

1 COUGHLIN STOIA GELLER
 2 RUDMAN & ROBBINS LLP
 3 BONNY E. SWEENEY (176174)
 4 GREGORY S. WESTON (239944)
 5 655 West Broadway, Suite 1900
 6 San Diego, CA 92101
 7 Telephone: 619/231-1058
 8 619/231-7423 (fax)
 9 bonnys@csgrr.com
 10 gweston@csgrr.com

11 THE KATRIEL LAW FIRM
 12 ROY A. KATRIEL (*pro hac vice*)
 13 1101 30th Street, N.W., Suite 500
 14 Washington, DC 20007
 15 Telephone: 202/625-4342
 16 202/330-5593 (fax)
 17 rak@katriellaw.com

18 Co-Lead Counsel for Plaintiffs

19 [Additional counsel appear on signature page.]

20 UNITED STATES DISTRICT COURT
 21
 22 NORTHERN DISTRICT OF CALIFORNIA
 23
 24 SAN JOSE DIVISION

25 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW
26 LITIGATION)	
27 _____)	<u>CLASS ACTION</u>
28 This Document Relates To:)	DECLARATION OF BONNY E. SWEENEY
29 ALL ACTIONS.)	IN SUPPORT OF MOTION TO COMPEL
30 _____)	DEFENDANT APPLE INC.'S
	PRODUCTION OF DOCUMENTS
	RELATING TO CLASS CERTIFICATION

31 DATE: January 8, 2008
 32 TIME: 10:00 a.m.
 33 COURTROOM: 5, 4th Floor
 34 JUDGE: Hon. Patricia V. Trumbull

1 I, Bonny E. Sweeney, declare as follows:

2 I am an attorney duly licensed to practice before all of the courts of the State of California. I
3 am a member of the law firm of Coughlin Stoia Geller Rudman & Robbins, LLP, one of the counsel
4 of record for Plaintiffs in the above-entitled action. I have personal knowledge of the matters stated
5 herein, and, if called upon, I could and would competently testify thereto.

6 1. On January 18, 2007, Plaintiff propounded her first set of requests for production of
7 documents on Apple. *See Ex. A*, attached hereto.

8 2. On February 23, 2007, Apple responded to each of Plaintiff's discovery requests with
9 objections. *See Ex. B*, attached hereto. Counsel for Apple further suggested that discovery initially
10 be limited to class certification issues.

11 3. On February 23, 2007, in response to Apple's suggestion that discovery initially be
12 limited to class certification issues, I sent a letter to Mr. Mittelstaedt and Ms. Strong extending
13 Apple's response date by one week as well as identifying the requests most relevant to class
14 certification. At the same time, Plaintiffs reserved their right to challenge any discovery bifurcation.
15 *See Ex. D*, attached hereto.

16 4. On April 13, 2007, I received a letter from Apple's counsel stating that if we would
17 like to meet and confer, Plaintiff Tucker should "set forth the bases for your position that the
18 discovery specified . . . relates to class issues." *See Ex. E*, attached hereto.

19 5. During the May 14, 2007, telephonic meet and confer, counsel for Apple discussed
20 implementing a "stepped discovery" plan. On May 24, 2007, I wrote a letter to counsel following up
21 on the meet and confer call, and agreeing to Apple's "stepped discovery" proposal. The agreement
22 required Apple to respond immediately to "class certification discovery," and Plaintiffs agreed to
23 permit Apple to defer its responses to certain discovery requests pending the filing of Apple's
24 opposition to Plaintiffs' motion for class certification. *See Ex. F*, attached hereto.

25 6. On May 31, 2007, I received a letter from counsel confirming its willingness to
26 produce unredacted spreadsheets responsive to Request No. 10, but refusing to comply with the full
27 extent of the request. Further, counsel again objected to producing cost and revenue data pursuant to
28 Request No. 19, stating that it was not relevant to class certification. *See Ex. G*, attached hereto.

1 7. On June 8, 2007, I again offered yet another concession to Apple by agreeing to
2 accept production of the underlying documents responsive to Request No. 10 in either electronic
3 version agreed to in the discovery format agreement, or in their native computer file format. *See*
4 Ex. H, attached hereto.

5 8. On June 15, Apple reversed its position and informed Plaintiffs that it would not
6 produce the spreadsheets responsive to Request No. 10 without redactions. *See* Ex. C, attached
7 hereto.

