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11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

14 THE APPLE IPOD ITUNES ANTI-TRUST	) Lead Case No. C-05-00037-JW(RS)	
15 LITIGATION		
16		) <u>CLASS ACTION</u>
17 This Document Relates To:		) STIPULATION AND [ <i>Proposed</i> ] ORDER
18 ALL ACTIONS.	) REGARDING DISCOVERY RELATED TO	
19	) TESTIFYING EXPERTS IN THIS MATTER	

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1 The parties stipulate and agree as to discovery related to testifying experts in this matter as  
2 follows:

3 1. This stipulation and order will govern discovery related to testifying experts in this  
4 matter. To the extent that this stipulation and order imposes limitations on discovery that would  
5 otherwise be available pursuant to the Federal Rules of Civil Procedure, the parties have agreed to  
6 such limitation. Neither the terms of this stipulation and order nor the parties' agreement to them  
7 implies that any of the information exempted from discovery in this stipulation and order would  
8 otherwise be discoverable.

9 2. The parties will make all disclosures required by Rule 26(a)(2)(B), as modified by  
10 this stipulation and order, at the times provided in any applicable scheduling order for the service of  
11 written expert reports. To the extent that the disclosures describe or include exhibits, information or  
12 data processed or modeled by a computer at the direction of a disclosed expert in the course of  
13 forming the expert's opinions, machine readable copies of the data (including all input and output  
14 files) along with the appropriate computer program and instructions shall be produced. If data used  
15 by experts are derived from electronic data produced by any party to this action, copies of that  
16 original electronic data, in machine readable format, shall be produced, together with any programs  
17 and instructions necessary to access and use the data. No party need produce computer programs  
18 that are reasonably and readily commercially available. All electronic data, together with programs  
19 and instructions, shall be produced within five business days of the disclosure of the expert's report  
20 to the opposing party. Copies of the electronic data together with any programs and instructions, and  
21 all other materials required to be produced, shall be delivered by hand or overnight express to  
22 counsel for the opposing party.

23 3. The following categories of data, information, documents or materials need not be  
24 produced by any party:

25 (a) drafts prepared by or for the testifying expert including without limitation  
26 drafts of expert reports, expert opinions, expert written testimony or expert work papers prepared for  
27 this litigation; preliminary calculations, computations, modeling or data runs prepared in connection  
28 with this matter; or other preliminary or draft materials prepared by, for or at the direction of an

1 expert witness; but any documents the expert witness relied on in rendering the expert witness's  
2 opinions in this matter, or which form the basis of summaries or tables of information relied on by  
3 the expert in rendering the expert witness's opinions in this matter (e.g., surveys and instructions for  
4 surveys), shall be produced and subject to discovery;

5 (b) any notes or other writings taken or prepared by or for an expert witness in  
6 connection with this matter, including correspondence or memos to or from, and notes of  
7 conversations with the expert's assistants and/or clerical or support staff, other expert witnesses or  
8 non-testifying expert consultants, or attorneys for the party offering the testimony of such expert  
9 witness, unless the expert witness relied on those notes or other writings in rendering the expert  
10 witness's opinions in this matter; and

11 (c) any written correspondence between an expert witness retained for this  
12 litigation and the expert's assistants and/or clerical or support staff, other expert witnesses or non-  
13 testifying expert consultants, or attorneys for the party offering the testimony of such expert witness,  
14 except that facts, data or information that such an expert relied on in rendering the expert witness's  
15 opinions in this matter shall be provided. However, written engagement letters between a testifying  
16 expert retained for this litigation and attorneys for the party offering the testimony of such expert  
17 witness are not subject to this stipulation and therefore must be produced.

18 4. Paragraph 3 shall apply to any data, information, documents or materials without  
19 regard to date of preparation.

20 5. Nothing in paragraph 3, however, shall be construed to prevent substantive deposition  
21 questions with respect to alternative theories, methodologies, variables, data, production of  
22 documents, or assumptions that the expert may have considered in preparing his or her report.


23 6. This stipulation and order should not be construed to preclude reasonable questions at  
24 deposition going to the expert's compensation, hours expended in preparing his or her report and  
25 testimony and frequency and duration of meetings with counsel.

26 7. Any party proffering the testimony of an expert witness in this matter shall identify  
27 each case in which the witness has testified as an expert at trial or by deposition within the preceding  
28 four years. If the testimony or written opinions are subject to confidentiality restrictions prohibiting

1 their disclosure, the party proffering the testimony of the expert witness in this matter will, in good  
2 faith, attempt to secure all consents necessary to have the testimony or opinions produced in this  
3 matter. Subject to obtaining any other required consents, any party proffering the testimony of an  
4 expert witness in this matter who also proffered that person's testimony as an expert witness in a  
5 prior matter shall not withhold its consent to the production in this matter of the testimony or  
6 opinions from such expert that it proffered in the prior matter.

7 DATED: June \_\_\_\_\_, 2008

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DATED: July 3, 2008

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ROBERT A. MITTELSTAEDT

  
\_\_\_\_\_  
ROBERT A. MITTELSTAEDT

Attorney for Defendant Apple, Inc.

\* \* \*

~~PROPOSED~~ ORDER

IT IS SO ORDERED.

DATED: July 11, 2008

  
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THE HONORABLE JAMES WARE  
UNITED STATES DISTRICT JUDGE

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