

EXHIBIT 1

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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 **THE APPLE IPOD iTUNES ANTI-TRUST**
15 **LITIGATION.**

Case No. C-05-00037-JW (HRL)
C-06-04457 JW (HRL)

16 **DEFENDANT'S RESPONSE TO**
17 **PLAINTIFFS' SECOND SET OF**
18 **REQUESTS FOR PRODUCTION OF**
DOCUMENTS

19 Pursuant to Federal Rule of Civil Procedure 34, Apple Inc. ("Apple") hereby responds and
20 objects to Plaintiffs' Second Set of Requests for Production of Documents ("Document
21 Requests") served December 29, 2010.

22 **GENERAL OBJECTIONS**

23 Apple asserts the following General Objections. Each individual response is subject to,
24 and is limited in accordance with, the following General Objections.

25 1. Apple objects to each Document Request on the ground that each is premature in
26 light of the Court's December 21, 2009 order and the case management conference scheduled for
27 February 22, 2010, when the Court will determine the scope of any further discovery. After the
28 case management conference, Apple will meet and confer with plaintiffs to attempt to reach

1 agreement on what, if any, documents are to be provided. Apple will refer to this objection as the
2 "Premature Objection."

3 2. In any further production, Apple will conduct a diligent search of its files that is
4 reasonable under the circumstances, and it will produce non-privileged documents in its
5 possession, custody and control, if any, in accordance with its responses to each individually-
6 numbered Document Request.

7 3. No admission of any kind is to be implied or inferred from these responses. The
8 fact that any Document Request has been responded to is not an admission or concession of the
9 existence of any facts set forth or assumed by such Document Request or that the response
10 constitutes evidence of any fact set forth or assumed. Moreover, any agreement to produce
11 documents responsive to a particular Document Request does not imply that responsive
12 documents exist.

13 4. Apple objects to the "Definitions," "Instructions," and each Document Request to
14 the extent that they seek to impose obligations beyond those imposed by the Federal Rules of
15 Civil Procedure, Local Rules of this Court or any order entered by the Court in this action.

16 5. Apple objects to each Document Request to the extent that it calls for documents
17 or information protected by the attorney-client privilege, the attorney work product doctrine, the
18 joint defense privilege, the common interest doctrine or any other applicable privilege or doctrine.
19 No such documents or information will be produced, and any inadvertent production shall not be
20 deemed a waiver of any privilege or protection. Apple will refer to this objection as the
21 "Privilege Objection."

22 6. Apple objects to this discovery to the extent it purports to require Apple to disclose
23 trade secrets, proprietary information, other confidential commercial information or sensitive
24 information. This objection will hereafter be referred to as the "Confidential Information
25 Objection."

26 7. Apple objects to this discovery to the extent that the terms used are so amorphous
27 and overbroad that they either make the Document Request, if literally read, so overbroad and
28 burdensome as to be unreasonable and beyond the bounds of relevance and/or make it difficult for

1 Apple to ascertain what information plaintiff is seeking. This objection will hereafter be referred
2 to as the "Vague and Ambiguous Objection."

3 8. Apple objects to each Document Request to the extent the scope of the Document
4 Request is overbroad and burdensome. This occurs when the Document Request seeks
5 documents that are not reasonably calculated to lead to the discovery of admissible evidence or
6 where the burden of producing the requested documents far outweighs their relevance to the
7 claims or defenses or the benefit to plaintiff. Apple further objects to each Document Request to
8 the extent that it requests "all" documents ever created, sent to, received or used by Apple
9 regardless of their materiality and relevance, as such requests are overbroad and unduly
10 burdensome. In any production, Apple will produce non-privileged documents located after
11 searching custodian files mostly likely to contain a substantial number of relevant documents.
12 This objection will hereafter be referred to as the "Burden Objection."

13 9. Apple objects to the burden associated with producing "all" documents when in
14 many instances documents "sufficient to show" representative, responsive information will
15 mitigate any undue burden and costs a request would otherwise impose on Apple. Apple is
16 prepared to meet-and-confer to agree on the aspects of these requests that can be satisfied by a
17 "sufficient to show" production. Apple will refer to this objection as the "'Sufficient to Show'
18 Objection." Apple's production, if any, will be on a "Sufficient to Show" basis wherever this
19 objection is made, unless the parties agree otherwise.

20 10. By responding to an Document Request with a defined term, Apple is not by
21 implication agreeing with any such definition.

22 11. Apple objects to the definition of "Apple" as overbroad and ambiguous.
23 Defendants will interpret "Apple" to be a reference to Apple Inc. and its relevant U.S. activities.

