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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARDWARE INC.,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO. LTD., ET
AL.,

Defendants.

CASE NO.: 2:22-CV-00141-JRG-RSP
(PENDING IN E.D. TEX.)

NON-PARTY APPLE INC.'S OBJECTIONS
AND RESPONSES TO SUBPOENA TO
TESTIFY AT A DEPOSITION IN A CIVIL
CASE

1 Apple Inc. ("Apple"), by and through its under-signed counsel and pursuant to Rules 26
2 and 45 of the Federal Rules of Civil Procedure, hereby serves the following objections and
3 responses to Defendants Samsung Electronics Co. Ltd.'s and Samsung Electronics America,
4 Inc.'s ("Defendants") Subpoena to Testify at a Deposition in a Civil Action (the "Subpoena"),
5 served on Apple on or about December 9, 2022.

6 The following objections and responses are based on Apple's current knowledge,
7 information and belief after making a reasonable inquiry within the time allotted by the
8 Subpoena. Apple's investigation into this matter is ongoing, and it is willing to meet and confer
9 with Defendants regarding the scope of the information sought. Apple reserves the right to
10 supplement its objections and responses to the Subpoena to the extent additional or different
11 information becomes available. Nothing in these objections or responses should be construed as
12 a waiver of any rights of Apple under applicable rules and governing laws. Any documents or
13 testimony provided in response to the Subpoena will be made pursuant to the Protective Order
14 entered in the underlying litigation, with Apple reserving the right to request supplemental
15 protections.

16 **GENERAL OBJECTIONS AND RESPONSES**

17 Each of Apple's responses, below, is subject to and incorporates the following General
18 Objections and Responses, in addition to any specifically stated objections. The assertion of
19 specific objections in response to any individual topic or request does not waive any of Apple's
20 General Objections.

21 1. Apple's headquarters are located in the Northern District of California, and not in
22 Eastern District of Texas where this litigation is currently pending nor the Central District of
23 California where the Subpoena was served. Pursuant to Federal Rule of Civil Procedure 45, the
24 U.S. District Court for the Northern District of California is the governing district for purposes
25 of the Subpoena and any related motions. Nothing in these objections and responses should be
26 interpreted as a waiver of the jurisdiction of the Northern District of California.
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1 2. Apple is a third party and non-party to the above-captioned action. Apple objects
2 to each Request for Production (“Request”) and Deposition Topic (“Topic”) listed in
3 Attachment A to the Subpoena and to all Definitions and Instructions to the Subpoena to the
4 extent they seek documents and testimony that are available from one or more parties to the
5 litigation and/or from public sources. It is unduly burdensome to ask third-party Apple to
6 collect, review, process, and produce documents that could be sought from and produced by the
7 parties to the litigation and/or that are publicly available.

8 3. Federal Rule of Civil Procedure 26(b)(1) limits the scope of discovery to any
9 “nonprivileged matter that is relevant to any party’s claim or defense and proportional to the
10 needs of the case.” Apple objects to the Subpoena and all Requests and Topics to the extent they
11 seek documents or testimony beyond the permissible and reasonable scope of discovery.

12 4. Apple objects to the Subpoena and all Requests and Topics to the extent they seek
13 third-party Apple’s trade secrets, Apple’s closely guarded research and development
14 information, and other commercially sensitive and technical Apple materials protected from
15 disclosure, including pursuant to Federal Rule of Civil Procedure 26(c)(1)(G) and/or Federal
16 Rule of Evidence 501. Apple further objects to the Subpoena and all Requests and Topics to the
17 extent they seek disclosure of proprietary and/or highly confidential and sensitive information
18 of third-party Apple. Any materials produced in response to the Subpoena are subject to the
19 Protective Order entered in this case, with Apple reserving the right to insist upon supplemental
20 protections. Given the extremely sensitive nature of some of the documents and information
21 sought by the Subpoena, Apple will not produce such documents and information unless the
22 relevance, proportionality, and protective order issues have been adequately resolved.

23 5. Apple objects to the Subpoena and all Requests and Topics to the extent they seek
24 the production of documents or testimony protected by the attorney-client privilege, the attorney
25 work product doctrine, the common interest privilege, or any other applicable privilege,
26 immunity, or protection from discovery, including any third-party duty or obligation of non-
27 disclosure, privacy, or confidentiality. Such documents or testimony will not be produced, and
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1 any inadvertent disclosure or production thereof shall not be deemed a waiver of any privilege
2 with respect to such information or documents or of any work product immunity which may
3 attach thereto.

4 6. Apple objects to the Subpoena and all Requests and Topics to the extent they are
5 not narrowly or appropriately tailored to avoid imposing undue burden or expense on third-
6 party Apple. Apple further objects to the Subpoena, including all Requests and Topics, to the
7 extent that the burden or expense of the proposed discovery outweighs its likely benefit.

8 7. Apple objects to the Subpoena and all Requests and Topics to the extent they seek
9 documents not in Apple's possession, custody, or control on the grounds that it would require
10 more of Apple than any obligation imposed by law, would subject Apple to unreasonable and
11 undue annoyance, oppression, burden, and expense, and would seek to impose upon third-party
12 Apple an obligation to investigate or obtain information or materials from other third parties.

