

1 Robert A. Mittelstaedt (State Bar No. 60359)  
 ramittelstaedt@jonesday.com  
 2 Craig E. Stewart (State Bar No. 129530)  
 cestewart@jonesday.com  
 3 David C. Kiernan (State Bar No. 215335)  
 dkiernan@jonesday.com  
 4 Amir Q. Amiri (State Bar No. 271224)  
 aamiri@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 OAKLAND DIVISION

14 THE APPLE IPOD iTUNES ANTI-TRUST  
 LITIGATION.

**Case No. C 05-00037-YGR  
 [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 the portions of its Motion for Summary  
 22 Judgment and to Exclude Expert Testimony of Roger G. Noll (“Motion”) that refer to information  
 23 that Apple designated “Confidential—Attorneys Eyes Only” under the Stipulation and Protective  
 24 Order Regarding Confidential Information (“Protective Order”) entered June 13, 2007 (ECF No.  
 25 112). In addition, Apple seeks permission to file under seal certain exhibits attached to the  
 26 Declaration of Amir Q. Amiri filed in support of Apple’s Motion, all of which contain  
 27 information that Apple designated “Confidential—Attorneys Eyes Only” under the Protective  
 28 Order.

1           The Court previously sealed similar information in relation to Apple’s Motion to Dismiss  
2 or, Alternatively, for Summary Judgment (ECF No. 340), Renewed Motion for Summary  
3 Judgment (ECF No. 524) and Opposition to Class Certification (ECF No. 526). Apple files this  
4 motion and the accompanying Declaration of Amir Amiri in support of a narrowly tailored order  
5 authorizing sealing those documents, on the grounds that there are compelling reasons to protect  
6 the confidentiality of the information. The proposed sealing order is based on the Protective  
7 Order and proof that particularized harm to Apple will result if the sensitive information is  
8 publicly released.

## 9       **II.     STANDARD**

10           Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit  
11 sealing of court documents to protect “a trade secret or other confidential research, development,  
12 or commercial information.” Fed. R. Civ. P. 26(c). Documents attached to dispositive motions  
13 are properly sealed where compelling reasons support the maintenance of the documents’  
14 confidentiality, as where the documents include trade secrets or could be used to “gratify private  
15 spite.” *Tokashiki v. Freitas*, No. 03-0065 ACK-LEK, 2007 WL 521915, at \*1 (D. Haw. Feb. 14,  
16 2007) (quoting *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir.  
17 2006)).

## 18       **III.    ARGUMENT**

### 19           **A.     There Are Compelling Reasons To Support Filing Under Seal.**

20           Pursuant to the Protective Order, Apple has designated as “Confidential-Attorneys Eyes  
21 Only” the Expert Reports of Dr. John Kelly, Dr. Robert H. Topel and Dr. Kevin M. Murphy, the  
22 Expert Declarations of Professor Roger G. Noll and the deposition transcripts of Professor Noll,  
23 selected excerpts from the deposition of Arthur Rangel and Mark Donnelly, and other documents  
24 containing sensitive pricing and competitive strategy data. These documents are all attached to  
25 Amir Amiri’s Declaration in Support of Apple’s Motion. These confidential materials are  
26 referred to and/or quoted in Apple’s Motion. As established by the accompanying declaration,  
27 compelling reasons justify filing the declarations and documents and the redacted portions of the  
28 Motion under seal.

1           The expert materials and other documents contain highly confidential and commercially  
2 sensitive business information, including confidential details of Apple’s FairPlay digital rights  
3 management (DRM) technology; updates to that technology; third-party technology used to  
4 protect or improve FairPlay; inquiries Apple received from customers that reflect personal  
5 information of the customers and confidential, proprietary information regarding how Apple  
6 responds to such inquiries; confidential contract terms; confidential communications between  
7 Apple and record labels regarding the distribution of music through the iTunes Store and Apple’s  
8 FairPlay DRM technology, and commercially sensitive pricing and sales data. Apple keeps this  
9 information highly confidential and does not disclose it to the public. *See* Declaration of Amir  
10 Amiri in Support of Apple’s Administrative Motion to Seal, Ex. 1, ¶ 2; Ex. 2, ¶ 7.

