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13 Co-Lead Counsel for Plaintiffs

14
 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:)	DECLARATION OF BONNY E. SWEENEY
22 ALL ACTIONS.)	IN SUPPORT OF PLAINTIFFS' REPLY IN
23 _____)	SUPPORT OF MOTION RE SCHEDULING
	AND OPPOSITION TO APPLE'S CROSS-
	MOTION TO EXTEND TIME FOR
	APPLE'S RENEWED RULE 56 MOTION

24 Judge: Hon. James Ware
 25 DATE: TBD
 26 TIME: 9:00 a.m.
 27 CTRM: 8, 4th Floor

1 I, BONNY E. SWEENEY, hereby declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the state of
3 California. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP, Co-Lead Class
4 Counsel of record for Plaintiffs Melanie Tucker, Mariana Rosen, and Somtai Troy Charoensak
5 (“Plaintiffs”) in this action. I have personal knowledge of the matters stated herein, and, if called
6 upon, I could and would competently testify thereto.

7 2. As Plaintiffs explained, Apple produced much of the data and documents required for
8 the Plaintiffs’ expert damages analysis at the very end of (and now even after the close of) the
9 December 20, 2010 discovery cut-off. As Plaintiffs previously detailed, between November 15,
10 2010 and December 20, 2010, Apple produced 1,493,245 pages of documents as compared to the
11 113,706 pages of documents produced in the previous three years of class and merits discovery.
12 Most of the 1.4 million pages of documents were responsive to document requests Plaintiffs served
13 on Apple in 2009. Apple also produced nearly all of the data required by Plaintiffs’ experts in the
14 last month that was similarly in response to requests served on Apple in 2009. In fact, Apple
15 produced data as recently as January 8, 2011. As a result, Plaintiffs’ counsel and experts have not
16 yet been able to complete their review of Apple’s production, much less conduct the kind of analysis
17 contemplated for Plaintiffs’ class certification expert report.

18 3. The parties had been working cooperatively toward a joint agreement regarding class
19 certification deadlines and had been meeting and conferring extensively. A series of emails and
20 letters were exchanged between the parties and telephone conferences took place between Plaintiffs’
21 counsel and Apple’s counsel. Additionally, drafts of a proposed stipulation were passed between the
22 parties over course of several days.

23 4. On December 30, 2010, I sent a meet and confer letter to Apple’s counsel Robert
24 Mittelsteadt, Plaintiffs concerning the status of discovery and Plaintiffs’ inability to analyze the
25 discovery recently produced. Ex. 1 at 1 (attached hereto). I stated that “plaintiffs are not required, in
26 order to meet their burden under Rule 23, to conduct any regression analysis or prepare any damages
27 study at this stage in the litigation.” *Id.* “Rather, plaintiffs are only required to ‘put forth a

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1 methodology that “there is a way to prove a class-wide measure of [impact] through generalized
2 proof.” *Id.* (citing case law).

3 5. Nonetheless, Plaintiffs explained that an extension of the class certification schedule
4 was necessary to sufficiently analyze the data recently produced by Apple to formulate and estimate
5 a regression equation to test the feasibility of the before-and-after methodology. *Id.*, at 2. As
6 explained, the late data production does not allow Plaintiffs’ experts to fully conduct this analysis in
7 time for the current January 17 due date of Plaintiffs’ class certification motion.

8 6. Apple agreed to an extension of the class certification schedule. It was not until
9 12:30 p.m. on the day the parties intended on filing the joint stipulation that Apple sought to include
10 for the first time an extension for summary judgment briefing in the proposed joint stipulation.
11 Apple’s counsel proposed new language that would add a month to the schedule for summary
12 judgment. Plaintiffs did not agree with this reasoning and explained that such an extension was not
13 warranted.

14 7. On January 6, 2011, Plaintiffs proposed to Apple a new joint stipulation that included
15 a set date for all depositions to be concluded in response to the Court’s denial without prejudice of
16 the parties joint stipulation filed on December 17, 2010. Plaintiffs took the following depositions:
17 Jeffrey Robbin in his personal capacity and as a 30(b)(6) witness on December 3, 2010; Augustin
18 Farrugia in his personal capacity and as a 30(b)(6) witness on December 8, 2010; David Heller in his
19 personal capacity and as a 30(b)(6) witness on December 15, 2010; Art Rangel in his personal
20 capacity and as a 30(b)(6) witness on December 17, 2010; and Eddy Cue in his personal capacity
21 and as a 30(b)(6) witness on December 17, 2010. As to each of these deponents, Apple produced
22 documents from the custodial file or documents from or to the witness or from both sources after the
23 deposition was concluded. Additionally, Plaintiffs took the deposition of Apple’s Rule 30(b)(6)
24 witness, Mark Donnelly, on cost and pricing of iPods, on December 20, 2010, despite having
25 received relevant cost and price information only days before and with some cost information
26 produced as late as last week.

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 11, 2011.

s/ Bonny E. Sweeney
BONNY E. SWEENEY

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)