24 12. Apple objects to the definition of "Communications" as overbroad and
25 burdensome, especially to the extent it seeks to incorporate communications in which neither
26 Apple nor its agents participated and that are available to plaintiffs through other means.

27 13. Apple objects to the definition of "Concerning" as overbroad and burdensome.
28 Apple will interpret "concerning" to have its ordinary, common sense meaning.

1 14. Apple objects to the definition of “Content Provider” to the extent that it includes
2 video content providers as overbroad, unduly burdensome, oppressive, and seeking information
3 that is not relevant to the claims or defenses in this action or not reasonably calculated to lead to
4 the discovery of admissible evidence. Apple will interpret “Content Provider” to mean digital
5 music content provider.

6 15. Apple objects to the definition of “Digital audio file” as overbroad, unduly
7 burdensome, and oppressive. Apple further objects to the definition to the extent it seeks
8 information that is not relevant to the claims or defenses in this action or not reasonably
9 calculated to lead to the discovery of admissible evidence. Apple will interpret “Digital audio
10 file” to mean digital music files.

11 16. Apple objects to the definition of “Documents” and “Electronic data” as overbroad
12 and burdensome. Subject to its objections, Apple will interpret “Documents” and “Electronic
13 data” to have the same meaning as the reference to “documents” and “electronically stored
14 information,” respectively, set forth in Federal Rule of Civil Procedure 34.

15 17. Apple objects to each Document Request to the extent “Documents” is defined to
16 include electronically stored information or “Electronic data” without a reasonable limitation as
17 to scope of custodians, location of data, date, file type, and search terms. Apple will meet and
18 confer with plaintiffs to determine a cost-effective method of identifying and producing
19 electronically stored information, including without limitation the use of search terms and
20 deduplication and reasonable limitations as to custodians, location of data, date, and file type.
21 Apple will produce electronically stored information pursuant to the terms of the Stipulation and
22 Order Governing Electronic Discovery Formats entered in this action. Apple will refer to this as
23 the “E-Discovery Objection.”

24 18. Apple objects to the definition of “Hewlett-Packard” as overbroad, unduly
25 burdensome, oppressive, vague and ambiguous. Apple will interpret “Hewlett-Packard” to mean
26 Hewlett-Packard Company.

27 19. Apple objects to the definition of “Motorola” as overbroad, unduly burdensome,
28 oppressive, vague and ambiguous. Apple will interpret “Motorola” to mean Motorola, Inc.

1 **RELEVANT TIME PERIOD**

2 Apple objects to the "Relevant Time Period" defined by plaintiffs as overbroad, unduly
3 burdensome, and oppressive, and seeking documents that are not relevant to the claims or
4 defenses in this action or not reasonably calculated to lead to the discovery of admissible
5 evidence. Apple will treat the relevant time period as April 28, 2003 through March 31, 2009.

6 **SPECIFIC RESPONSES TO DOCUMENT REQUESTS**

7 **REQUEST FOR PRODUCTION NO. 31:**

8 All communications between Apple and content providers concerning Apple's licensing
9 of FairPlay.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

11 Apple asserts the Premature, Burden, E-Discovery and Confidential Information
12 Objections. Apple objects to the term "concerning" as vague, ambiguous, overbroad, and unduly
13 burdensome. Apple further objects to the extent that it calls for information relating to video
14 content providers, as such information is not relevant to the allegations in the Amended
15 Consolidated Complaint. After the case management conference, Apple will meet and confer
16 with plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

17 **REQUEST FOR PRODUCTION NO. 32:**

18 All contracts with content providers concerning the sale of digital audio and/or video files
19 through the iTunes Store.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

21 Apple asserts the Premature and Confidential Information Objections. Apple objects to
22 the term "concerning" as vague, ambiguous, overbroad, and unduly burdensome. Apple objects
23 that documents relating to video content provides or video files are not relevant to the allegations
24 in the Amended Consolidated Complaint. Apple objects to the extent that that Apple has already
25 produced documents responsive to this Document Request. After the case management
26 conference, Apple will meet and confer with plaintiffs to attempt to reach agreement on what, if
27 any, documents are to be provided.