13 8. Apple objects to the Subpoena and all Requests and Topics to the extent they seek
14 documents and information in the possession of, more efficiently obtained from, and/or
15 confidential to one or more other third parties. To the extent Apple produces documents
16 containing any third-party confidential information, it will do so only after fulfilling its
17 obligations to the affected third-party under any applicable confidentiality agreement(s).

18 9. Apple objects to the Subpoena, including all Requests and Topics, as imposing
19 undue expense on a non-party to this dispute, and as unduly burdensome and irrelevant to the
20 litigation, especially to the extent that it may purport to require search and production from
21 electronic mail systems or archival storage systems.

22 10. Apple objects to the Subpoena and all Requests and Topics to the extent they seek
23 to impose any instruction, requirement, or request on Apple exceeding that required by the
24 Federal Rules of Civil Procedure, the Local Rules, or any order in the above-captioned action,
25 and/or would subject third-party Apple to unreasonable and undue burden and expense.

26 11. Apple objects to the Subpoena to the extent it purports to seek discovery from any
27 entity or individual other than Apple Inc., headquartered in Cupertino, California. In particular,
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1 Apple objects to the Definition of “You,” “Your,” and “Apple” in the Subpoena as unduly
2 broad and overly burdensome. In particular, Apple objects to the inclusion in such Definition of
3 “all predecessors, successors, subsidiaries, divisions, and/or affiliates [of Apple Inc.], past or
4 present, and all past or present officers, directors, agents, employees, consultants, accountants,
5 attorneys, representatives, and any other person or entity acting on behalf of any of the
6 foregoing.” Apple will limit its investigation, collection, review, production (if any), and
7 testimony (if any) to Apple Inc.

8 12. Apple objects to the Subpoena to the extent it seeks disclosure of confidential
9 commercial information and/or disclosure of an unretained expert’s opinion or information that
10 does not describe specific occurrences in the dispute and results from the expert’s study that
11 was not requested by a party pursuant to Federal Rule of Civil Procedure 45(d)(3)(B).

12 13. Apple objects to the definitions of “Related Patents” as overly broad, unduly
13 burdensome, vague, ambiguous, calling for an expert opinion or calling for a legal conclusion.

14 14. Apple objects to the Subpoena on the grounds that the date and location noticed
15 for the document production and deposition are inconvenient and unduly burdensome to third-
16 party Apple. Apple will meet and confer with Defendants regarding a mutually convenient time
17 and place for the provision of documents responsive to the Subpoena, if any, and will work to
18 provide the information sought via deposition through other, less burdensome means, such as a
19 declaration.

20 15. Apple objects to the Instructions included in the Subpoena as overly broad,
21 unduly burdensome, and improper in that they seek to obtain discovery outside of the scope of
22 the Federal Rules of Civil Procedure. Apple objects to all Instructions to the extent that they
23 purport to place obligations on Apple beyond the permissible and reasonable scope of
24 discovery.

25 16. Apple submits these responses and objections without conceding the relevance or
26 materiality of the subject matter of any Request or Topic or of any document or thing, or that
27 any responsive materials exist. Apple also submits the following responses and objections on
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1 the basis of information now known to Apple and without waiving any further objects to the
2 materiality or relevance of any of the information requested. Apple further reserves all
3 objections or other questions as to the competency, relevance, materiality, privilege, or
4 admissibility as evidence in any subsequent proceeding in or at trial of this or any other action
5 for any purpose whatsoever of Apple's responses herein and any document or thing, or
6 information identified or provided in response to the Subpoena.

7 17. Apple's objections as set forth herein are made without prejudice to update,
8 amend, or supplement these Objections and Responses to the Subpoena.

9 **OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION**

10 Specifically incorporating each of its General Objections and Responses into each and
11 every Response below, Apple objects and responds as follows:

12 **REQUEST NO. 1:**

13 Documents, communications, and things describing Apple's conception and reduction to
14 practice of Apple Pay's use of tokenization (replacing the Primary Account Number/credit card
15 number with a token or substitute number), a dynamic limited-use cryptogram, and NFC (or
16 other wireless communication technology) to accomplish a mobile transaction prior to the
17 commercial launch of Apple Pay in October 2014. *See* Exs. 1-3.

18 **OBJECTIONS AND RESPONSES TO REQUEST NO. 1:**

19 Apple incorporates each of its General Objections and Responses into its response to
20 Request No. 1 as if fully set forth herein. Apple further objects to this Request at least for the
21 following reasons:

22 **Overly Broad and Unduly Burdensome:** Apple objects to this Request as overbroad and
23 unduly burdensome, and improperly attempting to shift the burden of identifying prior art to
24 third-party Apple. The Request is not narrowly or reasonably tailored and seeks documents that
25 are over eight years old. Apple further objects to the extent that this Request seeks documents
26 and things not in the possession, custody, or control of Apple, and/or that are contained in
27 archival systems.

1 Vague, Ambiguous, and Calling for a Legal Conclusion: Apple objects to this Request as
2 vague, ambiguous, and calling for a legal conclusion. For example, the terms and phrases
3 “conception,” “reduction to practice,” “tokenization,” “dynamic limited-use cryptogram,” and
4 “NFC (or other wireless communication technology)” are unclear and would require the
5 subjective judgment of Apple or its attorneys.

