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 APPLE INC.

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

14 THE APPLE IPOD iTUNES ANTI-
 TRUST LITIGATION

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

CLASS ACTION

**APPLE'S REPLY IN SUPPORT OF ITS
 CROSS-MOTION TO EXTEND TIME FOR
 APPLE'S RENEWED RULE 56 MOTION**

17 This Document Related To:

18 ALL ACTIONS

Judge: Honorable James Ware
 Date: To Be Determined
 Time: 9:00 a.m.
 Place: Courtroom 8, 4th Floor

24 Plaintiffs' opposition (Doc. 444), filed today, fails to address the main reason for Apple's
 25 cross-motion to extend the time for its renewed Rule 56 motion. Plaintiffs offer no reason why
 26 the sequencing in the Court's current schedule—with Apple's motion being due after the close of
 27 fact discovery—should not be maintained. Thus, if Plaintiffs' motion to extend the deadline for
 28

1 depositions is extended to February 18 (a motion for which no good cause has been
2 demonstrated), the date for Apple’s renewed Rule 56 motion should be moved until after that date.

3 In addition, Apple’s requested extension makes sense because Plaintiffs have failed to
4 answer basic contention interrogatories, and Apple’s motion to compel is set for hearing for
5 February 1. On this point, Plaintiffs say that they expect that Magistrate Judge Lloyd will deny
6 the motion and permit Plaintiffs to delay their interrogatory responses until March, so long as
7 they are served before Apple’s reply brief on its Rule 56 motion is due. Plaintiffs, however, have
8 not told either this Court or Magistrate Judge Lloyd why they are unable to state, now, the facts
9 known to them on which their key allegations are supposedly based. That information is much
10 more useful if provided before Apple files its opening brief.

11 Plaintiffs charge Apple’s counsel with “sharp practices” for requesting that extensions be
12 reciprocal. Plaintiffs do not say what is wrong with reciprocal extensions. And they miss the
13 point that Apple requested an extension to February 28 for its Rule 56 motion as a result of
14 Plaintiffs’ proposal to extend the deposition deadline to February 18.

15 Finally, Plaintiffs misstate the reason why the attempt at a joint motion failed. Apple
16 declined to proceed with a joint motion when Plaintiffs changed their position on whether their
17 expert would in fact conduct a regression analysis if permitted more time. Their December 30,
18 2010 letter stated that their expert needed additional time “to analyze Apple data [so] **that they**
19 **could formulate and estimate a regression equation** to test the feasibility of the before-and-
20 after methodology.” They added that “[s]uch an equation would examine the relationship”
21 between identified variables, and that the expert would “run” and “conduct” the regression. *See*
22 *Doc. 445 (Sweeney Decl.), Ex. A, p. 2 including second heading.*¹ Although Plaintiffs claim
23 consistency, they do not dispute that their draft joint motion and their actual motion omitted the
24 bolded phrase and the references to “run[ning]” or “conduct[ing]” the regression analysis. Even
25 now, they are hedging by using the undefined term “estimate” and denying any commitment “to
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27 ¹ Plaintiffs are correct as to the date of the letter. The undersigned’s declaration used the
28 “auto-filled” date when the e-mail attachment was printed. Plaintiffs do not contend that the date
affects the substance of the parties’ dispute.

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conduct a regression analysis.” Doc. 444, p. 4, l. 4. That was a principal reason why the parties could not agree on a joint motion.

Dated: January 12, 2011

Respectfully submitted,
Jones Day

By: /s/ Robert A. Mittelstaedt
Robert A. Mittelstaedt
Counsel for Defendant