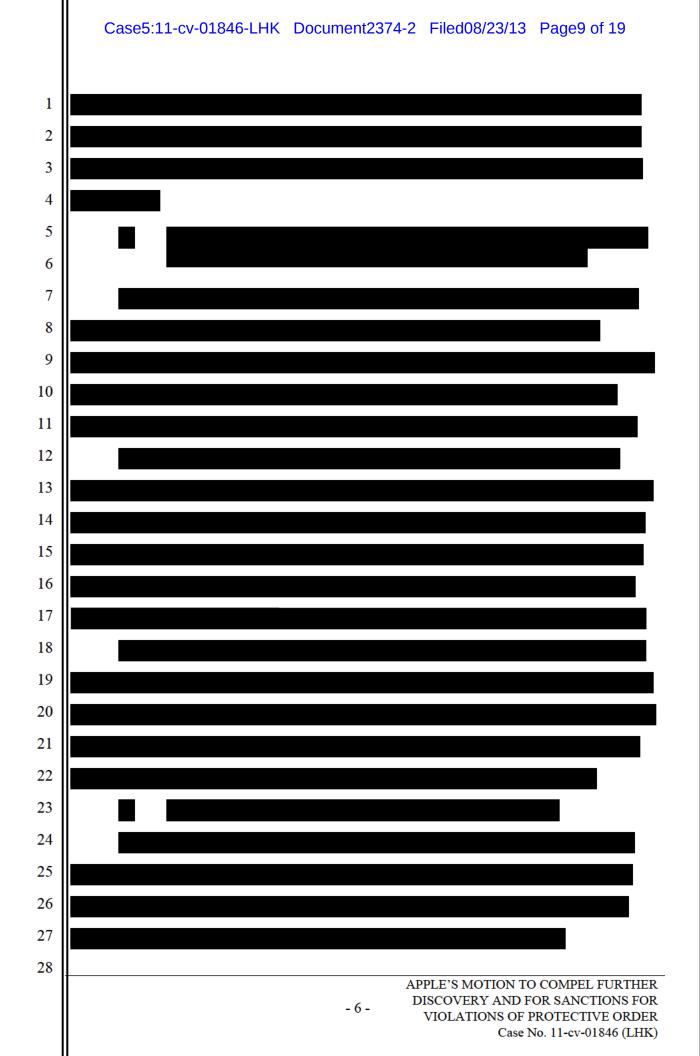
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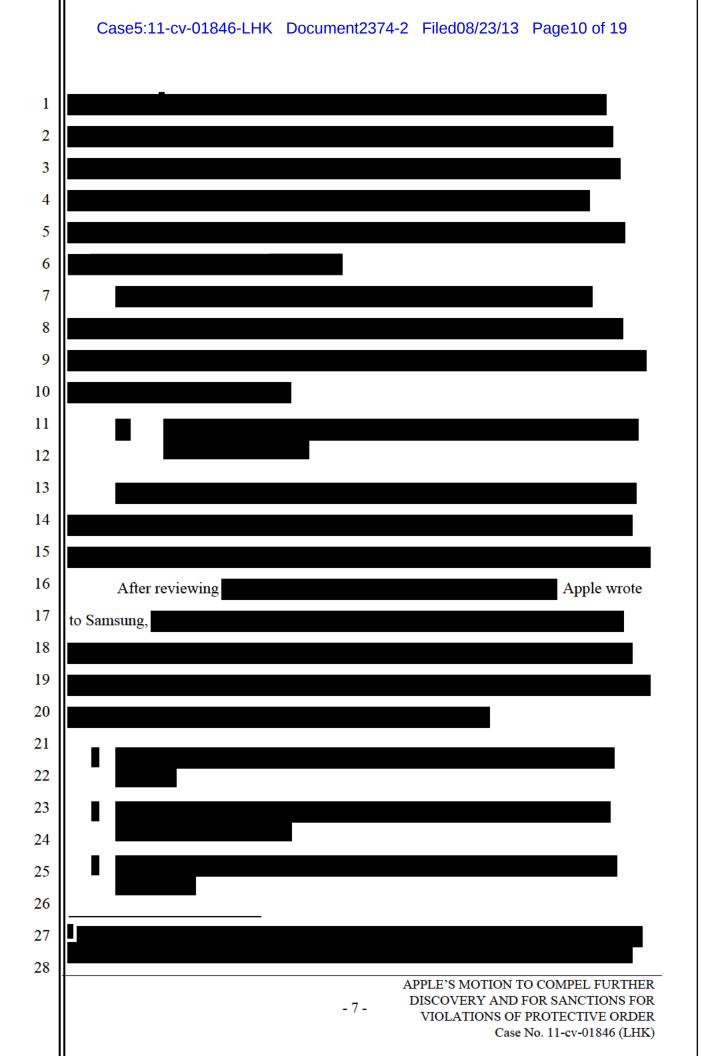
APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF PROTECTIVE ORDER Case No. 11-cv-01846 (LHK)

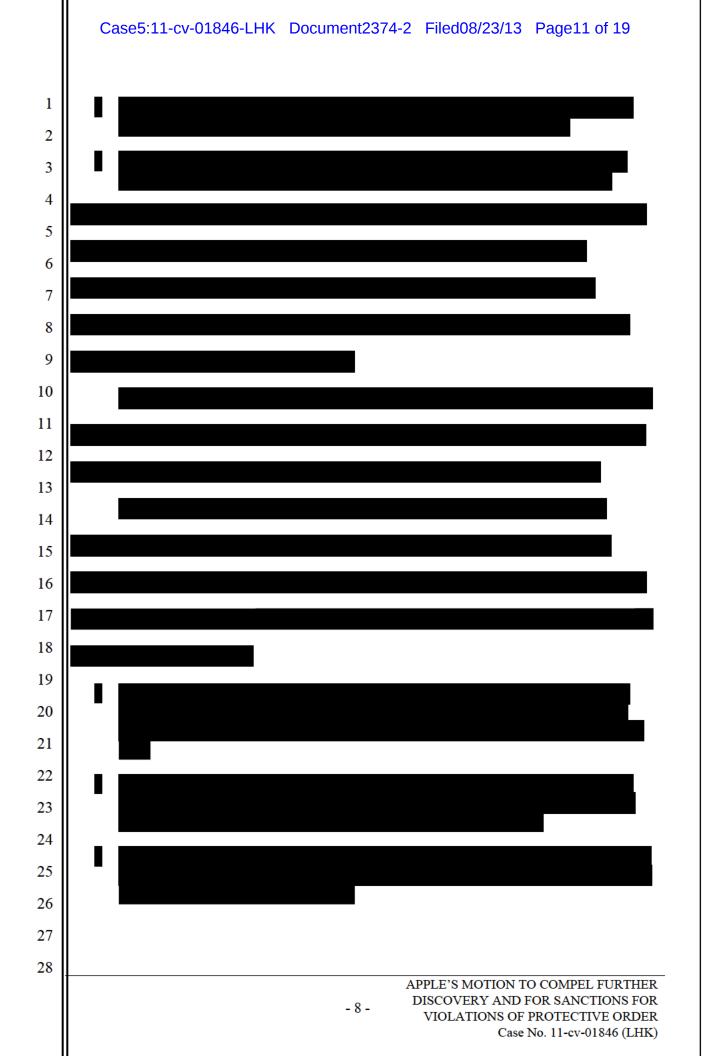