6 Privileged and Work Product Materials: Apple objects to this Request to the extent that it
7 seeks the production of documents or information protected by the attorney-client privilege, the
8 attorney work product doctrine, the common interest privilege, or any other applicable privilege,
9 immunity, or protection from discovery, including any third-party duty or obligation of non-
10 disclosure, privacy, or confidentiality. Apple will not produce privileged or protected documents
11 or information, and any inadvertent disclosure or production thereof shall not be deemed a
12 waiver of any privilege with respect to such information or documents or of any work product
13 immunity which may attach thereto.

14 Not Relevant Third-Party Discovery: Third-party Apple objects to this Request to the
15 extent it seeks documents, things, or information that is not relevant and exceeds the reasonable
16 scope of third-party discovery under the Federal Rules. The burden and expense of the proposed
17 discovery to third-party Apple outweighs its likely benefit. For example, third-party Apple
18 objects to this Request to the extent that it seeks Apple’s trade secrets, commercially sensitive
19 information, and/or closely guarded research and development information. Apple will not
20 produce information referring or relating to unannounced or unreleased products. Apple further
21 objects to this Request to the extent that it seeks documents, things, or information protected
22 from disclosure, including pursuant to Federal Rule of Civil Procedure 26(c)(1)(G) and/or
23 Federal Rule of Evidence 501. Defendants have not established that such sensitive and
24 proprietary information and things are relevant to any party’s claim or defense, or that it is
25 proportional to the needs of the above-captioned case, considering the importance of the issues at
26 stake, the amount in controversy, the parties’ and Apple’s relative access to relevant information,
27 the parties’ and third-party Apple’s resources, and the importance of the discovery in resolving
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1 the issues. Furthermore, to the extent Apple produces any materials in response to the Subpoena,
2 such production will be subject to the Protective Order entered in this case, with Apple reserving
3 the right to insist upon supplemental protections.

4 Subject to and without waiving the foregoing objections, Apple will meet and confer with
5 Defendants regarding the scope of this Request.

6 **REQUEST NO. 2:**

7 Documents, communications, and things describing Apple's discussions with Visa,
8 MasterCard and American Express or any third party merchant, bank, payment provider,
9 standards organization, or clearance house, regarding mobile payments using tokenization,
10 dynamic limited-use cryptograms, and NFC (or other wireless communication technology), prior
11 to the 2014 commercial launch of Apple Pay. This request includes, but is not limited to,
12 discussions that occurred in January 2013 with Visa, MasterCard and American Express as
13 described in Exhibit 4 ("The financial industry began working on the Apple Pay project in
14 January 2013, when Apple had the first concrete conversations with the big credit card networks,
15 Visa, MasterCard and American Express, after years of more vague conversations about the best
16 way for Apple to get involved.").

17 **OBJECTIONS AND RESPONSES TO REQUEST. 2:**

18 Apple incorporates each of its General Objections and Responses into its response to
19 Request No. 2 as if fully set forth herein. Apple further objects to this Request at least for the
20 following reasons:

21 Overly Broad and Unduly Burdensome: Apple objects to this Request as overbroad and
22 unduly burdensome, and improperly attempting to shift the burden of identifying prior art to
23 third-party Apple. The Request is not narrowly or reasonably tailored, particularly in its request
24 for information regarding discussions with "any third party merchant, bank, payment provider,
25 standards organization, or clearing house," and seeks information that is nearly ten years old.
26 Apple further objects to the extent that this Request seeks documents and things not in the
27 possession, custody, or control of Apple, and/or that are contained in archival systems. Apple
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1 further objects to the extent that this Request seeks documents and things that are in the
2 possession of, more efficiently obtained from, and/or confidential to one or more other third
3 parties. To the extent Apple produces documents containing any third-party confidential
4 information, it will do so only after fulfilling its obligations to the affected third-party under any
5 applicable confidentiality agreement(s).

6 Vague and Ambiguous: Apple objects to this Request as vague and ambiguous. For
7 example, the terms and phrases “tokenization,” “dynamic limited-use cryptograms,” and “NFC (or
8 other wireless communication technology” are unclear and would require the subjective
9 judgment of Apple or its attorneys.

10 Privileged and Work Product Materials: Apple objects to this Request to the extent that it
11 seeks the production of documents or information protected by the attorney-client privilege, the
12 attorney work product doctrine, the common interest privilege, or any other applicable privilege,
13 immunity, or protection from discovery, including any third-party duty or obligation of non-
14 disclosure, privacy, or confidentiality. Apple will not produce privileged or protected documents
15 or information, and any inadvertent disclosure or production thereof shall not be deemed a
16 waiver of any privilege with respect to such information or documents or of any work product
17 immunity which may attach thereto.

