

HAROLD J. MCELHINNY (CA SBN 66781)  
hmcclhinny@mofo.com  
MICHAEL A. JACOBS (CA SBN 111664)  
mjacobs@mofo.com  
RACHEL KREVANS (CA SBN 116421)  
rkrevans@mofo.com  
JENNIFER LEE TAYLOR (CA SBN 161368)  
jtaylor@mofo.com  
ALISON M. TUCHER (CA SBN 171363)  
atucher@mofo.com  
RICHARD S.J. HUNG (CA SBN 197425)  
rhung@mofo.com  
JASON R. BARTLETT (CA SBN 214530)  
jasonbartlett@mofo.com  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

WILLIAM F. LEE  
william.lee@wilmerhale.com  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 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

Attorneys for Plaintiff and  
Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a  
Korean business entity; SAMSUNG  
ELECTRONICS AMERICA, INC., a New York  
corporation; SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC, a  
Delaware limited liability company,

Defendants.

Case No. 11-cv-01846-LHK (PSG)

**APPLE'S SUR-REPLY TO  
SAMSUNG'S MOTION FOR  
DE NOVO DETERMINATION OF  
DISPOSITIVE MATTER  
REFERRED TO MAGISTRATE  
JUDGE, IN THE ALTERNATIVE,  
MOTION FOR RELIEF FROM  
NONDISPOSITIVE PRETRIAL  
ORDER OF MAGISTRATE  
JUDGE**

1 Samsung has wisely abandoned its original argument for *de novo* review, as Judge  
 2 Grewal's Order is plainly not a "dispositive motion." (*See* Dkt. No. 1392 (Mot.) at 2.) But  
 3 equally unavailing is Samsung's new theory that Judge Grewal lacks inherent power to impose  
 4 sanctions because he is not an Article III judge. (*See* Dkt. No. 1579 (Reply) at 7.) This theory  
 5 relies on a clear misreading of Ninth Circuit law and on an unpublished Fourth Circuit case that is  
 6 distinguishable on its facts. Judge Grewal's Order is reviewable only for clear error, and he made  
 7 none.<sup>1</sup>

8 Samsung's lead case for the proposition that Judge Grewal lacks inherent power to impose  
 9 sanctions is *Rainbow Magazine, Inc. v. Unified Capital Corp.*, 77 F.3d 278 (9th Cir. 1996). But  
 10 *Rainbow Magazine* held that Article I bankruptcy court judges *do* have inherent power to issue  
 11 sanctions. *Id.* at 284. There, the Ninth Circuit relied on *Chambers v. NASCO, Inc.*, 501 U.S. 32,  
 12 43 (1991), which "recognizes that courts created by Congress have inherent powers, unless  
 13 Congress intentionally restricts those powers," *Rainbow Magazine*, 77 F.3d at 284. "[A]bsent  
 14 congressional restriction, inherent powers exist within a court as part of the nature of the  
 15 institution," *Rainbow Magazine*, 77 F.3d at 285.

16 Section 636 of the Federal Magistrates Act confers a magistrate judge's powers.  
 17 28 U.S.C. § 636. Nothing in Section 636 "abrogate[s] or restrict[s] the inherent power to  
 18 sanction." *Rainbow Magazine*, 77 F.3d at 285. Consistent with magistrate judges' retention of  
 19 inherent power, the portion of Section 636 that concerns magistrate judges' civil contempt  
 20 authority provides that the section "shall not be construed to limit the authority of a magistrate  
 21 judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the  
 22 Federal Rules of Criminal Procedure." 28 U.S.C. § 636(e)(4). As in *Rainbow Magazine*,  
 23 Section 636(e)(4) "impliedly recognize[s] that [magistrate judges] have the inherent power to

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24  
 25 <sup>1</sup> Although this Sur-Reply addresses only the standard of review, Apple disagrees with  
 26 many other statements in Samsung's Reply, including any suggestion that Apple's August 2010  
 27 presentation to Samsung was limited to utility patents or that Samsung's litigation-hold notice in  
 28 August went only to lower-level engineers. (*See, e.g.*, PX52 (August 2010 presentation); Dkt.  
 No. 128 (Lutton Decl., filed under seal) ¶¶ 2-4; Dkt. No. 1047-2 (Reply) at 4 and Dkt. No. 895-1  
 (Mot.) at 4-5 (Samsung repeatedly represents that August litigation-hold notice went to lead  
 designer Minhyouk Lee and apex witness Won Pyo Hong).)

1 sanction that *Chambers* recognized exists within Article III courts.” *Rainbow Magazine*, 77 F.3d  
2 at 284.

3 Samsung relies on *National Labor Relations Board v. A-Plus Roofing, Inc.* for the  
4 proposition that “federal magistrates are creatures of statute, and so is their jurisdiction,” 39 F.3d  
5 1410, 1415 (9th Cir. 1994) (Dkt. No. 1579 at 2). But that principle does not limit the inherent  
6 power to sanction. Even as to courts “created by act of Congress, . . . we do not lightly assume  
7 that Congress has intended to depart from established principles such as the scope of a court’s  
8 inherent power.” *Chambers*, 501 U.S. at 47 (citation omitted). Moreover, *A-Plus Roofing* did not  
9 address a magistrate judge’s power to issue sanctions in *civil* actions; it addressed whether a  
10 magistrate judge has authority to initiate and preside over *criminal* contempt proceedings.  
11 *National Labor*, 39 F.3d at 1415-1417.

12 Finally, Samsung relies heavily on *Reddick v. White*, an unreported per curiam decision  
13 from the Fourth Circuit holding that a magistrate judge’s order denying sanctions against a non-  
14 party was subject to *de novo* review. 456 F. App’x 191 (4th Cir. 2011). That decision is readily  
15 distinguishable, as the magistrate judge’s order was “dispositive” of the only claim against the  
16 non-party, an individual who had made threatening statements against one of the lawyers while  
17 the litigation was pending. *Id.* at 193. The underlying litigation settled before the magistrate  
18 judge’s order issued. *Id.* Here, Judge Grewal’s order granting an adverse inference instruction  
19 issued against a *party*, before conclusion of this case, consistent with a proper exercise of his  
20 inherent power to issue sanctions. *Reddick* is thus inapposite.

21 Accordingly, *de novo* review is neither necessary nor permitted. The Court should review  
22 for clear error, and Judge Grewal’s order granting an adverse inference jury instruction for  
23 Samsung’s spoliation of evidence should be affirmed.

1 Dated: August 8, 2012

MORRISON & FOERSTER LLP

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3 By: /s/ Michael A. Jacobs  
4 Michael A. Jacobs

5 Attorneys for Plaintiff  
6 APPLE INC.  
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