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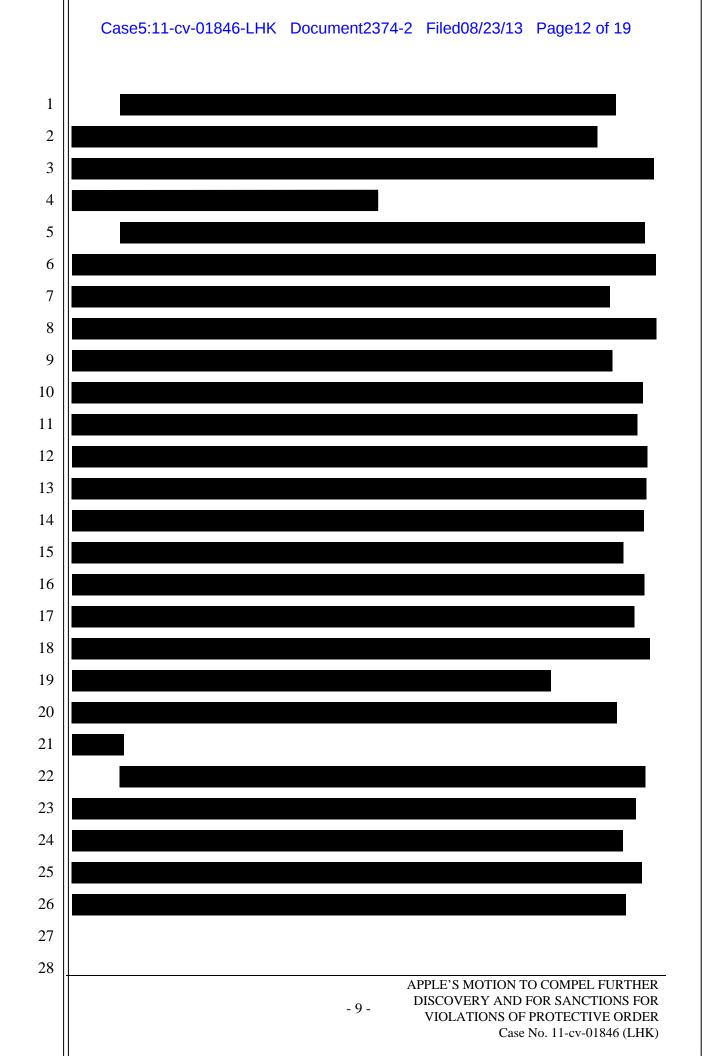
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1	The parties engaged in extensive fact discovery from August 3, 2011, to March 8,
2	2012, including discovery relevant to the parties' dispute regarding licensing of the
