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**** E-filed January 20, 2010 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE APPLE IPOD ITUNES ANTITRUST
LITIGATION

No. C05-00037 JW (HRL)

**ORDER GRANTING APPLE INC.'S
ADMINISTRATIVE MOTION TO
CONTINUE THE HEARING ON
PLAINTIFFS' MOTION TO COMPEL**

[Re: Docket No. 310]

_____/

Defendant Apple Inc. (“Apple”) moves to continue the hearing date for plaintiffs’ motion to compel, currently set for February 16, 2010. Apple argues that a continuance is appropriate because the discovery at issue is based on plaintiffs’ original complaint—but that Judge Ware has since ordered plaintiffs to file an amended complaint by January 25, 2010 in light of that court’s earlier dismissal of plaintiffs’ tying claims. (*See* Docket No. 303.) Apple notes that a case management conference is set for February 22, 2010 that will include a discussion of any further discovery and dispositive motions, and that it intends to request a stay of discovery at that time. It says that as a result, it would be inefficient to hold the hearing on plaintiffs’ motion prior to February 22.


Plaintiffs oppose the motion, arguing that their claims have not been dismissed and that they plan to file an amended consolidated complaint that will not change the substance of their allegations in this case. They assert that the discovery at issue, served nine months ago, will still be relevant to their monopoly claims in its forthcoming amended complaint, and thus, that they will be prejudiced by a continuance or stay of discovery.

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In light of the fact that plaintiffs have not yet filed an amended complaint pursuant to Judge Ware’s December 21, 2009 order and the fact that the motion to compel, filed after Judge Ware’s order, is currently scheduled just in advance of the February 22 case management conference, the court finds good cause to grant a short continuance. Of course, the parties must present any arguments they may have concerning an overall stay of discovery to Judge Ware. Accordingly, the hearing on plaintiffs’ motion to compel is continued to **March 23, 2010 at 10:00 a.m.** Apple’s opposition or statement of non-opposition is due **March 2, 2010**. Plaintiffs’ reply, if any, is due **March 9, 2010**.

IT IS SO ORDERED.

Dated: January 20, 2010



HOWARD R. LOYD
UNITED STATES MAGISTRATE JUDGE

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United States District Court
For the Northern District of California

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