**JONES & MAYER** Martin J. Mayer, Esq., SBN 73890 mjm@jones-mayer.com James R. Touchstone, Esq. SBN 184584 jrt@jones-mayer.com Tarquin Preziosi, Esq., SBN 198014 tp@jones-mayer.com 3777 North Harbor Boulevard 5 Fullerton, California 92835 (714) 446-1400; Fax (714) 446-1448 Attorneys for Amici Applicants 7 UNITED STATES DISTRICT COURT 8 CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION 9 Case No: 5:16-cm-00010-SP IN THE MATTER OF THE 10 SEARCH OF AN APPLIE IPHONE SEIZED DURING THE EXECUTION OF A SEARCH 11 APPLICATION FOR LEAVE TO WARRANT ON A BLACK LEXUS FILE AMICI CURIAE BRIEF: 12 IS300; CALIFORNIA LICENSE STATEMENT OF IDENTITY AND PLATE 35KGD203 13 INTERESTS OF AMICI CURIAE; BRIEF OF AMICI CURIAE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF 14 AMICI CURIAE BRIEF 15 Date: March 22, 2016 16 Time: 1:00 p.m. Location: Courtroom of Hon. 17 Sheri Pym 18 19 TO THE HONORABLE SHERI PYM, MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA: 20 APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF 21 The California State Sheriffs' Association, California Police Chiefs' 22 Association and the California Peace Officers' Association (collectively, 23 "California Law Enforcement") respectfully request leave to file the attached brief 24 of Amici Curiae in support of Applicant United States of America ("United 25 States") in order to assist this Court in resolving the important issue of law 26 presented in this matter. 27 28

1 The interests of Amici are as stated in the attached brief, Part I. Applicants endeavor to provide this Court with the perspective of similarly situated law 2 enforcement agencies throughout the State regarding the important legal issue 3 raised in this matter, specifically whether: 4 Apple Inc. ("Apple") can be compelled to assist the United States in 5 unlocking an iPhone owned by the government that was used to facilitate the 6 December 2, 2015 massacre in San Bernardino, California. 7 The issue in this case is of paramount importance to the parties, Amici, to 8 law enforcement generally, and to all of the People of the State of California. 9 Amici believe that they can provide additional perspective to this Court that 10 will be helpful in its decision. 11 Therefore, based upon all of the foregoing, applicants respectfully request 12 leave from the Presiding Judge to file the attached brief of Amici Curiae 13 addressing the above issues, in order to aid this Court in its consideration and 14 determination of the critical issues before it in this matter. 15 There is good cause for permitting the filing of the brief, as stated above, 16 and this Court may grant the filing of the brief pursuant to FRAP 29. 17 18 Dated: March 3, 2016 Respectfully submitted, 19 JONES & MAYER 20 21 By: /s/ Martin J. Mayer 22 Martin J. Mayer James R. Touchstone 23 Tarquin Preziosi Attorneys for Amici Applicants 24 25 26 27 28

# STATEMENT OF IDENTITY AND INTERESTS OF AMICI CURIAE

Amici Curiae are the following associations: the California State Sheriffs' Association ("CSSA"), the California Police Chiefs' Association ("CPCA"), and the California Peace Officers' Association ("CPOA"). Each of their memberships and interests are discussed below.

The California State Sheriffs' Association ("CSSA") is a non-profit professional organization that represents each of the 58 California Sheriffs. It was formed to allow the sharing of information and resources between sheriffs and departmental personnel, in order to allow for the general improvement of law enforcement throughout the State of California.

The California Police Chiefs' Association ("CPCA") represents virtually all of the more than 400 municipal chiefs of police in California. CPCA seeks to promote and advance the science and art of police administration and crime prevention, by developing and disseminating professional administrative practices for use in the police profession. It also furthers police cooperation and the exchange of information and experience throughout California.

The California Peace Officers' Association ("CPOA") represents more than 2,000 peace officers, of all ranks, throughout the State of California. CPOA provides professional development and training for peace officers, and reviews and comments on legislation and other matters impacting law enforcement.

## FRAP 29(a) STATEMENT

Pursuant to Rule 29(a) of Federal Rules of Appellate Procedure, Apple, Inc. has informed Amici Curiae that they consent to the filing of this brief. The United States has stated that it takes no position as to whether or not Amici should file this brief.

