

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 T. Scott #255282
 michaelscott@jonesday.com
 5 JONES DAY
 6 555 California Street, 26th Floor
 7 San Francisco, CA 94104
 Telephone: (415) 626-3939
 8 Facsimile: (415) 875-5700
 9 Attorneys for Defendant APPLE INC.

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

13
 14 **THE APPLE IPOD iTUNES**
 15 **ANTITRUST LITIGATION**

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

[CLASS ACTION]

**DECLARATION OF DAVID C. KIERNAN
 IN SUPPORT OF APPLE INC.'S
 ADMINISTRATIVE MOTION TO
 SHORTEN TIME**

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 20 I, David C. Kiernan, under penalty of perjury, declare as follows:

21 1. I am an attorney with the law firm of Jones Day, counsel of record for Defendant
 22 Apple Inc. I am an active, licensed member of the State Bar of California. I make this
 23 declaration in support of Apple's Administrative Motion to Shorten Time for Briefing and
 24 Hearing Defendant's Motion to Compel. I submit this declaration based on personal knowledge.

25 2. On October 27, 2010, Apple served Plaintiffs with 22 interrogatories and six
 26 requests for production of documents. The interrogatories asked for facts supporting specific
 27 contentions in Plaintiffs' amended complaint. The six document requests sought documents
 28

1 relating to their contentions and their denial of companion requests for admissions. Plaintiffs
2 failed to provide substantive answers to 20 of the 22 interrogatories or to produce documents in
3 response to three document requests. The parties have met and conferred regarding these
4 requests, but have reached an impasse regarding the timing of Plaintiffs' responses that requires
5 Apple to move to compel.

6 3. On December 24, 2010, I discussed the outstanding discovery with Plaintiffs'
7 counsel, Alexandra Bernay. During the call, Ms. Bernay said that she believed that a motion to
8 compel would be unnecessary because Plaintiffs will supplement and provide complete responses
9 to all of the outstanding discovery. With respect to the majority of the outstanding
10 interrogatories, Ms. Bernay represented that Plaintiffs will provide complete responses by March
11 28, 2011, the due date for Apple's reply in support of its motion for summary judgment.
12 Plaintiffs' only basis for not providing responses sooner is that they purportedly need three
13 additional months to review documents recently produced by Apple and draft the responses.
14 Thus the only remaining dispute is over timing. I explained that Apple would still file a motion to
15 compel due to the dispute over timing and to preserve its right to move to compel given that such
16 motions must be filed by December 27, 2010.

17 4. On December 9, 2010, Apple filed with this Court a Motion for Protective Order
18 Preventing the Deposition of Steve Jobs, which is currently scheduled for hearing on January 18,
19 2011. On December 22, 2010, Apple asked Plaintiffs to stipulate to shorten time for Apple's
20 Motion to Compel so that it could be heard by the Court at the same time as Apple's Motion for
21 Protective Order. Plaintiffs would not consent.

22 5. Attached as **Exhibit A** is a true and accurate copy of an email from Alexandra
23 Bernay stating that Plaintiffs would not consent to Apple's request to shorten time.

24 6. Over the course of this case, the parties have stipulated to various briefing
25 schedules. I am unaware of Apple requesting an order to shorten time for briefing on discovery
26 or other issues in this case.

27 7. The requested time modification would enable this Court to hear Apple's Motion
28 for Protective Order and Motion to Compel on the same date, a solution that will spare time and

1 expense for both parties and the court.

2 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true
3 and correct. This declaration was executed on December 27, 2010, in Lincoln, Nebraska.

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/s/ David C. Kiernan

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David C. Kiernan

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Exhibit A



Subject: RE: Potential motion to compel

From: Xan Bernay

12/22/2010 03:39 PM

To: Michael Scott, David Kiernan

History: This message has been forwarded.

We will not agree to shorten time for defendant's potential motion to compel.

Xan

-----Original Message-----

From: Michael Scott [mailto:michaelscott@jonesday.com]

Sent: Wednesday, December 22, 2010 1:38 PM

To: Xan Bernay; David Kiernan

Subject: Potential motion to compel

Xan,

While Apple hopes it will be unnecessary, it recognizes that a motion to compel discovery responses from Plaintiffs may be needed. Will plaintiffs agree to shorten time regarding the motion so that it could be heard by Judge Lloyd on the same day as Apple's motion for a protective order regarding Steve Jobs?

Thank you,

Mike

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