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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.
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**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 Opposition to
 22 Renewed Motion for Class Certification (“Opposition”) that refer to information that Apple
 23 designated “Confidential—Attorneys Eyes Only” under the Stipulation and Protective Order
 24 Regarding Confidential Information (“Protective Order”) entered June 13, 2007 (Dkt. 112). In
 25 addition, Apple seeks permission to file under seal portions of the Expert Report of Dr. Michelle
 26 M. Burtis (“Burtis Report”) and the exhibits to the Declaration of David C. Kiernan (“Kiernan
 27 Declaration”) filed in support of Apple’s Opposition, which contain information that Apple
 28 designated “Confidential—Attorneys Eyes Only” under the Protective Order.

1 Apple files this motion and the accompanying Declaration of Michael Scott in support of
2 a narrowly tailored order authorizing sealing those documents, on the grounds that there is good
3 cause to protect the confidentiality of that information. The proposed sealing order is based on
4 the Protective Order and proof that particularized injury to Apple will result if the sensitive
5 information is publicly released.

6 **II. STANDARD**

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

14 **III. ARGUMENT**

15 **A. There Is Good Cause To Support Filing Under Seal.**

16 Pursuant to the Protective Order, Apple has designated as “Confidential-Attorneys Eyes
17 Only” certain documents and information attached to or contained in Apple’s Opposition, the
18 Burtis Report, and the Kiernan Declaration. As established by the accompanying declarations,
19 there is good cause to permit filing the redacted portions of these documents under seal.

20 Apple’s Opposition, the Burtis Report, and the Kiernan Declaration contain highly
21 confidential and commercially sensitive business information, including information regarding
22 Apple’s sales of iPods to iPod resellers, Apple’s iPod pricing decisions, and Apple’s business
23 strategy and decisions.

24 Information regarding Apple’s pricing strategy and practices is highly confidential and
25 commercially sensitive business information. This information is non-public information that
26 should remain confidential. The information was produced to Plaintiffs pursuant to the Protective
27 Order. Harm to Apple would result from the public disclosure of the redacted information
28 contained in these documents. The public disclosure of information regarding Apple's pricing

1 strategy and practices would put Apple at a business disadvantage. *See* Scott Decl. Ex. 1, ¶¶ 2-3.

2 Information regarding Apple's sales of iPods to iPod resellers is also highly confidential
3 and commercially sensitive business information. This information is non-public information that
4 should remain confidential. *See* Scott Decl. Ex. 2, ¶¶ 2-3. The information was produced to
5 Plaintiffs pursuant to the Protective Order. Harm to Apple would result from the public
6 disclosure of the redacted information contained in these documents. The public disclosure of
7 information regarding Apple's sales of iPods to iPod resellers would put Apple at a business
8 disadvantage. Similar information has been previously sealed in this case in relation to Apple's
9 previous Memorandum in Opposition to Class Certification. Dkt. 184.

10 Information regarding Apple business decisions and strategy is highly confidential and
11 should not be publicly disclosed. *See* Scott Decl. Ex. 3, ¶ 9. The information was produced to
12 plaintiffs pursuant to the Protective Order. The information produced to plaintiffs is non-public
13 information from a public company that should remain confidential. Harm to Apple would result
14 from the public disclosure of the redacted information contained in these documents. The public
15 disclosure of information regarding Apple's business strategies would put Apple at a significant
16 business disadvantage. Similar information has been previously sealed in this case in relation to
17 Plaintiffs' Opposition to Apple's Motion for Protective Order. Dkt. 422.

18 **IV. CONCLUSION**

19 Apple respectfully requests that this Court grant its Administrative Motion to Seal
20 portions of Apple's Opposition to Renewed Motion for Class Certification and the Expert Report
21 of Dr. Michelle M. Burtis in support thereof and the exhibits to the Declaration of David C.
22 Kiernan in support thereof.

23 Dated: February 28, 2011

Jones Day

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25 By: /s/ Michael T. Scott
26 Michael T. Scott

27 Attorneys for Defendant
28 APPLE INC.