18 Not Relevant Third-Party Discovery: Third-party Apple objects to this Request to the
19 extent it seeks documents, things, or information that is not relevant and exceeds the reasonable
20 scope of third-party discovery under the Federal Rules. The burden and expense of the proposed
21 discovery to third-party Apple outweighs its likely benefit. For example, third-party Apple
22 objects to this Request to the extent that it seeks Apple’s trade secrets, commercially sensitive
23 information, and/or closely guarded research and development information. Apple will not
24 produce information referring or relating to unannounced or unreleased products. Apple further
25 objects to this Request to the extent that it seeks documents, things, or information protected
26 from disclosure, including pursuant to Federal Rule of Civil Procedure 26(c)(1)(G) and/or
27 Federal Rule of Evidence 501. Defendants have not established that such sensitive and
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1 proprietary information and things are relevant to any party's claim or defense, or that it is
2 proportional to the needs of the above-captioned case, considering the importance of the issues at
3 stake, the amount in controversy, the parties' and Apple's relative access to relevant information,
4 the parties' and third-party Apple's resources, and the importance of the discovery in resolving
5 the issues. Furthermore, to the extent Apple produces any materials in response to the Subpoena,
6 such production will be subject to the Protective Order entered in this case, with Apple reserving
7 the right to insist upon supplemental protections.

8 Subject to and without waiving the foregoing objections, Apple will meet and confer with
9 Defendants regarding the scope of this Request.

10 **REQUEST NO. 3:**

11 Documents, communications, and things sufficient to describe Apple's discussions and
12 interactions with EMVCo regarding mobile payments using tokenization, dynamic limited-use
13 cryptograms, and NFC (or other wireless communication technology) prior to the commercial
14 launch of Apple Pay in 2014. This request includes, but is not limited to, documents,
15 communications, and things relating to the *EMV® Payment Tokenisation Specification –*
16 *Technical Framework v1.0* referred to in Ex. 5, and all predecessor documents and drafts of the
17 same.

18 **OBJECTIONS AND RESPONSES TO REQUEST NO. 3:**

19 Apple incorporates each of its General Objections and Responses into its response to
20 Request No. 3 as if fully set forth herein. Apple further objects to this Request at least for the
21 following reasons:

22 Overly Broad and Unduly Burdensome: Apple objects to this Request as overbroad and
23 unduly burdensome, and improperly attempting to shift the burden of identifying prior art to
24 third-party Apple. The Request is not narrowly or reasonably tailored, particularly in its request
25 for information regarding "discussions and interactions" with EMVCo and "all predecessor
26 documents and drafts" of the identified technical documents, and seeks information that is over
27 eight years old. Apple further objects to the extent that this Request seeks documents and things
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1 not in the possession, custody, or control of Apple, and/or that are contained in archival systems.
2 Apple further objects to the extent that this Request seeks documents and things that are in the
3 possession of, more efficiently obtained from, and/or confidential to one or more other third
4 parties. To the extent Apple produces documents containing any third-party confidential
5 information, it will do so only after fulfilling its obligations to the affected third-party under any
6 applicable confidentiality agreement(s).

7 Vague and Ambiguous: Apple objects to this Request as vague and ambiguous. For
8 example, the terms and phrases “tokenization,” “dynamic limited-use cryptograms,” “NFC (or
9 other wireless communication technology,” and “predecessor documents” are unclear and would
10 require the subjective judgment of Apple or its attorneys.

11 Privileged and Work Product Materials: Apple objects to this Request to the extent that it
12 seeks the production of documents or information protected by the attorney-client privilege, the
13 attorney work product doctrine, the common interest privilege, or any other applicable privilege,
14 immunity, or protection from discovery, including any third-party duty or obligation of non-
15 disclosure, privacy, or confidentiality. Apple will not produce privileged or protected documents
16 or information, and any inadvertent disclosure or production thereof shall not be deemed a
17 waiver of any privilege with respect to such information or documents or of any work product
18 immunity which may attach thereto.

19 Not Relevant Third-Party Discovery: Third-party Apple objects to this Request to the
20 extent it seeks documents, things, or information that is not relevant and exceeds the reasonable
21 scope of third-party discovery under the Federal Rules. The burden and expense of the proposed
22 discovery to third-party Apple outweighs its likely benefit. For example, third-party Apple
23 objects to this Request to the extent that it seeks Apple’s trade secrets, commercially sensitive
24 information, and/or closely guarded research and development information. Apple will not
25 produce information referring or relating to unannounced or unreleased products. Apple further
26 objects to this Request to the extent that it seeks documents, things, or information protected
27 from disclosure, including pursuant to Federal Rule of Civil Procedure 26(c)(1)(G) and/or
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1 Federal Rule of Evidence 501. Defendants have not established that such sensitive and
2 proprietary information and things are relevant to any party's claim or defense, or that it is
3 proportional to the needs of the above-captioned case, considering the importance of the issues at
4 stake, the amount in controversy, the parties' and Apple's relative access to relevant information,
5 the parties' and third-party Apple's resources, and the importance of the discovery in resolving
6 the issues. Furthermore, to the extent Apple produces any materials in response to the Subpoena,
7 such production will be subject to the Protective Order entered in this case, with Apple reserving
8 the right to insist upon supplemental protections.

9 Subject to and without waiving the foregoing objections, Apple will meet and confer with
10 Defendants regarding the scope of this Request.

