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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.

**Case No. C 05-00037 JW (HRL)
[CLASS ACTION]**

**APPLE'S ADMINISTRATIVE
MOTION TO SEAL**

19 **I. INTRODUCTION**

20 Pursuant to Local Rules 7-11(a) and 79-5(b) and (c), Defendant Apple Inc. ("Apple")
21 requests that the Court permit Apple to file under seal the portions of Apple's Renewed Motion
22 for Summary Judgment ("Motion") that refer to information that Apple designated
23 "Confidential—Attorneys Eyes Only" under the Stipulation and Protective Order Regarding
24 Confidential Information ("Protective Order") entered June 13, 2007 (Dkt. 112). In addition,
25 Apple seeks permission to file under seal the Declarations of Jeffrey Robbin, Augustin Farrugia,
26 John Kelly, and David Kiernan filed in support of Apple's Renewed Motion For Summary
27 Judgment, all of which contain information that Apple designated "Confidential—Attorneys Eyes
28 Only" under the Protective Order.

1 The Court previously sealed similar information in relation to Apple’s Motion to Dismiss
2 or, Alternatively, for Summary Judgment. Dkt. 340. Apple files this motion and the
3 accompanying Declaration of Jeffrey Robbin and David C. Kiernan in support of a narrowly
4 tailored order authorizing sealing those documents, on the grounds that there are compelling
5 reasons to protect the confidentiality of that information. The proposed sealing order is based on
6 the Protective Order and proof that particularized harm to Apple will result if the sensitive
7 information is publicly released.

8 **II. STANDARD**

9 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit
10 sealing of court documents to protect “a trade secret or other confidential research, development,
11 or commercial information.” Fed. R. Civ. P. 26(c). Documents attached to dispositive motions
12 are properly sealed where compelling reasons support the maintenance of the documents’
13 confidentiality, as where the documents include trade secrets or could be used to “gratify private
14 spite.” *Tokashiki v. Freitas*, No. 03-0065 ACK-LEK, 2007 WL 521915, at *1 (D. Haw. Feb. 14,
15 2007) (quoting *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir.
16 2006)).

17 **III. ARGUMENT**

18 **A. There Are Compelling Reasons To Support Filing Under Seal.**

19 Pursuant to the Protective Order, Apple has designated as “Confidential-Attorneys Eyes
20 Only” the Declarations of Jeffrey Robbin, Augustin Farrugia, and John Kelly and the documents
21 attached thereto and certain documents attached to the Declaration of David C. Kiernan. These
22 Declarations and documents are referred to and/or quoted in Apple’s Motion for Summary
23 Judgment. As established by the accompanying declarations, compelling reasons justify filing the
24 declarations and documents and the redacted portions of the Motion under seal.

25 The Declarations and documents contain highly confidential and commercially sensitive
26 business information, including confidential details of Apple’s FairPlay digital rights
27 management (DRM) technology; updates to that technology; third-party technology used to
28 protect or improve FairPlay; inquiries Apple received from customers that reflect personal

1 information of the customers and confidential, proprietary information regarding how Apple
2 responds to such inquiries; confidential contract terms; and confidential communications between
3 Apple and record labels regarding the distribution of music through the iTunes Store and Apple's
4 FairPlay DRM technology. Apple keeps this information highly confidential and does not
5 disclose it to the public. *See* Declaration of Jeffrey Robbin in Support of Apple's Administrative
6 Motion to Seal, ¶ 2; *See* Declaration of David Kiernan in Support of Apple's Renewed Motion for
7 Summary Judgment, ¶ 7.

8 FairPlay's technology is a highly protected trade secret, and Apple uses physical and
9 electronic controls to protect it. The efficacy of FairPlay is dependent on the confidentiality of
10 information regarding its operation and maintenance. Only a few Apple employees have access
11 to and work on FairPlay technology, and they work in a restricted area at Apple's headquarters.
12 Information regarding FairPlay and third-party technology intended to increase FairPlay efficacy
13 is non-public information that should remain confidential. Harm to Apple, including potential use
14 of the information by hackers attempting to circumvent FairPlay, would result from the public
15 disclosure of the information. *See* Declaration of Jeffrey Robbin in Support of Apple's
16 Administrative Motion to Seal, ¶ 3. The Court previously sealed similar information in relation
17 to Apple's Motion to Dismiss or, Alternatively, for Summary Judgment. Dkt. 340.

18 Apple's contracts with record labels, which include some details of the DRM used by
19 Apple and contain highly sensitive commercial information, are kept highly confidential in accord
20 with the contracts' confidentiality provisions. Similarly, Apple's communications with the record
21 labels regarding the distribution of music through the iTunes Store and details of FairPlay are
22 kept highly confidential and have not been disclosed outside of Apple except to plaintiffs
23 pursuant to the Protective Order. This information is non-public information that should remain
24 confidential. Harm to Apple would result from the public disclosure of this information. For
25 example, the disclosure of confidential contract terms and communications regarding those terms
26 would adversely impact Apple's bargaining position in future dealings with current and potential
27 business partners. *See* Declaration of Jeffrey Robbin in Support of Apple's Administrative
28 Motion to Seal, ¶ 4. The Court previously sealed similar information in relation to Apple's

1 Motion to Dismiss or, Alternatively, for Summary Judgment. Dkt. 340.

2 Customer inquiries and Apple's responses are kept highly confidential and have been
3 disclosed to Plaintiffs pursuant to the Protective Order. Among other things, the inquiries reflect
4 personal information of the customers and confidential, proprietary information regarding how
5 Apple tracks and responds to such inquiries. This information is non-public information that
6 should remain confidential. Harm would result from the public disclosure of this highly
7 confidential information. *See* Declaration of David Kiernan in Support of Apple's Renewed
8 Motion for Summary Judgment, ¶ 7.

9 **IV. CONCLUSION**

10 Apple respectfully requests that this Court grant its Administrative Motion to Seal
11 portions of Apple's Renewed Motion for Summary Judgment, and the Declarations of Jeffrey
12 Robbin, Augustin Farrugia, John Kelly, and certain exhibits to the Declaration of David Kiernan
13 in support thereof.

14 Dated: January 18, 2011

Jones Day

16 By: /s/ Michael Scott
17 Michael Scott

18 Attorneys for Defendant
19 APPLE INC.

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