

EXHIBIT D

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW(RS)
18 LITIGATION)	
19 _____)	<u>CLASS ACTION</u>
20 This Document Relates To:)	PLAINTIFFS' SECOND SET OF
21 ALL ACTIONS.)	INTERROGATORIES TO DEFENDANT
	APPLE, INC.

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1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiffs Somtai Charoensak,
2 Mariana Rosen, and Melanie Tucker, individually and on behalf of all others similarly situated, by
3 and through their undersigned counsel, hereby request that Defendant Apple, Inc. ("Apple") respond
4 to the following interrogatories within 30 days of the date hereof.

5 **I. DEFINITIONS**

6 The following definitions apply to each of the interrogatories set forth herein and are deemed
7 to be incorporated in each of said interrogatories:

8 1. "You," "your," "yourself" or "defendant" means Apple, Inc.

9 2. "Apple" means defendant Apple, Inc. and any of its predecessors, successors, parents,
10 subsidiaries, affiliates, segments, divisions, operating units or business lines (foreign and domestic),
11 any of its present or former officers, directors, administrators, agents, employees, investigators,
12 accountants, attorneys and all other persons acting or purporting to act on its behalf.

13 3. "Affirmative defense" means the specific affirmative defenses identified by Apple in
14 its Answer and Defenses to Plaintiffs' Consolidated Complaint (Dkt. No. 110), filed June 6, 2007.

15 4. "Content provider(s)" means any provider of digital audio and/or video files that
16 contracts or contracted with Apple for resale of the digital audio and/or video files through the
17 iTunes Store.

18 5. "Consolidated Complaint" means the Consolidated Complaint (Dkt. No. 107), filed
19 April 19, 2007.

20 6. "DRM" means digital rights management software and technology.

21 7. "FairPlay" means Apple's proprietary digital rights management technology.

22 8. "iTunes Store" means Apple's online music store, formally known as the iTunes
23 Music Store, through which Apple sells digital audio and video files.

24 9. "Online music store" means any place on the internet from which digital audio and/or
25 video files may be purchased and downloaded.

26 10. "iPod" refers to the portable digital media players manufactured by Apple, including,
27 but not limited to, all generations of iPod, iPod Touch, iPod Photo, iPod Mini, iPod Nano, and iPod
28 Shuffle, that were released during the Relevant Time Period.

1 15. The phrase “burning and ripping” is used herein in the same manner as used at page 1
2 of Apple’s Memorandum in Opposition to Motion for Class Certification (Dkt. No. 177), filed
3 October 17, 2008.

4 16. “Terms of Service agreements” refers to the agreements between Apple and
5 purchasers of digital audio and/or video files from the iTunes Store that states the terms governing
6 use of the iTunes Store.

7 **II. INSTRUCTIONS**

8 1. Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, these interrogatories
9 are continuing in nature so that if, after answering, you acquire additional responsive knowledge or
10 information, Plaintiffs direct that you serve supplemental answers upon Plaintiffs within seven days
11 after acquiring such additional knowledge or information.

12 2. If at any time after answering these interrogatories you determine that an answer you
13 provided was false, you must immediately notify Plaintiffs’ counsel and provide amended answers
14 as soon as reasonably possible.

15 3. If you refuse to respond to any of the interrogatories based on a claim of privilege
16 pursuant to Rule 26(b)(5) of the Federal Rules of Civil Procedure, you must provide a statement of
17 the claim of privilege and all facts relied upon in support of that claim, including the parties involved,
18 any dates involved, the relevant subject matter of the privileged material, any documents supporting
19 the privileged information, including the dates, authors, recipients, title and subject matter, and
20 present location of any documents involved. In the case of attorney work-product privilege, you
21 must also identify the litigation for which the work-product was prepared.

22 4. If you answer any interrogatory by reference to business records pursuant to Rule
23 33(d) of the Federal Rules of Civil Procedure, identify such records by Bates number and the name
24 of your employee certifying the documents as business records for purposes of answering the
25 interrogatory.

26 **III. RELEVANT TIME PERIOD**

27 Unless otherwise indicated, these interrogatories relate to the period between January 1, 2000
28 and the present (the “Relevant Time Period”). Your responses should reflect information for the

1 entire Relevant Time Period. Where your responses relate to only a portion of the Relevant Time
2 Period, indicate the date or dates to which your response relates.

3 **IV. INTERROGATORIES**

4 INTERROGATORY NO. 9:

5 Identify all geographic markets in which you sell iPods and state all factors used to define
6 and segregate those geographic markets.

7 INTERROGATORY NO. 10:

8 For each model of iPod, specify each product that you consider competes with that iPod
9 model.

10 INTERROGATORY NO. 11:

11 State each product that you consider competes with the digital audio and/or video files
12 purchased through the iTunes Store.