11 **REQUEST FOR PRODUCTION NO. 4:**

12 All Documents, communications, and things concerning the Asserted Patents and Related
13 Patents.

14 **OBJECTIONS AND RESPONSES TO REQUEST NO. 4:**

15 Apple incorporates each of its General Objections and Responses into its response to
16 Request No. 4 as if fully set forth herein. Apple further objects to this Request at least for the
17 following reasons:

18 Publicly Available Documents: Apple objects to this Request to the extent it seeks
19 documents and information that are publicly available.

20 Overly Broad and Unduly Burdensome: Apple objects to this Request as overbroad and
21 unduly burdensome, and improperly attempting to shift the burden of identifying prior art to
22 third-party Apple. The Request is not narrowly or reasonably tailored, particularly in its request
23 for documents regarding "[a]ll Documents, communications, and things" and by virtue of the
24 defined term "Related Patents." Apple further objections to this Request because it is not limited
25 in time and/or to any particular subject matter relevant to the parties' claims and defenses in the
26 litigation. Apple further objects to the extent that this Request seeks documents and things not in
27 the possession, custody, or control of Apple, and/or that are contained in archival systems.

1 Vague, Ambiguous, and Calling for a Legal Conclusion: Apple objects to this Request as
2 vague, ambiguous, and calling for a legal conclusion. In particular, the defined term “Related
3 Patents” is unclear and would require the subjective judgment of Apple or its attorneys.

4 Privileged and Work Product Materials: Apple objects to this Request to the extent that it
5 seeks the production of documents or information protected by the attorney-client privilege, the
6 attorney work product doctrine, the common interest privilege, or any other applicable privilege,
7 immunity, or protection from discovery, including any third-party duty or obligation of non-
8 disclosure, privacy, or confidentiality. Apple will not produce privileged or protected documents
9 or information, and any inadvertent disclosure or production thereof shall not be deemed a
10 waiver of any privilege with respect to such information or documents or of any work product
11 immunity which may attach thereto.

12 Not Relevant Third-Party Discovery: Third-party Apple objects to this Request to the
13 extent it seeks documents, things, or information that is not relevant and exceeds the reasonable
14 scope of third-party discovery under the Federal Rules. The burden and expense of the proposed
15 discovery to third-party Apple outweighs its likely benefit. For example, third-party Apple
16 objects to this Request to the extent that it seeks Apple’s trade secrets, commercially sensitive
17 information, and/or closely guarded research and development information. Apple will not
18 produce information referring or relating to unannounced or unreleased products. Apple further
19 objects to this Request to the extent that it seeks documents, things, or information protected
20 from disclosure, including pursuant to Federal Rule of Civil Procedure 26(c)(1)(G) and/or
21 Federal Rule of Evidence 501. Defendants have not established that such sensitive and
22 proprietary information and things are relevant to any party’s claim or defense, or that it is
23 proportional to the needs of the above-captioned case, considering the importance of the issues at
24 stake, the amount in controversy, the parties’ and Apple’s relative access to relevant information,
25 the parties’ and third-party Apple’s resources, and the importance of the discovery in resolving
26 the issues. Furthermore, to the extent Apple produces any materials in response to the Subpoena,
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1 such production will be subject to the Protective Order entered in this case, with Apple reserving
2 the right to insist upon supplemental protections.

3 Subject to and without waiving the foregoing objections, Apple will meet and confer with
4 Defendants regarding the scope of this Request.

5 **REQUEST NO. 5:**

6 All Documents, communications, and things concerning CardWare, Virtual Electric, Inc.,
7 and David Wyatt.

8 **OBJECTIONS AND RESPONSES TO REQUEST NO. 5:**

9 Apple incorporates each of its General Objections and Responses into its response to
10 Request No. 5 as if fully set forth herein. Apple further objects to this Request at least for the
11 following reasons:

12 Party Discovery: Apple objects to this Request to the extent it seeks documents and
13 information in the possession of, available to, and/or more efficiently obtained from Plaintiff.

14 Overly Broad and Unduly Burdensome: Apple objects to this Request as overbroad and
15 unduly burdensome, and failing to take reasonable steps to avoid imposing undue burden and
16 expense on third-party Apple. The Request is not reasonably or narrowly tailored, particularly in
17 its request for documents regarding “[a]ll Documents, communications, and things” and because
18 is not limited to any subject matter relevant to the parties’ claims or defenses in the underlying
19 litigation. Apple further object to the Request as overly broad and unduly burdensome because it
20 is unbounded by time. Apple further objects to the extent that this Request seeks documents and
21 things not in the possession, custody, or control of Apple, and/or that are contained in archival
22 systems.

23 Privileged and Work Product Materials: Apple objects to this Request to the extent that it
24 seeks the production of documents or information protected by the attorney-client privilege, the
25 attorney work product doctrine, the common interest privilege, or any other applicable privilege,
26 immunity, or protection from discovery, including any third-party duty or obligation of non-
27 disclosure, privacy, or confidentiality. Apple will not produce privileged or protected documents
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1 or information, and any inadvertent disclosure or production thereof shall not be deemed a
2 waiver of any privilege with respect to such information or documents or of any work product
3 immunity which may attach thereto.

