

1 Robert A. Mittelstaedt #60359  
ramittelstaedt@jonesday.com  
2 Craig E. Stewart #129530  
cestewart@jonesday.com  
3 David C. Kiernan #215335  
dkiernan@jonesday.com  
4 Michael Scott #255288  
michaelscott@jonesday.com  
5 JONES DAY  
555 California Street, 26th Floor  
6 San Francisco, CA 94104  
Telephone: (415) 626-3939  
7 Facsimile: (415) 875-5700

8 Attorneys for Defendant  
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)

[CLASS ACTION]

**DEFENDANT'S ADMINISTRATIVE  
MOTION TO SEAL**

19  
20 **I. INTRODUCTION**

21 Pursuant to Local Rules 7-11(a) and 79-5(b) and (c), Defendant Apple Inc. (“Apple”)  
22 requests that the Court permit Apple to file under seal a portion of Apple’s Supplemental Brief Re  
23 Class Certification (“Supplemental Brief”), specifically the portion of the Supplemental Brief that  
24 cites previously sealed information that Apple designated as “Confidential—Attorneys Eyes  
25 Only” under the Stipulation and Protective Order Regarding Confidential Information  
26 (“Protective Order”) entered June 13, 2009 (Dkt. 112).

27 Apple files this administrative motion and the accompanying declaration of Michael Scott  
28 in support of a narrowly tailored order authorizing sealing the document, on the grounds that

1 there is good cause to protect the confidentiality of that information. The proposed sealing order  
2 is based on the Protective Order in this action and proof that particularized injury to defendant  
3 will result if the sensitive information is publicly released. Identical information has been  
4 previously sealed in this case. *See* Scott Decl. ¶ 3. For the Court’s convenience, the Scott  
5 declaration attaches a declaration in support of a previously granted motion to file under seal  
6 (Dkt. 475), which establishes the sealability of such information.

7 **II. STANDARD**

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

15 **III. ARGUMENT**

16 **A. There is Good Cause to Support Filing under Seal.**

17 The Scott declaration establishes good cause to permit filing under seal. It establishes that  
18 the redacted portion of Apple’s Supplemental Brief Re Class Certification contains highly  
19 confidential and sensitive information that must be kept confidential in order to avoid causing  
20 harm to Apple. *See* Scott Decl. Ex. 1.

21 The redacted information specifically relates to confidential market research. *See* Scott  
22 Decl. ¶ 2. Market research conducted by Apple or on Apple’s behalf, including information  
23 regarding iTunes market share, is highly confidential and commercially sensitive business  
24 information. Third-party research (e.g., research from NPD) is subject to confidentiality  
25 provisions in contracts between Apple and the third-party market research providers. This  
26 information is non-public information that should remain confidential. The information was  
27 produced to Plaintiffs pursuant to the Protective Order. Harm to Apple would result from the  
28 public disclosure of such information. *See* Scott Decl. Ex. 1. Identical information has been

1 previously sealed in this case in relation to Plaintiffs' Motion for Class Certification. Dkt. 477,  
2 525.

3 **IV. CONCLUSION**

4 Apple respectfully requests that this Court grant its Administrative Motion to File Under  
5 Seal portions of Apple's Supplemental Brief Re Class Certification.

6 Dated: June 6, 2011

Jones Day

8

9 By: /s/Michael Scott  
Michael Scott

10

11 Attorneys for Defendant  
APPLE INC.

12

13

SFI-699287v1

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28