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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13  
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 ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL**

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20 **I. INTRODUCTION**

21 Pursuant to Local Rules 7-11(a) and 79-5(b) and (c), defendant Apple Inc. (“Apple”)  
22 requests that the Court order the Clerk of the Court to file under seal portions of Apple’s  
23 Opposition to Plaintiff’s Motion to Compel (“Opposition”) and the Declaration of David C.  
24 Kiernan in support thereof (“Kiernan Declaration”). The Opposition and Kiernan Declaration  
25 contain, refer to or reveal information that Apple designated as “Confidential—Attorneys Eyes  
26 Only” under the Stipulation and Protective Order Regarding Confidential Information  
27 (“Protective Order”) entered June 13, 2009 (Dkt. 112). Such information has been previously  
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1 filed under seal in this case. *See* Dkt. 526.

2 Apple files this motion and the accompanying Declaration of Michael Scott in Support of  
3 Apple’s Administrative Motion to Seal (“Scott Declaration”) in support of a narrowly tailored  
4 order authorizing sealing those documents, on the grounds that there is good cause to protect the  
5 confidentiality of that information. The proposed sealing order is based on the Protective Order  
6 in this action and proof that particularized injury to Apple will result if the sensitive information  
7 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). Based on this authority, the Ninth Circuit has  
12 “carved out an exception to the presumption of access to judicial records for a sealed discovery  
13 document [attached] to a non-dispositive motion.” *Navarro v. Eskanos & Adler*, No. C-06 02231  
14 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at \*6 (N.D. Cal. March 22, 2007) (citing *Kamakana*  
15 *v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

## 16 **III. ARGUMENT**

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

18 1. Pursuant to the Protective Order, Apple has designated as “Confidential-Attorneys  
19 Eyes Only” certain information in Apple’s Opposition and the Kiernan Declaration. As  
20 established by the accompanying Scott Declaration, there is good cause to permit filing the  
21 redacted portions of these documents under seal.

22 2. Apple’s Opposition and the Kiernan Declaration contain highly confidential and  
23 commercially sensitive business information, including information regarding Apple’s sales of  
24 iPods to iPod resellers and the maintenance of iPod reseller transaction data.

25 3. Information regarding Apple’s sales of iPods to iPod resellers, including  
26 information relating to the maintenance of iPod reseller transaction data, is highly confidential  
27 and commercially sensitive business information. This information is non-public information that  
28 should remain confidential. *See* Scott Decl., Ex. 1. The information was produced to Plaintiffs

1 pursuant to the Protective Order. Harm to Apple would result from the public disclosure of the  
2 redacted information contained in these documents, including putting Apple at a business  
3 disadvantage. Similar information has been previously sealed in this case in relation to Apple's  
4 Memorandum in Opposition to Class Certification. Dkt. 526.

5 **II. CONCLUSION**

6 Apple respectfully requests that this Court grant Apple's Administrative Motion to Seal.

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Dated: April 12, 2011

Jones Day

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

Attorneys for Defendant  
APPLE INC.

SFI-673614v1