

ORIGINAL

1 JEROME C. ROTH (State Bar No. 159483)
 jerome.roth@mto.com
 2 ROSEMARIE T. RING (State Bar No. 220769)
 rose.ring@mto.com
 3 JONATHAN H. BLAVIN (State Bar No. 230269)
 jonathan.blavin@mto.com
 4 JOSHUA PATASHNIK (State Bar No. 295120)
 josh.patashnik@mto.com
 5 MUNGER, TOLLES & OLSON LLP
 560 Mission Street
 6 Twenty-Seventh Floor
 San Francisco, California 94105-2907
 7 Telephone: (415) 512-4000
 Facsimile: (415) 512-4077
 8

9 ARIEL C. GREEN (State Bar No. 304780)
 ariel.green@mto.com
 10 MUNGER, TOLLES & OLSON LLP
 355 South Grand Avenue
 11 Thirty-Fifth Floor
 Los Angeles, California 90071-1560
 12 Telephone: (213) 683-9100
 Facsimile: (213) 687-7302
 13

Attorneys for *Amici Curiae*

15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 EASTERN DIVISION

18 IN THE MATTER OF THE SEARCH OF AN
 APPLE IPHONE SEIZED DURING THE
 19 EXECUTION OF A SEARCH WARRANT
 ON A BLACK LEXUS IS300, CALIFORNIA
 20 LICENSE PLATE 35KGD203
 21
 22
 23
 24
 25
 26
 27
 28

Case No. ED CM 16-10-SP

DECLARATION OF JONATHAN H. BLAVIN IN SUPPORT OF MOTION OF AIRBNB, INC.; ATLISSIAN PTY. LTD.; AUTOMATTIC INC.; CLOUDFLARE, INC.; EBAY INC.; GITHUB, INC.; KICKSTARTER, PBC; LINKEDIN CORPORATION; MAPBOX INC.; A MEDIUM CORPORATION; MEETUP, INC.; REDDIT, INC.; SQUARE, INC.; SQUARESPACE, INC.; TWILIO INC.; TWITTER, INC.; AND WICKR INC. FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Judge: Hon. Sheri Pym

BY _____
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 RIVERSIDE
 2016 MAR -3 PM 4: 19

FILED

LOGGED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF JONATHAN H. BLAVIN

I, Jonathan H. Blavin, hereby declare:

1. I am admitted to practice before this Court. I am an attorney at the law firm of Munger, Tolles & Olson LLP and am counsel of record for Airbnb, Inc., Atlassian Pty. Ltd., Automattic Inc., CloudFlare, Inc., eBay Inc., GitHub, Inc., Kickstarter, PBC, LinkedIn Corporation, Mapbox Inc., A Medium Corporation, Meetup, Inc., Reddit, Inc., Square, Inc., Squarespace, Inc., Twilio Inc., Twitter, Inc., and Wickr Inc. (collectively, "*Amici*") in the above-captioned matter. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, I could and would testify competently to the matters set forth herein.

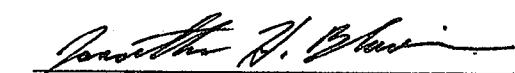
2. On March 2, 2016, I contacted counsel for both Apple Inc. ("Apple") and the United States via email, informing them that *Amici* intended to file a brief in support of Apple in the above-captioned matter.

3. Counsel for Apple informed me that Apple consented to the filing of *Amici's* brief.

4. Counsel for the United States informed me that the government does not oppose the filing of *Amici's* brief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 3, 2016, at San Francisco, California.