13 INTERROGATORY NO. 12:

14 For each quarter during the relevant time period, state your market share in the portable
15 digital media player market, the digital audio file market, and the digital video file market and
16 describe the methods used to measure that market share.

17 INTERROGATORY NO. 13:

18 State all facts upon which your denial of paragraph 18 of the Consolidated Complaint is
19 based, including, but not limited to, identifying all persons by name and address who have
20 knowledge of those facts and identify all documents that support your denial.

21 INTERROGATORY NO. 14:

22 State all facts upon which your denial of paragraph 54 of the Consolidated Complaint is
23 based, including, but not limited to, identifying all persons by name and address who have
24 knowledge of those facts and identify all documents that support your denial.

25 INTERROGATORY NO. 15:

26 State all facts upon which your denial of paragraph 76 of the Consolidated Complaint is
27 based, including, but not limited to, identifying all persons by name and address who have
28 knowledge of those facts and identify all documents that support your denial.

1 INTERROGATORY NO. 16:

2 Do you contend that any content provider required that you implement FairPlay on all digital
3 audio and/or video files sold through the iTunes Store? If so, state all facts upon which you base
4 your response including, but not limited to, identifying all persons by name and address who have
5 knowledge of those facts and identifying all documents that support your response.

6 INTERROGATORY NO. 17:

7 Do you contend that implementing FairPlay was the least restrictive means by which you
8 could protect the intellectual property rights associated with the digital audio and/or video files sold
9 by you through the iTunes Store? If so, state all facts upon which you base your response including,
10 but not limited to, identifying all persons by name and address who have knowledge of those facts
11 and identifying all documents that support your response.

12 INTERROGATORY NO. 18:

13 Do you contend that the process of "burning and ripping" does not effect the quality of the
14 digital audio files sold through the iTunes Store ? If so state all facts upon which you base your
15 response including, but not limited to, identifying all persons by name and address who have
16 knowledge of those facts and identifying all documents that support your response.

17 INTERROGATORY NO. 19:

18 Do you contend that the process of "burning and ripping" to eliminate Fairplay from digital
19 audio files has been permitted under the Terms of Service agreements throughout the entire relevant
20 time period? If so, state all facts upon which you base your response, including, but not limited to,
21 identifying all persons by name and address who have knowledge of those facts and identifying all
22 documents that support your response.

23 INTERROGATORY NO. 20:

24 With respect to your fourth affirmative defense wherein you allege, "[t]he plaintiffs and/or
25 others claimed to be members of the putative class have not suffered and will not suffer any injury
26 that is cognizable under the antitrust laws," state all facts upon which this defense is based,
27 including, but not limited to, identifying all persons by name and address who have knowledge of
28 those facts and identifying all documents that support those facts.

1 INTERROGATORY NO. 21:

2 With respect to your fifth affirmative defense in which you state, “[t]he activities of Apple
3 alleged in the Complaint do not give rise to antitrust liability because they did not result in adverse
4 effects on competition or, in the alternative, any such effects were outweighed by the pro-
5 competitive benefits of the activities,” state all facts upon which your defense is based, including,
6 but not limited to, identifying all persons by name and address who have knowledge of those facts
7 and identifying all documents that support those facts.

8 INTERROGATORY NO. 22:

9 With respect to your sixth affirmative defense in which you state, “Defendant Apple has at
10 all times and in all relevant manners acted reasonably, as necessary to serve legitimate business
11 purposes, in furtherance of trade, in good faith, and with the purpose and effect of promoting,
12 encouraging, or increasing competition. Apple has not acted with the purpose or intent to suppress
13 or restrain competition,” state all facts upon which your defense is based, including, but not limited
14 to, identifying all persons by name and address who have knowledge of those facts and identifying
15 all documents that support those facts.

16 DATED: December 29, 2009

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DECLARATION OF SERVICE BY ELECTRONIC MAIL AND U.S. MAIL

I, the undersigned, declare:

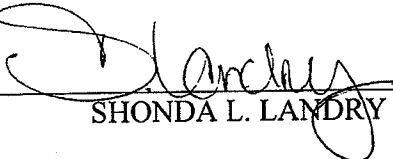
1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on December 29, 2009, declarant served the PLAINTIFFS' SECOND SET OF INTERROGATORIES TO DEFENDANT APPLE, INC. via Electronic Mail to the parties listed on the attached Service List.

3. That on December 29, 2009, declarant served the PLAINTIFFS' SECOND SET OF INTERROGATORIES TO DEFENDANT APPLE, INC. by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

4. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of December, 2009, at San Diego, California.


SHONDA L. LANDRY