28

1 **REQUEST FOR PRODUCTION NO. 33:**

2 All documents constituting, reflecting, or commenting upon negotiations between Apple
3 and content providers concerning the sale of digital audio and/or video files on the iTunes Store,
4 including, but not limited to, all contracts, all contract amendments, and all drafts of contracts.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

6 Apple asserts the Premature, Vague and Ambiguous, Burden, E-Discovery, Confidential
7 Information, and Privilege Objections. Apple objects to the term “concerning” as vague,
8 ambiguous, overbroad, and unduly burdensome. Apple objects that documents relating to video
9 content providers or video files are not relevant to the allegations in the Amended Consolidated
10 Complaint. Apple objects to the extent that Apple has already produced documents responsive to
11 this Document Request. After the case management conference, Apple will meet and confer with
12 plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

13 **REQUEST FOR PRODUCTION NO. 34:**

14 All communications between Apple and content providers concerning the use of DRM.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

16 Apple asserts the Premature, Burden, E-Discovery, and Confidential Information
17 Objections. Apple objects to the term “concerning” as vague, ambiguous, overbroad, and unduly
18 burdensome. Apple further objects to the extent that it calls for information relating to video
19 content providers, as such information is not relevant to the allegations in the Amended
20 Consolidated Complaint. After the case management conference, Apple will meet and confer
21 with plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

22 **REQUEST FOR PRODUCTION NO. 35:**

23 All communications between Apple and content providers concerning interoperability.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

25 Apple asserts the Premature, Burden, E-Discovery, Confidential Information, and Vague
26 and Ambiguous Objections. Apple objects to the term “concerning” as vague, ambiguous,
27 overbroad, and unduly burdensome. Apple further objects to the extent that it calls for
28 information relating to video content providers, as such information is not relevant to the

1 allegations in the Amended Consolidated Complaint. After the case management conference,
2 Apple will meet and confer with plaintiffs to attempt to reach agreement on what, if any,
3 documents are to be provided.

4 **REQUEST FOR PRODUCTION NO. 36:**

5 All communications between Apple and content providers concerning Apple's
6 development of FairPlay.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

8 Apple asserts the Premature, Burden, Confidential Information and E-Discovery
9 Objections. Apple objects to the term "concerning" and the phrase "development of FairPlay" as
10 vague, ambiguous, overbroad, and unduly burdensome. Apple objects to this Document Request
11 on the ground that the development of FairPlay is not relevant to the claims or defenses in this
12 action or not reasonably calculated to lead to the discovery of admissible evidence. Apple further
13 objects to the extent that it calls for information relating to video content providers, as such
14 information is not relevant to the allegations in the Amended Consolidated Complaint. After the
15 case management conference, Apple will meet and confer with plaintiffs to attempt to reach
16 agreement on what, if any, documents are to be provided.

17 **REQUEST FOR PRODUCTION NO. 37:**

18 All documents, including internal communications or presentations, discussing or
19 contemplating Apple's development of FairPlay for use on digital audio or video files sold
20 through the iTunes Store.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

22 Apple asserts the Premature, Burden, Confidential Information, Privilege, Vague and
23 Ambiguous and E-Discovery Objections. Apple objects to the terms "contemplating" and
24 "development" as vague, ambiguous, overbroad, and unduly burdensome. Apple objects on the
25 ground that the development of FairPlay is not relevant to the claims or defenses in this action or
26 not reasonably calculated to lead to the discovery of admissible evidence. Apple objects that
27 documents relating to video files are not relevant to the allegations in the Amended Consolidated
28 Complaint. After the case management conference, Apple will meet and confer with plaintiffs to

1 attempt to reach agreement on what, if any, documents are to be provided.

2 **REQUEST FOR PRODUCTION NO. 38:**

3 All documents constituting or commenting upon Apple's contracts with Hewlett-Packard
4 for the sale of iPods and for use of iTunes on Hewlett-Packard computers, including all final
5 contracts, all drafts of such contracts, all documents reflecting contract negotiations, all
6 communications between Apple and Hewlett-Packard regarding such contracts, and all
7 documents reflecting internal Apple discussions concerning such contracts.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

9 Apple asserts the Premature, Burden, Confidential Information, Privilege, and E-
10 Discovery Objections. Apple objects to the extent that this Document Request seeks documents
11 that are not relevant to the claims or defenses in this action or not reasonably calculated to lead to
12 the discovery of admissible evidence and that any such relevance is far outweighed by the burden
13 of locating, collecting, processing, reviewing, and producing such documents. Apple objects to
14 the terms "regarding" and "concerning" as vague, ambiguous, overbroad, and unduly
15 burdensome. After the case management conference, Apple will meet and confer with plaintiffs
16 to attempt to reach agreement on what, if any, documents are to be provided.

