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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 RESPONSE TO
 PLAINTIFFS’ ADMINISTRATIVE
 MOTION TO SEAL (ECF NO. 750)**

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1 **I. INTRODUCTION**

2 Pursuant to Local Rule 79-5, Apple Inc. files this statement and the Declaration of Amir
3 Amiri in support of Plaintiffs’ Administrative Motion to File Under Seal Plaintiffs’ Motion to
4 Strike the Supplemental Report of Kevin M. Murphy and Robert H. Topel, Dated December 20,
5 2013 (ECF No. 750, “Administrative Motion”). Specifically, Apple requests the Court grant
6 Plaintiffs leave to file under seal the portions of Plaintiffs’ motion that refer to information that
7 Apple designated as “Confidential—Attorneys Eyes Only” under the Stipulation and Protective
8 Order Regarding Confidential Information (“Protective Order”) entered June 13, 2007 (ECF No.
9 112). Apple files this statement and the accompanying Amiri Declaration in support of a
10 narrowly tailored order authorizing sealing those documents, on the grounds that there are
11 compelling reasons and good cause to protect the confidentiality of documents relating to Apple’s
12 pricing data and business strategy. The proposed sealing order is based on the Protective Order in
13 this action and proof that particularized injury to Apple will result if the sensitive information is
14 publically released.

15 The Court previously sealed similar documents in connection with Apple’s Motion to
16 Dismiss or, Alternatively, for Summary Judgment and Apple’s Renewed Motion for Summary
17 Judgment. ECF Nos. 340, 527. For the convenience of the Court, the Amiri Declaration attaches
18 as an exhibit a declaration from an Apple employee that the Court previously relied on in
19 determining the sealability of Apple documents in those orders.

20 **II. STANDARD**

21 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit
22 sealing of court documents to protect “a trade secret or other confidential research, development,
23 or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). Where the documents are submitted in
24 connection with a dispositive motion, the Ninth Circuit has ruled that documents should be sealed
25 when “compelling reasons” exist for protecting information from public disclosure. *Kamakana v.*
26 *City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). For documents submitted
27 with a non-dispositive motion, a showing of “good cause” under Federal Rule of Civil Procedure
28 26(c) is sufficient. *Id.* at 1179-80.

1 **III. APPLE’S CONFIDENTIAL INFORMATION MEETS BOTH THE “GOOD**
2 **CAUSE” AND “COMPELLING REASONS” STANDARDS FOR SEALING**
3 **DOCUMENTS**

4 As described in the exhibit accompanying the Amiri Declaration, portions of Plaintiffs’
5 motion contain confidential information relating to Apple Fair Play Digital Rights Management
6 (DRM) technology and updates to that technology. FairPlay’s technology is a highly protected
7 trade secret, and Apple uses physical and electronic controls to protect it. The efficacy of
8 FairPlay is dependent on the confidentiality of information regarding its operation and
9 maintenance. Only a few Apple employees have access to and work on FairPlay technology, and
10 they work in a restricted are at Apple’s headquarters. Information regarding FairPlay, including
11 information regarding updates to FairPlay and descriptions of how FairPlay operates, is kept
12 highly confidential and was produced to plaintiffs pursuant to the Protective Order and
13 Supplemental Protective Order in this case. This information is non-public information that
14 should remain confidential. Harm to Apple, including potential use of the information by hackers
15 attempting to circumvent FairPlay, would result from the public disclosure of the information.
16 *See* Amiri Decl., Ex. 1. This information has been sealed previously. ECF Nos. 340, 527.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Apple respectfully requests that this Court grant Plaintiffs’
19 Administrative Motion to File Under Seal Plaintiffs’ Motion to Strike, consistent with the
20 proposed order filed herewith.

21 Dated: January 17, 2014

Respectfully submitted,

Jones Day

24 By: /s/ Amir Q. Amiri
25 Amir Q. Amiri

26 Counsel for Defendant
27 APPLE INC.