

1 Robert A. Mittelstaedt #60359
 ramittelstaedt@jonesday.com
 2 Craig E. Stewart #129530
 cestewart@jonesday.com
 3 David C. Kiernan #215335
 dkiernan@jonesday.com
 4 Michael Scott #255288
 michaelscott@jonesday.com
 5 JONES DAY
 555 California Street, 26th Floor
 6 San Francisco, CA 94104
 Telephone: (415) 626-3939
 7 Facsimile: (415) 875-5700

8 Attorneys for Defendant
 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)
 C 06-04457 JW (HRL)

[CLASS ACTION]

**APPLE INC.'S RESPONSE TO
 PLAINTIFFS' ADMINISTRATIVE
 MOTION TO SEAL**

21 **I. INTRODUCTION**

22 Pursuant to Local Rule 79-5, Apple supports Plaintiffs' Administrative Motion (Dkt. 549)
 23 to File Under Seal Portions of Plaintiffs' Notice of Motion and Motion to Compel Production of
 24 Data ("Motion to Compel") and Declaration of Alexandra S. Bernay in Support Thereof ("Bernay
 25 Declaration"), specifically the portions of the Motion to Compel (Dkt. 556) and Bernay
 26 Declaration (Dkt. 557) that refer to information that Apple designated as "Confidential—
 27 Attorneys Eyes Only" under the Stipulation and Protective Order Regarding Confidential
 28 Information ("Protective Order") entered June 13, 2009 (Dkt. 112).

1 Apple files this response and the accompanying Declaration of Michael Scott in Support
2 of Apple Inc.'s Response to Plaintiffs' Administrative Motion to File Under Seal ("Scott
3 Declaration" or "Scott 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 **II. STANDARD**

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

15 **III. ARGUMENT**

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

17 The Scott Declaration establishes good cause to permit filing under seal. It establishes
18 that the redacted portions of Plaintiffs' Motion to Compel and the Bernay Declaration contain
19 highly confidential and sensitive information that must be kept confidential in order to avoid
20 causing substantial harm to Apple. *See* Scott Decl., Ex. 1.

21 The redacted information specifically relates to information regarding Apple's
22 transactions with iPod resellers. *See* Scott Decl., Ex. 1. The Court recently granted a motion to
23 seal similar information in relation to Apple's Opposition to Renewed Motion for Class
24 Certification. *See* Dkt. 526.

25 Apple does not assert confidentiality with regard to page 1 of Plaintiffs' Motion to
26 Compel or paragraph 1 of the Bernay Declaration.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

The redacted portions of Plaintiffs' Motion to Compel and the Bernay Declaration in support thereof contain highly confidential and commercially sensitive business information, including descriptions of data regarding transactions between Apple and iPod resellers. *See* Scott Decl., Ex. 1. The redacted information is highly confidential and should remain confidential and not be publicly disclosed. *See* Scott Decl., Ex. 1. The information was produced to Plaintiffs pursuant to the Protective Order. *Id.* Harm to Apple would result from the public disclosure of the redacted information contained in these documents, including putting Apple at a business disadvantage. *Id.*

IV. CONCLUSION

Defendant respectfully requests that this Court grant Plaintiffs' Administrative Motion to File Under Seal Portions of Plaintiffs' Notice of Motion and Motion to Compel Production of Data and Declaration of Alexandra S. Bernay in Support Thereof Pursuant to Local Rule 79-f(c).

Dated: April 4, 2011

Jones Day

By: /s/Michael Scott
Michael Scott

Attorneys for Defendant
APPLE INC.