17 **REQUEST FOR PRODUCTION NO. 39:**

18 All documents constituting or commenting upon Apple's contracts with Motorola for the
19 sale of Motorola mobile phones capable of directly transferring digital audio files purchased
20 through the iTunes Store, including all final contracts, all drafts of such contracts, all documents
21 reflecting contract negotiations, all communications between Apple and Motorola regarding such
22 contracts, and all documents reflecting internal Apple discussions concerning such contracts.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

24 Apple asserts the Premature, Burden, Confidential Information, Privilege, and E-
25 Discovery Objections. Apple objects to the extent that this Document Request seeks documents
26 that are not relevant to the claims or defenses in this action or not reasonably calculated to lead to
27 the discovery of admissible evidence and that any such relevance is far outweighed by the burden
28 of locating, collecting, processing, reviewing, and producing such documents. Apple objects to

1 the terms “regarding” and “concerning” as vague, ambiguous, overbroad, and unduly
2 burdensome. After the case management conference, Apple will meet and confer with plaintiffs
3 to attempt to reach agreement on what, if any, documents are to be provided.

4 **REQUEST FOR PRODUCTION NO. 40:**

5 All documents concerning the transfer of digital audio or video files directly from iTunes
6 to Motorola mobile phones.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

8 Apple asserts the Premature, Burden, Confidential Information, Privilege, Sufficient to
9 Show, and E-Discovery Objections. Apple objects to the term “concerning” as vague,
10 ambiguous, overbroad, and unduly burdensome. Apple objects to the extent that this Document
11 Request seeks documents that are not relevant to the claims or defenses in this action or not
12 reasonably calculated to lead to the discovery of admissible evidence and that any such relevance
13 is far outweighed by the burden of locating, collecting, processing, reviewing, and producing such
14 documents. Apple objects that documents relating to video files are not relevant to the allegations
15 in the Amended Consolidated Complaint. After the case management conference, Apple will
16 meet and confer with plaintiffs to attempt to reach agreement on what, if any, documents are to be
17 provided.

18 **REQUEST FOR PRODUCTION NO. 41:**

19 All reports, presentations, studies, polls, surveys or any other marketing analysis or
20 research, whether conducted by Apple or by a third party, concerning iPod owners and their use
21 of the iTunes Store, including, but not limited to, unredacted versions of Exhibits 1 and 2 to the
22 Arthur Rangel declaration filed in support of Apple’s opposition to Plaintiffs’ motion for class
23 certification.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

25 Apple asserts the Premature, Privilege, Burden, Confidential Information, Vague and
26 Ambiguous, Sufficient to Show, and E-Discovery Objections. Apple objects to the extent that
27 this Document Request seeks reports, presentations, studies, polls, surveys or any other marketing
28 analysis or research discussing use that is not relevant to the claims or defenses in this action or

1 not reasonably calculated to lead to the discovery of admissible evidence. Apple objects to the
2 term “concerning” as vague, ambiguous, overbroad, and unduly burdensome. After the case
3 management conference, Apple will meet and confer with plaintiffs to attempt to reach agreement
4 on what, if any, documents are to be provided.

5 **REQUEST FOR PRODUCTION NO. 42:**

6 All reports, presentations, studies, polls, surveys or any other marketing analysis or
7 research, whether conducted by Apple or by a third party, concerning consumer use of the iTunes
8 Store or any other music store.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

10 Apple asserts the Premature, Burden, Confidential Information, Vague and Ambiguous,
11 Sufficient to Show and E-Discovery Objections. Apple objects to the extent that this Document
12 Request seeks reports, presentations, studies, polls, surveys or any other marketing analysis or
13 research discussing use that is not relevant to the claims or defenses in this action or not
14 reasonably calculated to lead to the discovery of admissible evidence. Apple objects to the term
15 “concerning” as vague, ambiguous, overbroad, and unduly burdensome. After the case
16 management conference, Apple will meet and confer with plaintiffs to attempt to reach agreement
17 on what, if any, documents are to be provided.

18 **REQUEST FOR PRODUCTION NO. 43:**

19 All reports, presentations, studies, polls, surveys or any other marketing analysis or
20 research, whether conducted by Apple or by a third party, concerning consumer use of portable
21 digital music players other than iPod.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

23 Apple asserts the Premature, Burden, Confidential Information, Vague and Ambiguous,
24 Sufficient to Show and E-Discovery Objections. Apple objects to the extent that this Document
25 Request seeks reports, presentations, studies, polls, surveys or any other marketing analysis or
26 research discussing use that is not relevant to the claims or defenses in this action or not
27 reasonably calculated to lead to the discovery of admissible evidence. Apple objects to the term
28 “concerning” as vague, ambiguous, overbroad, and unduly burdensome. After the case

1 management conference, Apple will meet and confer with plaintiffs to attempt to reach agreement
2 on what, if any, documents are to be provided.

