

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 JOHN J. STOIA, JR. (141757)
 BONNY E. SWEENEY (176174)
 3 THOMAS R. MERRICK (177987)
 ALEXANDRA S. BERNAY (211068)
 4 CARMEN A. MEDICI (248417)
 655 West Broadway, Suite 1900
 5 San Diego, CA 92101
 Telephone: 619/231-1058
 6 619/231-7423 (fax)
 johns@rgrdlaw.com
 7 bonnys@rgrdlaw.com
 tmerrick@rgrdlaw.com
 8 xanb@rgrdlaw.com
 cmedici@rgrdlaw.com

9 THE KATRIEL LAW FIRM
 10 ROY A. KATRIEL (*pro hac vice*)
 1101 30th Street, N.W., Suite 500
 11 Washington, DC 20007
 Telephone: 202/625-4342
 12 202/330-5593 (fax)
 rak@katriellaw.com

13 Co-Lead Counsel for Plaintiffs

14 [Additional counsel appear on signature page.]

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW(HRL)
19 LITIGATION)	
20 _____)	<u>CLASS ACTION</u>
21 This Document Relates To:)	REQUEST FOR LEAVE TO FILE BRIEF
22 ALL ACTIONS.)	RESPONSE TO APPLE'S OBJECTIONS TO
23 _____)	PLAINTIFFS' EVIDENCE FILED IN
	SUPPORT OF REPLY IN SUPPORT OF
	PLAINTIFFS' RENEWED MOTION FOR
	CLASS CERTIFICATION

24 JUDGE: Hon. James Ware
 25 DATE: TBD
 26 TIME: TBD
 27 CTRM: 8, 4th Floor
 28

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that as soon as the Court’s schedule allows, plaintiffs Melanie
3 Tucker, Mariana Rosen, and Somtai Charoensak (collectively, “Plaintiffs”) hereby move this Court
4 for leave to file a brief response to Apple’s Objections to Plaintiffs’ Evidence Filed in Support of
5 Reply in Support of Plaintiffs’ Renewed Motion for Class Certification (“Objections”). Plaintiffs
6 seek leave because matters raised in Apple’s Objections are contrary to the clear record and misstate
7 critical matters raised in the Reply Declaration of Roger G. Noll and in the Declaration of Alexandra
8 S. Bernay in Support of Reply Memorandum in Support of Plaintiffs’ Renewed Motion for Class
9 Certification (“Bernay Declaration”).

10 Plaintiffs seek to submit a response of not more than four pages to address the Objections and
11 seek to cure certain alleged issues by submitting copies of documents cited in the Bernay
12 Declaration.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 On Monday, April 4, 2011, Apple filed its Objections. This document makes a number of
15 objections to matters raised by Plaintiffs’ expert, Professor Roger G. Noll, in his Reply Declaration
16 and seeks to strike a number of paragraphs in the Bernay Declaration.

17 Apple’s contentions regarding these critical evidentiary issues cannot go uncontested by
18 Plaintiffs. Without an opportunity to respond to the Objections, Plaintiffs will be severely
19 prejudiced prior to the planned April 18, 2011 hearings on Plaintiffs’ renewed motion for class
20 certification and Apple’s renewed motion for summary judgment. By this request, Plaintiffs seek
21 leave to file a brief response – no more than four pages – that addresses the issues raised by the
22 Objections. Plaintiffs also request leave to submit as exhibits copies of documents cited in the
23 Bernay Declaration to lay to rest Apple’s claimed objection to Plaintiffs’ citation to discovery-
24 related correspondence as well as a short Declaration from former Plaintiffs’ attorney Paula M
25 Roach.

26 Moreover, the Objections improperly include further argument on the motion in
27 contravention of Local Rule 7-3(d)(1) which provides that an objection to reply evidence “may not
28 include further argument on the motion.” Here, Apple has made a number of statements in its

1 Objections that plainly constitute further argument on the motion. This further demonstrates why
2 Plaintiffs' brief submission should be considered by the Court.

3 Plaintiffs' request the Court consider this request on an expedited basis because of the
4 pending schedule for oral argument.

