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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNWIRED PLANET LLC, a Nevada limited
liability company,

Plaintiff,

v.

APPLE INC., a California corporation,

Defendant.

CASE NO. 3:13-CV-04134-VC

**APPLE, INC.'S ADMINISTRATIVE MOTION
TO SEAL COURTROOM DURING APRIL 22,
2015 HEARING ON THE PARTIES' MOTIONS
FOR SUMMARY JUDGMENT AND APPLE'S
MOTION TO EXCLUDE UNWIRED
PLANET'S EXPERTS**

Hearing: April 22, 2015, 10:00 AM
Judge: Hon. Vince Chhabria

Defendant Apple Inc. (“Apple”) respectfully moves for an order sealing the courtroom at the hearing on the parties’ Motions for Summary Judgment and on Apple’s Motion to Exclude Unwired Planet’s Experts, currently scheduled in this case for April 22, 2015, at 10:00 am. Unwired Planet does not oppose this motion.

I. BACKGROUND

Apple files this motion to seal the courtroom because the motions set for argument on April 22 concern Apple’s highly confidential technical, financial, and licensing information. Apple and Unwired Planet have both moved to file the briefing regarding these motions under seal. *See* D.I. 310, 316, 318, 325, 328-330, 332, 335. As described in these motions to file under seal and their supporting declarations, each of the Parties submitted certain information in the briefs or exhibits that Apple designated “Highly Confidential – Attorney’s Eyes Only” when produced. *See* Protective Order [D.I. 118] at ¶¶ 2(f), 9. This information included, *inter alia*:

- Apple’s trade secrets and confidential business practices, including highly confidential information about the functioning of Apple’s products and confidential source code;
- Apple’s non-public financial information: Apple’s specific cost data, profit margins, and detailed breakdowns of product line sales, costs, and revenue; and
- Apple’s confidential licensing information: terms and/or settlement amounts of certain settlement licenses between Apple and its licensing partners.

Each of these categories of information is precisely the type of information that has been found by courts to “outweigh the public’s interest and justify sealing court records” under the Ninth Circuit’s “compelling reasons” standard.¹ Because this evidence so closely supports the arguments the parties are likely to make at the April 22nd hearing, and therefore will likely need to be referenced explicitly during the hearing, the courtroom should be sealed during the hearing because this evidence goes well beyond what the public needs to understand the parties’ positions and the judicial process. *Richardson v. Mylan Inc.*, No. 09-CV-1041, 2011 U.S. Dist. LEXIS 23969, at *7-8 (S.D. Cal. Mar. 9, 2011) (information “of comparatively little value to the general public in terms of

¹ *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003) (“Compelling reasons” must be shown to seal “documents subject to a protective order [that] are filed under seal as attachments to a dispositive motion”).

enhancing its understanding of the judicial process” is sealable) (internal quotation omitted); *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053, 2010 U.S. Dist. LEXIS 21721, at *13-14 (N.D. Cal. Mar. 10, 2010) (sealing material that would “do little to aid the public’s understanding of the judicial process,” but could cause a party “significant harm”).

II. GROUNDS TO SEAL COURTROOM

A. Apple Undertakes Significant Internal Measures to Protect Confidential Information Belonging to Apple or Third Parties

Apple moves to seal the courtroom for the April 22, 2015 hearing on the parties’ Motions for Summary Judgment and Apple’s Motion to Exclude Unwired Planet’s Experts because the hearing will include significant, detailed discussion of Apple’s confidential information (listed above) submitted under seal in support of these Motions.

As described above, the parties’ Motions repeatedly refer to Apple’s trade secrets and confidential business information, including highly sensitive information about how Apple’s products function, as well as Apple’s highly confidential and proprietary source code and technical information. The specific Apple technical information at issue here is non-public and is considered by Apple to be of highest confidentiality. Apple treats its source code and closely-related technical information with the utmost confidentiality, restricting access even within Apple to such source code. Declaration of Sarita Venkat (“Venkat Decl.”) at ¶¶ 4-5. Apple takes significant precautions to protect the confidentiality of its source code and closely-related information and prevent disclosure of the same accordingly. *Id.* at ¶¶ 4-8. Apple heavily limits knowledge of its source code, as Apple considers such technical information to be its trade secret and the subject of independent economic value. *Id.* at ¶ 9. Apple has made significant investments in developing this source code. *Id.* at ¶ 7. Indeed, in light of the value of this information to Apple, and the harm that would be caused to Apple from its disclosure, even in this litigation, where source code has been produced in discovery, it has been treated with the utmost confidentiality and additional restrictions regarding its protection were implemented. *Id.* at ¶ 8; *see also* Protective Order (D.I. 118).

Indeed, courts in this circuit have consistently held that “[c]onfidential source code clearly meets the definition of a trade secret” and is sealable under the “compelling reasons” standard.