3 **REQUEST FOR PRODUCTION NO. 44:**

4 All reports, evaluations, and/or presentations, whether conducted by Apple or a third
5 party, that Apple uses as support for its public statements regarding the market share of iPods.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

7 Apple asserts the Premature, Burden, Confidential Information, Sufficient to Show and E-
8 Discovery Objections. Apple objects to the term “regarding” as vague, ambiguous, overbroad,
9 and unduly burdensome. After the case management conference, Apple will meet and confer
10 with plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

11 **REQUEST FOR PRODUCTION NO. 45:**

12 All reports, evaluations, and/or presentations, whether conducted by Apple or a third
13 party, that Apple uses as support for its public statements regarding the market share of the
14 iTunes Store.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

16 Apple asserts the Premature, Burden, Confidential Information, Sufficient to Show and E-
17 Discovery Objections. Apple objects to the terms “regarding” and “evaluations” as vague,
18 ambiguous, overbroad, and unduly burdensome. After the case management conference, Apple
19 will meet and confer with plaintiffs to attempt to reach agreement on what, if any, documents are
20 to be provided.

21 **REQUEST FOR PRODUCTION NO. 46:**

22 All drafts of and communications regarding Steve Jobs’ Thoughts on Music released on
23 February 6, 2007 and found at <http://www.apple.com/hotnews/thoughtsonmusic/>.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

25 Apple asserts the Premature, Burden, Confidential Information, Privilege and E-Discovery
26 Objections. Apple objects to the term “regarding” as vague, ambiguous, overbroad, and unduly
27 burdensome. After the case management conference, Apple will meet and confer with plaintiffs
28 to attempt to reach agreement on what, if any, documents are to be provided.

1 **REQUEST FOR PRODUCTION NO. 47:**

2 All documents supporting Apple's response to Interrogatory No. 6, including
3 communications with NPD.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

5 Apple asserts the Premature, Burden, Confidential Information, Privilege, Sufficient to
6 Show and E-Discovery Objections. After the case management conference, Apple will meet and
7 confer with plaintiffs to attempt to reach agreement on what, if any, documents are to be
8 provided.

9 **REQUEST FOR PRODUCTION NO. 48:**

10 Documents sufficient to show Apple's costs of developing and maintaining FairPlay for
11 each quarter beginning when Apple first incurred costs to the present.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

13 Apple asserts the Premature, Burden, Confidential Information and E-Discovery
14 Objections. Apple objects to the terms "developing" and "maintaining" as vague, ambiguous,
15 overbroad, and unduly burdensome. Apple objects to the extent that this Document Request
16 seeks documents that are not relevant to the claims or defenses in this action or not reasonably
17 calculated to lead to the discovery of admissible evidence and that any such relevance is far
18 outweighed by the burden of locating, collecting, processing, reviewing, and producing such
19 documents. After the case management conference, Apple will meet and confer with plaintiffs to
20 attempt to reach agreement on what, if any, documents are to be provided.

21 **REQUEST FOR PRODUCTION NO. 49:**

22 Documents sufficient to show Apple's costs of developing and maintaining the iTunes
23 Store for each quarter beginning when Apple first incurred costs to the present.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

25 Apple asserts the Premature, Burden, Confidential Information, Vague and Ambiguous
26 and E-Discovery Objections. Apple objects to the terms "developing" and "maintaining" as
27 vague, ambiguous, overbroad, and unduly burdensome. Apple objects to the extent that this
28 Document Request seeks documents that are not relevant to the claims or defenses in this action

1 or not reasonably calculated to lead to the discovery of admissible evidence and that any such
2 relevance is far outweighed by the burden of locating, collecting, processing, reviewing, and
3 producing such documents. After the case management conference, Apple will meet and confer
4 with plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

5 **REQUEST FOR PRODUCTION NO. 50:**

6 Documents sufficient to show Apple's costs of advertising the iTunes Store for each
7 quarter beginning when Apple first incurred costs to the present

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

9 Apple asserts the Premature, Burden, Confidential Information, Vague and Ambiguous
10 and E-Discovery Objections. Apple objects to the extent that this Document Request seeks
11 documents that are not relevant to the claims or defenses in this action or not reasonably
12 calculated to lead to the discovery of admissible evidence and that any such relevance is far
13 outweighed by the burden of locating, collecting, processing, reviewing, and producing such
14 documents. After the case management conference, Apple will meet and confer with plaintiffs to
15 attempt to reach agreement on what, if any, documents are to be provided.

