Kurt R. Bonds, Esq.
Nevada Bar No. 6228
Adam R. Knecht, Esq.
Nevada Bar No. 13166
ALVERSON, TAYLOR,
MORTENSEN & SANDERS
7401 W. Charleston Boulevard
Las Vegas, NV 89117
(702) 384-7000
efile@alversontaylor.com

Attorneys for Plaintiff
Voip-Pal.com, Inc.

Michael J. McCue
Nevada Bar No. 6055
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: (702) 949-8200
E-mail: mmccue@lrrc.com

John M. Desmarais (admitted *pro hac vice*)
Michael P. Stadnick (admitted *pro hac vice*)
Ameet A. Modi (admitted *pro hac vice*)
Kerri-Ann Limbeek (admitted *pro hac vice*)
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Tel: (212) 351-3400
E-mail: jdesmarais@desmaraisllp.com
E-mail: mstadnick@desmaraisllp.com
E-mail: amodi@desmaraisllp.com
E-mail: klimbeek@desmaraisllp.com

Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VOIP-PAL.COM INC., Plaintiff, v. APPLE INC., Defendant.	Case No. 2:16-cv-00260-RFB-VCF **JOINT STATUS REPORT**

Pursuant to this Court's order (*see* ECF No. 34), Plaintiff Voip-Pal.com, Inc. ("Plaintiff" or "Voip-Pal") and Defendant Apple Inc. ("Defendant" or "Apple"), through undersigned counsel, hereby submit the following Joint Status Report outlining the parties' positions on how this case should proceed in light of recent developments in proceedings concurrently pending in the Patent Trial and Appeal Board ("PTAB").

I. PROCEDURAL HISTORY

On February 9, 2016, Voip-Pal filed this action against Apple alleging infringement of U.S. Patent Nos. 8,542,815 (the "'815 patent") and 9,179,005 (the "'005 patent"). (ECF No. 1.)

Voip-Pal filed an Amended Complaint on April 6, 2016 and a Second Amended Complaint on May 5, 2016. (ECF Nos. 4, 11.) By stipulation, Apple's deadline to respond to the Second Amended Complaint was extended to July 29, 2016. (ECF Nos. 12, 13.)

On July 20, 2016, the Court granted the parties' stipulation to stay this litigation pending decisions by the Patent Trial and Appeal Board ("PTAB") on whether to institute *inter partes* review ("IPR") on the '815 and '005 patents based on petitions filed by Apple (the "IPR Petitions"). (ECF Nos. 24, 25.) On November 21, 2016, the PTAB instituted IPR on all asserted claims of the '815 and '005 patents. (*See* ECF No. 27 at ¶¶ 6-7.) On December 21, 2016, the Court granted the parties' stipulation and proposed order to continue the stay pending final written decisions by the PTAB in the pending IPR proceedings. (ECF No. 26, 27.)

On November 20, 2017, the PTAB issued final written decisions concerning the IPR Petitions. In its decisions, the PTAB held that Apple did not show by a preponderance of the evidence that the asserted claims of the '815 and '005 patents were unpatentable. (*See* ECF No. 34 at ¶ 9.)

The parties agreed to provide the Court with their respective positions on how the case should proceed in light of the PTAB's final written decisions. (*See id.* at ¶ 10.) Similar status reports are being concurrently filed in two other cases filed by Voip-Pal pending in this district: *VoIP-Pal.com, Inc v. Verizon Wireless Services, LLC, et al.*, Case No. 2:16-cv-00271-RCJ-VCF and *VoIP-Pal.com, Inc. v. Twitter Inc.*, Case No. 2:16-cv-02338-RFB-VCF.

