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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)  
 C 06-04457 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 Motion to Exclude the Opinions of Defendant’s Expert, Dr. Michelle M. Burtis, Ph.D  
 23 (“Opposition”) that refer to information that Apple designated “Confidential—Attorneys Eyes  
 24 Only” under the Stipulation and Protective Order Regarding Confidential Information  
 25 (“Protective Order”) entered June 13, 2007 (Dkt. 112). In addition, Apple seeks permission to  
 26 file under seal portions of the Report of Dr. Michelle M. Burtis in support thereof (“Burtis  
 27 Report”) and exhibits to the Declaration of David Kiernan in support thereof (“Kiernan  
 28 Declaration”) which contain information that Apple designated “Confidential—Attorneys Eyes

1 Only” under the Protective Order.

2 Apple files this motion and the accompanying Declaration of Michael Scott in support of  
3 a narrowly tailored order authorizing sealing those documents, on the grounds that there is good  
4 cause to protect the confidentiality of that information. The proposed sealing order is based on  
5 the Protective Order and proof that particularized injury to Apple will result if the sensitive  
6 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 Pursuant to the Protective Order, Apple has designated as “Confidential-Attorneys Eyes  
18 Only” certain documents and information attached to or contained in Apple’s Opposition, the  
19 Burtis Report, and the Kiernan Declaration. As established by the accompanying declarations,  
20 there is good cause to permit filing the redacted portions of these documents under seal.

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

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

1 contained in these documents. The public disclosure of information regarding Apple's pricing  
2 strategy and practices would put Apple at a business disadvantage. *See* Scott Decl., Ex 1. Similar  
3 information has been previously sealed in this case in relation to Apple's Memorandum in  
4 Opposition to Class Certification. Dkt. 526.

5 Information regarding Apple's sales of iPods to iPod resellers is also highly confidential  
6 and commercially sensitive business information. This information is non-public information that  
7 should remain confidential. *See* Scott Decl., Ex. 2. The information was produced to Plaintiffs  
8 pursuant to the Protective Order. Harm to Apple would result from the public disclosure of the  
9 redacted information contained in these documents. The public disclosure of information  
10 regarding Apple's sales of iPods to iPod resellers would put Apple at a business disadvantage.  
11 Similar information has been previously sealed in this case in relation to Apple's Memorandum in  
12 Opposition to Class Certification. Dkt. 526.

13 iTunes Store sales and market research conducted by Apple or on Apple's behalf,  
14 including information regarding iTunes market share, is highly confidential and commercially  
15 sensitive business information. Third-party research is subject to confidentiality provisions in  
16 contracts between Apple and the third-party market research providers. This information is non-  
17 public information that should remain confidential. The information was produced to Plaintiffs  
18 pursuant to the Protective Order. Harm to Apple would result from the public disclosure of such  
19 information. *See* Scott Decl., Ex. 3. Similar information has been previously sealed in this case  
20 in relation to Apple's Opposition to Class Certification and Plaintiffs' Motion to Compel. Dkt.  
21 184, 336.

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1 **IV. CONCLUSION**

2 Apple respectfully requests that this Court grant its Administrative Motion to Seal  
3 portions of Apple’s Opposition to Motion to Exclude the Opinions of Defendant’s Expert, Dr.  
4 Michelle M. Burtis, Ph.D, portions of the Expert Report of Dr. Michelle M. Burtis in support  
5 thereof, and exhibits to the Declaration of David Kiernan in support thereof.

6  
7 Dated: April 11, 2011

Jones Day

8 By:  /s/ Michael T. Scott  
Michael T. Scott

9 Attorneys for Defendant  
10 APPLE INC.

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