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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

APPLE INC.,

Plaintiff,

v.

WI-LAN INC., et al.,

Defendants.

Case No.: 14cv2235-DMS (BLM)

ORDER GRANTING IN PART AND DENYING IN PART APPLE INC.'S NOTICE OF EX PARTE MOTION TO STRIKE NEW STANWOOD DECLARATION SUBMITTED WITH WI-LAN'S REPLY BRIEF

AND RELATED COUNTERCLAIMS

[ECF No. 198]

On October 10, 2017, the Court issued an order setting a briefing schedule regarding a discovery dispute between Defendant Wi-LAN Inc.'s ("Wi-LAN") and Plaintiff Apple, Inc. ("Apple"), and directed Wi-LAN to file its motion to compel by October 18, 2017, Apple to file its opposition by October 25, 2017, and Wi-LAN to file a reply by November 1, 2017. ECF No. 178. The parties complied with these deadlines. ECF Nos. 179, 183, 189.

On November 6, 2017, Apple filed an *Ex Parte* Motion requesting that the Court strike as untimely: (1) the 12-page declaration from Kenneth Stanwood, Wi-LAN's CTO, offered for the first time with Wi-LAN's reply brief in support of its motion to compel, and (2) the new arguments in Wi-LAN's reply brief that rely on or cite to that untimely declaration. ECF 198-1, at 2. In the

1 alternative, Apple requests leave to submit a short sur-reply to respond to Wi-LAN's untimely
2 evidence and argument. Id. On November 9, 2017, Wi-LAN filed an Opposition to Apple's *Ex*
3 *Parte* Motion. ECF No. 201. Wi-LAN requests in its opposition that the Court: "(1) deny Apple's
4 request to strike the Stanwood Declaration (and related arguments) filed in reply to Apple's
5 newly raised argument and (2) deny Apple's request to file a sur-reply." Id. at 2.

6 Having reviewed Apple's *ex parte* motion, Wi-LAN's opposition thereto, and Wi-LAN's
7 motion to compel and reply in support thereof, the Court **DENIES** Apple's request to strike Mr.
8 Stanwood's declaration and the arguments made in Wi-LAN's reply brief that rely on or cite to
9 that declaration. The Court finds good cause to **GRANT** Apple's alternative request to submit
10 a sur-reply to respond to Wi-LAN's reply. Apple is **DIRECTED** to file its proposed sur-reply by
11 **November 15, 2017.**

12 **IT IS SO ORDERED.**

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14 Dated: 11/13/2017

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16 Hon. Barbara L. Major
17 United States Magistrate Judge
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