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

14 THE APPLE IPOD iTUNES ANTI-TRUST
 LITIGATION.

Case No. C 05-00037 JW (HRL)

[CLASS ACTION]

**DEFENDANT'S RESPONSE TO
 PLAINTIFFS' ADMINISTRATIVE
 MOTION TO SEAL**

19
 20 **I. INTRODUCTION**

21 Pursuant to Local Rule 79-5, Apple supports Plaintiffs' Administrative Motion to File
 22 Under Seal Portions of Plaintiffs' Memorandum in Opposition to Apple Inc.'s Motion to Compel
 23 and the Bernay declaration in support thereof (Dkt. 440, "Administrative Motion"), specifically
 24 the portions of the Memorandum in Opposition (Dkt. 442) and Bernay Declaration (Dkt. 443) that
 25 refer to information that Apple designated as "Confidential—Attorneys Eyes Only" under the
 26 Stipulation and Protective Order Regarding Confidential Information ("Protective Order") entered
 27 June 13, 2009 (Dkt. 112).
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1 Apple files this response and the accompanying Declaration of Mark Buckley in Support
2 of Apple Inc.'s Response to Plaintiffs' Administrative Motion to File Under Seal ("Buckley
3 Declaration" or "Buckley Decl.") in support of a narrowly tailored order authorizing sealing those
4 documents, on the grounds that there is good cause to protect the confidentiality of that
5 information. The proposed sealing order is based on the Protective Order in this action and proof
6 that particularized injury to defendant will result if the sensitive information is publicly released.
7 The Court has previously sealed similar information in this case. *See* Dkt. 184.

8 Apple does not assert that exhibits 7 or 9 should be filed under seal.

9 **II. STANDARD**

10 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit
11 sealing of court documents to protect "a trade secret or other confidential research, development,
12 or commercial information." Fed. R. Civ. P. 26(c). Based on this authority, the Ninth Circuit has
13 "carved out an exception to the presumption of access to judicial records for a sealed discovery
14 document [attached] to a non-dispositive motion." *Navarro v. Eskanos & Adler*, No. C-06 02231
15 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana*
16 *v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

17 **III. ARGUMENT**

18 **A. There is Good Cause to Support Filing under Seal.**

19 The Buckley Declaration establishes good cause to permit filing under seal. It establishes
20 that the redacted portions of Plaintiffs' Memorandum in Opposition and the Bernay Declaration
21 contain highly confidential and sensitive information that must be kept confidential in order to
22 avoid causing substantial harm to Apple. *See* Buckley Decl., ¶ 2-3.

23 The redacted information specifically relates to data regarding transactions between Apple
24 and iPod resellers. *See* Buckley Decl., ¶ 2.

25 **1. The Redacted Information Includes Descriptions of Sensitive Data** 26 **Regarding Transactions with iPod Resellers.**

27 The redacted portions of Plaintiffs' Memorandum in Opposition and the Bernay
28 Declaration in support thereof contain highly confidential and commercially sensitive business

1 information, including descriptions of data regarding transactions between Apple and iPod
2 resellers. *See* Buckley Decl., ¶ 2.

3 The redacted information is highly confidential and should not be publicly disclosed. *See*
4 Buckley Decl., ¶ 3. The information was produced to Plaintiffs pursuant to the Protective Order.
5 *Id.* The information produced to Plaintiffs is non-public information that should remain
6 confidential. Harm to Apple would result from the public disclosure of the redacted information
7 contained in these documents. The public disclosure of information regarding Apple's business
8 strategies would put Apple at a business disadvantage. *Id.*

9 **IV. CONCLUSION**

10 Defendant respectfully requests that this Court grant Plaintiffs' Administrative Motion to
11 File Under Seal portions of Plaintiffs' Memorandum in Opposition to Apple Inc.'s Motion to
12 Compel and the Bernay declaration in support thereof .

13 Dated: January 14, 2011

Jones Day

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16 By: /s/Michael Scott
Michael Scott

17 Attorneys for Defendant
18 APPLE INC.