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

13
14 **THE APPLE iPOD iTUNES**
15 **ANTI-TRUST LITIGATION**

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18 This Document Related To:
19 ALL ACTIONS

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

[CLASS ACTION]

**APPLE INC.'S MOTION FOR LEAVE TO
FILE RESPONSE TO PLAINTIFFS'
SUPPLEMENTAL MEMORANDUM
REGARDING APPLE INC.'S MOTION
FOR PROTECTIVE ORDER**

Date: January 18, 2011

Time: 10:00 a.m.

Place: Courtroom 2, 5th Floor

Honorable Howard Lloyd

1 PLEASE TAKE NOTICE that defendant Apple Inc. (“Apple”) will and hereby does move
2 this Court for leave to file: (1) Apple’s Response to Plaintiffs’ Supplemental Memorandum
3 Regarding Apple Inc.’s Motion for Protective Order (“Apple’s Response”) and (2) the
4 Declaration of David C. Kiernan In Support of Apple Inc.’s Response to Plaintiffs’ Supplemental
5 Memorandum Regarding Apple’s Motion for Protective Order (“Kiernan Declaration”). The
6 hearing is set for Tuesday, January 18, 2011, at 10:00 a.m. before the Honorable Howard Lloyd,
7 Courtroom 2, Fifth Floor, in the United States District Court for the Northern District of
8 California, San Jose Division, 280 South 1st Street, San Jose, CA 95113, or as soon thereafter as
9 the parties may be heard.

10 **I. MEMORANDUM IN SUPPORT**

11 On January 11, 2011, this Court granted Plaintiffs’ Motion for Leave to File Additional
12 Evidence in Support of their Opposition to Apple’s Motion for Protective Order. Plaintiffs’
13 Motion for Leave argued that Plaintiffs “were unable” to review certain documents produced by
14 Apple on December 20 before they filed their Opposition to Apple’s Motion for Protective Order,
15 Docket No. 404, later that same day. But Plaintiffs *chose* to file their opposition before reviewing
16 Apple’s production of documents. By rule, Plaintiffs’ opposition was due on December 28,
17 2010—twenty-one days prior to the January 18, 2011 hearing date—not December 20. *See* L.R.
18 7-3(a). Plaintiffs elected to file their opposition eight days before the deadline, on December 20,
19 even though they knew that Apple had just produced the documents that are the subject of this
20 motion for leave. (“Kiernan Declaration, ¶ 2.) It is not true that Plaintiffs were “unable” to
21 review these documents before filing their opposition. Rather, Plaintiffs’ failure to address these
22 documents in their opposition was solely the result of a strategic decision not to review these
23 documents and to file their opposition early.

24 Now that Plaintiffs have been permitted leave to file additional evidence in opposition to
25 Apple’s Motion for Protective Order, fairness requires that Apple be permitted to respond to that
26 evidence and explain how none of the cited documents is relevant to the remaining issue in this
27 case or justifies requiring that Mr. Jobs be deposed.

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II. CONCLUSION

Apple respectfully requests that the Court grant this motion for leave to file: (1) Apple's Response and (2) the Kiernan Declaration.

Dated: January 13, 2011

By: /s/ David C. Kiernan
David C. Kiernan

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