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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 Exhibit 1 to the Supplemental Declaration
 22 of David C. Kiernan in Support of Apple's Opposition to Plaintiffs' Motion to Exclude the
 23 Opinions of Apple's Expert, Dr. Michelle M. Burtis, Ph.D ("Supplemental Kiernan Declaration"),
 24 which contains information that Apple designated "Confidential—Attorneys Eyes Only" under
 25 the Stipulation and Protective Order Regarding Confidential Information ("Protective Order")
 26 entered June 13, 2007 (Dkt. 112).

27 Apple files this motion and the accompanying Declaration of Michael Scott ("Scott
 28 Declaration") in support of a narrowly tailored order authorizing sealing those documents, on the

1 grounds that there is good cause to protect the confidentiality of that information. The proposed
2 sealing order is based on the Protective Order and proof that particularized injury to Apple will
3 result if the sensitive information is publicly released.

4 **II. STANDARD**

5 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit
6 sealing of court documents to protect “a trade secret or other confidential research, development,
7 or commercial information.” Fed. R. Civ. P. 26(c). Based on this authority, the Ninth Circuit has
8 “carved out an exception to the presumption of access to judicial records for a sealed discovery
9 document [attached] to a non-dispositive motion.” *Navarro v. Eskanos & Adler*, No. C-06 02231
10 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana*
11 *v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

12 **III. ARGUMENT**

13 **A. There Is Good Cause To Support Filing Under Seal.**

14 Pursuant to the Protective Order, Apple has designated as “Confidential-Attorneys Eyes
15 Only” certain information contained in Exhibit 1 to the Supplemental Kiernan Declaration. As
16 established by the accompanying declarations, there is good cause to permit filing Exhibit 1 under
17 seal. Exhibit 1 contains highly confidential and commercially sensitive business information,
18 including information regarding Apple’s sales of iPods to iPod resellers, Apple’s iPod pricing
19 decisions, and iTunes Store sales and market share.

20 Information regarding Apple’s pricing strategy and practices is highly confidential and
21 commercially sensitive business information. This information is non-public information that
22 should remain confidential. The information was produced to Plaintiffs pursuant to the Protective
23 Order. Harm to Apple would result from the public disclosure of the redacted information
24 contained in these documents. The public disclosure of information regarding Apple's pricing
25 strategy and practices would put Apple at a business disadvantage. *See* Scott Decl., Ex 1.
26 Identical information has been previously sealed in this case in relation to Apple’s Opposition to
27 Plaintiffs’ Motion To Exclude the Opinions of Defendant’s Expert, Dr. Michelle Mr. Burtis,
28 Ph.D. Dkt. 592.

1 Information regarding Apple's sales of iPods to iPod resellers is also highly confidential
2 and commercially sensitive business information. This information is non-public information that
3 should remain confidential. See Scott Decl., Ex. 2. The information was produced to Plaintiffs
4 pursuant to the Protective Order. Harm to Apple would result from the public disclosure of the
5 redacted information contained in these documents. The public disclosure of information
6 regarding Apple's sales of iPods to iPod resellers would put Apple at a business disadvantage.
7 Identical information has been previously sealed in this case in relation to Apple's Opposition to
8 Plaintiffs' Motion To Exclude the Opinions of Defendant's Expert, Dr. Michelle Mr. Burtis,
9 Ph.D. Dkt. 592.

10 iTunes Store sales and market research conducted by Apple or on Apple's behalf,
11 including information regarding iTunes market share, is highly confidential and commercially
12 sensitive business information. Third-party research is subject to confidentiality provisions in
13 contracts between Apple and the third-party market research providers. This information is non-
14 public information that should remain confidential. The information was produced to Plaintiffs
15 pursuant to the Protective Order. Harm to Apple would result from the public disclosure of such
16 information. See Scott Decl., Ex. 3. Identical information has been previously sealed in this case
17 in relation to Apple's Opposition to Plaintiffs' Motion To Exclude the Opinions of Defendant's
18 Expert, Dr. Michelle Mr. Burtis, Ph.D. Dkt. 592.

19
20 **IV. CONCLUSION**

21 Apple respectfully requests that this Court grant its Administrative Motion to Seal Exhibit
22 1 to the Supplemental Declaration of David C. Kiernan in Support of Apple's Opposition to
23 Motion to Exclude the Opinions of Defendant's Expert, Dr. Michelle M. Burtis, Ph.D.

24 Dated: April 15, 2011

Jones Day

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

27 Attorneys for Defendant
28 APPLE INC.

SFI-678166v1