16 **REQUEST FOR PRODUCTION NO. 51:**

17 Unredacted versions of all documents produced and transcripts of testimony given by
18 Apple in *In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment*
19 *Proceeding*, before the Copyright Royalty Board.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

21 Apple asserts the Premature, Privilege, and Confidential Information Objections. Apple
22 objects to the extent that this Document Request seeks documents that are not relevant to the
23 claims or defenses in this action or not reasonably calculated to lead to the discovery of
24 admissible evidence. After the case management conference, Apple will meet and confer with
25 plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

26 **REQUEST FOR PRODUCTION NO. 52:**

27 Documents sufficient to show, for each quarter since iPod was first sold, the revenue and
28 costs of iPod on a model by model basis.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

2 Apple asserts the Premature, Vague and Ambiguous and Confidential Information
3 Objections. After the case management conference, Apple will meet and confer with plaintiffs to
4 attempt to reach agreement on what, if any, documents are to be provided.

5 **REQUEST FOR PRODUCTION NO. 53:**

6 Documents sufficient to show, for each quarter since iPod was first sold, the component
7 costs of iPod on a model by model basis.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

9 Apple asserts the Premature, Confidential Information and Burden Objections. After the
10 case management conference, Apple will meet and confer with plaintiffs to attempt to reach
11 agreement on what, if any, documents are to be provided.

12 **REQUEST FOR PRODUCTION NO. 54:**

13 Documents sufficient to show the costs to Apple of creating and issuing software updates
14 intended, in whole or in part, to maintain a lack of interoperability.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

16 Apple asserts the Premature, Burden, Vague and Ambiguous and Confidential
17 Information Objections. Apple objects to the terms "creating," and "issuing" as vague,
18 ambiguous, overbroad, and unduly burdensome. Apple objects to the extent that this Document
19 Request seeks documents that are not relevant to the claims or defenses in this action or not
20 reasonably calculated to lead to the discovery of admissible evidence and that any such relevance
21 is far outweighed by the burden of locating, collecting, processing, reviewing, and producing such
22 documents. After the case management conference, Apple will meet and confer with plaintiffs to
23 attempt to reach agreement on what, if any, documents are to be provided.

24 **REQUEST FOR PRODUCTION NO. 55:**

25 All transaction data between Apple and wholesalers and resellers of iPods, including the
26 quantity of iPods sold, the date the iPods were sold, the model number of iPods, and the price,
27 from October 2001 to the present.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

2 Apple asserts the Premature, Burden, Confidential Information, Vague and Ambiguous,
3 Sufficient To Show, and E-Discovery Objections. Apple objects to the terms “wholesalers,”
4 “resellers,” and “transaction data” as vague, ambiguous, overbroad, and unduly burdensome.
5 Apple objects to the extent that this Document Request seeks documents that are not relevant to
6 the claims or defenses in this action or not reasonably calculated to lead to the discovery of
7 admissible evidence and that any such relevance is far outweighed by the burden of locating,
8 collecting, processing, reviewing, and producing such documents. After the case management
9 conference, Apple will meet and confer with plaintiffs to attempt to reach agreement on what, if
10 any, documents are to be provided.

11 **REQUEST FOR PRODUCTION NO. 56:**

12 All contracts between Apple and wholesalers and resellers of iPods for the sale of iPods,
13 from October 2001 to the present.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

15 Apple asserts the Premature, Burden and Confidential Information Objections. Apple
16 objects to the terms “resellers” and “wholesalers” as vague, ambiguous, overbroad, and unduly
17 burdensome. Apple objects to the extent that this Document Request seeks documents that are
18 not relevant to the claims or defenses in this action or not reasonably calculated to lead to the
19 discovery of admissible evidence. After the case management conference, Apple will meet and
20 confer with plaintiffs to attempt to reach agreement on what, if any, documents are to be
21 provided.

22 **REQUEST FOR PRODUCTION NO. 57:**

23 Documents sufficient to show, for each quarter since the opening of the iTunes Store, the
24 number of digital audio files available on the iTunes Store.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

26 Apple asserts the Premature, Burden and Confidential Information Objections. After the
27 case management conference, Apple will meet and confer with plaintiffs to attempt to reach
28 agreement on what, if any, documents are to be provided.

