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APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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: February 10, 2010
Time: 9:30 A.M.
Place: Courtroom 2, 5th floor

I. INTRODUCTION

Pursuant to Local Rule 79-5(c) and (d), Apple supports Plaintiffs' Administrative Motion to File Under Seal (Dkt. 304), specifically the portions of the Motion to Compel and Roach Declaration which refer to information that Apple designated as "Confidential—Attorneys Eyes Only" under the Stipulation and Protective Order Regarding Confidential Information ("Protective Order") entered June 13, 2007 (Document No. 112).

Pursuant to Local Rule 79-5, Apple files this Response and the accompanying declaration in support of a narrowly tailored order authorizing sealing those documents, on the grounds that there is good cause to protect the confidentiality of that information. The proposed sealing order

Defendant's Response to Plaintiffs'
Administrative Motion to Seal
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1 is based on the Protective Order in this action and proof that particularized injury to defendant
2 will result if the sensitive information is publicly released.

3 **II. STANDARD**

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

11 **III. ARGUMENT**

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

13 Apple has designated the documents containing the information as “Confidential-
14 Attorneys’ Eyes Only” under the Protective Order. The accompanying declaration establishes
15 good cause to permit filing under seal. It establishes that Apple itself treats the information at
16 issue as confidential within its own organization. *See* Declaration of Eddy Cue in Support of
17 Defendant’s Response to Plaintiffs’ Administrative Motion to Seal, ¶¶2-8. Moreover, disclosure
18 of the redacted contents of these documents would cause Apple to suffer injury. *See Id.*

19 **IV. CONCLUSION**

20 Defendant respectfully requests that this Court grant Plaintiffs’ Administrative Motion to
21 File Under Seal Portions of Plaintiffs’ Motion to Compel Further Response From Defendant
22 Apple Inc. and Exhibits 11, 17, 22, 23, 24, 27, 30, 35 to the Roach Declaration Pursuant to Local
23 Rule 79-5(b)-(c).

24 Dated: January 22, 2010

JONES DAY

25 By: /s/ David Kiernan
26 David Kiernan

27 Attorneys for Defendant
28 APPLE INC.

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