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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE

13 IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

Case No. 5:11-cv-2509-LHK

14
15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS

**DEFENDANTS' JOINT NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT BASED ON
MOTION TO EXCLUDE TESTIMONY OF
DR. EDWARD E. LEAMER, PH.D.;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

18 DATE: March 20, 2104 and
19 March 27, 2014
20 TIME: 1:30 p.m.
COURTROOM: Courtroom 8, 4th Floor
JUDGE: Hon. Lucy H. Koh

1 **DEFENDANTS’ JOINT NOTICE OF MOTION AND MOTION FOR SUMMARY**
2 **JUDGMENT BASED ON THE MOTION TO EXCLUDE THE EXPERT TESTIMONY**
3 **OF EDWARD E. LEAMER, PH.D.**

4 **PLEASE TAKE NOTICE** that on that on March 20, 2014 at 1:30 p.m. and/or March 27,
5 2104 at 1:30 p.m., or as soon thereafter as this matter may be heard, Defendants Adobe Systems
6 Inc., Apple Inc., Google Inc., and Intel Corp. (“Defendants”), shall and do hereby move this
7 Court for an order entering summary judgment in Defendants’ favor pursuant to Federal Rule of
8 Civil Procedure 56.

9 This motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the Notice of Motion and Motion to Exclude the Expert
11 Testimony of Edward E. Leamer, Ph.D., the accompanying Memorandum of Points and
12 Authorities, the accompanying Declaration of Christina J. Brown in Support of Defendants’ Joint
13 Motion to Exclude the Expert Testimony of Edward E. Leamer, Ph.D. (“Brown Decl.”) and
14 exhibits thereto, the accompanying Declaration of Lauren J. Stiroh, Ph.D. in Support of
15 Defendants’ Joint Motion to Exclude the Expert Testimony of Edward E. Leamer, Ph.D. (“Stiroh
16 Decl.”) and exhibits thereto, Defendants’ Reply Memorandum, the pleadings and files in this
17 action, such arguments and authorities as may be presented at or before the hearing, and such
18 other matters as the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

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2 The defendants jointly move for summary judgment based on their Motion to Exclude the
3 Expert Testimony of Edward E. Leamer, Ph.D. Without Dr. Leamer's expert report and
4 testimony, plaintiffs have no evidence of class-wide impact or damages and cannot prove the
5 essential elements of their antitrust claims. *See, e.g., In re New Motor Vehicles Canadian Export*
6 *Antitrust Litig.*, 522 F.3d 6, 19 n.8 (1st Cir. 2008) (listing elements of an antitrust claim); *Heary*
7 *Bros. Lightning Protection Co. v. Lightning Protection Inst.*, 287 F. Supp. 2d 1038, 1061-62 (D.
8 Ariz. 2003), *aff'd in part and rev'd in part on other grounds*, 262 Fed. App'x 815 (9th Cir. 2008)
9 (simultaneously granting defendants' *Daubert* motion to exclude the plaintiffs' damages expert
10 and defendants' summary judgment motion, because "exclusion of [the expert's] testimony leaves
11 the Plaintiffs with no proof of injury, an essential element of their Sherman Act claim").

12 In addition to jointly moving for summary judgment based on plaintiffs' lack of evidence
13 of impact or damages, each defendant has filed an individual motion for summary judgment
14 directed to plaintiffs' claim that it joined an overarching conspiracy among all defendants.
15 Plaintiffs must demonstrate that "each defendant," considered individually, made a conscious
16 commitment to join the alleged conspiracy. *AD/SAT, Inc. v. Associated Press, et al.*, 181 F.3d
17 216, 234 (2d Cir. 1999). Thus, the question whether plaintiffs have made a sufficient showing
18 that any particular defendant joined the alleged conspiracy must be considered separately with
19 respect to each defendant.

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1 Dated: January 9, 2013

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ATTESTATION: The filer attests that concurrence in the filing of this document has been
20 obtained from all signatories.
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