11           FairPlay’s technology is a highly protected trade secret, and Apple uses physical and  
12 electronic controls to protect it. The efficacy of FairPlay is dependent on the confidentiality of  
13 information regarding its operation and maintenance. Only a few Apple employees have access  
14 to and work on FairPlay technology, and they work in a restricted area at Apple’s headquarters.  
15 Information regarding FairPlay and third-party technology intended to increase FairPlay efficacy  
16 is non-public information that should remain confidential. Harm to Apple, including potential use  
17 of the information by hackers attempting to circumvent FairPlay, would result from the public  
18 disclosure of the information. *See Id.*, Ex. 1, ¶ 3. The Court previously sealed similar  
19 information in relation to Apple’s dispositive motions and Opposition to Class Certification. *See*  
20 ECF Nos. 340, 524 and 526.

21           Apple’s contracts with record labels, which include some details of the DRM used by  
22 Apple and contain highly sensitive commercial information, are kept highly confidential in accord  
23 with the contracts’ confidentiality provisions. Similarly, Apple’s communications with the record  
24 labels regarding the distribution of music through the iTunes Store and details of FairPlay are  
25 kept highly confidential and have not been disclosed outside of Apple except to plaintiffs  
26 pursuant to the Protective Order. This information is non-public information that should remain  
27 confidential. Harm to Apple would result from the public disclosure of this information. For  
28 example, the disclosure of confidential contract terms and communications regarding those terms

1 would adversely impact Apple's bargaining position in future dealings with current and potential  
2 business partners. *See* Amiri Decl., Ex. 1, ¶ 4. The Court previously sealed similar information  
3 in relation to Apple's dispositive motions and Opposition to Class Certification. *See* ECF Nos.  
4 340, 524 and 526.

5 Customer inquiries and Apple's responses are kept highly confidential and have been  
6 disclosed to Plaintiffs pursuant to the Protective Order. Among other things, the inquiries reflect  
7 personal information of the customers and confidential, proprietary information regarding how  
8 Apple tracks and responds to such inquiries. This information is non-public information that  
9 should remain confidential. Harm would result from the public disclosure of this highly  
10 confidential information. *See* Amiri Decl. Ex. 2, ¶ 7. The Court previously sealed similar  
11 information in relation to Apple's Renewed Motion for Summary Judgment (ECF No. 524) and  
12 Opposition to Class Certification (ECF No. 526).

13 Information regarding Apple's pricing strategy and practices is highly confidential and  
14 commercially sensitive business information. This information is non-public information that  
15 should remain confidential. The information as produced to Plaintiffs pursuant to the Protective  
16 Order. Harm to Apple would result from the public disclosure of the redacted information  
17 contained in these documents. The public disclosure of information regarding Apple's pricing  
18 strategy and practices would put Apple at a business disadvantage. *See* Amiri Decl., Ex. 3 ¶¶ 2-3.

19 Information regarding Apple's sales of iPods to iPod resellers is also highly confidential  
20 and commercially sensitive business information. This information is non-public information that  
21 should remain confidential. *See Id.*, Ex. 4, ¶¶ 2-3. The information was produced to Plaintiffs  
22 pursuant to the Protective Order. Harm to Apple would result from the public disclosure of the  
23 redacted information contained in these documents. The public disclosure of information  
24 regarding Apple's sales of iPods to iPod resellers would put Apple at a business disadvantage.  
25 Similar information has previously been sealed in this case in relation to Apple's previous  
26 oppositions to class certification. *See* ECF No. 184, 526.

27 Information regarding Apple business decisions and strategy is highly confidential and  
28 should not be publicly disclosed. *See* Amiri Decl., Ex. 5, ¶ 9. The information as produced to

1 Plaintiffs pursuant to the Protective Order. The information produced to Plaintiffs is non-public  
2 information that should remain confidential. Harm to Apple would result from the public  
3 disclosure of the redacted information contained in these documents. The public disclosure of  
4 information regarding Apple's business strategies would put Apple at a significant business  
5 disadvantage. Similar information was previously been sealed in this case. *See* ECF No. 422,  
6 526.

7 **IV. CONCLUSION**

8 Apple respectfully requests that this Court grant its Administrative Motion to Seal  
9 portions of Apple's Motion for Summary Judgment and to Exclude Expert Testimony of Roger  
10 G. Noll, and the supporting exhibits attached to the declaration of Amir Amiri filed in support  
11 thereof.

12 Dated: December 20, 2013

Jones Day

14 By: /s/ David C. Kiernan  
15 David C. Kiernan

16 Attorneys for Defendant  
17 APPLE INC.

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