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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW
15 LITIGATION)	
16 _____)	<u>CLASS ACTION</u>
17 This Document Relates To:)	JOINT STATUS CONFERENCE
18 ALL ACTIONS.)	STATEMENT
19 _____)	

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1 In accordance with the Court’s April 2, 2012 Order, the parties jointly submit this Joint
2 Status Conference Statement.

3 **I. DISPOSITIVE MOTIONS**

4 No dispositive motions are pending.

5 Plaintiffs’ Position

6 It is Plaintiffs’ position that further dispositive motions by Apple are neither permitted nor
7 necessary. See Fed. R. Civ. P. 56 (b) (“Time to File a Motion. Unless a different time is set by local
8 rule or the court orders otherwise, a party may file a motion for summary judgment at any time until
9 30 days after the close of all discovery.”) Discovery in this case closed on December 20, 2011. *See,*
10 *e.g.,* July 22, 2010 Scheduling Order. The deadline for Apple to file its renewed summary judgment
11 motion was set forth in the October 28, 2010 Scheduling Order. Its renewed motion was filed
12 January 18, 2011. The Court ruled on the motion on May 19, 2011.

13 Should the Court determine that Apple is entitled to another, third, summary judgment
14 motion in this case, Plaintiffs’ request the parties meet and confer on a schedule for such a motion.

15 Apple’s Position:

16 The time for filing dispositive motions has not passed. Rule 56(b) allows a party to “file a
17 motion for summary judgment at any time until 30 days after the close of all discovery.” As
18 reflected below, expert discovery is ongoing and will not close until November 19, 2012. Nor did
19 this Court’s October 28, 2010 Scheduling Order limit Rule 56(b). That Order simply set a briefing
20 schedule for Apple’s motion seeking summary judgment on the threshold ground that Apple’s
21 software updates were not exclusionary acts as a matter of law.

22 In addition to showing exclusionary conduct, plaintiffs must prove the other elements of their
23 antitrust claim, including antitrust impact and damages. Apple’s earlier summary judgment motion
24 did not address and could not have addressed these issues because plaintiffs had not produced at that
25 time (and still have not produced) their expert reports addressed to those issues. As Rule 56(b)
26 recognizes, Apple’s motion will be ripe once plaintiffs’ produce their reports and discovery on those
27 issues is complete. And if, as Apple believes, Plaintiffs’ expert(s) will be unable to establish impact
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1 or damages, it is in the interests of all to have those issues determined by motion rather than hold an
2 unnecessary trial.

3 Apple proposes the same briefing schedule proposed for motions to exclude experts below:
4 i.e., dispositive motion due November 30, 2012, opposition due December 21, 2012, and Reply due
5 January 11, 2013.

6 **II. CLASS NOTICE**

7 On March 29, 2012, the Court approved the parties joint proposal regarding notice. At this
8 time, the notice process is proceeding as scheduled. On April 5, 2012, Apple informed the notice
9 provider that it had determined that it had 8.5 million email addresses instead of the 4.2 million
10 email addresses it originally believed it possessed. The notice providers have told Plaintiffs and
11 Apple that it can still complete the notice process as originally envisioned in the joint plan and will
12 be sending out the notice in several batches over the course of six days, with the start of the email
13 portion of the notice plan set for April 24, 2012. Mailings to resellers will be sent on April 30, 2012.

14 Advertising space in Entertainment Weekly and Wired magazine has been secured. The
15 notice to be published in Entertainment Weekly will run in the May 11, 2012 edition, available on
16 newsstands May 4, 2012. The notice to be published in Wired will run in the June 2012 edition,
17 available on newsstands May 22, 2012. The planned website has been secured and is expected to go
18 live on April 23, 2012. The toll-free hotline is to go live on April 23, 2012

19 **III. SCHEDULING**

20 The parties have conferred regarding a schedule for the remainder of the litigation and
21 propose the following:

22 **A. Experts**

23 Plaintiffs' expert report(s) due: September 28, 2012

24 Service of Plaintiffs' experts' data and October 1, 2012
25 documents:

26 Deposition(s) of Plaintiffs' expert(s) to be October 26, 2012
27 completed

28 Defendant's expert report(s) due: November 2, 2012

1 Service of Defendant's experts' data and November 5, 2012
documents:
2
3 Depositions of Defendants expert(s) to be November 14, 2012
completed:
4
5 Plaintiffs' rebuttal report(s) due: November 16, 2012
6
7 Service of Plaintiffs experts' data and November 19, 2012
documents:
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9 Motions to exclude expert testimony due: November 30, 2012
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11 Oppositions due: December 21, 2012
12
13 Replies due: January 11, 2013
14
15 Hearing on motions to exclude expert testimony January 18, 2013

12 **B. Pretrial Practice**

13 Service of proposed witness and exhibit lists: January 7, 2013
14 Service of objections to witness and exhibit lists: January 14, 2013
15 Final exhibit lists, witness lists, jury instructions, January 21, 2013
16 voir dire questions, and verdict forms
17 Motions in limine January 11, 2013
18 Oppositions to motions in limine January 28, 2013
19 Replies in support of motions in limine January 25, 2013
20 Pretrial Conference Week of January 28, 2013

21 **C. Trial.**

22 February 2013
23 Estimated length of trial: 10 days.

24 **IV. SETTLEMENT EFFORTS**

25 Over the course of the case, the parties have discussed ways to resolve the litigation.
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1 DATED: April 13, 2012

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