Jonathan H. Blavin

1 JENNIFER STISA GRANICK (SBN 168423)
2 jennifer@law.stanford.edu
3 RIANA PFEFFERKORN (SBN 266817)
4 riana@law.stanford.edu
5 STANFORD LAW SCHOOL
6 CENTER FOR INTERNET AND SOCIETY
7 559 Nathan Abbott Way
8 Stanford, California 94305-8610
9 Telephone: (650) 736-8675
10 Facsimile: (650) 725-4086

11 Attorneys for [Proposed] *Amici Curiae*
12 iPhone Security and Applied Cryptography
13 Experts

14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **EASTERN DIVISION**

18 IN THE MATTER OF THE SEARCH OF
19 AN APPLE IPHONE SEIZED DURING
20 THE EXECUTION OF A SEARCH
21 WARRANT ON A BLACK LEXUS
22 IS300, CALIFORNIA LICENSE PLATE
23 35KGD203

ED No. CM 16-10 (SP)

**APPLICATION OF [PROPOSED]
AMICI CURIAE IPHONE
SECURITY AND APPLIED
CRYPTOGRAPHY EXPERTS FOR
LEAVE TO FILE BRIEF IN
SUPPORT OF MOVANT APPLE
INC.**

Hearing:

Date: March 22, 2016
Time: 1:00 p.m.
Place: Courtroom 3 or 4
Judge: Hon. Sheri Pym

FILED
lodged (proposed)
2016 MAR -3 PM 3:18
dreda
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE
BY _____

1 Pursuant to the Court’s Scheduling Order dated February 19, 2016 (D.I. 9),
 2 iPhone Security and Applied Cryptography Experts Dino Dai Zovi *et al.*
 3 (collectively, “*amici*”) respectfully apply to the Court for permission to submit the
 4 accompanying *amici curiae* brief in support of movant Apple, Inc.’s (“Apple’s”)
 5 Motion to Vacate the Court’s February 16, 2016 Order Compelling Apple, Inc. to
 6 Assist Agents in Search (the “Order”). Counsel for *amici* has advised Apple
 7 attorney Jeffrey Landis and government attorney Tracy L. Wilkison of *amici*’s
 8 intent to file this Application. Counsel for both parties have stated that they do not
 9 oppose *amici*’s filing of the proposed brief, which is attached to this Application.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 This Court’s Order seeks to address law enforcement’s legitimate interest in
 12 conducting investigations. However, in commanding Apple to create forensic
 13 software that would bypass iPhone security features, *amici* assert that the Order
 14 would endanger public safety. *Amici* are independent experts in iPhone and iOS
 15 security and applied cryptography who work to analyze, understand, and
 16 encourage the security of Apple products. (For a full list of *amici* and their
 17 credentials, please see the attached brief at page 1.) *Amici* are concerned that the
 18 Court’s Order would ultimately compromise the protections that Apple has
 19 provided to iPhone users for the wealth of sensitive and personal data they store on
 20 their devices. Those protections are vital against hackers, identity thieves,
 21 corporate espionage, and abusive governments. For this reason, *amici* strongly
 22 support Apple’s Motion to Vacate.

23 To assist the Court in deciding whether or not to grant Apple’s Motion to
 24 Vacate, *amici* seek leave to file the attached brief explaining the public-security
 25 risks more fully. This Court has broad inherent discretion to accept briefs from
 26 *amici curiae*. See *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated*
 27 *on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995); *In re Roxford Foods*
 28 *Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991). “District courts frequently welcome


1 amicus briefs from non-parties ... if the amicus has unique information or
2 perspective that can help the court beyond the help that the lawyers from the
3 parties are able to provide.” *Sonoma Falls Developers, L.L.C. v. Nev. Gold &*
4 *Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (citation omitted).

5 This proposed brief fulfills that purpose. The brief is informed by *amici*’s
6 deep expertise in iPhone and cryptographic security research. It provides useful
7 information to the Court about the security features at issue in this case, the
8 broader iPhone security ecosystem, and the public-security ramifications at stake
9 beyond the scope of the instant matter. Permitting *amici*’s participation is
10 appropriate since the Court has specifically contemplated the submission of *amicus*
11 *curiae* briefs, Scheduling Order at 2, ¶ 4.ii, and indicated an interest in hearing
12 more about the technical aspects of the case during a February 18 telephonic
13 conference. *See* Dan Levine and Sue Horton, *In FBI vs. Apple, Judge Asks for*
14 *Technological Details*, Reuters (Feb. 24, 2016),
15 <http://www.reuters.com/article/apple-encryption-judge-idUSL2N16403K>.

16 For the foregoing reasons, *amici curiae* respectfully request that the Court
17 allow the filing of the accompanying *amici curiae* brief.

