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 APPLE INC.

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

13 THE APPLE IPOD iTUNES ANTI-TRUST
 14 LITIGATION.

Case No. C 05-00037 JW (HRL)
 C 06-04457 JW (HRL)

15 **DEFENDANT’S RESPONSE TO**
 16 **PLAINTIFFS’ ADMINISTRATIVE**
 17 **MOTION TO SEAL**

18 **Date:** April 26, 2010
 19 **Time:** 9:00 A.M.
Place: Courtroom 8, 4th floor

20 **I. INTRODUCTION**

21 Pursuant to Local Rule 79-5(c) and (d), Apple supports Plaintiffs’ Administrative Motion
 22 to File Under Seal (Dkt. 343) the redacted portions of Plaintiffs’ Memorandum in Opposition to
 23 Apple’s Motion to Dismiss, the redacted portions of the Roach, and Exhibits 2, 3, 4, 5, 7, and 9 to
 24 the Merrick Declaration, which refer to information that Apple designated as “Confidential—
 25 Attorneys Eyes Only” under the Stipulation and Protective Order Regarding Confidential
 26 Information (“Protective Order”) entered June 13, 2007 (Document No. 112).

27 Apple files this motion and the accompanying declaration of Eddy Cue in support of a
 28 narrowly tailored order authorizing sealing those documents, on the grounds that there are

Defendant’s Response to Plaintiffs’
 Administrative Motion to Seal

1 compelling reasons to protect the confidentiality of that information. The proposed sealing order
2 is based on the Protective Order and proof that particularized injury to Apple will result if the
3 sensitive information is publicly released.

4 **II. STANDARD**

5 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit
6 sealing of court documents to protect “a trade secret or other confidential research, development,
7 or commercial information.” Fed. R. Civ. P. 26(c). Documents attached to dispositive motions
8 are properly sealed where compelling reasons support the maintenance of the documents’
9 confidentiality, as where the documents include trade secrets or could be used to “gratify private
10 spite.” *Tokashiki v. Freitas*, No. 03-0065 ACK-LEK, 2007 WL 521915, at *1 (D. Haw. Feb. 14,
11 2007) (quoting *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir.
12 2006)).

13 **III. ARGUMENT**

14 **A. There Are Compelling Reasons To Support Filing Under Seal.**

15 Exhibits 2, 3, 4, 5, 7, and 9 to the Merrick Declaration and the redacted portions of the
16 Roach Declaration and plaintiffs’ brief contain highly confidential and commercially sensitive
17 business information, including confidential contract terms, confidential communications
18 between Apple and record labels, and confidential details of Apple’s FairPlay digital rights
19 management (DRM) technology and updates to that technology. Apple keeps this information
20 highly confidential and has designated exhibits 2, 3, 4, 5, 7, and 9 “Confidential-Attorneys Eyes
21 Only.”

22 Apple’s agreements with record labels and HP (exhibits 2, 3, and 7 to the Merrick
23 declaration) are subject to confidentiality provisions and have not been disclosed outside of Apple
24 except to plaintiffs pursuant to the Protective Order. This information is non-public information
25 from a public company that should remain confidential. Harm to Apple would result from the
26 public disclosure of this highly confidential information. For example, the disclosure of
27 confidential contract terms and communications regarding those terms would adversely impact
28 Apple’s bargaining position in future dealings with current and potential business partners.

1 In addition to highly sensitive commercial information, exhibits 2 and 3 include
2 information regarding the manner in which FairPlay protects music sold through the iTunes Store.
3 FairPlay is a highly protected trade secret, and Apple uses physical and electronic controls to
4 protect it. The efficacy of FairPlay is dependent on the confidentiality of information regarding
5 its operation and maintenance. Information regarding FairPlay is non-public, proprietary
6 information from a public company that should remain confidential. Harm to Apple would result
7 from the public disclosure of the information.

8 Exhibits 4 and 5 are internal Apple e-mails containing highly confidential and
9 commercially sensitive business information, including discussions regarding potential public
10 comments regarding RealNetworks' Harmony technology and updates to FairPlay to stop a hack.
11 This information is non-public information that has been kept highly confidential and has not
12 been disclosed outside of Apple except to plaintiffs pursuant to the Protective Order. Harm to
13 Apple would result from the public disclosure of this information. Exhibit 4 was previously filed
14 under seal. See Dkt. 280, 291.

15 Exhibit 9 is an internal Apple email regarding updates to iTunes and FairPlay, which is
16 kept highly confidential and has not been disclosed outside of Apple except to plaintiffs pursuant
17 to the Protective Order. As discussed above, disclosure of the details of FairPlay would cause
18 harm to Apple.

19 Apple also seeks an order sealing the redacted portions of the Roach Declaration and
20 plaintiffs' brief. The redacted portions of the Roach Declaration refer to exhibits 4 and 5 to the
21 Merrick Declaration, which are discussed above. Plaintiffs' brief also refers to the exhibits to the
22 Merrick Declaration, as well as portions of Apple's Motion To Dismiss and the Robbin
23 Declaration in support thereof, previously filed under seal (See Dkt. 340).

24 **IV. CONCLUSION**

25 Apple respectfully requests that this Court grant Plaintiffs' Administrative Motion to File
26 Under Seal.

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Dated: March 29, 2010

Jones Day

By: /s/ Michael Scott
 Michael Scott

Attorneys for Defendant
APPLE INC.

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