4 Not Relevant Third-Party Discovery: Third-party Apple objects to this Request to the
5 extent it seeks documents, things, or information that is not relevant and exceeds the reasonable
6 scope of third-party discovery under the Federal Rules. The burden and expense of the proposed
7 discovery to third-party Apple outweighs its likely benefit. For example, third-party Apple
8 objects to this Request to the extent that it seeks Apple's trade secrets, commercially sensitive
9 information, and/or closely guarded research and development information. Apple will not
10 produce information referring or relating to unannounced or unreleased products. Apple further
11 objects to this Request to the extent that it seeks documents, things, or information protected
12 from disclosure, including pursuant to Federal Rule of Civil Procedure 26(c)(1)(G) and/or
13 Federal Rule of Evidence 501. Defendant has not established that such sensitive and proprietary
14 information and things are relevant to any party's claim or defense, or that it is proportional to
15 the needs of the above-captioned case, considering the importance of the issues at stake, the
16 amount in controversy, the parties' and Apple's relative access to relevant information, the
17 parties' and third-party Apple's resources, and the importance of the discovery in resolving the
18 issues. Furthermore, to the extent Apple produces any materials in response to the Subpoena,
19 such production will be subject to the Protective Order entered in this case, with Apple reserving
20 the right to insist upon supplemental protections.

21 Subject to and without waiving the foregoing objections, Apple will meet and confer with
22 Defendant regarding the scope of this Request.

23 OBJECTIONS AND RESPONSES TO DEPOSITION TOPICS

24
25 Specifically incorporating each of its General Objections and Responses into each and
26 every Response below, Apple objects and responds as follows:
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1 **TOPIC NO. 1:**

2 Apple's conception and reduction to practice of Apple Pay's use of tokenization
3 (replacing the Primary Account Number/credit card number with a token or substitute number), a
4 dynamic limited-use cryptogram, and NFC (or other wireless communication technology) to
5 accomplish a mobile transaction prior to the commercial launch of Apple Pay in October 2014.

6 **OBJECTIONS AND RESPONSES TO TOPIC NO. 1:**

7 Apple hereby incorporates the General Objections into its response to Topic No. 1 as if
8 fully set forth herein. Apple further objects to this Topic at least for the following reasons:

9 Overly Broad and Unduly Burdensome: Third-party Apple objects to this Topic as
10 overbroad and unduly burdensome, and improperly attempting to shift the burden of identifying
11 prior art to third-party Apple. Specifically, the Topic fails to take reasonable steps to avoid
12 imposing undue burden and expense on third-party Apple, is not narrowly or reasonably tailored
13 and seeks information that is over eight years old. Apple also objects to the extent that the Topic
14 seeks information that is not reasonably maintained and/or accessible by Apple in the ordinary
15 course of business and/or that is not in the possession, custody, or control of Apple.

16 Vague, Ambiguous, and Calling for a Legal Conclusion: Apple objects to this Topic as
17 vague, ambiguous, and calling for a legal conclusion. For example, the terms and phrases
18 "conception," "reduction to practice," "tokenization," "dynamic limited-use cryptogram," and
19 "NFC (or other wireless communication technology)" are unclear and would require the
20 subjective judgment of Apple or its attorneys.

21 Privileged and Work Product Materials: Third-party Apple objects to this Topic to the
22 extent that it seeks testimony protected by the attorney-client privilege, the attorney work
23 product doctrine, the common interest privilege, or any other applicable privilege, immunity, or
24 protection from discovery, including any third-party duty or obligation of non-disclosure,
25 privacy, or confidentiality. Apple will not provide privileged or protected information, and any
26 inadvertent disclosure or production thereof shall not be deemed a waiver of any privilege with
27 respect to such information or of any work product immunity which may attach thereto.

1 Not Relevant Third-Party Discovery: Third-party Apple objects to this Topic to the extent
2 it seeks information that is not relevant and exceeds the reasonable scope of third-party discovery
3 under the Federal Rules. The burden and expense of the proposed discovery to third-party Apple
4 outweighs its likely benefit. For example, third- party Apple objects to this Topic to the extent
5 that it seeks Apple's trade secrets, commercially sensitive information, and/or closely guarded
6 research and development information. Apple will not provide testimony referring or relating to
7 unannounced or unreleased products. Apple further objects to this Topic to the extent that it
8 seeks documents, things, or information protected from disclosure, including pursuant to Federal
9 Rule of Civil Procedure 26(c)(1)(G) and/or Federal Rule of Evidence 501. Defendants have not
10 established that such sensitive and proprietary information and things are relevant to any party's
11 claim or defense, or that it is proportional to the needs of the above- captioned case, considering
12 the importance of the issues at stake, the amount in controversy, the parties' and Apple's relative
13 access to relevant information, the parties' and third-party Apple's resources, and the importance
14 of the discovery in resolving the issues. Furthermore, to the extent Apple provides any testimony
15 in response to the Subpoena, such production will be subject to the Protective Order entered in
16 this case, with Apple reserving the right to insist upon supplemental protections.

17 Subject to and without waiving the foregoing objections, Apple will meet and confer with
18 Defendants regarding this Topic.

