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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW(HRL)
19 LITIGATION)	
20 _____)	<u>CLASS ACTION</u>
21 This Document Relates To:)	PLAINTIFFS' NOTICE OF MOTION AND
22 ALL ACTIONS.)	MOTION FOR LEAVE TO FILE
_____)	PLAINTIFFS' MOTION TO STRIKE THE
	SUPPLEMENTAL EXPERT REPORT OF
	DR. MICHELLE M. BURTIS, Ph.D.

23 JUDGE: Hon. James Ware
 24 DATE: TBD
 25 TIME: TBD
 CTRM: 8, 4th Floor

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that as soon as the Court's schedule allows, in Courtroom 8, 4th
3 Floor, of the above-captioned Court located at 280 South First Street, San Jose, California 95113,
4 before the Honorable James Ware, Plaintiffs Melanie Tucker, Mariana Rosen, and Somtai
5 Charoensak (collectively, "Plaintiffs") will and hereby do through undersigned counsel, move this
6 Court for leave to file a Motion to Strike the Supplemental Expert Report of Dr. Michelle M. Burtis,
7 Ph.D. Plaintiffs seek leave because on April 11, 2011, Defendants submitted a new, supplemental
8 expert report in support of their opposition to class certification by their expert Dr. Burtis. It is
9 Plaintiffs' position that this new, supplemental expert report is improper and must be stricken.

10 **I. MEMORANDUM OF POINTS AND AUTHORITIES**

11 On October 28, 2010, this Court signed an Order setting forth the schedule for certain matters
12 in this action. Dkt. No. 392. That October 28, 2010 scheduling Order provided that briefing on
13 Plaintiffs' motion for class certification would be complete on March 28, 2011. Apple has flouted
14 this deadline by submitting a 15-page expert report, with detailed exhibits and more than 40
15 footnotes, that plainly addresses class-certification matters. Apple should not be allowed to submit
16 this lengthy new report nearly two weeks after briefing on class certification is over and just a week
17 before the hearing on the motion is scheduled, particularly where Plaintiffs have not been able to
18 examine Dr. Burtis regarding this newly-filed report. Plaintiffs' Motion for Leave should be
19 considered on an expedited basis because of the pending schedule for oral argument.

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1 **II. CONCLUSION**

2 For the foregoing reasons, Plaintiffs' request the Court grant the request for leave to file a
3 motion to strike Dr. Burtis's newly-filed supplemental report.

4 DATED: April 15, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 15, 2011.

s/ Alexandra S. Bernay
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