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 APPLE INC.

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN JOSE DIVISION

13 THE APPLE IPOD iTUNES ANTI-TRUST  
 LITIGATION.

Case No. C 05-00037 JW  
 C 06-04457 JW

**DEFENDANT'S RESPONSE TO  
 PLAINTIFFS' ADMINISTRATIVE  
 MOTION TO SEAL**

**Date:** November 23, 2009  
**Time:** 9:00 A.M.  
**Place:** Courtroom 8, 4th floor

21 **I. INTRODUCTION**

22 Pursuant to Local Rule 79-5(c), Apple supports Plaintiffs' Administrative Motion to File  
 23 Under Seal Portions of Plaintiffs' Reply Memorandum In Support of Their Motion to Modify  
 24 Injunctive Relief Class Definition to Include iTMS Purchasers ("Reply") and Exhibit 1 to the  
 25 Merrick Declaration ("Merrick Declaration"), specifically the portions of the Reply and Merrick  
 26 Declaration which refer to information that Apple designated as "Confidential—Attorneys Eyes  
 27 Only" under the Stipulation and Protective Order Regarding Confidential Information  
 28 ("Protective Order") entered June 13, 2007 (Document No. 112).

1 Pursuant to Local Rule 79-5, Apple files this Response and the accompanying declaration  
2 in support of a narrowly tailored order authorizing sealing those documents, on the grounds that  
3 there is good cause to protect the confidentiality of that information. The proposed sealing order  
4 is based on the Protective Order in this action and proof that particularized injury to defendant  
5 will result if the sensitive information is publicly released.

## 6 **II. STANDARD**

7 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit  
8 sealing of court documents to protect “a trade secret or other confidential research, development,  
9 or commercial information.” Fed. R. Civ. P. 26(c). Based on this authority, the Ninth Circuit has  
10 “carved out an exception to the presumption of access to judicial records for a sealed discovery  
11 document [attached] to a non-dispositive motion.” *Navarro v. Eskanos & Adler*, No. C-06 02231  
12 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at \*6 (N.D. Cal. March 22, 2007) (citing *Kamakana*  
13 *v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

## 14 **III. ARGUMENT**

### 15 **A. There is Good Cause to Support Filing Under Seal.**

16 The accompanying declaration establishes good cause to permit filing under seal. It  
17 establishes that Apple itself treats the information at issue as confidential within its own  
18 organization. *See* Declaration of Eddy Cue in Support of Defendant’s Response to Plaintiffs’  
19 Administrative Motion to Seal, ¶ 3.

20 Apple has designated the documents containing the information as “Confidential-  
21 Attorneys’ Eyes Only” under the Protective Order. As set forth in the Declaration of Eddy Cue,  
22 revelation of the contents of these documents would likely cause Apple to suffer injury, and that  
23 harm would not be mitigated through partial redaction. *See* Declaration of Eddy Cue in Support  
24 of Defendant’s Response to Plaintiffs’ Administrative Motion to Seal, ¶ 4.

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1 **IV. CONCLUSION**

2 Defendant respectfully requests that this Court grant Plaintiffs' Administrative Motion to  
3 File Under Seal Portions of Plaintiffs' Reply Memorandum In Support of Their Motion to Modify  
4 Injunctive Relief Class Definition to Include iTMS Purchasers and Exhibit 1 to the Merrick  
5 Declaration pursuant to Local Rule 79-5(c).

6 Dated: November 16, 2009

Jones Day

8 By:   
9 Michael Scott

10 Attorneys for Defendant  
11 APPLE INC.

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