

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]

**DEFENDANT'S RESPONSE TO  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO SEAL (ECF NO. 766)**

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Defendant's Response to Plaintiffs'  
Administrative Motion to Seal  
C 05-00037 YGR

1     **I.     INTRODUCTION**

2             Pursuant to Local Rule 79-5, Apple supports Plaintiffs’ Administrative Motion to File  
3     Under Seal Portions of its Letter dated February 3, 2014 (ECF No. 766, “Administrative  
4     Motion”). Specifically, Apple supports sealing those portions of the letter that are based upon,  
5     refer to, summarize, paraphrase, or otherwise relate to information that Apple designated as  
6     “Confidential—Attorneys Eyes Only” under the Protective Order (ECF No. 112) and  
7     Supplemental Protective Order (ECF No. 395). Plaintiffs have lodged with the Court redacted  
8     portions of its letter and a proposed order authorizing Plaintiffs to file those portions under seal.

9             Apple files this response and the accompanying declaration of David C. Kiernan in  
10     support of the narrowly tailored order authorizing sealing the letter, on the grounds that there are  
11     compelling reasons and good cause to protect the confidentiality of sensitive information  
12     contained or referred to in the redacted portions of the letter. Similar information has been  
13     previously sealed in this case. *See* Kiernan Decl. ¶ 3. For the Court’s convenience, the Kiernan  
14     declaration attaches declarations in support of previous motions to file under seal, which establish  
15     the sealability of such information.

16     **II.     STANDARD**

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

25     **III.    THERE ARE COMPELLING REASONS AND GOOD CAUSE TO SUPPORT**  
26     **FILING PORTIONS OF THE LETTER UNDER SEAL**

27             As described in the exhibits accompanying the Kiernan Declaration, portions of Plaintiffs’  
28     letter that Apple requests sealed contain confidential and commercially sensitive information

1 relating to Apple's pricing policies and alleged overcharges for certain Apple products. Apple  
2 keeps information relating to its pricing policies confidential and the public disclosure of  
3 information relating to or otherwise disclosing the contents of such policies would cause Apple  
4 harm. Kiernan Decl., Ex. 1. The disclosure of such information could give third-parties  
5 (including individuals responsible for competitive decision-making) insights into the confidential  
6 and sensitive aspects of Apple's pricing policies, allowing these third-parties to potentially gain  
7 an unfair advantage in dealings with and against Apple.

8       Additionally, information regarding Apple business decisions or strategy, including iPod  
9 pricing decisions and sales strategies at Apple (including any alleged price overcharges for  
10 iPods), is highly confidential and commercially sensitive business information. *See* Kiernan  
11 Decl., Exs. 1-3. The information was produced to plaintiffs pursuant to the Protective Order. *Id.*  
12 This information is non-public information that should remain confidential. *Id.* The public  
13 disclosure of information regarding Apple's business and pricing strategies would put Apple at a  
14 business disadvantage. *Id.* Similar information has previously been sealed in this case. *See* ECF  
15 Nos. 525, 526.

16       Such sensitive pricing and business strategy information should be sealed to protect  
17 Apple's competitive advantage in the marketplace. *See Stout v. Hartford Life & Accident Ins. Co.*  
18 *et al.*, No. CV 11-6186, 2012 U.S. Dist. LEXIS 172088, at \*6-7 (N.D. Cal. Dec. 4, 2012)  
19 (granting motion to seal documents containing confidential and proprietary pricing information  
20 that could be used by competitors to their advantage); *In re Elec. Arts, Inc. v. U.S. Dist. Court for*  
21 *the Northern Dist. of California*, 298 Fed. Appx. 568, 569 (9th Cir. 2008) (district court erred in  
22 denying motion to seal portions of contract that contained pricing terms disclosure of which  
23 posed harm to petitioner's competitive standing); *Caplan v. CNA Fin. Corp.*, No. 2008 U.S. Dist.  
24 LEXIS 119680, at \*6-7 (N.D. Cal. Feb. 12, 2008) (granting motion to seal service contract  
25 containing pricing information the "disclosure of [which could] permit a competitor to determine  
26 the rates charged by [defendant] for services").

#### 27 **IV. CONCLUSION**

28       For the foregoing reasons, Apple respectfully requests that this Court grant Plaintiffs'

1 Administrative Motion to File Under Seal Portions of its Letter Dated February 3, 2014 (ECF No.  
2 766).

3 Dated: February 6, 2014

Jones Day

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

7 Attorneys for Defendant  
8 APPLE INC.

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