19 **TOPIC NO. 2:**

20 Apple's discussions with Visa, MasterCard and American Express or any third party
21 merchant, bank, payment provider, standards organization, or clearance house, regarding mobile
22 payments using tokenization, dynamic limited-use cryptograms, and NFC (or other wireless
23 communication technology), prior to the 2014 commercial launch of Apple Pay.

24 **OBJECTIONS AND RESPONSES TO TOPIC NO. 2:**

25 Apple hereby incorporates the General Objections into its response to Topic No. 2 as if
26 fully set forth herein. Apple further objects to this Topic at least for the following reasons:
27
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1 Overly Broad and Unduly Burdensome: Third-party Apple objects to this Topic as
2 overbroad and unduly burdensome, and improperly attempting to shift the burden of identifying
3 prior art to third-party Apple. Specifically, the Topic fails to take reasonable steps to avoid
4 imposing undue burden and expense on third-party Apple, and seeks information that is over
5 eight years old. Apple further objects to the Topic as not narrowly or reasonably tailored,
6 particularly in its request for information regarding discussions with “any third party merchant,
7 bank, payment provider, standards organization, or clearing house.” Apple also objects to the
8 extent that the Topic seeks information that is not reasonably maintained and/or accessible by
9 Apple in the ordinary course of business and/or that is not in the possession, custody, or control
10 of Apple. Apple further objects to the extent that this Topic seeks information that is in the
11 possession of, more efficiently obtained from, and/or confidential to one or more other third
12 parties. To the extent Apple provides testimony containing any third-party confidential
13 information, it will do so only after fulfilling its obligations to the affected third-party under any
14 applicable confidentiality agreement(s).

15 Vague and Ambiguous: Apple objects to this Topic as vague and ambiguous. For
16 example, the terms and phrases “tokenization,” “dynamic limited-use cryptograms,” and “NFC (or
17 other wireless communication technology” are unclear and would require the subjective
18 judgment of Apple or its attorneys.

19 Privileged and Work Product Materials: Third-party Apple objects to this Topic to the
20 extent that it seeks testimony protected by the attorney-client privilege, the attorney work
21 product doctrine, the common interest privilege, or any other applicable privilege, immunity, or
22 protection from discovery, including any third-party duty or obligation of non-disclosure,
23 privacy, or confidentiality. Apple will not provide privileged or protected information, and any
24 inadvertent disclosure or production thereof shall not be deemed a waiver of any privilege with
25 respect to such information or of any work product immunity which may attach thereto.

26 Not Relevant Third-Party Discovery: Third-party Apple objects to this Topic to the extent
27 it seeks information that is not relevant and exceeds the reasonable scope of third-party discovery
28

1 under the Federal Rules. The burden and expense of the proposed discovery to third-party Apple
2 outweighs its likely benefit. For example, third- party Apple objects to this Topic to the extent
3 that it seeks Apple's trade secrets, commercially sensitive information, and/or closely guarded
4 research and development information. Apple will not provide testimony referring or relating to
5 unannounced or unreleased products. Apple further objects to this Topic to the extent that it
6 seeks documents, things, or information protected from disclosure, including pursuant to Federal
7 Rule of Civil Procedure 26(c)(1)(G) and/or Federal Rule of Evidence 501. Defendants have not
8 established that such sensitive and proprietary information and things are relevant to any party's
9 claim or defense, or that it is proportional to the needs of the above- captioned case, considering
10 the importance of the issues at stake, the amount in controversy, the parties' and Apple's relative
11 access to relevant information, the parties' and third-party Apple's resources, and the importance
12 of the discovery in resolving the issues. Furthermore, to the extent Apple provides any testimony
13 in response to the Subpoena, such production will be subject to the Protective Order entered in
14 this case, with Apple reserving the right to insist upon supplemental protections.

15 Subject to and without waiving the foregoing objections, Apple will meet and confer with
16 Defendants regarding this Topic.

17 **TOPIC NO. 3:**

18 The accuracy and authenticity of Exhibits 1 through 3.

19 **OBJECTIONS AND RESPONSES TO TOPIC NO. 3:**

20 Apple hereby incorporates the General Objections into its response to Topic No. 3 as if
21 fully set forth herein. Apple further objects to this Topic at least for the following reasons:

22 Overly Broad and Unduly Burdensome: Third-party Apple objects to this Topic as
23 overbroad and unduly burdensome. Specifically, the Topic fails to take reasonable steps to avoid
24 imposing undue burden and expense on third-party Apple, and seeks testimony regarding
25 information more appropriately obtained via less burdensome means of discovery (such as a
26 declaration). Apple also objects to the extent that the Topic seeks information that is not
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1 reasonably maintained and/or accessible by Apple in the ordinary course of business and/or that
2 is not in the possession, custody, or control of Apple.

3 Privileged and Work Product Materials: Third-party Apple objects to this Topic to the
4 extent that it seeks testimony protected by the attorney-client privilege, the attorney work
5 product doctrine, the common interest privilege, or any other applicable privilege, immunity, or
6 protection from discovery, including any third-party duty or obligation of non-disclosure,
7 privacy, or confidentiality. Apple will not provide privileged or protected information, and any
8 inadvertent disclosure or production thereof shall not be deemed a waiver of any privilege with
9 respect to such information or of any work product immunity which may attach thereto.