II. THE PARTIES' POSITIONS

Voip-Pal and Apple respectfully submit that, under the current circumstances, the stay of this case should be lifted, and that Apple's answer or other response to Voip-Pal's Second Amended Complaint (ECF No. 11) shall be due thirty (30) days after an order of this Court lifting the stay of this case. The parties agree to confer on a case schedule and discovery plan pursuant to Fed. R. Civ. P. 26(f) after Apple files its responsive pleading, and the parties agree to submit their plan to the Court no later than seven (7) days before the Court's scheduling conference under Fed. R. Civ. P. 16(b).

/ / /

III. ONGOING PTAB PROCEEDINGS

The parties further respectfully inform the Court that Apple has filed post-judgment "Motion(s) For Entry Of Judgment In Favor Of Petitioner As A Sanction For Improper *Ex Parte* Communications By Patent Owner, Or, Alternatively, For New And Constitutionally Correct Proceedings" in the PTAB proceedings. (*See* Case No. IPR2016-01198, Paper No. 55 (P.T.A.B. Dec. 20, 2017); Case No. IPR2016-01201, Paper No. 55 (P.T.A.B. Dec. 20, 2017).)

A. Apple's Statement

In its motions, Apple contends that Voip-Pal engaged in misconduct during the IPR proceedings, including by delivering six letters to the PTAB, this Court, and many others (but not Apple), alleging PTAB bias and threatening criminal liability against the PTAB, the former director of the USPTO, and others. Voip-Pal concealed these letters from Apple; Apple received notice of two of those letters only after the clerk of this Court posted those letters on the docket for this case. (*See, e.g.*, Dkt. Nos. 28, 32.) Apple argues that the letters were improper *ex parte* communications, and that the letters and Voip-Pal's conduct violated federal regulations, the Administrative Procedure Act, and Apple's due process rights. Apple's motions seek judgment in favor of Apple or new and constitutionally correct IPR proceedings as a sanction for those alleged violations. Briefing on Apple's motion closes on January 26, 2018. Apple may renew its request to stay this case if the PTAB grants Apple's requested relief.

B. Voip-Pal's Statement

Voip-Pal vehemently opposes Apple's motions and the allegations therein. Foremost, as pointed out in Voip-Pal's opposition to the motions, the first and the last communications were known to Apple; the first of which more than six months before Apple's motions were filed. Despite this, Apple did not raise any objection to the communications until after Apple lost on the merits of its IPR proceedings – likely because Apple believed the communications had no effect. Secondly, as addressed in Voip-Pal's opposition to the motions, the communications did not address any technical or substantive merits, but were instead, communications about systemic issues regarding USPTO and PTAB processes, which communications are expressly authorized by the USPTO Rules of Practice and the Code of Federal Regulations. Finally, the

relief requested by Apple is unprecedented and perceptibly nothing more than an attempt to drag out a process that Apple lost on the merits. Voip-Pal also contends that Apple's request for relief is untimely and statutorily barred.

Dated: January 26, 2018

Respectfully submitted:

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

/s/ Adam R. Knecht
Kurt R. Bonds
Nevada Bar No. 6228
Adam R. Knecht
Nevada Bar No. 13166
7404 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Tel: 702.384.7000
E-mail: kbonds@alversontaylor.com
E-mail: aknecht@alversontaylor.com

Attorneys for Plaintiff Voip-Pal.com, Inc.

LEWIS ROCA
ROTHGERBER CHRISTIE LLP

/s/ Michael J. McCue
Michael J. McCue
Nevada Bar No. 6055
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: (702) 949-8200
E-mail: mmccue@lrrc.com

DESMARAIS LLP
John M. Desmarais (*pro hac vice*)
Michael P. Stadnick (*pro hac vice*)
Ameet A. Modi (*pro hac vice*)
Kerri-Ann Limbeek (*pro hac vice*)
230 Park Avenue
New York, NY 10169
Tel: (212) 351-3400
E-mail: jdesmarais@desmaraisllp.com
E-mail: mstadnick@desmaraisllp.com
E-mail: amodi@desmaraisllp.com
E-mail: klimbeek@desmaraisllp.com

Attorneys for Defendant Apple Inc.