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### FRAP 29(c)(5) STATEMENT

Pursuant to Rule 29(c)(5), Amici Curiae state that (A) no party's counsel authored this brief in whole or in part; (B) no party or party's counsel contributed money to fund the preparation or submission of this brief; and (C) no person other than Amici Curiae and their counsel contributed money to fund the preparation or submission of this brief.

#### **ARGUMENT**

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Amici have identified this matter as one of statewide significance in which their expertise may be of assistance to the Court. The attached brief offers a broad perspective of Amici as to the issues before the court, namely the impact of the Court's decision on local law enforcement agencies throughout the State by enabling the United States to compel Apple to assist in unlocking the iPhone that was used to facilitate the December 2, 2015 massacre in San Bernardino, California.

In particular, if the Court were to grant the motion to vacate the order as requested by the Apple, law enforcement investigations into acts of terror – and the ability to prevent the same - will be greatly jeopardized by prohibiting access to crucial information relevant to investigations which is obtained through the judicial process.

The undersigned have been given specific authority to make this Application on behalf of Amici.

Dated: March 3, 2016 Respectfully submitted,

JONES & MAYER

By: /s/ Martin J. Mayer

Martin J. Mayer

Tarquin Preziosi

James R. Touchstone

Attorneys for Amici Applicants

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9   10	Attorneys for Amici Curiae	
11	UNITED STATES DISTRICT COURT	
12	CENTRAL DISTRICT OF CALIFORNIA	
13	EASTERN DIVISION	
14		BY FAX
15	IN THE MATTER OF THE SEARCH	ED No. CM 16-10 (SP)
16	OF AN APPLE IPHONE SEIZED DURING THE EXECUTION OF A	APPLICATION OF
17	SEARCH WARRANT ON A BLACK LEXUS IS300, CALIFORNIA	AMAZON.COM, BOX, CISCO SYSTEMS, DROPBOX,
18	LICENSE PLÁTE 35KGD20	EVERNOTE, FACEBOOK, GOOGLE, MICROSOFT,
19		MOZILLA, NEST, PINTEREST, SLACK, SNAPCHAT, WHATSAPP, AND YAHOO TO PARTICIPATE
20		AND YAHOO TO PARTICIPATE AS AMICI CURIAE IN SUPPORT OF APPLE, INC.
21		
22		Date: March 22, 2016 Time: 1:00 p.m. Place: Courtroom 3 or 4
23		Judge: Honorable Sheri Pym
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HOGAN LOVELLS US LLP ATTORNEYS AT LAW		
LOS ANGELES	Al	PPLICATION TO PARTICIPATE AS AMICI CURIAE

HOGAN LOVELLS US LLP ATTORNEYS AT LAW LOS ANGELES Amazon.com, Box, Cisco Systems, Dropbox, Evernote, Facebook, Google, Microsoft, Mozilla, Nest, Pinterest, Slack, Snapchat, WhatsApp, and Yahoo apply for leave to participate as *amici curiae* in support of Apple, Inc. in this matter. In support, applicants state:

- 1. The government has moved under the All Writs Act to compel Apple to create software that will bypass the security features of an iPhone recovered by the government. The government's application raises important legal questions regarding whether the All Writs Act authorizes the government's request and the relationship between the All Writs Act and security features on electronic devices more generally.
- 2. District courts have the inherent authority to permit non-parties to participate as *amici curiae* in a case, and have broad discretion in deciding whether to permit *amicus* briefs. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). Generally speaking, "courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case." *In re Roxford Foods Litigation*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). A brief will typically be accepted if it is "timely and useful." *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996). Applicants' brief is both.
- 3. First, applicants' brief is timely because it is being filed on March 3, 2016, the date set for *amicus* submissions in the Court's February 19, 2016 scheduling order. Dkt. No. 10.
- 4. Second, applicants' brief is useful. Applicants are leading technology companies, and their brief discusses why the government's request is unsupported by the case law, unduly burdensome to technology companies like applicants, and practically harmful for American consumers. The Court will benefit from the unique perspective offered by applicants' brief.

LLP ATTORNEYS AT LAW

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5. We have conferred with counsel for Apple and the government regarding this application. Both have consented to applicants' participation as *amici curiae*.

For the foregoing reasons, the application should be granted.

