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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 INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

17 This Document Related To:
18 ALL ACTIONS

21 **I. INTRODUCTION**

22 Pursuant to Local Rules 7-11(a) and 79-5(b) and (c), defendant Apple Inc. (“Apple”)
23 requests that the Court order that portions of (1) Apple’s Response to Plaintiffs’ Supplemental
24 Memorandum Regarding Apple Inc.’s Motion for Protective Order (“Apple’s Response”) and (2)
25 the Declaration of David C. Kiernan in Support of Apple’s Response to Plaintiffs’ Supplemental
26 Memorandum Regarding Apple Inc.’s Motion for Protective Order (“Kiernan Declaration”) be
27 filed under seal. Apple’s Response and the exhibits to the Kiernan Declaration contain, refer to
28 or reveal documents and other information that Apple designated as “Confidential—Attorneys

1 Eyes Only” under the Stipulation and Protective Order Regarding Confidential Information
2 (“Protective Order”) entered June 13, 2009 (Dkt. 112).

3 Moreover, on January 11, 2011, this Court issued its Order Granting Plaintiffs’
4 Administrative Motion to File Under Seal Portions of Plaintiffs’ Supplemental Memorandum in
5 Further Support of Their Opposition to Apple, Inc.’s Motion for Protective Order and Exhibits 1-
6 12 to the Declaration of Paula M. Roach in Support Thereof Pursuant to Local Rule 79-5(b) and
7 (c). (Dkt. 406). This Motion to Seal seeks an order sealing the descriptions and copies of the
8 materials and exhibits already ordered sealed by the Court. Accordingly, for this Court’s prior
9 order to have effect, this Motion to Seal should also be granted.

10 Apple files this motion and the accompanying Declaration of Michael Scott in Support of
11 Apple’s Administrative Motion to Seal (“Scott Declaration” or “Scott Decl.”) in support of a
12 narrowly tailored order authorizing sealing those documents, on the grounds that there is good
13 cause to protect the confidentiality of that information. The proposed sealing order is based on
14 the Protective Order in this action and proof that particularized injury to Apple will result if the
15 sensitive information is publicly released.

16 **II. ARGUMENT**

17 **A. Standard for Sealing Documents Related to a Non-Dispositive Motion**

18 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit
19 sealing of court documents to protect “a trade secret or other confidential research, development,
20 or commercial information.” Fed. R. Civ. P. 26(c). Based on this authority, the Ninth Circuit has
21 “carved out an exception to the presumption of access to judicial records for a sealed discovery
22 document [attached] to a non-dispositive motion.” *Navarro v. Eskanos & Adler*, No. C-06 02231
23 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana*
24 *v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)). A party need only establish that good cause
25 exists to justify sealing of materials submitted in support of a non-dispositive motion.

26 **B. There is Good Cause to Support Filing under Seal.**

27 As established by the Scott Declaration, the redacted portions of Apple’s Response and
28 exhibits 1-4 of the Kiernan Declaration contain highly confidential and sensitive information that

1 must be kept confidential in order to avoid causing substantial harm to Apple. *See* Scott Decl.,
2 ¶¶ 2-6. The redacted information specifically relates to sensitive contract terms, communications
3 with record labels, and decisions by Apple employees regarding Apple's business strategy. *Id.*

4 **1. This Court Has Previously Ordered Sealed the Content of the**
5 **Materials That are the Subject of this Motion to Seal**

6 The information that Apple now moves to file under seal contains, refers to or reveals
7 documents and other information that that this Court has previously ordered should be sealed.
8 *See* Scott Decl., ¶¶ 2-3. Accordingly, for this Court's prior order to have effect, this Motion to
9 Seal should also be granted.

10 **2. The Redacted Information Includes Sensitive Contract Terms and**
11 **Highly Confidential Communications with Record Labels.**

12 Portions of the redactions to pages 2-4 of Apple's Response and exhibits 3-4 of the
13 Kiernan Declaration contain highly confidential and commercially sensitive business information,
14 including information regarding sensitive contract terms and communications with record labels.
15 *See* Scott Decl., ¶ 5. The redacted contract terms and communications with record labels are
16 highly confidential and should not be publicly disclosed. *Id.* Apple's contracts with record labels
17 are subject to confidentiality provisions and were produced to Plaintiffs pursuant to the Protective
18 Order. *Id.* Similarly, Apple's communications with the record labels contain highly confidential,
19 commercially sensitive business information and were produced to Plaintiffs pursuant to the
20 Protective Order. *Id.* The public disclosure of this highly confidential information would cause
21 substantial harm to Apple. *Id.*

22 **3. The Redactions Include Highly Confidential and Commercially**
23 **Sensitive Information Relating to Key Business Decisions at Apple.**

24 Portions of the redactions to pages 2-4 of the Apple's Response and exhibits 1-4 of the
25 Kiernan Declaration contain highly confidential and commercially sensitive business information,
26 including information relating to business decisions or strategies at Apple. *See* Scott Decl., ¶ 6.
27 The redacted information relating to business decisions and strategy is highly confidential and
28 should not be publicly disclosed. *Id.* The information was produced to Plaintiffs pursuant to the

1 Protective Order. The information produced to Plaintiffs is non-public information from a public
2 company that should remain confidential. Harm to Apple would result from the public disclosure
3 of the redacted information contained in these documents. The public disclosure of information
4 regarding Apple's business strategies would put Apple at a significant business disadvantage.

5 **III. CONCLUSION**

6 Defendant respectfully requests that this Court grant Apple's Administrative Motion to
7 Seal.

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9 Dated: January 12, 2011

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By: /s/ Michael Scott
Michael Scott
Attorneys for Defendant
APPLE INC.