

1 Robert A. Mittelstaedt #60359
 ramittelstaedt@jonesday.com
 2 Craig E. Stewart #129530
 cestewart@jonesday.com
 3 David C. Kiernan #215335
 dkiernan@jonesday.com
 4 Michael Scott #255282
 michaelscott@jonesday.com
 5 JONES DAY
 555 California Street, 26th Floor
 6 San Francisco, CA 94104
 Telephone: (415) 626-3939
 7 Facsimile: (415) 875-5700

8 Attorneys for Defendant
 APPLE INC.

9
 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:** May 10, 2010
Time: 9:00 A.M.
 19 **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. 364) the redacted portions of Plaintiffs’ Reply In Support Of Their
 23 Motion For Additional Discovery Pursuant To Rule 56(f) (“Reply”) and the Merrick Declaration
 24 in support thereof, specifically the portions of that motion and declaration which refer to
 25 information that Apple designated as “Confidential—Attorneys Eyes Only” under the Stipulation
 26 and Protective Order Regarding Confidential Information (“Protective Order”) entered June 13,
 27 2007 (Document No. 112), and which the Court previously sealed in Apple’s Motion to Dismiss
 28 and the declaration of Jeffrey Robbin in support thereof. *See* Dkt. 340.

Defendant’s Response to Plaintiffs’
 Administrative Motion to Seal

1 Apple files this response and the accompanying declaration in support of a narrowly
2 tailored order authorizing sealing those documents, on the grounds that there is good cause to
3 protect the confidentiality of that information. The proposed sealing order is based on the
4 Protective Order and proof that particularized injury to Apple will result if the sensitive
5 information is publicly released.

6 **II. STANDARD**

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

14 **III. ARGUMENT**

15 **A. There Is Good Cause To Support Filing Under Seal.**

16 Apple previously moved to seal descriptions of updates to its FairPlay technology in the
17 declaration of Jeffrey Robbin in Support of Motion to Dismiss or, Alternatively, for Summary
18 Judgment and the documents attached thereto, and Apple’s Motion to Dismiss, which referred to
19 the Robbin declaration. Dkt. 327. Both documents were ordered sealed on March 12, 2010. Dkt.
20 340. Apple now moves to seal the redacted portions of Plaintiffs’ Reply and the Merrick
21 Declaration that refer to this information. (Declaration of Michael Scott, ¶ 2.) As established by
22 the Robbin declaration filed in support of the motion to seal (Dkt. 328), compelling reasons
23 justify filing this information under seal. The redacted portions contain highly confidential and
24 commercially sensitive business information, including confidential details of Apple’s FairPlay
25 digital rights management (DRM) technology and updates to that technology. (Robbin Decl. (Dkt
26 328), ¶ 3; Scott Decl., ¶ 2). Apple keeps this information highly confidential, does not disclose it
27 to the public, and has designated it “Confidential-Attorneys Eyes Only.” *Id.*

28

1 FairPlay's technology is a highly protected trade secret, and Apple uses physical and
2 electronic controls to protect it. The efficacy of FairPlay is dependent on the confidentiality of
3 information regarding its operation and maintenance. Only a few Apple employees have access
4 to and work on FairPlay technology, and they work in a restricted area at Apple's headquarters.
5 Information regarding FairPlay is non-public, proprietary information from a public company that
6 should remain confidential. Harm to Apple, including potential use of the information by hackers
7 attempting to circumvent FairPlay, would result from the public disclosure of the information.

8 (Robbin Decl., ¶ 3.)

9 **IV. CONCLUSION**

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

12
13 Dated: May 3, 2010

Jones Day

14 By: /s/ Michael Scott
15 Michael Scott

16 Attorneys for Defendant
17 APPLE INC.

18 SFI-640537v1
19
20
21
22
23
24
25
26
27
28