Dated: March 3, 2016

Respectfully submitted,

HOGAN LOVELLS US LLP

Michael M. Maddigan Attorney for Amici Curiae

Case No. ED 5:16-cm-00010-SP

LEAVE TO FILE BRIEF OF AMICI CURIAE

FENWICK & WEST LLP

# FINWICK & WEST LLP ATTORNEYS AT LAW SAN FRANCISCO

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# TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 22, 2016, at 1:00 p.m., before the Honorable Sheri Pym, AVG Technologies, Computer & Communications Industry Association (CCIA), Data Foundry, Golden Frog, the Internet Association, and the Internet Infrastructure Coalition ("i2Coalition") (hereinafter "Amici") move the Court for leave to file the accompanying brief as amici curiae in support of Apple's Motion to Vacate Order Compelling Apple Inc. to Assist Agents in Search, and Opposition To Government's Motion to Compel Assistance.

The motion is based on this Notice of Motion and Motion, and the accompanying brief.

Dated: March 3, 2016

FENWICK & WEST LLP

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Attorneys for Amici Curiae

AVG Technologies, the Computer & Communications Industry Association (CCIA), Data Foundry, Golden Frog, the Internet Association, and the Internet Infrastructure Coalition ("i2Coalition") ("Amici") move this Court for leave to appear as amici curiae and to file the accompanying brief in support of Apple's Motion to Vacate Order Compelling Apple Inc. to Assist Agents in Search, and Opposition To Government's Motion to Compel Assistance. Dkt. 16.

Counsel for the *Amici* has contacted Apple Inc. and the United States to provide notice of the filing of this motion and accompanying brief. The parties have indicated that they do not object to the filing of this brief.

#### I. STANDARD FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

The court has inherent authority to permit a non-party to participate as amicus curiae in a case, and it has broad discretion in deciding whether to permit participation. See, e.g., Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982), abrogated on other grounds by Sandin v. Conner, 515 U.S. 472 (1995); Ellsworth Assocs., Inc. v. United States, 917 F. Supp. 841, 846 (D.D.C. 1996); In re Roxford Foods Litig., 790 F. Supp. 987, 997 (E.D. Cal 1991); Gerritsen v. De La Madrid Hurtado, 819 F.2d 1511, 1514 n. 3 (1987). "Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case. . ." In re Roxford Foods Litig., 790 F. Supp. at 997 (quoting United States v. Louisiana, 751 F. Supp. 608, 620 (E.D. La. 1990)). Courts typically permit amicus participation if the information offered is "timely and useful." Ellsworth Assocs., 917 F. Supp. at 846; Avellino v. Herron, 991 F. Supp. 730, 732 (E.D. Pa. 1998); Hoptowit, 682 F.2d at 1260 (9th Cir.1982).

The proposed brief is timely. *Amici* submit the proposed brief in accordance with the Court's scheduling order, which required that "[a]ny amicus brief shall be filed by not later than March 3, 2016, along with an appropriate request seeking leave of the Court to file such brief." Dkt. 10. The Court will hear Apple's and the government's motions on March 22, and submission of this brief does not affect the

hearing date or the briefing schedule set by the Court.

# II. INTERESTS OF AMICI CURIAE AND HOW THEIR EXPERTISE WILL BENEFIT THE COURT

The proposed brief provides information that is both useful and critical to the Court in considering the issues relating to Apple's motion. Courts have deemed *amicus* participation useful when the *amicus* has a special interest in the issues in a case, is particularly familiar with the issues, or has relevant expertise. *Amicus* briefs concerning legal issues that have potential ramifications beyond parties directly involved are permitted. *NGV Gaming v. Upstream Point Molate*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005).

The government's interpretation of the scope of the Court's authority to issue the order here under the All Writs Act has potential ramifications beyond this case and beyond Apple. If adopted, the government's theory could empower it compel other technology companies, including Internet companies, to develop and implement software that weakens security features those companies have built into their products. *Amici* either are technology companies or represent or support technology companies. None received any compensation for participating in this brief. The sole interest of *Amici* in this case is advocating a principled interpretation of the All Writs Act that protects the ability of technology companies to develop and maintain secure products and services.

#### III. STATEMENT OF IDENTITY OF AMICI CURIAE

AVG is the leading provider of software services to secure devices, data and people. AVG's award-winning consumer portfolio includes internet security, performance optimization, location services, data controls and insights, and privacy and identity protection, for mobile devices and desktops.

