

# **Exhibit 2**

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 OAKLAND DIVISION  
4  
5 THE APPLE IPOD ITUNES ) Lead Case No. C 05-00037  
6 ANTI-TRUST LITIGATION )  
7 \_\_\_\_\_ )  
8 This Document Relates To: )  
9 ALL ACTIONS )  
10 \_\_\_\_\_ )  
11 \_\_\_\_\_ )  
12  
13  
14 CONFIDENTIAL - ATTORNEYS' EYES ONLY  
15 VIDEOTAPED DEPOSITION OF ROBERT H. TOPEL, Ph.D.  
16 VOLUME II  
17 January 08, 2014  
18 Phoenix, Arizona  
19  
20  
21  
22 Reported By:  
23 Cathy A. Miccolis  
24 RPR, CRR, CSR No. 50068  
25 Job No. 10009199

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1	I N D E X	
2	Witness	Page
3	ROBERT TOPEL, Ph.D.	
4		
5	EXAMINATION BY MS. SWEENEY	198
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8	E X H I B I T S	
9	Exhibit Description	Page
10	(No newly marked exhibits.)	
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A P P E A R A N C E S

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2  
3 For the Plaintiffs: Bonny Sweeney, Esq.  
4 ROBBINS GELLER RUDMAN & DOWD, LLP  
5 655 West Broadway  
6 Suite 1900  
7 San Diego, CA 92101  
8 619.231.1058  
9 bonnys@rgrdlaw.com

10 For the Defendant Apple, Inc.:  
11 David C. Kiernan, Esq.  
12 JONES DAY  
13 555 California Street  
14 26th Floor  
15 San Francisco, CA 94104  
16 415.626.3939  
17 dkiernan@jonesday.com

18 Also Present: Thomas C. Tracy, videographer  
19  
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21  
22  
23  
24  
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1 THE VIDEOTAPED DEPOSITION OF ROBERT TOPEL,  
2 Ph.D., VOLUME II, was continued on January 8, 2014,  
3 commencing at 12:56 p.m. at the offices of BONNETT,  
4 FAIRBOURN, FRIEDMAN & BALINT, P.C., 2325 East Camelback  
5 Road, Suite 300, Phoenix, Arizona, before CATHY MICCOLIS,  
6 a Certified Reporter in the State of Arizona.  
7  
8 THE VIDEOGRAPHER: We are now on the record.  
9 The time is approximately 12:56 p.m. Today's date is  
10 January 8, 2014. My name is Tom Tracy of Aptus Court  
11 Reporting. The court reporter is Cathy Miccolis of Aptus  
12 Court Reporting, located at 600 West Broadway, Suite 300,  
13 San Diego, California 92101.  
14 This begins the videotaped deposition of Robert  
15 Topel, Volume II, testifying in the matter of the Apple  
16 iPod iTunes Antitrust Litigation pending in the District  
17 Court of California, Division of Oakland, Case Number C  
18 05-00037 YGR, taken at 2325 East Camelback, Suite 300,  
19 Phoenix, Arizona 85016.  
20 Counsel, will you please identify yourself and  
21 whom you represent for the record at this time, starting  
22 with the plaintiffs' counsel.  
23 MS. SWEENEY: Bonny Sweeney for the plaintiffs.  
24 MR. KIERNAN: David Kiernan for Apple.  
25 THE VIDEOGRAPHER: Thank you, Counsel. The

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1 Q. Yeah.  
[REDACTED]

4 Q. Okay. Another question, I asked you if you'd  
5 looked at the percentages of iPod buyers who were  
6 first-time versus repeat buyers during other periods, and  
7 you mentioned your recollection. Did you look at all at  
8 the percentages in the period more than five months after  
9 September 2005?

10 THE WITNESS: Could you read back the question?  
11 (Record read.)  
12 THE WITNESS: Yes.

13 BY MS. SWEENEY:

14 Q. And what did you find?

15 A. I found that more than five months after that I  
16 found that 14 percent number.

17 MR. KIERNAN: Can you take maybe a short break?  
18 This thing is forcing a shutdown.

19 MS. SWEENEY: Let's take a break. I wouldn't  
20 mind a break anyway.

21 THE VIDEOGRAPHER: We are going off the record.  
22 The time is approximately 2:07 p.m.  
23 (Recess taken at 2:07 p.m.; resumed at  
24 2:16 p.m.)  
25 THE VIDEOGRAPHER: We are going back on the

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1 A. Two months. No.

2 Q. Maybe I didn't -- I don't think my question was  
3 clear. I think you testified about those instances in  
4 your last deposition, and I'm just asking whether you did  
5 anything in addition to the ones that you've already  
6 described.

7 A. Well, I don't recall what I described in my  
8 last deposition, but it's certainly possible that in  
9 another matter I clustered on a characteristic.

