

1 Robert A. Mittelstaedt (State Bar No. 060359)
 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
 6 555 California Street, 26th Floor
 7 San Francisco, CA 94104
 Telephone: (415) 626-3939
 8 Facsimile: (415) 875-5700

9 Attorneys for Defendant
 10 APPLE INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

15 **THE APPLE IPOD ITUNES ANTI-
 16 TRUST LITIGATION**

Lead Case No. C-05-0037-YGR
 [CLASS ACTION]

**DEFENDANT’S SUPPLEMENTAL
 RESPONSE TO PLAINTIFFS’
 ADMINISTRATIVE MOTION TO
 SEAL**

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1 **I. INTRODUCTION**

2 On December 21, 2013, Apple Inc. filed a response (ECF No. 745) to Plaintiffs’
3 Administrative Motion to File Under Seal Portions of Plaintiffs’ *Daubert* Motion to Exclude
4 Certain Opinion Testimony of Kevin M. Murphy and Robert H. Topel and Exhibits 1-10 to the
5 Sweeney Declaration in support thereof (ECF No. 737, “Administrative Motion”). In that
6 response, Apple supported Plaintiffs’ request to file under seal portions of Plaintiffs’ *Daubert*
7 motion and Exhibits 1-10 in their entirety.

8 Apple filed portions of some of the same exhibits under seal in support of its Motion For
9 Summary Judgment and Motion To Exclude Expert Testimony of Roger G. Noll. *See, e.g.*, ECF
10 Nos. 740-7, 740-9, 740-13, 740-19. For consistency, Apple hereby requests the Court to enter a
11 narrower order that authorizes Plaintiffs to file portions of the *Daubert* motion and portions of
12 Exhibits 1-6 and 9-10 under seal. Apple continues to request that the Court seal Exhibit 7 in its
13 entirety. Apple has attached hereto the *Daubert* motion and Exhibits 1-6 and 9-10 with the
14 portions it requests to be sealed redacted and has filed an Amended Proposed Order.

15 **II. DISCUSSION**

16 As Apple demonstrated in its Administrative Motion to Seal (ECF No. 740) and Response
17 To Plaintiffs Administrative Motion To Seal (ECF No 745), the portions of the *Daubert* Motion
18 and Exhibits 1-6 and 9-10 Apple seeks to seal refers to information that Apple designated as
19 “Confidential—Attorneys Eyes Only” under the Protective Order (ECF No. 112) and meets both
20 the “good cause” and “compelling reasons” standards for sealing documents. *See* ECF No. 745.
21 The information reflects highly confidential information about Apple’s pricing strategy, iPod
22 sales and pricing, reseller pricing programs, and Apple’s business decisions and strategy, the
23 disclosure of which would harm Apple. *See* ECF No. 740-1 at Exs. 3 & 4 and ECF No. 746 at
24 Exs. 1 & 2.

25 Apple continues to request that the Court seal Exhibit 7 in its entirety. This exhibit
26 contains confidential information relating to Apple’s FairPlay technology. This technology is a
27 highly protected trade secret, and Apple uses physical and electronic controls to protect it.
28 Kiernan Decl. in Support of Apple’s Admin. Motion., ECF No. 742-1 at Ex. 1, ¶ 3. The efficacy

1 of FairPlay is dependent on the confidentiality of information regarding its operation and
2 maintenance. *Id.* Exhibit 7 contains information relating to specific components of Apple's
3 FairPlay technology as it is implemented on various models of Apple's iPod. Harm to Apple,
4 including potential use of the information by hackers attempting to circumvent FairPlay, would
5 result from the public disclosure of the information. *Id.* The Court previously sealed information
6 relating to FairPlay in this litigation. *See* Court Orders, ECF Nos. 340, 524 and 526.

7 Apple does not request the Court seal the excerpts to the deposition of Plaintiffs' Expert
8 Roger G. Noll, submitted as Exhibit 8 to Plaintiffs' *Daubert* motion.

9 **IV. CONCLUSION**

10 For the foregoing reasons, Apple respectfully requests that this Court authorize Plaintiffs
11 to file under seal portions of Plaintiffs' *Daubert* Motion, Exhibit 7 to the Sweeney Declaration,
12 and portions of Exhibits 1-6 and 9-10 to the Sweeney Declaration.

13 Dated: December 30, 2013

Respectfully submitted,

14 Jones Day

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16 By: /s/ Amir Amiri

17 Amir Amiri

18 Counsel for Defendant
19 APPLE INC.

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