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

25 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW(RS)
26 LITIGATION)	<u>CLASS ACTION</u>
27 This Document Relates To:)	DECLARATION OF PAULA M. ROACH IN
28 ALL ACTIONS.)	SUPPORT OF PLAINTIFFS' MOTION TO
)	COMPEL FURTHER RESPONSE FROM
)	DEFENDANT APPLE, INC.

Judge: Magistrate Richard Seeborg
 Date: February 10, 2010
 Time: 9:30 a.m.
 Ctrm: 4 – 5th Floor

REDACTED

1 I, PAULA M. ROACH, hereby declare as follows:

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

7 2. Prior to consolidation, in early 2006, Plaintiffs Somtai Charoensak and Mariana
8 Rosen propounded their first set of requests for production of documents and first set of
9 interrogatories on Apple. In response, Apple objected that the requests were beyond the scope of
10 class certification. Accordingly, Apple only produced terms of sale agreements, redacted iTunes
11 Store (“iTunes”) profits and loss statements and iPod sales spreadsheets.

12 3. Similarly, on January 18, 2007, Plaintiff Melanie Tucker propounded her first set of
13 requests for production of documents, first set of requests for admissions, and first set of
14 interrogatories. Apple also objected to these requests, contending that Plaintiff Tucker should be
15 limited to class certification discovery.

16 4. Following the Court’s August 21, 2007 ruling limiting discovery, Plaintiffs narrowed
17 their discovery requests and continued to meet and confer with Apple. Apple again refused to
18 provide responsive information, claiming that the information was merits based and not “class”
19 related. *See* Exs. 1-3, attached hereto.

20 5. Accordingly, Apple produced a limited universe of documents prior to class
21 certification in the consolidated action including, customer complaints through the middle of 2007,
22 documents previously produced in related litigation, organizational charts, and three exemplars of
23 financial data. The majority of Apple’s production consisted of customer complaints, totaling over
24 83,000 pages.

25 6. After certification, Plaintiffs served a Rule 30(b)(6) deposition notice with document
26 requests on April 9, 2009, concerning software updates. Ex. 7, attached hereto.

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28

1 7. On May 6, 2009, the parties met and conferred concerning the 30(b)(6) requests.
2 Apple proposed producing a summary list of software updates to assist Plaintiffs in narrowing their
3 requests. Plaintiffs agreed to this proposal.

4 8. Plaintiffs served their amended first set of requests for production (“Amended
5 Document Requests”), amended first set of interrogatories (“Amended Interrogatories”), and
6 amended first set of requests for admission (“Amended RFAs”) (collectively, “Amended Discovery
7 Requests”) on May 22, 2009. Exs. 8-10, attached hereto.

8 9. On May 27, 2009, Apple produced a [REDACTED].
9 Ex. 11, attached hereto. Apple’s counsel attached a cover letter to the summary list explaining the
10 purpose of the list as intended to assist Plaintiffs in narrowing their 30(b)(6) requests. *See id.*

11 10. On June 18, 2009, Plaintiffs met and conferred with Apple explaining that the
12 summary list of software updates was useless. *See Ex. 35*, attached hereto. Instead of relying on the
13 list, Plaintiffs proposed Apple produce documents responsive to particular requests. *Id.*

14 11. The parties met and conferred on July 2, 2009 and Apple’s counsel, David Kiernan,
15 stated that he was meeting with his client to find out what type of responsive information was
16 available.

17 12. On July 8, 2009, the parties met and conferred telephonically once again concerning
18 the 30(b)(6) requests. During that call, Apple stated that unless an Apple employee could be located
19 with knowledge of the relevant software updates, the parties would have to agree on search terms
20 and custodians for document production. Apple agreed to make an initial proposal of terms and
21 custodians.

22 13. Apple also stated that it would provide Plaintiffs an update on the relevant software
23 updates on July 13, 2009. On July 9, 2009, Apple’s counsel, David Kiernan, called Plaintiffs’
24 counsel and stated that he would call on July 14, 2009, with an update. Mr. Kiernan never called
25 with an update.

26 14. On July 20, 2009, Mr. Kiernan stated again that he would call the next day with an
27 update on the relevant software updates. He once again never called.

