

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

THE APPLE IPOD ITUNES ANTI-TRUST LITIGATION	}	Lead Case No. C-05-00037-JW(HRL)
This Document Relates To:	}	<u>CLASS ACTION</u>
ALL ACTIONS.	}	PLAINTIFFS' SUBMISSION OF SUPPLEMENTAL EVIDENCE FROM THE DEPOSITION OF STEVE JOBS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO SUMMARY JUDGMENT

JUDGE: Hon. James Ware  
 DATE: April 18, 2011  
 TIME: 9:00 a.m.  
 CTRM: 8, 4th Floor

[REDACTED]

1 On April 12, 2011, Plaintiffs took the deposition of Steve Jobs, CEO of Apple, Inc.  
2 (“Apple”). Plaintiffs submit the following additional evidence in support of Plaintiffs’ opposition to  
3 Apple’s summary judgment motion. This evidence could not have been submitted with Plaintiffs’  
4 summary judgment opposition because Apple moved for a protective order to quash the timely-  
5 noticed deposition of Mr. Jobs. The hearing on Apple’s motion was postponed at Apple’s request  
6 (because of Mr. Jobs’ medical leave of absence), until a date after Plaintiffs’ opposition to summary  
7 judgment was due. On March 21, 2011, Magistrate Judge Lloyd granted in part and denied in part  
8 Apple’s motion for protective order. Dkt. No. 543.

9 Testimony by Mr. Jobs provides additional support for the allegations in Plaintiffs’  
10 complaint. At a minimum, his testimony further demonstrates that there are myriad material  
11 disputed facts that preclude summary judgment.

12 Apple argues, for example, [REDACTED]  
13 [REDACTED] “any basis to infer that Apple’s redesign starting in May 2004 was in  
14 reaction to Harmony.” Apple’s Reply in Support of Motion for Summary Judgment (“Def. Reply  
15 Mem.”), dated March 28, 2011, at 7. Testimony by Mr. Jobs, as well as Apple documents, suggest,  
16 however, [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]. In the Q&A section of the article, Mr. Glaser stated that RealNetworks decided in January  
20 2004, four months before the proposal to Mr. Jobs, to implement Harmony:

21 Q: Has the Harmony project met your expectations?

22 A: No, it has blown them away. *We took the decision at the beginning of the*  
23 *year to implement Harmony.* It really went back to some things we were working  
24 on before, where we’ve had good experience with creating technology with  
interoperability in the past.

25 \* \* \*

26 [Q:] *You had attempted to ask Jobs if he was interested in providing a license to*  
*FairPlay and the iPod back in April. But you had the Harmony project already*  
*under way at that point?*

27 [A:] *Absolutely.* We had reached the conclusion that technically we had all the  
28 bases covered, and that we were going to be able to implement something that was

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very good. We didn't have all the finish on it, and all the user interface hooked up, and hadn't done all the final tuning and everything, but at the time I contacted Steve, we were well on the way – which is when he decided to do a Bill O'Reilly on us.

Ex. 1, (Jobs Exhibit 10 at AIIA00920839-40) (emphasis added).<sup>1</sup>

[REDACTED]

Ex. 2 (Jobs Tr. at 23:20-24:23).

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<sup>1</sup> All references to "Ex." are to the exhibits attached to the Declaration of Alexandra S. Bernay in Support of Plaintiffs' Submission of Supplemental Evidence from the Deposition of Steve Jobs in Support of Plaintiffs' Opposition to Summary Judgment.

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In addition, Mr. Jobs' testimony and documents he authored demonstrate several disputed fact issues surrounding Apple's disparagement of Harmony. In its reply brief, Apple claims (without citation) that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. In its first press release, Larry Kenswil, president of Universal Music's eLabs division, said: "We applaud RealNetworks' efforts to help correct this situation and appeal to all people and companies in this area to work toward a world of universal interoperability." Ex. 3 (Jobs Exhibit 7 at 2). [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Further, Apple has never produced any evidence of any illegality on RealNetworks' part, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>2</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

1 This evidence, and the evidence previously submitted by Plaintiffs, demonstrates the  
2 existence of material issues of disputed facts that preclude summary judgment. For these reasons,  
3 this Court should deny Apple's motion.

4 DATED: April 15, 2011

Respectfully submitted,

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

12 s/ Bonny E. Sweeney  
13 BONNY E. SWEENEY

14 655 West Broadway, Suite 1900  
15 San Diego, CA 92101  
16 Telephone: 619/231-1058  
17 619/231-7423 (fax)

18 THE KATRIEL LAW FIRM  
19 ROY A. KATRIEL  
20 1101 30th Street, N.W., Suite 500  
21 Washington, DC 20007  
22 Telephone: 202/625-4342  
23 202/330-5593 (fax)

Co-Lead Counsel for Plaintiffs

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

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

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25  
26  
27  
28

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



## 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.

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