5 **CONCLUSION**

6 For the foregoing reasons, Plaintiffs' request to respond to Apple's Objections should be
7 granted.

8 DATED: April 11, 2011

Respectfully submitted,

9 ROBBINS GELLER RUDMAN
& DOWD LLP
10 JOHN J. STOIA, JR.
11 BONNY E. SWEENEY
THOMAS R. MERRICK
12 ALEXANDRA S. BERNAY
CARMEN A. MEDICI

13
14 s/ Alexandra S. Bernay
ALEXANDRA S. BERNAY

15 655 West Broadway, Suite 1900
16 San Diego, CA 92101
17 Telephone: 619/231-1058
619/231-7423 (fax)

18 THE KATRIEL LAW FIRM
19 ROY A. KATRIEL
1101 30th Street, N.W., Suite 500
20 Washington, DC 20007
Telephone: 202/625-4342
202/330-5593 (fax)

21 Co-Lead Counsel for Plaintiffs

22 BONNETT, FAIRBOURN, FRIEDMAN
23 & BALINT, P.C.
ANDREW S. FRIEDMAN
24 FRANCIS J. BALINT, JR.
25 ELAINE A. RYAN
TODD D. CARPENTER
26 2901 N. Central Avenue, Suite 1000
Phoenix, AZ 85012
27 Telephone: 602/274-1100
602/274-1199 (fax)

28 BRAUN LAW GROUP, P.C.

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

MICHAEL D. BRAUN
10680 West Pico Blvd., Suite 280
Los Angeles, CA 90064
Telephone: 310/836-6000
310/836-6010 (fax)

MURRAY, FRANK & SAILER LLP
BRIAN P. MURRAY
JACQUELINE SAILER
275 Madison Avenue, Suite 801
New York, NY 10016
Telephone: 212/682-1818
212/682-1892 (fax)

GLANCY BINKOW & GOLDBERG LLP
MICHAEL GOLDBERG
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067
Telephone: 310/201-9150
310/201-9160 (fax)

Additional Counsel for Plaintiffs

1 CERTIFICATE OF SERVICE

2 I hereby certify that on April 11, 2011, I authorized the electronic filing of the foregoing with
3 the Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on April 11, 2011.

9 s/ Alexandra S. Bernay
ALEXANDRA S. BERNAY

10 ROBBINS GELLER RUDMAN
11 & DOWD LLP
12 655 West Broadway, Suite 1900
13 San Diego, CA 92101-3301
Telephone: 619/231-1058
619/231-7423 (fax)

14 E-mail: xanb@rgrdlaw.com

Mailing Information for a Case 5:05-cv-00037-JW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Francis Joseph Balint , Jr**
fbalint@bffb.com
- **Alexandra Senya Bernay**
xanb@rgrdlaw.com
- **Michael D Braun**
service@braunlawgroup.com
- **Michael D. Braun**
service@braunlawgroup.com,clc@braunlawgroup.com
- **Todd David Carpenter**
tcarpenter@bffb.com,pjohnson@bffb.com,rcreech@bffb.com
- **Andrew S. Friedman**
khonecker@bffb.com,rcreech@bffb.com,afriedman@bffb.com
- **Alreen Haeggquist**
alreenh@zhlaw.com,judyj@zhlaw.com
- **Roy Arie Katriel**
rak@katriellaw.com,rk618@aol.com
- **Thomas J. Kennedy**
tkennedy@murrayfrank.com
- **David Craig Kiernan**
dkiernan@jonesday.com,lwong@jonesday.com
- **Carmen Anthony Medici**
cmedici@rgrdlaw.com,slandry@rgrdlaw.com
- **Thomas Robert Merrick**
tmerrick@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_sf@rgrdlaw.com
- **Caroline Nason Mitchell**
cnmitchell@jonesday.com,mlandsborough@jonesday.com,ewallace@jonesday.com

- **Robert Allan Mittelstaedt**
ramittelstaedt@jonesday.com,mlandsborough@jonesday.com
- **Brian P Murray**
bmurray@murrayfrank.com
- **George A. Riley**
griley@omm.com,lperez@omm.com,cchiu@omm.com
- **Elaine A. Ryan**
eryan@bffb.com,pjohnson@bffb.com
- **Jacqueline Sailer**
jsailer@murrayfrank.com
- **Michael Tedder Scott**
michaelscott@jonesday.com,amhoward@jonesday.com
- **Craig Ellsworth Stewart**
cestewart@jonesday.com,mlandsborough@jonesday.com
- **John J. Stoia , Jr**
jstoia@rgrdlaw.com
- **Bonny E. Sweeney**
bonnys@rgrdlaw.com,christinas@rgrdlaw.com,E_file_sd@rgrdlaw.com
- **Helen I. Zeldes**
helenz@zhlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)