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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:)	DECLARATION OF ALEXANDRA S.
22 ALL ACTIONS.)	BERNAY IN SUPPORT OF PLAINTIFFS'
_____)	REPLY MEMORANDUM IN SUPPORT OF
	MOTION TO COMPEL PRODUCTION OF
	DATA

JUDGE: Hon. Howard R. Lloyd
 DATE: May 3, 2011
 TIME: 10:00 a.m.
 CTRM: 2, 5th Floor

26 [REDACTED]

1 I, ALEXANDRA S. BERNAY, hereby declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am associated with the law of firm Robbins Geller Rudman & Dowd LLP, Co-Lead
4 Counsel of record for Plaintiffs Melanie Tucker, Mariana Rosen and Somtai Troy Charoensak
5 (collectively, "Plaintiffs") in this action. I have personal knowledge of the matters stated herein,
6 and, if called upon, I could and would competently testify thereto.

7 2. I submit this Declaration in Support of Plaintiffs' Reply Memorandum in Support of
8 Motion to Compel Production of Data.

9 3. Plaintiffs have sought [REDACTED] since at least December 2009, if not
10 earlier.

11 4. On December 14, 2010, Apple produced to Plaintiffs, in response to document
12 production requests, [REDACTED] for the period August 2002 through 2010.
13 There were a number of issues with this data, including many missing fields, and Apple had to
14 produce corrected data on January 6, 2011.

15 5. As detailed in my declaration filed with the motion to compel production of data,
16 dated on March 28, 2011, significant efforts were undertaken by Plaintiffs to get data going back to
17 October 2001. Many emails were exchanged and the parties had a number of telephonic meet and
18 confers as well. As explained in my prior declaration, Plaintiffs sent an additional email to Apple's
19 counsel on March 25, 2011 and as of March 28, 2011 at 11:30 p.m., Apple's counsel had not
20 responded. Plaintiffs' motion to compel followed. That same day, Plaintiffs filed their reply
21 memorandum in support of class certification as well as a declaration from their expert, Professor
22 Roger G. Noll.

23 6. On April 1, 2011, three days after the filing of the motion to compel the production of
24 data and other filings, Plaintiffs received a production from Apple purporting to be [REDACTED]
25 [REDACTED] for the period October 2001 though September 2002. This data, like the production
26 from mid-December 2010, also had a number of issues that greatly limited its usefulness. Apple
27 produced corrected data on April 11, 2011. Since April 1, 2011, Plaintiffs have sent Apple certain
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1 questions regarding the data necessary to get the data into a form useful to Plaintiffs' experts. Some
2 questions have been answered and some remain unanswered.

3 7. I have reviewed my contemporaneous time records for the month of March 2011.
4 The billing records show two time entries related to the drafting of the motion to compel production
5 of data. The first, on March 25, 2011, is for two hours and states as follows: "Write email to defense
6 counsel re data issues – discuss motion to compel production of data with team; gather all materials
7 re same." The second time entry is for six hours on March 28, 2011. That entry reads as follows:
8 "Draft motion to compel; declaration in support of motion to compel." See Exhibit 1. My hourly
9 billing rate, according to my firm, is \$550.00. The total attorneys' fees are, therefore, \$4,400.

10 8. I have also determined the copying costs related to the filing of the motion to compel.
11 Those costs are \$57.00. There were also costs associated with the attorney service used for delivery
12 of the motion to compel to the Court. These costs were \$83.50. See Exhibit 2.

13 9. Attached hereto are true and correct copies of the following documents:

14 Exhibit 1: Redacted time entry report of Alexandra S. Bernay.

15 Exhibit 2: Invoice from Class Action Research and Litigation Support Services, Inc.

16 I declare under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct. Executed this 19th day of April, 2011, at San Diego, California.

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s/ Alexandra S. Bernay
ALEXANDRA S. BERNAY

1 CERTIFICATE OF SERVICE

2 I hereby certify that on April 19, 2011, I authorized the electronic filing of the foregoing with
3 the Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on April 19, 2011.

9 s/ Alexandra S. Bernay
10 ALEXANDRA S. BERNAY

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Mailing Information for a Case 5:05-cv-00037-JW

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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.

- (No manual recipients)