

Robert A. Mittelstaedt (State Bar No. 60359)  
ramittelstaedt@jonesday.com  
Craig E. Stewart (State Bar No. 129530)  
cestewart@jonesday.com  
David C. Kiernan (State Bar No. 215335)  
dkiernan@jonesday.com  
Amir Q. Amiri (State Bar No. 271224)  
aamiri@jonesday.com  
JONES DAY  
555 California Street, 26th Floor  
San Francisco, CA 94104  
Telephone: (415) 626-3939  
Facsimile: (415) 875-5700

Attorneys for Defendant  
APPLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

THE APPLE IPOD iTUNES ANTI-TRUST  
LITIGATION.

Case No. C 05-00037 YGR

[CLASS ACTION]

**APPLE'S ADMINISTRATIVE  
MOTION TO SEAL ITS  
OPPOSITION BRIEF AND EXHIBIT  
TO PLAINTIFFS' MOTION TO  
STRIKE THE SUPPLEMENTAL  
REPORT OF KEVIN MURPHY AND  
ROBERT TOPEL DATED  
DECEMBER 20, 2013 (ECF NO. 750)**

**I. INTRODUCTION**

Pursuant to Local Rule 79-5, Apple seeks leave to file portions its Opposition to Plaintiffs' Motion to Strike the Supplemental Report of Kevin Murphy and Robert Topel Dated December 20, 2013 (ECF No. 750) under seal as well as portions of Exhibit 1 to the Declaration of David C. Kiernan filed in Support of Apple's Opposition Brief. Apple files this Administrative Motion and the accompanying declaration of David C. Kiernan in support of a narrowly tailored

1 order authorizing sealing portions of its opposition brief and exhibits thereto, on the grounds that  
2 there are compelling reasons to protect the confidentiality of the redacted information. The  
3 proposed sealing order filed herewith is based on the Protective Order and Supplemental  
4 Protective Order governing discovery in this case and proof that particularized harm to Apple will  
5 result if the sensitive information is publicly released. Similar information has been previously  
6 sealed in this case. *See* Kiernan Decl. ¶ 3. Further, the underlying expert reports that are  
7 referenced and discussed in the opposition brief are the subject of currently pending motions to  
8 seal. *See Id.*; ECF Nos. 740, 751. For the Court’s convenience, the Kiernan declaration attaches  
9 declarations in support of previous motions to file under seal, which establish the sealability of  
10 such information

## 11 **II. STANDARD**

12 Under Federal Rule of Civil Procedure 26(c), this Court has broad discretion to permit  
13 sealing of court documents to protect “a trade secret or other confidential research, development,  
14 or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). Where the documents are submitted in  
15 connection with a dispositive motion, the Ninth Circuit has ruled that documents should be sealed  
16 when “compelling reasons” exist for protecting information from public disclosure. *Kamakana v.*  
17 *City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). For documents submitted  
18 with a non-dispositive motion, a showing of “good cause” under Federal Rule of Civil Procedure  
19 26(c) is sufficient. *Id.* at 1179-80.

## 20 **III. APPLE’S CONFIDENTIAL INFORMATION MEETS BOTH THE “GOOD** 21 **CAUSE” AND “COMPELLING REASONS” STANDARDS FOR SEALING** 22 **DOCUMENTS**

23 The Kiernan declaration and the declarations attached thereto establish compelling  
24 reasons and good cause why the redacted portions of the opposition brief and exhibit that  
25 summarize, paraphrase, cite, or otherwise relate to documents designated “Confidential” by  
26 Apple should be filed under seal. They establish that the redacted portions of the opposition brief  
27 and exhibit, contain highly confidential and sensitive information that must be kept confidential  
28 in order to avoid causing harm to Apple. *See* Kiernan Decl., Exs. 1-2.

Portions of the opposition brief relate to the expert reports filed by both parties in this

1 litigation. These reports are based on, among other things, confidential information regarding  
2 iPod and iTunes Store sales and/or market research. The redacted information regarding iPod and  
3 iTunes Store sales is highly confidential and commercially sensitive business information and  
4 was produced to plaintiffs pursuant to the Protective Order. The public disclosure of this  
5 information would put Apple at a business disadvantage. *See* Kiernan Decl. Ex. 1. Similar  
6 information has been previously sealed in this case in relation to Apple's Motion for  
7 Reconsideration of Rule 23(b)(2) Class, Plaintiffs' Motion to Compel and Plaintiffs' Opposition  
8 to Apple's Renewed Motion for Summary Judgment. *See* Kiernan Decl. ¶ 3; ECF Nos. 247, 336,  
9 527.

10 Portions of the opposition brief and exhibit thereto also contain highly confidential  
11 information regarding Apple's FairPlay technology. FairPlay's technology is a highly protected  
12 trade secret, and Apple uses physical and electronic controls to protect it. The efficacy of  
13 FairPlay is dependent on the confidentiality of information regarding its operation and  
14 maintenance. Only a few Apple employees have access to and work on FairPlay technology, and  
15 they work in a restricted area at Apple's headquarters. Information regarding FairPlay, including  
16 information regarding updates to FairPlay, is kept highly confidential and was produced to  
17 plaintiffs pursuant to the Protective Order and Supplemental Protective Order. This information  
18 is non-public information that should remain confidential. Harm to Apple, including potential use  
19 of the information by hackers attempting to circumvent FairPlay, would result from the public  
20 disclosure of the information. *See* Kiernan Decl. Ex. 2. Similar information has been previously  
21 sealed in this case in relation to Apple's Motion to Dismiss or, Alternatively, for Summary  
22 Judgment and Plaintiffs' Opposition to Apple's Renewed Motion for Summary Judgment.  
23 Kiernan Decl. ¶ 3; ECF Nos. 340, 527.

#### 24 **IV. CONCLUSION**

25 Apple respectfully requests that this Court grant its Administrative Motion for File  
26 Portions of its Opposition Brief and Exhibits to Plaintiffs' Motion to Strike consistent with the  
27 proposed order filed herewith.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: January 27, 2014

Jones Day

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

Attorneys for Defendant  
APPLE INC.

SFI-851017v1