1 *Apple, Inc. v. Samsung Electronics Co.*, No. 11-CV-01846-LHK, 2012 WL 6115623, at *2 (N.D. Cal.
 2 Dec. 10, 2012); *Apple, Inc. v. Samsung Electronics Co.*, No. 11-CV-01846-LHK, 2012 WL 4933287,
 3 at *2 (N.D. Cal. Oct. 16, 2012). “[T]echnical information that is closely related to Apple’s source
 4 code” is likewise considered to be sealable. Order at 7-8, *Apple, Inc. v. Samsung Electronics Co.,*
 5 *Ltd.*, No. 11-cv-1846 (Feb. 20, 2013) (D.I. 2250-1); Order at 2-3, *Apple, Inc. v. Samsung Electronics*
 6 *Co., Ltd.*, No. 11-cv-1846 (Sep. 11, 2013) (D.I. 2397) (granting motion to seal documents that could
 7 give competitors a chance to learn the functionality and limits of functionality of Apple products).
 8 Disclosure of such source code and closely-related information, which Apple carefully protects from
 9 public knowledge, thus would cause Apple harm and to lose significant competitive advantage.
 10 Venkat Decl. at ¶¶ 7, 9. For example, such disclosure would damage the significant investment that
 11 Apple has made in developing its software and the independent economic value that Apple derives
 12 from its proprietary and confidential source code. *Id.*

13 Likewise, the parties’ arguments on Apple’s Motion to Exclude Unwired Planet’s Experts
 14 identify specific cost information for the Apple iPhone devices and identify the confidential amount
 15 Apple paid to settle an unrelated litigation. Exhibits to these motions contain supporting
 16 documentation in the form of a financial document that details Apple’s product sales and costs, profit
 17 margins, and operating expenses. Apple strictly protects its confidential financial data, both within
 18 and outside Apple, as they provide critical strategic insight into Apple’s competitive business
 19 strategy, in stark contrast to the more generalized revenue and sales information that Apple provides
 20 in SEC filings and on earnings calls. *Id.* at ¶¶ 15-16. Such financial data could enable Apple’s
 21 competitors to tailor their own product offerings and priorities, advertising, budgets, and business
 22 strategies to more effectively compete with Apple. *Id.* at ¶ 17. As just one example, if Apple’s
 23 competitors knew the specific profit margins for each iPhone model, they could determine which
 24 models are most profitable and by how much, and use that as a roadmap to undercut Apple’s product
 25 pricing. *Id.* In addition, if Apple’s suppliers had this information, they could raise prices just enough
 26 to extract a higher profit without losing Apple as a customer. *Id.* Other courts have found that
 27 compelling reasons exist to seal such information based on these very reasons. *See Nat’l Ass’n of*
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1 *Optometrists & Opticians v. Brown*, 709 F. Supp. 2d 968, 978 (E.D. Cal. 2010), *aff'd* by 682 F.3d
2 1144 (9th Cir. 2012); (deeming financial data not known to the public “proprietary”).

3 Finally, during the hearing, the parties will also need to explain to the court the details of
4 certain of Apple’s settlement licenses. As courts have recognized, the disclosure of this information
5 would substantially harm Apple by providing its competitors “with competitively sensitive
6 information to which they otherwise would not have access and also potentially reduce [Apple’s]
7 leverage in negotiations with component suppliers and other business partners.” *Nygren v. Hewlett-*
8 *Packard Co.*, 2010 U.S. Dist. LEXIS 59094 (N.D. Cal. May 25, 2010) (finding compelling reasons to
9 seal settlement agreement that “reveals confidential, competitively sensitive financial matters”).
10 Apple deliberately and carefully protects the confidentiality of its licensing arrangements, within and
11 without Apple, for these very reasons. Venkat Decl. at ¶¶ 11-13. Apple discloses its license
12 agreements or related documents only under very strict non-disclosure or other confidentiality
13 agreements. *Id.* Apple is frequently engaged in licensing negotiations and lawsuits, and the public
14 disclosure of its licenses, settlement agreements, and revenues would negatively impact its position in
15 future negotiations. *Id.* at ¶ 12. At minimum, potential competitors or entities seeking to sue Apple
16 would gain unfair bargaining power and insight into Apple’s, and its licensing partners,’ cost/benefit
17 and licensing strategies. *Id.*

18 **B. Apple Undertakes Significant Measures to Protect Confidential Information Belonging**
19 **to Apple or Third Parties During Litigation**

20 As mentioned above in § A, the information described above is of great value to Apple, and
21 Apple accordingly imposes both internal protocols and, in the context of a litigation, strict
22 requirements for disclosure of such confidential technical information (such as confidential source
23 code), licensing information, and financial information. In particular, the Protective Order set in
24 place in this case limits the disclosure of “Protected Material” prior to trial to the individuals
25 identified in paragraph 9 of the Order under strict conditions; for instance, Apple does not permit
26 even its own experts to retain electronic or hard copies of Apple source code during litigation. *Id.* at
27 ¶ 8; Protective Order [D.I. 118] at ¶¶ 9, 11. Similarly, Apple’s in-house counsel had to obtain
28

multiple levels of approval before any of this information could be produced in this litigation, even when being produced under the Protective Order with a “Highly Confidential – Outside Attorneys’ Eyes Only” confidentiality designation. Venkat Decl. at ¶ 13. Last, Apple has repeatedly sought to file this sensitive material – where necessary to support its motions or other briefing in this matter – under seal to ensure its confidentiality.

III. Conclusion

The Parties agree that Protected Material submitted in the Parties’ Motion papers (or related thereto) is highly likely to be discussed during the April 22 hearing. Therefore, in an abundance of caution and to preserve the confidentiality of Apple’s Protected Material, Apple hereby respectfully requests an order prohibiting persons not identified in paragraph 9 of the Protective Order from attending the hearing or viewing any transcription thereof, except as otherwise agreed by the Parties, as applicable. Apple further respectfully requests permission to submit proposed redactions before any transcription or order issuing from the Motions is published.

Dated: April 17, 2015

Respectfully submitted,

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By: /s/ Y. Ernest Hsin

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document, and its supporting documents, were filed electronically in compliance with Civil Local Rule 5.4, and will be served upon all counsel of record for the parties who have consented to electronic service in accordance with Civil Local Rule 5.4(c) and (d) via the Court's ECF system.

Dated: April 17, 2015

/s/ Y. Ernest Hsin