8 9. Following the Court's August 21, 2007 ruling on Plaintiff's Motion for
9 Administrative Relief (*see* Ex. I), Gregory Weston sent a letter to counsel reiterating that Apple
10 produce the responsive revenue, profit and loss statements, and related documents and explain the
11 basis of its confidentiality objection. *See* Ex. J, attached hereto.

12 10. On August 28, 2007, Apple again refused to provide the outstanding documents
13 responsive to Plaintiffs' Requests No. 10 and 19. *See* Ex. K, attached hereto.

14 11. On September 26, 2007, Apple refused again to provide the outstanding documents,
15 claiming that they are "merit" based and not "class" related. Apple has never objected to their
16 relevancy. *See* Ex. L, attached hereto.

17 12. Attached hereto are true and correct copies of the following:

18 Exhibit A: Plaintiff Melanie Tucker's First Set of Requests for Production of Documents
19 to Defendant Apple Inc. dated January 18, 2007;

20 Exhibit B: Apple Inc.'s Objections to Plaintiff Melanie Tucker's First Set for Requests
21 for Production of Documents dated February 23, 2007;

22 Exhibit C: Letter from Tracy Strong to Bonny Sweeney, dated June 15, 2007;

23 Exhibit D: Letter from Bonny Sweeney to Robert Mittlestaedt, dated February 23, 2007;

24 Exhibit E: Letter from Robert Mittlestaedt to Bonny Sweeney, dated April 13, 2007;

25 Exhibit F: Letter from Bonny Sweeney to Robert Mittlestaedt, dated May 24, 2007;

26 Exhibit G: Letter from Tracy Strong to Bonny Sweeney, dated May 31, 2007;

27 Exhibit H: Letter From Bonny Sweeney to Robert Mittlestaedt and Tracy Strong, dated
28 June 8, 2007;

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

- Exhibit I: *The Apple iPod iTunes Antitrust Litigation*, No. 05-cv-00037-JW, Order Regarding Plaintiffs' Motion for Administrative Relief (N.D. Cal. July 20, 2007);
- Exhibit J: Letter from Gregory Weston to Tracy Strong, dated August 21, 2007;
- Exhibit K: Letter from Tracy Strong to Greg Weston, dated August 28, 2007; and
- Exhibit L: Letter from Tracy Strong to Greg Weston, dated September 26, 2007.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of December, 2007, at San Diego, California.

s/BONNY E. SWEENEY
BONNY E. SWEENEY

S:\CasesSD\Apple Tying\DEC00047575.doc

1 CERTIFICATE OF SERVICE

2 I hereby certify that on December 3, 2007, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the e-mail
4 addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have
5 mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF
6 participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on December 3, 2007.

9 s/ BONNY E. SWEENEY
10 BONNY E. SWEENEY

11 COUGHLIN STOIA GELLER
12 RUDMAN & ROBBINS LLP
13 655 West Broadway, Suite 1900
14 San Diego, CA 92101-3301
15 Telephone: 619/231-1058
16 619/231-7423 (fax)

17 E-mail:BonnyS@csgrr.com
18
19
20
21
22
23
24
25
26
27
28

Mailing Information for a Case 5:05-cv-00037-JW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Francis Joseph Balint , Jr**
fbalint@bffb.com
- **Michael David Braun**
service@braunlawgroup.com
- **Andrew S. Friedman**
rcreech@bffb.com,afriedman@bffb.com
- **Roy A. Katriel**
rak@katriellaw.com,rk618@aol.com
- **Thomas J. Kennedy**
tkennedy@murrayfrank.com
- **Caroline Nason Mitchell**
cnmitchell@jonesday.com,mlandsborough@jonesday.com,ewallace@jonesday.com
- **Robert Allan Mittelstaedt**
ramittelstaedt@jonesday.com,ybennett@jonesday.com
- **Brian P Murray**
bmurray@rabinlaw.com
- **Jacqueline Sailer**
jsailer@murrayfrank.com
- **Adam Richard Sand , Esq**
invalidaddress@invalidaddress.com
- **John J. Stoia , Jr**
jstoia@csgrr.com
- **Tracy Strong**
tstrong@jonesday.com,dharmon@jonesday.com
- **Bonny E. Sweeney**
bonnys@csgrr.com,tturner@csgrr.com,E_file_sd@csgrr.com
- **Gregory Steven Weston**
gweston@csgrr.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Todd David Carpenter

Bonnett, Fairbourn, Friedman, & Balint
2901 N. Central Avenue
Suite 1000
Phoenix, AZ 85012

Elaine A. Ryan

Bonnett Fairbourn Friedman & Balint, P.C
2901 N. Central Avenue
Suite 1000
Phoenix, AZ 85012