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   INTERNATIONAL BUSINESS MACHINES CORPORATION
9
                    UNITED STATES DISTRICT COURT
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                  NORTHERN DISTRICT OF CALIFORNIA
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                        SAN JOSE DIVISION
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                                        | CASE NO. 11-CV-01846-LHK (PSG)
14 APPLE INC., a California corporation,
15   Plaintiff,
                                        | **NON-PARTY IBM'S MOTION FOR**
16   V. | **TEMPORARY RESTRAINING ORDER**
                                        | **PROHIBITING THIRD-PARTY**
17 SAMSUNG ELECTRONICS CO., LTD., a | **INTERVENOR REUTERS FROM**
    Korean corporation; SAMSUNG | **DISCLOSING HIGHLY SENSITIVE**
18 ELECTRONICS AMERICA, INC., a New | **INFORMATION OF IBM, CURRENTLY**
    York corporation; and SAMSUNG | **SUBJECT TO A MOTION TO SEAL**
19 TELECOMMUNICATIONS AMERICA,
20 LLC, a Delaware limited liability company,
21   Defendants.
22
23   **IBM'S MOTION FOR A TEMPORARY RESTRAINING ORDER**
24   On July 26, 2012, non-party International Business Machines Corporation ("IBM") filed a
25 motion to seal limited, but highly sensitive, commercial information in potential trial exhibit 630
26 in the above captioned matter. Specifically, IBM seeks to seal the payment amounts under a
27 contract between Defendant Samsung and IBM.
28

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1   IBM understood that Local Rule 79-5(c)(3) and General Order 62 required Reuters to be

2 served with an unredacted copy of proposed trial exhibit 630, the subject of IBM's motion to seal.

3 Furthermore, IBM believed that Reuters would be bound by the terms of the protective order in

4 this case, entered on January 30, 2012 (the "Protective Order"). Paragraph 15 of the Protective

5 Order states that "absent written permission from the producing party, or a court order secured

6 after appropriate notice to all interested persons, a receiving party may not filed in the public

7 record any protected material." Paragraph 18 of the Protective Order stated that inadvertent

8 disclosure of the protected material does not change the status of the material or waive the right to

9 hold the disclosed document or information as protected.

10   Rather than immediately informing IBM that Reuters would not abide by the terms of the

11 Protective Order or return the unredacted document, on July 29 at approximately 9:52 p.m. IBM

12 received an electronic message from Mr. Dan Levin, a legal reporter with Reuters in California.

13 Mr. Levine suggested that he was in possession of the unredacted exhibit and that he intended to

14 publish IBM's highly confidential payment terms with Samsung immediately, stating that the

15 deadline for publication was 11 a.m. PST on Monday July 30. That publication would not only

16 be in direct violation of the protective order in this matter, but would moot the very motion to seal

17 currently before this Court.

18   At the very least, and to the extent Reuters is not a bound by the terms of the Protective

19 Order, IBM requested that the document be immediately returned and all copies destroyed

20 pursuant to paragraph 18(a) of the Protective Order.

21   Based on the foregoing, IBM hereby seeks a temporary restraining order prohibiting

22 Reuters from publishing or otherwise using in any way, IBM's confidential information unless

23 and until IBM's motion to seal is denied, and an Order abiding by the terms of the Protective

24 Order, or otherwise returning or destroying IBM's confidential material.

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1   DATED: July 30, 2012

2   By: _Timothy T. Scott /s_
                                                TIMOTHY T. SCOTT
3
                                           Attorneys for Non-Party
4   INTERNATIONAL
                                           BUSINESS MACHINES
5   CORPORATION

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