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

18 THE APPLE IPOD ITUNES ANTI-TRUST	)	Lead Case No. C-05-00037-JW(HRL)
19 LITIGATION	)	
20 _____	)	<u>CLASS ACTION</u>
21 This Document Relates To:	)	PLAINTIFFS' OPPOSITION TO
22 ALL ACTIONS.	)	DEFENDANT'S ADMINISTRATIVE
23 _____	)	MOTION TO SHORTEN TIME FOR
	)	BRIEFING AND HEARING
	)	DEFENDANT'S MOTION TO COMPEL

1 Defendant Apple Inc. provides no basis for its Motion to Shorten Time for Plaintiffs’  
2 opposition and hearing on its motion to compel responses to contention interrogatories and  
3 accompanying requests for production. As Apple acknowledges in both its Motion to Shorten Time  
4 and Motion to Compel, the dispute remaining between the parties is the timing of Plaintiffs’  
5 responses. Apple fails, however, to inform the Court that the dispute exists because Plaintiffs are  
6 unable to provide a substantive response to Apple’s contention requests given Apple’s large dump of  
7 documents in the last month of discovery. *See* Declaration of Paula M. Roach in Support of  
8 Plaintiffs’ Opposition to Defendant’s Administrative Motion to Shorten Time for Briefing and  
9 Hearing Defendant’s Motion to Compel (“Roach Decl.”), ¶¶3-5. Between November 15, 2010, and  
10 December 21, 2010, the close of fact discovery, Apple produced 1,606,951 pages of documents plus  
11 data needed by Plaintiffs’ experts. *Id.*, ¶3. This dwarfs Apple’s production of a mere 97,316 pages  
12 of documents in the previous three years of ongoing discovery leading up to the date Apple’s  
13 contention requests were served. *Id.* Plaintiffs have also taken six depositions of fact witnesses over  
14 the last month. *Id.*

15 As Plaintiffs have explained to Apple, Plaintiffs will respond to Apple’s contention  
16 interrogatories and related document requests after they have had an opportunity to review the  
17 documents recently produced by Apple and take any additional depositions.<sup>1</sup> *Id.*, ¶¶4, 5. Because  
18 Plaintiffs have already agreed to provide such responses well in advance of the deadline for Apple to  
19 file its reply in support of its motion for summary judgment, Apple cannot show any prejudice. *A*  
20 *fortiori*, Apple cannot show any prejudice will result from briefing and hearing the motion in the  
21 ordinary course. Even if this Court granted Apple’s motion to shorten time, the hearing date would

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23  
24 <sup>1</sup> Many of the contention interrogatories that are the subject of Apple’s underlying motion to  
25 compel also require expert analysis. Compelling Plaintiffs to provide partial responses to contention  
26 requests before review and analysis of this production is completed defeats the purpose of contention  
27 discovery. *See In re Convergent Tech. Sec. Litig.*, 108 F.R.D. 328, 338-40 (N.D. Cal. 1985)  
28 (denying motion to compel responses to contention interrogatories and laying out standards for such  
discovery); Moore’s, *Manual for Complex Litigation (Fourth)* §11.461 (noting that Rule 33(c)  
permits contention interrogatories, “but permits a court to defer an answer ‘until after designated  
discovery has been completed or until a pretrial conference or other later time’”).

1 be January 18, 2011, one day after Apple must file its motion for summary judgment. *Id.*, ¶7. Apple  
2 cannot, therefore, claim any prejudice.

3 If Apple's Motion to Shorten Time is granted, Plaintiffs will be forced to brief an opposition  
4 to the Motion to Compel over the holiday while Plaintiffs are reviewing Apple's massive production  
5 and also briefing their Motion for Class Certification (due to be filed on January 17, 2010). *Id.*, ¶8.  
6 Shortening Plaintiffs' time to respond serves no other purpose than to prejudice Plaintiffs and reward  
7 Apple for its bad conduct. If Apple wanted full responses to its contention interrogatories sooner, it  
8 could have complied with its discovery obligation months ago, as most of the over 1,000,000 pages  
9 of late document production was in response to requests that were served on Apple in 2009. *Id.*, ¶¶3,  
10 8.

11 The current hearing date of February 1, 2011, allows Plaintiffs adequate time to brief their  
12 opposition to Apple's motion, review Apple's large document production, and brief their Motion for  
13 Class Certification. Any shortened schedule will severely prejudice Plaintiffs. Additionally, hearing  
14 Apple's motion on January 18, 2011, as suggested by Apple, will not provide any added efficiencies  
15 because Apple's Motion for Protective Order is entirely unrelated to its Motion to Compel and  
16 Apple's Motion for Summary Judgment will have already been filed. Moreover, as Apple's counsel  
17 is located in San Francisco and has offices in Palo Alto, requiring Apple to attend an additional  
18 hearing in San Jose imposes no hardship on Apple.

19 Plaintiffs therefore respectfully request that this Court deny Apple's Motion to Shorten Time  
20 for Briefing and Hearing of its Motion to Compel.

21 DATED: December 30, 2010

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26 s/ Paula M. Roach  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on December 30, 2010, I authorized the electronic filing of the foregoing  
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to  
4 the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I  
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-  
6 CM/ECF participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct. Executed on December 30, 2010.

9 s/ Paula M. Roach  
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- (No manual recipients)