1 **REQUEST FOR PRODUCTION NO. 58:**

2 Documents sufficient to show, for each quarter since the opening of the iTunes Store, the
3 number of digital video files available on the iTunes Store.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 58:**

5 Apple asserts the Premature, Burden and Confidential Information Objections. Apple
6 objects that documents relating to video files are not relevant to the allegations in the Amended
7 Consolidated Complaint. After the case management conference, Apple will meet and confer
8 with plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

9 **REQUEST FOR PRODUCTION NO. 59:**

10 All documents analyzing, describing, or comparing the features, functionality, and design
11 of each iPod model sold by Apple since October 2001, including, but not limited to, capacity,
12 weight, size (including thickness, length, width), design, screen-size, ability to display or store
13 video or photos, ability to send and receive e-mail, ability to access the internet, battery life,
14 color, multi-touch interface, operating system, and software capabilities.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

16 Apple asserts the Premature, Privilege, Burden, Confidential Information, Vague and
17 Ambiguous, Sufficient To Show, and E-Discovery Objections. Apple objects to the terms
18 “features,” “functionality” and “design” as vague, ambiguous, overbroad, and unduly
19 burdensome. Apple objects to the extent that this Document Request seeks documents that are
20 publicly available. After the case management conference, Apple will meet and confer with
21 plaintiffs to attempt to reach agreement on what, if any, documents are to be provided.

22 **REQUEST FOR PRODUCTION NO. 60:**

23 All documents analyzing or comparing the features, functionality, and design of each iPod
24 model sold by Apple since October 2001 with the features, functionality, and design of any
25 product with which iPod competes.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60:**

27 Apple asserts the Premature, Privilege, Burden, Confidential Information, Vague and
28 Ambiguous, Sufficient To Show, and E-Discovery Objections. Apple objects to the extent that

1 this Document Request seeks documents that are publicly available. Apple objects to the terms
2 "features," "functionality" and "design" as vague, ambiguous, overbroad, and unduly
3 burdensome. Apple objects to this Document Request as overbroad and unduly burdensome to
4 the extent it seeks documents relating to products that "compete" or "competed" with a specific
5 iPod model over a nearly ten year period and to the extent that it purports to include products that
6 may not be known or readily identifiable by Apple. Apple further objects to this Document
7 Request to the extent that it requests a legal or expert opinion or conclusion relating to what
8 products comprise the relevant antitrust product market. Such a request is premature, as the scope
9 of the relevant market will be the subject of expert discovery. After the case management
10 conference, Apple will meet and confer with plaintiffs to attempt to reach agreement on what, if
11 any, documents are to be provided.

12 **REQUEST FOR PRODUCTION NO. 61:**

13 All documents concerning, discussing, analyzing and/or describing Apple's pricing
14 strategies or policies for iPods.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 61:**

16 Apple asserts the Premature, Burden, Confidential Information, Vague and Ambiguous,
17 Privilege, Sufficient To Show, and E-Discovery Objections. Apple objects to the terms
18 "strategies," "policies" and "concerning" as vague, ambiguous, overbroad, and unduly
19 burdensome. After the case management conference, Apple will meet and confer with plaintiffs
20 to attempt to reach agreement on what, if any, documents are to be provided.

21 **REQUEST FOR PRODUCTION NO. 62:**

22 Documents sufficient to show, for each model of iPod, the prices at which Apple sold
23 those iPods to persons other than resellers, distributors, or wholesalers.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 62:**

25 Apple asserts the Premature and Burden Objections. Apple objects to the terms
26 "resellers," "distributors" and "wholesalers" as vague, ambiguous, overbroad, and unduly
27 burdensome. After the case management conference, Apple will meet and confer with plaintiffs
28 to attempt to reach agreement on what, if any, documents are to be provided.

1 **REQUEST FOR PRODUCTION NO. 63:**

2 All marketing studies, whether conducted by Apple or a third party, regarding products
3 with which the iPod competes.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 63:**

5 Apple asserts the Premature, Burden, Confidential Information, Sufficient To Show, and
6 E-Discovery Objections. Apple objects to the term “regarding” as vague, ambiguous, overbroad,
7 and unduly burdensome. Apple objects to this Document Request as overbroad and unduly
8 burdensome to the extent it seeks documents relating to each product that “competes” or
9 “competed” with a specific iPod model over a nearly ten year period and to the extent that it
10 purports to include products that may not be known or readily identifiable by Apple. Apple
11 further objects to this Document Request to the extent that it requests a legal or expert opinion or
12 conclusion relating to what products comprise the relevant antitrust product market. Such a
13 request is premature, as the scope of the relevant market will be the subject of expert discovery.
14 After the case management conference, Apple will meet and confer with plaintiffs to attempt to
15 reach agreement on what, if any, documents are to be provided.