10 Not Relevant Third-Party Discovery: Third-party Apple objects to this Topic to the extent
11 it seeks information that is not relevant and exceeds the reasonable scope of third-party discovery
12 under the Federal Rules. The burden and expense of the proposed discovery to third-party Apple
13 outweighs its likely benefit. For example, third- party Apple objects to this Topic to the extent
14 that it seeks Apple's trade secrets, commercially sensitive information, and/or closely guarded
15 research and development information. Apple will not provide testimony referring or relating to
16 unannounced or unreleased products. Apple further objects to this Topic to the extent that it
17 seeks documents, things, or information protected from disclosure, including pursuant to Federal
18 Rule of Civil Procedure 26(c)(1)(G) and/or Federal Rule of Evidence 501. Defendants have not
19 established that such sensitive and proprietary information and things are relevant to any party's
20 claim or defense, or that it is proportional to the needs of the above- captioned case, considering
21 the importance of the issues at stake, the amount in controversy, the parties' and Apple's relative
22 access to relevant information, the parties' and third-party Apple's resources, and the importance
23 of the discovery in resolving the issues. Furthermore, to the extent Apple provides any testimony
24 in response to the Subpoena, such production will be subject to the Protective Order entered in
25 this case, with Apple reserving the right to insist upon supplemental protections.

26 Subject to and without waiving the foregoing objections, Apple will meet and confer with
27 Defendants regarding this Topic.
28

1 **TOPIC NO. 4:**

2 Apple's communications with CardWare, Virtual Electric, Inc., and David Wyatt, or
3 relating in any way to the Asserted Patents.

4 **OBJECTIONS AND RESPONSES TO TOPIC NO. 4:**

5 Apple hereby incorporates the General Objections, listed above. Third-party Apple
6 further objects to this Topic at least for the following reasons:

7 Testimony Available Through Party Discovery: Apple objects to this Topic to the extent
8 it seeks testimony more easily obtained from Plaintiff.

9 Overly Broad and Unduly Burdensome: Third-party Apple objects to this Topic as
10 overbroad and unduly burdensome. Specifically, the Topic fails to take reasonable steps to avoid
11 imposing undue burden and expense on third-party Apple, and seeks testimony regarding
12 information more appropriately obtained via less burdensome means of discovery (such as a
13 declaration). In addition, the Topic is not reasonably or narrowly tailored and is unbounded in
14 time and is not limited to any subject matter relevant to the parties' claims or defenses in the
15 underlying litigation. Apple also objects to the extent that the Topic seeks information that is not
16 reasonably maintained and/or accessible by Apple in the ordinary course of business and/or that
17 is not in the possession, custody, or control of Apple.

18 Privileged and Work Product Materials: Third-party Apple objects to this Topic to the
19 extent that it seeks testimony protected by the attorney-client privilege, the attorney work
20 product doctrine, the common interest privilege, or any other applicable privilege, immunity, or
21 protection from discovery, including any third-party duty or obligation of non-disclosure,
22 privacy, or confidentiality. Apple will not provide privileged or protected information, and any
23 inadvertent disclosure or production thereof shall not be deemed a waiver of any privilege with
24 respect to such information or of any work product immunity which may attach thereto.

25 Not Relevant Third-Party Discovery: Third-party Apple objects to this Topic to the extent
26 it seeks information that is not relevant and exceeds the reasonable scope of third-party discovery
27 under the Federal Rules. The burden and expense of the proposed discovery to third-party Apple
28

1 outweighs its likely benefit. For example, third- party Apple objects to this Topic to the extent
2 that it seeks Apple's trade secrets, commercially sensitive information, and/or closely guarded
3 research and development information. Apple will not provide testimony referring or relating to
4 unannounced or unreleased products. Apple further objects to this Topic to the extent that it
5 seeks documents, things, or information protected from disclosure, including pursuant to Federal
6 Rule of Civil Procedure 26(c)(1)(G) and/or Federal Rule of Evidence 501. Defendants have not
7 established that such sensitive and proprietary information and things are relevant to any party's
8 claim or defense, or that it is proportional to the needs of the above- captioned case, considering
9 the importance of the issues at stake, the amount in controversy, the parties' and Apple's relative
10 access to relevant information, the parties' and third-party Apple's resources, and the importance
11 of the discovery in resolving the issues. Furthermore, to the extent Apple provides any testimony
12 in response to the Subpoena, such production will be subject to the Protective Order entered in
13 this case, with Apple reserving the right to insist upon supplemental protections.

14 Subject to and without waiving the foregoing objections, Apple will meet and confer with
15 Defendants regarding this Topic.

17 Dated this 23rd day of December, 2022

WALKER STEVENS CANNOM LLP

19 /s/ Bethany Stevens
Bethany Stevens

21 Attorneys for Non-Party Apple Inc.

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Dated: December 23, 2022

NON-PARTY APPLE INC.'S OBJECTIONS AND RESPONSES TO SUBPOENA TO TESTIFY AT A
DEPOSITION IN A CIVIL CASE