3	Samsung FRAND Patents.
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28	- 5 - APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF PROTECTIVE ORDER Case No. 11-cv-01846 (LHK)









III. LEGAL STANDARD

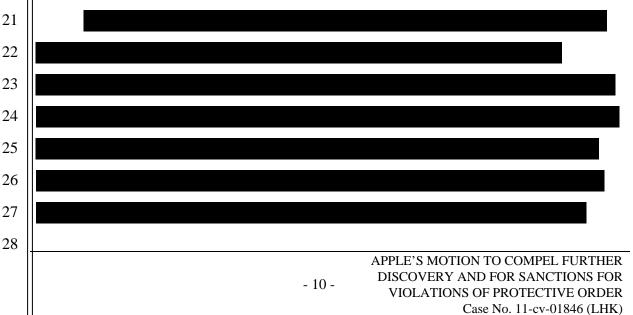
4 Courts have the inherent authority to sanction a party for discovery misconduct 5 even absent a prior court order. See, e.g., Unigard Security Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d. 363, 368 (9th Cir. 1992). Where a party violates a discovery order, 6 7 however, Federal Rule of Civil Procedure 37 authorizes a court to impose a broad variety 8 of sanctions, including directing that "designated facts be taken as established for purposes 9 of the action," dismissing an action in whole or in part, "treating as contempt of court the 10 failure to obey any order," and awarding fees or expenses. See Fed. R. Civ. P. 37(b)(2) 11 (authorizing sanctions for failing to obey an order, "including