1 15. After several extensions by Plaintiffs, Apple served its responses and objections to
2 Plaintiffs' Amended Document Requests on July 20, 2009. *See* Ex. 21, attached hereto. Apple
3 served its responses and objections to the Amended Interrogatories on July 21, 2009. *See* Ex. 22,
4 attached hereto. Apple served its responses and objections to the Amended RFAs on July 24, 2009.
5 *See* Ex. 23, attached hereto.

6 16. On July 31, 2009, the parties met and conferred again concerning the 30(b)(6)
7 requests. *See* Ex. 13, attached hereto. The parties agreed Apple would produce documents
8 concerning: (1) software updates that affected competitors' attempts to achieve interoperability; and
9 (2) "hacks." *See id.* Apple also agreed to produce documents "sufficient to identify the software
10 updates referred to in categories (1) and (2)." Ex. 14, attached hereto. Apple promised to propose
11 search terms and custodians by the end of August 2009. Apple's counsel also stated that Apple was
12 willing to produce responsive information to Interrogatories 1-3 once it could determine how
13 information was kept.

14 17. Plaintiffs responded by letter to Apple's responses and objections to the Amended
15 Discovery Requests on August 10, 2009. *See* Ex. 24, attached hereto. Plaintiffs clarified the scope
16 of their requests and sought additional information on Apple's objections, including facts in support
17 of its burden claims. *See id.*

18 18. On August 12, 2009, Apple proposed a list of custodians and search terms for the
19 30(b)(6) document production. *See* Ex. 14, attached hereto. Apple stated that it would run the
20 proposed search terms "against ESI created, modified, sent, or received on or after April 1, 2002
21 through the date of collections of the custodians' data, which occurred in 2007." *Id.*

22 19. On April 13, 2009, Plaintiffs met and conferred telephonically with Apple to confirm
23 that Apple would search for and produce responsive documents beyond 2007.

24 20. On August 20, 2009, the parties met and conferred telephonically concerning the
25 30(b)(6) documents requests and the Amended Discovery Requests. Apple's counsel stated that he
26 would propose a list of custodians and search terms for the Amended Documents Requests by
27 August 27, 2009 and would produce responsive documents to the 30(b)(6) requests at the end of
28 August or early September. *See* Ex. 25, attached hereto. Apple's counsel also stated that Apple was

1 willing to produce responsive information to Interrogatory Nos. 1-3 once it could determine how
2 information was kept. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 21. On August 27, 2009, Apple's counsel, Mr. Kiernan, revised his originally proposed
6 search terms for the 30(b)(6) document production. See Ex. 15, attached hereto. Mr. Kiernan
7 justified the revision by stating that the original terms "brought back approximately 50-75 boxes of
8 documents" and the more narrowed terms "brought back a more manageable number of
9 approximately 15-20 boxes of documents." Ex. 15, attached hereto. Mr. Kiernan also emailed
10 Plaintiffs to inform them that he would propose a list of custodians and keywords for the Amended
11 Document Requests by September 2 or 3. See Ex. 26, attached hereto.

12 22. Plaintiffs immediately responded on September 1, 2009, and expressed concern with
13 Apple's arbitrary limit of search terms. See Ex. 16, attached hereto. Plaintiffs also proposed
14 additional search terms based on public information concerning software updates that affected
15 competitors. *Id.*

16 23. On September 1, 2009, Plaintiffs followed up on several outstanding discovery
17 requests by letter including whether Apple's production of supplemental customer complaints, its
18 response to Interrogatory No. 5 and its proposal of search terms and custodians for the Amended
19 Document Requests. See Ex. 16, attached hereto.

20 24. Again, on September 9, 2009, Apple's counsel, Mr. Kiernan, called Plaintiffs'
21 counsel and stated that Apple would not meet its previously promised date of production for the
22 30(b)(6) request of early September. Mr. Kiernan stated that because of heavy briefing in the case
23 and "a snafu with the document review tool" it would not begin rolling production for the 30(b)(6)
24 requests until the end of September. See Ex. 17, attached hereto. Mr. Kiernan also stated that he
25 would propose search terms and custodians for the Amended Document Requests by September 15
26 instead of the originally promised date of September 2 or 3.