16 **REQUEST FOR PRODUCTION NO. 64:**

17 All marketing studies, whether conducted by Apple or a third party, regarding products
18 with which the iTunes Store competes.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 64:**

20 Apple asserts the Premature, Sufficient To Show, Burden, Confidential Information,
21 Possession and E-Discovery Objections. Apple objects to the term “regarding” as vague,
22 ambiguous, overbroad, and unduly burdensome. Apple objects to this Document Request as
23 overbroad and unduly burdensome to the extent it seeks documents relating to each product
24 “competes” or “competed” with iTunes Store and to the extent that it purports to include products
25 that may not be known or readily identifiable by Apple. Apple further objects to this Document
26 Request to the extent that it requests a legal or expert opinion or conclusion relating to what
27 products comprise the relevant antitrust product market. Such a request is premature, as the scope
28 of the relevant market will be the subject of expert discovery. After the case management

1 conference, Apple will meet and confer with plaintiffs to attempt to reach agreement on what, if
2 any, documents are to be provided.

3 **REQUEST FOR PRODUCTION NO. 65:**

4 All documents analyzing, discussing or concerning the effects of burning and ripping on
5 the quality of digital audio files.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 65:**

7 Apple asserts the Premature, Burden, Confidential Information, Privilege, Sufficient to
8 Show, and E-Discovery Objections. Apple objects to the terms “concerning” and “quality” as
9 vague, ambiguous, overbroad, and unduly burdensome. After the case management conference,
10 Apple will meet and confer with plaintiffs to attempt to reach agreement on what, if any,
11 documents are to be provided.

12 **REQUEST FOR PRODUCTION NO. 66:**

13 All documents analyzing, discussing or concerning the effects of FairPlay on the quality
14 of digital audio files sold on the iTunes Store.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 66:**

16 Apple asserts the Premature, Burden, Confidential Information, Privilege, Sufficient to
17 Show, and E-Discovery Objections. Apple objects to the term “concerning” as vague,
18 ambiguous, overbroad, and unduly burdensome. After the case management conference, Apple
19 will meet and confer with plaintiffs to attempt to reach agreement on what, if any, documents are
20 to be provided.

21 **REQUEST FOR PRODUCTION NO. 67:**

22 All documents identified by Apple in response to interrogatories served by Plaintiffs.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 67:**

24 Apple asserts the Premature, Privilege, Burden, Confidential Information, Sufficient To
25 Show, and E-Discovery Objections. After the case management conference, Apple will meet and
26 confer with plaintiffs to attempt to reach agreement on what, if any, documents are to be
27 provided.

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Dated: February 1, 2010

Jones Day

By: 

David C. Kiernan

Counsel for Defendant
APPLE INC.

1 **PROOF OF SERVICE**

2 I, Lillian Wong, declare:

3 I am a citizen of the United States and employed in San Francisco County, California. I
4 am over the age of eighteen years and not a party to the within-entitled action. My business
5 address is 555 California Street, 26th Floor, San Francisco, California 94104. On February 1,
6 2010, I served a copy of the within document(s):

7 **DEFENDANT'S RESPONSE TO PLAINTIFFS' SECOND SET OF**
8 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

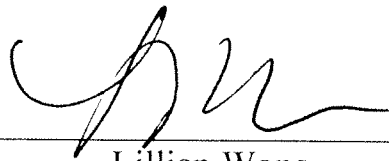
- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in the United States mail at San Francisco, California addressed as
13 set forth below.
- 14 by placing the document(s) listed above in a sealed envelope and affixing a pre-
15 paid air bill, and causing the envelope to be delivered to a agent for delivery.
- 16 by personally delivering the document(s) listed above to the person(s) at the
17 address(es) set forth below.
- 18 by transmitting via e-mail or electronic transmission the document(s) listed above
19 to the person(s) at the e-mail address(es) set forth below.

20 SEE ATTACHED SERVICE LIST

21 I am readily familiar with the firm's practice of collection and processing correspondence
22 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
23 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
24 motion of the party served, service is presumed invalid if postal cancellation date or postage
25 meter date is more than one day after date of deposit for mailing in affidavit.

26 I declare that I am employed in the office of a member of the bar of this court at whose
27 direction the service was made.

28 Executed on February 1, 2010, at San Francisco, California.



Lillian Wong

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