an order under Rule 26(f)"); 12 see also U.S. v. Nat'l Med. Enters., Inc., 792 F.2d 906, 910 (9th Cir. 1986) ("Rule 37(b) 13 ... authorizes the district court to impose a wide range of sanctions if a party fails to 14 comply with a discovery order"); Life Techs. Corp. v. Biosearch Techs., Inc., C-12-00852, 15 2012 WL 1600393 (N.D. Cal. May 7, 2012) ("Rule 37 of the Federal Rules of Civil 16 Procedure grants courts the authority to impose sanctions where a party has violated a 17 discovery order, including a protective order issued pursuant to Rule 26(f)") (citations 18 omitted).

IV. ARGUMENT

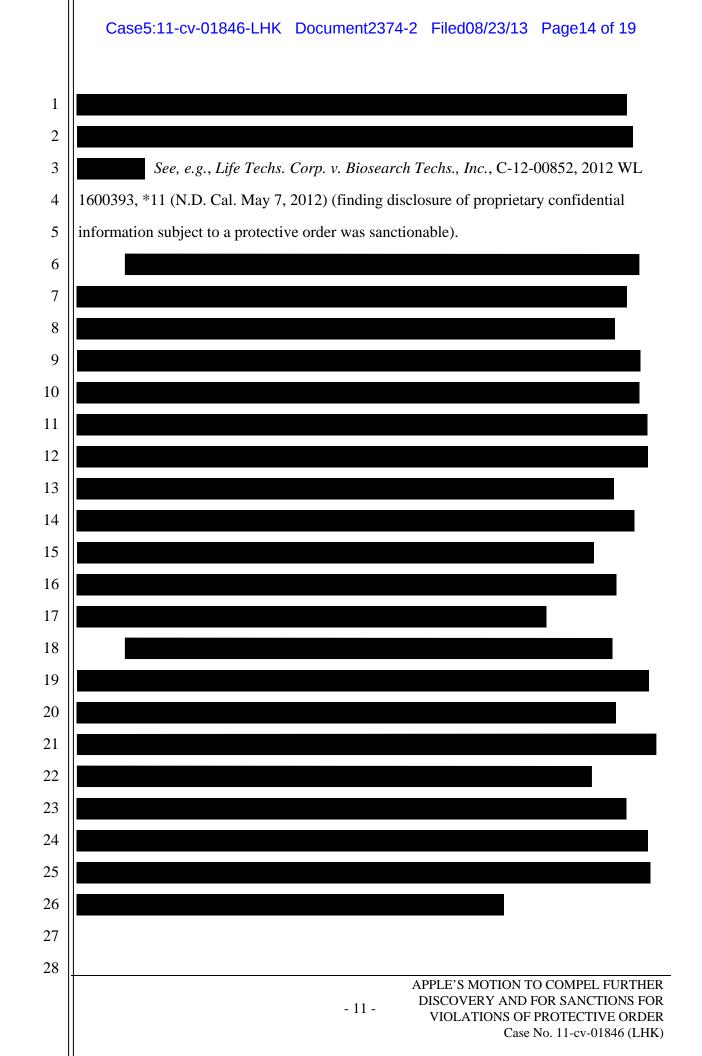
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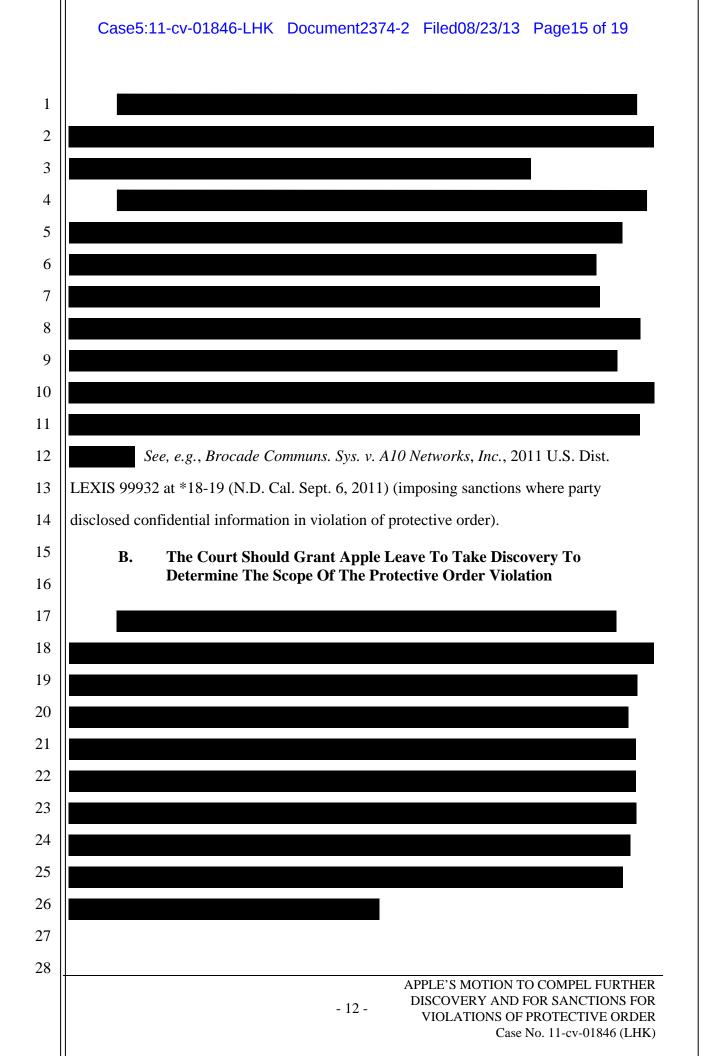
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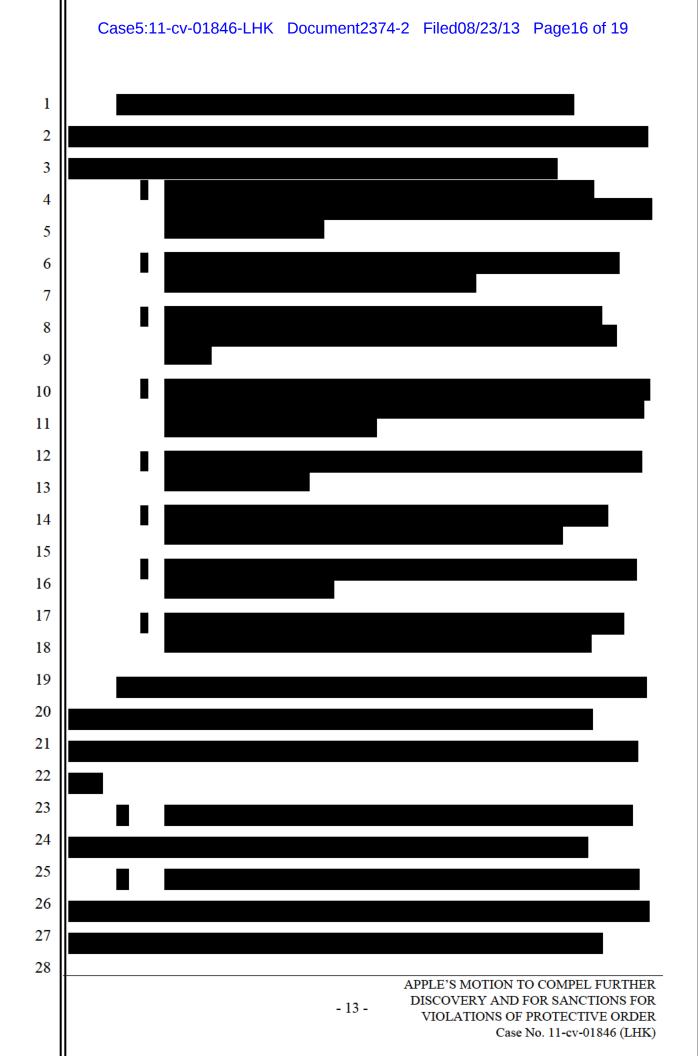
A. Sanctions Are Warranted

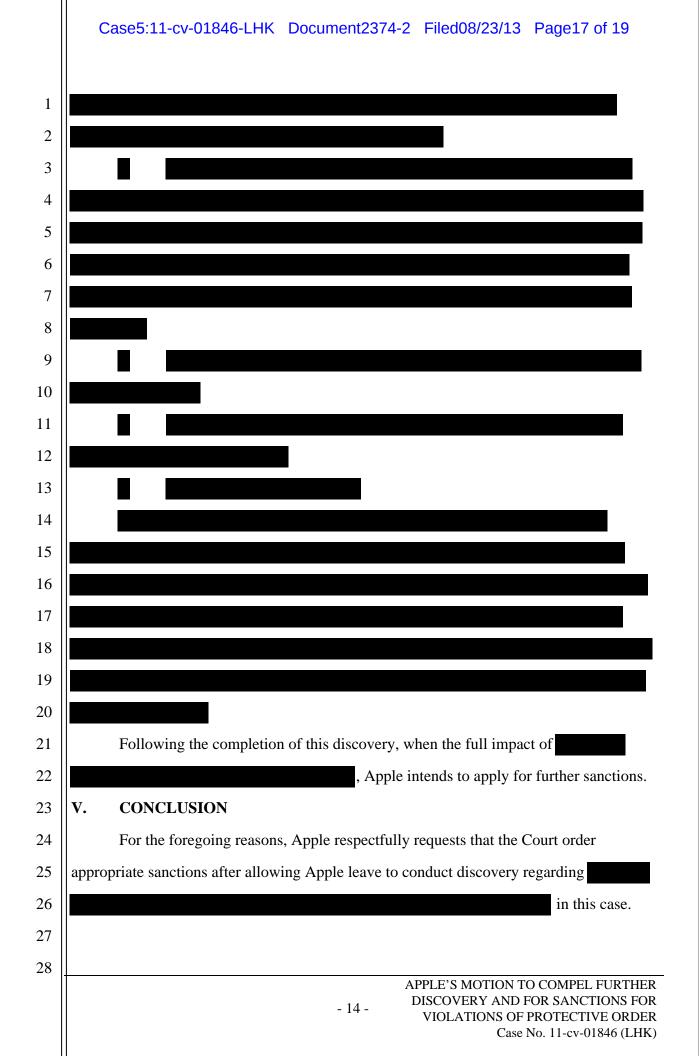


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1	Dated: August 23, 2013	/s/ William F. Lee
2		William F. Lee (admitted <i>pro hac vice</i>)
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19		Attorneys for Plaintiff and
20		Counterclaim-Defendant Apple Inc.
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	- 1	APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF PROTECTIVE ORDER Case No. 11-cv-01846 (LHK)

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1	<u>CERTIFICATE OF SERVICE</u>
2	I hereby certify that a true and correct copy of the above and foregoing document
3	has been served on August 23, 2013 to all counsel of record who are deemed to have
4	consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5-1.
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6	/s/ Mark D. Selwyn Mark D. Selwyn
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20	- 2 - APPLE'S MOTION TO COMPEL FURTHER DISCOVERY AND FOR SANCTIONS FOR VIOLATIONS OF PROTECTIVE ORDER Case No. 11-cv-01846 (LHK)