27 25. On September 22, 2009, Plaintiffs wrote Apple again and requested immediate
28 response to the 30(b)(6) requests and Amended Document Requests. See Ex. 17, attached hereto.

1 Apple responded by letter on September 25, 2009, stating that it was not the cause of delay in
2 production. *See* Ex. 27, attached hereto. Apple also provided a list of search terms and custodians
3 for the Amended Document Requests, produced updated organizational charts, and promised to
4 produce responses to several outstanding discovery requests. *See id.*

5 26. The parties met and conferred telephonically on October 2, 2009, concerning the
6 Amended Discovery Requests. During the call, Apple stated that it was still analyzing whether
7 supplemental customer complaints would be produced and what type of information could be
8 produced in response to Interrogatories 1-3.

9 27. On October 13, 2009, Plaintiffs followed up with Apple by letter and again requested
10 immediate response to the Amended Document Requests. *See* Ex. 28, attached hereto.

11 28. Apple produced an installment of documents on October 15, 2009. This production
12 consisted of 35 unique documents.

13 29. On October 21, 2009, Apple wrote Plaintiffs and stated that it would produce a
14 second installment of documents in the next few days and would continue to produce documents on
15 a rolling basis. *See* Ex. 29, attached hereto. Apple also stated that it was "in the process of
16 supplementing responses to Interrogatories 1-3. *See id.*

17 30. Again, on October 22, 2009, Apple produced a second round of documents consisting
18 of 132 unique documents. Both productions were primarily responsive to Plaintiffs' 30(b)(6)
19 document requests.

20 31. On October 28, 2009, Plaintiffs wrote Apple and requested, *inter alia*, an immediate
21 response to Interrogatories 1-3. *See* Ex. 30, attached hereto.

22 32. Apple produced a third installment of document on November 5. In total, 80 unique
23 documents were produced, the vast majority of which were responsive to the 30(b)(6) requests only.

24 33. On November 11, 2009, Apple responded to Plaintiffs' October 28 letter and stated
25 that it had "fifteen lawyers reviewing documents for responsiveness and privilege and have started
26 producing documents on a rolling basis." *See* Ex. 31, attached hereto. Apple again stated that it was
27 investigating the costs of producing supplemental customer complaints and that it continues to work
28 on obtaining information responsive to Interrogatories 1-3. *See id.*

1 34. Plaintiffs wrote Apple again on November 25, 2009, to seek an update on production.
2 *See* Ex. 18, attached hereto.

3 35. Apple made two more installments of documents on December 7 and 18, 2009,
4 responsive to the 30(b)(6) requests. The December 7 production included 125 unique documents
5 and the December 18 production included 93 unique documents.

6 36. On December 14, Apple responded to Plaintiffs' November 25 letter. Apple stated
7 that it had collected documents in 2007 and is in the process of updating them.

8 37. To date, Plaintiffs have received, at most, 465 unique documents, all of which are
9 emails and email attachments. Additionally, in response to Plaintiffs' Amended Document
10 Requests, Apple has produced 20 pages of updated organizational charts, five pages of revenue and
11 sales charts previously produced in redacted form, six pages of sales spreadsheets, and an extremely
12 limited number of documents concerning markets and licensing of FairPlay.

13 38. Attached are true and correct copies of the following exhibits:

- 14 Exhibit 1 Plaintiff Melanie Tucker's First Set of Requests for
15 Production of Documents to Defendant Apple, Inc., dated
 January 18, 2007;
- 16 Exhibit 2 Plaintiff Melanie Tucker's First Set of Requests for
17 Admission to Defendant Apple, Inc., dated January 18, 2007;
- 18 Exhibit 3 Plaintiff Melanie Tucker's First Set of Interrogatories to
 Defendant Apple, Inc., dated January 18, 2007;
- 19 Exhibit 4 Defendant's Objections to Plaintiff Melanie Tucker's First
20 Set of Requests for Production to Defendant Apple, Inc.,
 dated February 23, 2007;
- 21 Exhibit 5 Defendant's Objections to Plaintiff Melanie Tucker's First
22 Set of Requests for Admission to Defendant Apple, Inc.,
 dated February 23, 2007;
- 23 Exhibit 6 Defendant's Objections to Plaintiff Melanie Tucker's First
 Set of Interrogatories to Defendant Apple, Inc., dated
24 February 23, 2007;
- 25 Exhibit 7 Plaintiffs' Rule 30(b)(6) Notice of Videotaped Deposition
 and Rule 34 Request for Documents to Defendant Apple,
26 Inc. Regarding Software Updates, dated April 9, 2009;
- 27 Exhibit 8 Plaintiffs' Amended First Set of Requests for Production of
 Documents to Defendant Apple, Inc., dated May 22, 2009;
- 28 Exhibit 9 Plaintiffs' Amended First Set of Interrogatories to Defendant

- 1 Apple, Inc., dated May 22, 2009;
- 2 Exhibit 10 Plaintiffs' Amended First Set of Requests for Admission to
Defendant Apple, Inc., dated May 22, 2009;
- 3 Exhibit 11 Letter from Mittestaedt to Sweeney, dated May 27, 2009
4 **(redacted)**;
- 5 Exhibit 12 Email from Merrick to Kiernan, dated July 20, 2009;
- 6 Exhibit 13 Email from Kiernan to Roach, dated August 3, 2009;
- 7 Exhibit 14 Email from Kiernan to Merrick, dated August 12, 2009;
- 8 Exhibit 15 Email from Kiernan to Merrick and Roach, dated August 27,
2009;
- 9 Exhibit 16 Letter from Merrick to Kiernan, dated September 1, 2009;
- 10 Exhibit 17 Letter from Merrick to Kiernan, dated September 22, 2009;
- 11 Exhibit 18 Letter from Roach to Kiernan, dated November 25, 2009
(redacted);
- 12 Exhibit 19 Email from Scott to Roach, dated December 2, 2009;
- 13 Exhibit 20 Letter from Kiernan to Roach, dated December 14, 2009;
- 14 Exhibit 21 Defendant Apple Inc.'s Response to Plaintiffs' Amended
15 First Set of Requests for Production of Documents, dated
July 20, 2009;
- 16 Exhibit 22 Defendant Apple Inc.'s Objections and Answers to
17 Plaintiffs' Amended First Set of Interrogatories, dated July
21, 2009 **(redacted)**;
- 18 Exhibit 23 Defendant Apple Inc.'s Objections and Responses to
19 Plaintiffs' Amended First Set of Requests for Admission,
dated July 24, 2009 **(redacted)**;
- 20 Exhibit 24 Letter from Merrick to Kiernan, dated August 10, 2009
(redacted);
- 21 Exhibit 25 Letter from Merrick to Kiernan, dated August 24, 2009;
- 22 Exhibit 26 Email from Kiernan to Merrick and Roach, dated August 27,
2009;
- 23 Exhibit 27 Letter from Kiernan to Merrick, dated September 25, 2009
24 **(redacted)**;
- 25 Exhibit 28 Letter from Merrick to Kiernan, dated October 13, 2009;
- 26 Exhibit 29 Letter from Kiernan to Merrick, dated October 21, 2009;
- 27 Exhibit 30 Letter from Merrick to Kiernan, dated October 28, 2009
(redacted);
- 28 Exhibit 31 Letter from Kiernan to Merrick, dated November 11, 2009;

- 1 Exhibit 32 Letter from Strong to Weston, dated August 28, 2007;
- 2 Exhibit 33 Letter from Strong to Weston, dated September 26, 2007;
- 3 Exhibit 34 Relevant Excerpts from the Hearing Transcript, dated
November 23, 2009; and
- 4 Exhibit 35 Letter from Merrick to Mittlestaedt, dated June 18, 2009
5 **(redacted)**.

6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct. Executed this 5th day of January, 2010, at San Diego, California.

8 s/ Paula M. Roach
9 _____
10 PAULA M. ROACH

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CERTIFICATE OF SERVICE

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I hereby certify that on January 5, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 5, 2010.

s/ PAULA M. ROACH
PAULA M. ROACH

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

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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.

- (No manual recipients)