10 Q. Okay. What would that be?

11 A. Well, I have to be careful. I think this is  
12 filed under seal, so I can't describe all the details of  
13 the case, but it involved earnings and whether certain  
14 things had statistically significant impacts in an  
15 earnings regression, and oddly enough, the other side  
16 thought that I had not taken into account the correlation  
17 in the residuals for people from -- for group people, and  
18 so they had a statistician say that I should, and in fact  
19 I had. So they thought I had made the mistake that  
20 Professor Noll made and I hadn't.

21 Q. And that you said was an entire population of  
22 data?

23 A. Yes.

24 Q. But I know you can't tell me details about the  
25 case, but it involved wages?

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1 record. The time is approximately 2:16 p.m.  
2 BY MS. SWEENEY:

3 Q. You said that you read Professor Wooldridge's  
4 declaration?

5 A. Yes.

6 Q. And were you familiar with his work before  
7 reading the declaration?

8 A. I had probably read something that he had done  
9 before the declaration, yeah.

10 Q. And do you consider yourself an expert in  
11 cluster samples?

12 MR. KIERNAN: Object to form.  
13 THE WITNESS: Yes, as an applied econometrician  
14 I do.

15 BY MS. SWEENEY:

16 Q. Have you published any articles or books about  
17 cluster samples?

18 A. No. It's mainly in my teaching and using it in  
19 my research and using it in my empirical analysis.

20 Q. And have you in your own work used a cluster  
21 adjustment in the case where you have a whole population  
22 instead of a sample?

23 A. Yes.

24 Q. And are those just the instances that you  
25 described in your last deposition?

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1 A. Compensation, yeah.

2 Q. Compensation. So is it fair to say that you  
3 disagree with Professor Wooldridge that clustering is not  
4 appropriate either in the case of a randomly drawn sample  
5 or a total population?

6 MR. KIERNAN: Object to form.  
7 THE WITNESS: That's fair to say, yes.

8 BY MS. SWEENEY:

9 Q. And can you identify for me the bases for that  
10 statement, for your opinion?

11 A. Well, sure. For one thing when Professor  
12 Wooldridge had a population in at least two instances  
13 where he had a population, he clustered his -- he  
14 clustered. He based his opinion that -- on the fact that  
15 common factors would be affecting people in different  
16 groups in a similar way, and so he clustered on those  
17 groups, and so now he is -- that stuff is in his written  
18 teaching and in his research, and now he has turned 180  
19 degrees in saying he wouldn't do that because he is  
20 testifying in this case. I just think it's very odd and  
21 totally inconsistent.

22 Q. I'm going to move to strike as nonresponsive.

23 MR. KIERNAN: Oppose the motion.

24 BY MS. SWEENEY:

25 Q. Is it your view that one must cluster in every

DECLARATION UNDER PENALTY OF PERJURY

1 Case Name: The Apple iPod iTunes Anti-Trust Litigation
2 Date of Deposition: 1/8/2014
3 Job No: 10009199

6 I, ROBERT TOPEL, Ph.D., the witness herein,
7 declare under penalty of perjury that I have read the
8 foregoing in its entirety; and that the testimony
9 contained therein, as corrected by me, is a true and
10 accurate transcription of my testimony elicited at said
11 time and place.

12 Executed this \_\_\_ day of \_\_\_,
13 2014, at \_\_\_\_\_.

14 ROBERT TOPEL, Ph.D. Date

DEPOSITION ERRATA SHEET

2 Page No. \_\_\_ Line No. \_\_\_
3 Change: \_\_\_\_\_
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22 Reason for change: \_\_\_\_\_

24 ROBERT TOPEL, Ph.D. Dated

1 STATE OF ARIZONA )
) ss.
2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing deposition was
4 taken before me, Cathy A. Miccolis, RPR, a Certified
5 Reporter, Certificate #50068, for the State of Arizona,
6 and by virtue thereof authorized to administer an oath;
7 that the witness before testifying was duly sworn by me to
8 testify to the whole truth; that the questions propounded
9 to the witness and the answers of the witness thereto were
10 taken down by me in shorthand and thereafter reduced to
11 print by computer-aided transcription under my direction;
12 that pursuant to request, notification was provided that
13 the deposition is available for review and signature; that
14 the transcript consisting of pages 194 through 264 is a
15 full, true and accurate transcript of all proceedings and
16 testimony had and adduced upon the taking of said
17 deposition, all done to the best of my skill and ability.

18 I FURTHER CERTIFY that I am in no way related to
19 nor employed by any of the parties hereto nor am I in any
20 way interested in the outcome hereof.

21 DATED at Phoenix, Arizona, January 9, 2014.

22 Cathy A. Miccolis
23 Cathy A. Miccolis, RPR, CRR
24 Certified Reporter #50068
25