18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,


JENNIFER STISA GRANICK (SBN 168423)
RIANA PFEFFERKORN (SBN 266817)
STANFORD LAW SCHOOL
CENTER FOR INTERNET AND SOCIETY

Dated: March 2, 2016

Attorneys for [Proposed] *Amici Curiae*
iPhone Security and Applied Cryptography
Experts

FILED

2016 MAR -3 PM 4:31
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE
BY [Signature]
Volsed (proposed) [Signature]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

William Cody Grammer
121 Breeze Ave
Venice, CA 90291
(252) 646-3063
williamcgrammer@gmail.com

Jesse Binnall (*pro hac vice* motion pending)
Harvey & Binnall, PLLC
717 King Street, Suite 300
Alexandria, VA 22314
Telephone: (703) 888-1943
Facsimile: (703) 888-1930
jbinnall@harveybinnall.com

Attorney for *Amici Curiae*
Lavabit LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

IN THE MATTER OF THE SEARCH OF
AN APPLE IPHONE SEIZED DURING
THE EXECUTION OF A SEARCH
WARRANT ON A BLACK LEXUS
IS300, CALIFORNIA LICENSE PLATE
35KGD203

Case No.: 5:16-cm-00010-SP-1
MOTION FOR LEAVE TO FILE
BRIEF OF AMICUS CURIAE LAVABIT,
LLC IN SUPPORT OF APPLIE INC.'S
MOTION TO VACATE

Date: March 22, 2016
Time: 1:00 p.m.
Place: Courtroom 3 or 4, 3rd Floor
Judge: Honorable Sheri Pym

1 Lavabit, LLC hereby requests leave to participate in this action
2 as *amicus curiae* by filing a brief in support of Apple Inc.'s Motion to
3 Vacate Order Compelling Apple Inc. to Assist Agents in Search and
4 Opposition to the Government's Motion to Compel Assistance (filed
5 Feb. 25, 2016) [ECF Docket Entry 16]. *Amicus* requests leave to
6 explain that the Government's request for extraordinary assistance
7 is unwarranted by statute, unconstitutional, and jeopardizes
8 American businesses and the security of American consumers.
9

10
11
12 Lavabit LLC is a former provider of secured e-mail services. In
13 2013, the Government sought extraordinary assistance from
14 Lavabit in the form of access to encrypted e-mails stored on
15 Lavabit's servers. The FBI requested access to the private
16 encryption key that Lavabit used to maintain the security of the
17 data sent between the server and the user's e-mail client, or web
18 browser. With this encryption key, the FBI would be able to
19 intercept, decrypt, inspect, and even modify all e-mails sent
20 through the servers. After a lengthy legal battle, and a potential
21 contempt charge, Lavabit surrendered the private encryption key.
22
23 Lavabit then chose to cease operation of the e-mail service.
24
25
26
27
28

1 Similarly, in this case, the Government is seeking
2
3 extraordinary assistance from Apple in the form of a new product to
4 access the data stored on an individual's iPhone. Lavabit's
5 proposed brief, which is attached, argues that the Government is
6 seeking extraordinary assistance that far exceeds the scope of the
7 All Writs Act and violates the rights guaranteed to Apple under the
8 First and Thirteenth Amendments to the United States
9 Constitution. The brief discusses important points that Lavabit
10 believes have not otherwise been briefed in this matter.

11 Third party Apple does not oppose the filing of this brief. The
12 United States did not respond to Lavabit's request for their position
13 on the filing of the brief.

1 Dated: March 3, 2016

Lavabit LLC

2
3 By Counsel

4 William Cody Grammer

5  #b2

6 (SBN 290184)

7 121 Breeze Ave

8 Venice, CA 90291

(252) 646-3063

9 williamcgrammer@gmail.com

10
11 HARVEY & BINNALL, PLLC

12 

13 Jesse Binnall (*pro hac vice* motion pending)

14 717 King Street, Suite 300

15 Alexandria, VA 22314

16 Telephone: (703) 888-1943

17 Facsimile: (703) 888-1930

18 jbinall@harveybinnall.com

19 Counsel for *Amicus Curiae* Lavabit LLC