IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

RFCYBER CORP., Plaintiff, v. APPLE INC., Defendant.	Civil Action No. 6:21-cv-00916-ADA **JURY TRIAL DEMANDED**

APPLE'S OPPOSITION TO PLAINTIFF RFCYBER'S
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

TABLE OF CONTENTS

i

<u>TABLE OF AUTHORITIES</u>

Page(s)

Cases

Court Rules

Apple respectfully opposes the motion by Plaintiff RFCyber for leave to file a second amended complaint (ECF No. 133), which should be denied with prejudice and without further leave to amend.

I.   INTRODUCTION

On September 12, 2022, the Court granted Apple's renewed motion to dismiss RFCyber's claims of pre-suit indirect and willful infringement, correctly finding that "RFCyber's Amended Complaint does not plead sufficient facts that would support an allegation of pre-suit knowledge of the patents." ECF No. 98 at 5. In that Order, the Court set a specific deadline of "ninety (90) days after the start of fact discovery" for RFCyber to try to reallege its dismissed claims. *Id*. That deadline came and went nearly five months ago. Now, with less than one month left in an already-extended fact discovery period, RFCyber is trying to reinject its dismissed claims back into this case based on the same facts and circumstances the Court already found did not withstand pleading scrutiny. *See* ECF No. 98. This is the opposite of good cause for amending a complaint under Federal Rule 16(b).

Despite its effort to repackage the evidence by citing recent discovery responses and deposition testimony, RFCyber presents no new facts or circumstances that differ from those analyzed by the Court in its September 2022 Order dismissing RFCyber's claims of pre-suit indirect and willful infringement. *See id*. The Court therefore should deny with prejudice RFCyber's futile motion for the same reasons the Court granted Apple's renewed motion to dismiss last September. And RFCyber provides no reason for missing the amendment deadline by nearly five months, especially where Apple produced all of the documents RFCyber relies on more than five months ago. RFCyber's allegations were insufficient in September 2022 when the Court granted Apple's renewed motion to dismiss, and they are insufficient now. RFCyber therefore has no good cause for this late amendment to its pleading.

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