The Computer & Communications Industry Association ("CCIA") represents more than twenty large, medium-sized, and small companies in the high technology products and services sectors, including computer hardware and software,

electronic commerce, telecommunications, and Internet products and services—companies that collectively generate more than \$465 billion in annual revenues. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition.

Founded in 1994, Data Foundry is one of the first 50 ISPs in the United States. During its nineteen year history, its data centers have supported thousands of enterprise companies in every industry, including high performance computing, energy, financial services, healthcare and technology.

Golden Frog was founded in response to Room 641a, an infamous room in San Francisco where the NSA was conducting surveillance on AT&T's networks. Golden Frog builds tools that help preserve an open and secure Internet experience while respecting user privacy.

The Internet Association, the unified voice of the Internet economy, represents the interests of 35 leading Internet companies and their global community of users. It is dedicated to advancing public policy solutions that strengthen and protect Internet freedom, foster innovation and economic growth, and empower users.

The Internet Infrastructure Coalition ("i2Coalition") is the non-profit voice of companies from the Internet infrastructure industry. i2Coalition members are primarily small to medium sized businesses with global businesses in web hosting, data centers and Cloud infrastructure, as well as companies who provide services to those industries. The security of the Internet's infrastructure is vitally important to the economy, and the millions of citizens who rely upon being able to keep their personal data, financial, medical and legal records, secure. Requiring workarounds that weaken security standards has the potential to have broad ramifications and the potential to jeopardize the security and safety of all users.

#### IV. CONCLUSION

The questions at issue in this action are vitally important to both the public

and Amici. Amici respectfully request that the Court grant them leave to appear and 1 file the accompanying brief. 3 4 FENWICK & WEST LLP Dated: March 3, 2016 5 6 By: 7 8 Andrew P. Bridges David L. Hayes 9 Tyler G. Newby 10 Ciara N. Mittan FENWICK & WEST LLP 11 555 California Street, 12th Floor 12 San Francisco, CA 94104 Telephone: 415.875.2300 13 Facsimile: 415.281.1350 14 abridges@fenwick.com dhayes@fenwick.com 15 tnewby@fenwick.com 16 cmittan@fenwick.com 17 Attorneys for Amici Curiae 18 19 20 21 22 23 24 25 26 27 28

FENWICK & WEST LLP Attorneys at Law San Francisco 5

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#### **CERTIFICATE OF SERVICE**

The undersigned declares as follows:

I am a citizen of the United States and employed in the San Francisco County, State of California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Fenwick & West LLP, 555 California Street, 12<sup>th</sup> Floor, San Francisco, CA 94104. On the date set forth below, I served a copy of the following documents:

NOTICE OF MOTION AND MOTION OF AVG TECHNOLOGIES, THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, DATA FOUNDRY, GOLDEN FROG, THE INTERNET ASSOCIATION, AND THE INTERNET INFRASTRUCTURE COALITION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF IN SUPPORT OF APPLE, INC.'S MOTION TO VACATE ORDER COMPELLING ASSISTANCE; PROPOSED BRIEF;

BRIEF OF AMICI CURIAE, AVG TECHNOLOGIES, THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, DATA FOUNDRY, GOLDEN FROG,, THE INTERNET ASSOCIATION, AND THE INTERNET INFRASTRUCTURE COALITION IN SUPPORT OF APPLE INC.'S MOTION TO VACATE ORDER COMPELLING APPLE INC. TO ASSIST AGENTS IN SEARCH, AND OPPOSITION TO GOVERNMENT'S MOTION TO COMPEL ASSISTANCE

[PROPOSED] ORDER GRANTING MOTION OF AVG
TECHNOLOGIES, THE COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION DATA FOUNDRY, GOLDEN FROG, THE
INTERNET ASSOCIATION, AND THE INTERNET INFRASTRUCTURE
COALITION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF IN
SUPPORT OF APPLE INC.'S MOTION TO VACATE ORDER
COMPELLING APPLE INC. TO ASSIST AGENTS IN SEARCH, AND
OPPOSITION TO GOVERNMENT'S MOTION TO COMPEL
ASSISTANCE

on the interested parties in the subject action by transmitting a true copy thereof as indicated below, addressed as follows:

NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* 

I declare under penalty of perjury under the laws of the State of California and the United States that the above is true and correct. Dated: March 3, 2016 FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO