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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

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16 STACIE SOMERS, On Behalf of Herself and
All Others Similarly Situated,
17 Plaintiff,
18 vs.
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20 APPLE, INC., a California Corporation,
21 Defendant.
22
23

Case No. 6507
CLASS ACTION HRL
COMPLAINT FOR VIOLATIONS OF
SHERMAN ANTITRUST ACT,
CARTWRIGHT ACT, CALIFORNIA
UNFAIR COMPETITION LAW,
CONSUMER LEGAL REMEDIES ACT
AND MONOPOLIZATION OF BUSINESS
PRACTICES
DEMAND FOR JURY TRIAL

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1 INTRODUCTION AND MARKET DEFINITIONS

2 1. Plaintiff Stacie Somers, on her own behalf and behalf of the classes defined herein
3 (the “Classes”), based on information and belief and investigation of counsel, except for information
4 pertaining to the named Plaintiff, which is based on her personal knowledge, alleges as follows:

5 2. Apple, Inc. (“Apple” or “Defendant”) owns and operates iTunes Music Store (“Music
6 Store”), an Internet site that offers digital music and digital video computer files for online purchase
7 and download (“Online Music” and “Online Video”). Unlike most Internet sites, Music Store is
8 accessed with proprietary Apple software, rather than with a Web browser. Apple designs the
9 hardware and software of its iPod Digital Music Player, while manufacturing is outsourced to Asia.

10 3. The “Online Music market” is defined as the market for digital music delivered to the
11 consumer by way of Internet download. Online Music presents consumers enormous advantages
12 over purchasing music in CD form at retail stores. Online Music stores offer for sale hundreds of
13 thousands of songs at once, many times more than even the largest traditional music retailer. Online
14 Music is attractive to consumers because it allows them to purchase a la carte only the songs that
15 they want, rather than having to buy an entire CD album in order to get only one or two desirable
16 songs.

17 4. Online Music is also attractive because it is more convenient, reliable, and better for
18 the environment. Consumers do not have to drive to a store to make their purchase, trucks do not
19 have to transport the CDs from factory to warehouse to retailer, and there is no material or packaging
20 produced only to be thrown away. Online Music also promises superior audio fidelity over time,
21 because unlike CDs, Online Music lasts indefinitely and cannot wear out or break.

22 5. Apple has approximately an 83% market share of the Online Music market.

23 6. The “Online Video market” is defined as the market for digital video files that are
24 purchased and downloaded via the Internet, and can be viewed both on a home computer and a
25 video-enabled Digital Music Player. Popular examples of Online Video include commercial-free
26 television shows, music videos, and short films. Just as with Online Music, the variety, reliability,
27 convenience, and environmental friendliness of Online Video make it superior to DVDs purchased
28 from traditional retail outlets.

1 7. Apple's share of the Online Video market is at least 75%.

2 8. The "Digital Music Player market" is defined as the market for portable battery-
3 powered devices that can store and play large numbers of digital music computer files. For
4 technology-savvy consumers, Digital Music Players are enormous improvements over portable CD
5 players. While a traditional CD can hold no more than 15 to 25 songs, Digital Music Players, by
6 playing music that has been compressed into small digital files, can store from 150 to more than
7 20,000 songs. Even larger Digital Music Players are now typically only a fraction of the size of a
8 typical portable CD player, and by having few moving parts, are more reliable and offer a much
9 longer battery life. Digital Music Players also dispense with the need to carry around CDs, and
10 allow consumers to organize, categorize, and play their music in whatever manner or order they
11 desire. Further advantages include superior skip protection, and models can play video games and
12 files, and store digital photographs.

13 9. There are two major segments of the Digital Music Player market: those that store
14 music files on miniature hard drives, and those that store music using flash memory. Apple's iPod
15 line of Digital Music Players has more than a 90% market share of the hard drive-based player
16 market, by far the larger of the two segments over the Class Period (as defined herein in the Class
17 Action Allegations section), and approximately a 70% share of the flash memory-based segment of
18 the market.

19 10. The three relevant product markets are the markets for Online Video, Online Music,
20 and Digital Music Players, as defined above, or collectively "the digital music markets."

21 11. The relevant geographic market for all three product markets is the United States.

22 12. Apple has engaged in tying and monopolizing behavior, placing unneeded and
23 unjustifiable technological restrictions on its most popular products in an effort to restrict consumer
24 choice, and to restrain what little remains of its competition in the digital music markets. Apple's
25 CEO Steve Jobs has himself compared Apple's digital music dominance to Microsoft's personal
26 computer operating system dominance, calling Apple's Music Store "the Microsoft of music stores"
27 in a meeting with financial analysts.

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1 13. Apple has repeatedly acted to foreclose even the possibility of competition by using
2 its market power to force consumers to choose its products based not on their merits, but on the fact
3 that technological restrictions and incompatibilities prevent them from buying its competitors'
4 products.

5 14. Apple deliberately makes digital music purchased at the Music Store inoperable with
6 its competitors' Digital Music Players. Thus, in order to play music from Apple's Music Store, the
7 dominant Online Music retailer, the consumer's only option in the Digital Music Player market is
8 Apple's iPod. Given that other companies' products cannot even begin to compete for the business
9 of most consumers, Apple can and does sell the iPod at prices far above those that would prevail in a
10 competitive market.

11 15. Conversely, Apple also makes the iPod unable to play music sold at its rivals' Online
12 Music stores. Consumers who have iPods can play only the Online Music they purchase from
13 Apple's Music Store, allowing Apple to further entrench its nearly complete monopoly in both of
14 these markets.

15 16. In the past year, as improved hard drive and video compression technology have
16 made it possible to play video content such as television shows on Digital Music Players, Apple has
17 begun using these same illegal tactics to block consumers from purchasing and playing Online Video
18 from its rivals' online stores and video-enabled Digital Music Players.

19 **PARTIES**

20 17. Defendant Apple, Inc. is a corporation organized under the laws of the State of
21 California and has its principal place of business in Cupertino, California. Though best known as a
22 computer hardware and software company, the majority of Apple's revenues and profits now derive
23 from its Online Video, Online Music, and Digital Music Player businesses.

24 18. Plaintiff Stacie Somers resides in San Diego County, California. On or about
25 November 2005, while in San Diego County, Ms. Somers purchased a 30GB iPod from Target.

26 **PLAINTIFF'S ALLEGATIONS**

27 19. Beginning on or around December 2005, and periodically throughout the Class
28 Period, Ms. Somers purchased music from the iTunes Music Store, and downloaded it from the

1 Music Store to her personal computer. Ms. Somers then selected and uploaded the purchased music
2 from her personal computer to her iPod.

3 20. Ms. Somers downloaded the songs she purchased from the Music Store and utilized
4 her iPod in accordance with the instructions provided in the packaging and on the iTunes Music
5 Store website.

6 JURISDICTION AND VENUE

7 21. Jurisdiction is conferred upon this judicial district pursuant to 15 U.S.C. §§ 15 and 26,
8 and 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction over Plaintiff's state law
9 claims pursuant to 28 U.S.C. § 1367(a).

10 22. This Court has original jurisdiction over this action under the Class Action Fairness
11 Act of 2005, 28 U.S.C. § 1332(d)(2) ("CAFA"), as to the named Plaintiff and every member of the
12 class, because the proposed class contains more than 100 members, the aggregate amount in
13 controversy exceeds \$5 million, and members of the class reside across the United States, and are
14 therefore diverse from Defendant.

15 23. Venue is proper in this district pursuant to 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C.
16 §1391 because Defendant transacts business in this district, Defendant has its principle corporate
17 office in this district, and because thousands of Class members are located in this district.
18 Additionally, a substantial part of the interstate trade and commerce involved and affected by the
19 alleged violations of the antitrust laws was and is carried on in this district. The acts complained of
20 have had, and will have, substantial anti-competitive effects in this district. A substantial number of
21 putative plaintiffs reside in this district. Finally, one other case is pending in this district concerning
22 the subject matter alleged herein.

23 24. This Court has personal jurisdiction over Apple, because Apple's corporate
24 headquarters are located in Cupertino, California, it is authorized to conduct business in California,
25 and it has intentionally availed itself of the laws and markets of California through the promotion,
26 marketing, distribution and sale of its Digital Music Players, Online Music, and Online Video in
27 California. In addition, Defendant is headquartered in Santa Clara County, which is assigned to this
28

1 Division of the Court. Plaintiff is filing concurrently herewith an affidavit stating facts showing that
2 this action has been commenced in a proper county pursuant to California Civil Code § 1780(c).

3 **INTRADISTRICT ASSIGNMENT**

4 25. Assignment to the San Jose Division is proper because a substantial portion of the
5 acts, events, and omissions giving rise to this action occurred in Santa Clara, which is within the
6 purview of the San Jose Division of this District.

7 **TRADE AND COMMERCE**

8 26. During the Class Period, Apple marketed, distributed, and sold Digital Music Players,
9 Online Music, and Online Video in a continuous and uninterrupted flow of intrastate and interstate
10 commerce throughout the United States.

11 **CLASS ACTION ALLEGATIONS**

12 27. Plaintiff brings this action on behalf of herself, and all others similarly situated,
13 pursuant to Rules 23(b)(2) and (3) of the Federal Rules of Civil Procedure. Plaintiff seeks to
14 represent the following Classes:

- 15 (a) **Injunctive Relief Class (for injunctive relief under the Clayton Act, 15**
16 **U.S.C. §26):** All persons or entities in the United States (excluding
17 federal, state and local governmental entities, Apple, its directors, officers
18 and members of their families), that, during the Class Period, purchased an
19 Apple iPod, or who purchased audio or video content from Apple's Music
20 Store, from December 31, 2003 through the conclusion of the trial of this
21 matter.

1 **(b) Indirect Purchaser Damages Class (for damages under the Cartwright**
2 **Act, Cal. Bus. & Prof. Code §16720):** All persons or entities in the United
3 States (excluding federal, state and local governmental entities, Apple, its
4 directors, officers and members of their families) that during the Class Period
5 purchased an Apple iPod indirectly from Apple or video content from Apple's
6 Music Store from December 31, 2003 through the conclusion of the trial of
7 this matter.

8 28. The Classes are so numerous that joinder of all members is impractical. There are
9 thousands of members in each Class who are geographically dispersed throughout the United States.

10 29. Plaintiff's claims are typical of the claims of the members of the Classes because
11 Plaintiff and all Class members were damaged by the same wrongful conduct of the Defendant
12 alleged herein.

13 30. There are questions of law and fact common to the Classes which predominate over
14 any questions affecting only individual Class members. Such common questions include:

- 15 (a) the definition of the relevant markets;
- 16 (b) Apple's market power within these markets;
- 17 (c) whether Apple monopolized and continues to monopolize the relevant
18 markets;
- 19 (d) whether Apple attempted to monopolize and continues to attempt to
20 monopolize the relevant markets;
- 21 (e) whether the contractual conditions Apple imposes upon its customers are
22 unconscionable;
- 23 (f) whether Apple's conduct caused damage to the Plaintiff and members of the
24 Classes, including the degree to which prices paid by the Classes are higher than the prices that
25 would be paid in a market free from tying, monopolization, and other illegal conduct; and
26 (g) the appropriateness of injunctive relief to restrain ongoing and future
27 violations of the law.

1 31. The claims of the Plaintiff are typical of the claims of the Classes, and Plaintiff has no
2 interest adverse to the interest of other members of the Classes.

3 32. Plaintiff will fairly and adequately protect the interests of the Classes, and has
4 retained counsel experienced and competent in the prosecution of complex class actions and antitrust
5 litigation.

6 33. A class action is superior to other available methods for the fair and efficient
7 adjudication of the controversy. Such treatment will permit a large number of similarly situated
8 persons to prosecute their common claims in a single forum simultaneously, efficiently, and without
9 duplication of effort and expense that numerous individual actions would engender. Class treatment
10 will also permit the adjudication of relatively small claims by many Class members who could not
11 afford on their own to individually litigate an antitrust claim against a large corporate defendant.
12 There are no difficulties likely to be encountered in the management of this class action that would
13 preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient
14 adjudication of the controversy.

15 **APPLE ENGAGES IN ILLEGAL TYING CONDUCT**

16 34. Online Music comes in both unprotected and protected digital file formats. Unlike
17 unprotected formats, protected formats include technological encumbrances designed to prevent
18 consumers from making illegal unauthorized copies of the digital file.

19 35. Given the increasing problem of music piracy, the major record companies that
20 control the copyrights to most popular music are generally unwilling to license their music for online
21 sale except in protected formats.

22 36. The protected music file format used by most Online Music stores is the WMA
23 format. Online Music stores that sell their protected music files in WMA format include America
24 Online, Wal-Mart, Napster, MusicMatch, Best Buy, Yahoo! Music, FYE Download Zone, and
25 Virgin Digital.

26 37. Apple's iPod is alone among mass-market Digital Music Players in not supporting the
27 WMA format.

1 38. There are no technological limitations preventing the iPod from supporting WMA
2 playback. Apple outsources most of the production of the iPod to third-party manufacturers in Asia.
3 One third-party part used in the iPod is its “core processor,” the Portal Player System-On-A-Chip.
4 The System-On-A-Chip by default supports the WMA format. Apple, however, deliberately
5 designed the iPod’s software so that it would only play a single protected digital format, Apple’s
6 FairPlay-modified AAC format. Deliberately disabling a desirable feature of a computer product is
7 known as “crippling” a product, and software that does this is known as “crippleware.”

8 39. The software Apple has designed for the iPod, which disables the iPod’s inherent
9 ability to play WMA format files, is a classic example of crippleware. By preventing the iPod from
10 playing WMA or any other protected music format besides FairPlay-modified AAC format, iPod
11 owners’ only option to purchase Online Music is to purchase from Apple’s Music Store. This
12 conduct constitutes an illegal tie in violation of antitrust laws.

13 40. In place of the Portal Player System-On-A-Chip, Apple uses the SigmaTel
14 STMP3550 in its low-end iPod Shuffles. Like the Portal Player System-On-A-Chip, the SigmaTel
15 STMP3550 was designed to decode and play WMA files and does indeed play them on every Digital
16 Music Player that contains the STMP3550 chip except the iPod. As in its higher end models,
17 Apple’s crippleware operating system software prevents the iPod Shuffle from playing WMA files.

18 41. The cost to Apple of licensing the WMA format would likely not exceed \$800,000
19 per year, or approximately three cents per iPod sold in 2005.

20 42. Just as Apple deliberately makes the iPod incapable of playing any Online Music not
21 purchased on Music Store, it makes the FairPlay-modified AAC music files purchased on Music
22 Store incapable of being played by other Digital Music Players. Thus, consumers who have
23 purchased Online Music from Apple to play on their home computers will have no choice but to buy
24 an iPod if they want to play their music on a Digital Music Player.

25 43. Other consumers first buy an iPod and later buy Online Music for their iPod from
26 Apple’s Music Store. As described above, such consumers are not able to purchase Online Music
27 for play on an iPod from any company besides Apple. After purchasing their digital music library
28 from Apple, these consumers are locked into making all future Digital Music Player purchases from

1 Apple. They might want to buy a non-Apple Digital Music Player for a family member, or to
2 replace their original Apple iPod, but to do so would mean they could not utilize any of the songs
3 they purchased from Apple in their new music player.

4 44. Defendant's refusal to allow its FairPlay-modified AAC music files to be played on
5 any Digital Music Player besides the Apple iPod constitutes an illegal tie in violation of antitrust
6 laws.

7 45. These ongoing injuries can be halted and abated by an injunction that would compel
8 Apple to make iPod compatible with Online Music and Online Video purchased on stores other than
9 Music Store, and to allow competitors to sell their music and video content using Apple's iTunes
10 platform.

11 46. Apple has acted on grounds generally applicable to the Injunctive Relief Class,
12 thereby making final injunctive relief appropriate with respect to the Class as a whole. Such an
13 injunction would be of immense benefit to the Plaintiff, the Class, and the general public while
14 imposing only a trifling burden upon Apple.

15 **IN EUROPE APPLE'S MONOPOLY PRICING AND TYING CONDUCT HAS BEEN**
16 **THE TARGET OF FORMAL GOVERNMENT INVESTIGATIONS, PRIVATE**
17 **LAWSUITS, AND LEGISLATION SPECIFICALLY DESIGNED TO COUNTER**
18 **APPLE'S ANTI-COMPETITIVE CONDUCT**

19 47. European antitrust authorities are currently investigating Apple's pricing practices in
20 the European Union. Leveraging its worldwide monopoly power in the Online Music market, Apple
21 has set the price of music downloads in the United Kingdom substantially higher than in the United
22 States and in countries that use the Euro as their currency, and maintains this higher price by placing
23 technological restrictions on residents of the United Kingdom from purchasing music from Apple's
24 non-UK Music Store sites.

25 48. In France, a consumer rights organization has filed suit against Apple for deliberately
26 making the iPod and Online Music purchased from Music Store incompatible with competing
27 products.

28 49. Also in France, the two chambers of Parliament have passed slightly different
versions of a bill that would force Apple to stop making music files purchased on its Music Store
incompatible with Digital Music Players other than the Apple iPod.

1 50. Also in France, the nation's Parliament has approved a law that specifically was
2 designed to force Apple to allow other companies to sell protected music files on the iPod, and to
3 force Apple to make music purchased on its Music Store compatible with competing Digital Music
4 Players. In an interview, a French official explained that his government believes that "[s]omeone
5 who buys a song has to be able to listen to it, no matter which device or the software of choice" and
6 that Apple's designing its products to prevent consumers from using other companies' products is
7 "not in the interest of the consumer, nor the interest of the creator. It only benefits the company and
8 we're there to defend the consumer, our citizens." Apple has unsuccessfully lobbied against the law,
9 calling it "state sponsored piracy."

10 51. Denmark's Minister of Culture plans on introducing in 2007 legislation similar to the
11 French law.

12 52. The Office of the Norwegian Consumer Ombudsman on July 6, 2006 ruled that Apple
13 violates Norwegian law by tying purchases of music from its Music Store to the purchase of an
14 Apple iPod. Using language that echoes the American common law standard of an unconscionable
15 contract, Ombudsman Bjørn Erik Thon ruled:

16 [Apple] goes to great lengths to ensure that its standard customer contract protects
17 the company's own interest. . . . "The contracts are both vague and hard to
18 understand for the customers, and they're clearly unbalanced to disfavor the
19 customer. The consumers are clearly the inferior partner in the contract, and this in
20 itself is illegal" [¶¶] "[Apple's restrictive] technology renders the customers
21 without rights in dealing with a company which on a whim can dictate what kind of
22 access customers will have to products they have already paid for"

23 53. Sweden and Denmark's antitrust regulators have indicated that they are likely to
24 duplicate any action taken against Apple by Norway. The *Financial Times* of London reported on
25 June 14, 2006 that Finnish antitrust authorities are considering joining these three countries in their
26 joint action against Apple.

27 **ANTITRUST INJURY TO CONSUMERS**

28 54. Through the unlawful acts and practices described above, Apple has harmed
29 competition, consumers and innovation by causing consumers to pay supracompetitive prices for
30 iPod Digital Music Players. Those practices, described herein, have also allowed Apple to obtain
31 and maintain illegal monopolies in the aforementioned markets.

1 55. By preventing consumers who have purchased music files from Music Store from
2 playing their music on its competitors' Digital Music Players, Apple has been able to charge
3 purchasers of the iPod Digital Music Player a supracompetitive price.

4 56. Likewise, by preventing owners of iPods from buying music from any Online Music
5 retailer other than Music Store, Apple deters consumers from even considering doing business with
6 its competitors' music and video stores, allowing it to monopolize these markets.

7 57. Consumers have been further injured as innovative companies such as Dell, Olympus,
8 and Rio have begun to withdraw from the Digital Music Player markets. These companies had little
9 choice but to give up and exit the market because Apple's anticompetitive conduct excluded them
10 from reaching the majority of their potential customers, no matter how much cheaper or how much
11 better their products were. There can be no real competition in the Online Music, Online Video, and
12 Digital Music Player markets as long as Apple's conduct forecloses even the possibility of its
13 competitors reaching most potential customers.

14 58. This anti-competitive conduct has deterred the development of competing products,
15 damaging consumers by depriving them of a choice of products with different and possibly superior
16 sets of features.

17 59. Normally markets for consumer electronic goods such as Digital Music Players are
18 characterized by intense competition and narrow profit margins. Apple's pricing in the Digital
19 Music Player market, by contrast, is exactly that of a monopolist, excessive and arbitrary. For
20 example, the only difference between Apple 1GB and 4GB models of its iPod Nano is the capacity
21 of their NAND flash memory parts. At current spot prices in the NAND flash memory market the
22 1GB part costs approximately \$4.15, while the 4GB part costs approximately \$9.67. Nonetheless,
23 Apple charges an additional one hundred dollars for the 4GB model.

24 60. Plaintiff and the Classes have been injured by this anti-competitive conduct and will
25 continue to suffer injury unless the relief prayed for herein is granted.

COUNT I: TYING

(For Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1)

Violations Resulting from Unlawful Tying or Bundling of Online Video and FairPlay Protected Music Files to the Apple iPod

61. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above on behalf of the Classes.

62. Apple has substantial market power in each of the distinct Digital Music Player, Online Music, and Online Video markets.

63. All of these markets are for goods and not services.

64. There is no appropriate or legitimate business justification for Apple's use of technological restrictions to force those who purchase Apple's Digital Music Players to also purchase only Online Music and Online Video from Music Store that would counterbalance the clear anti-competitive effects of its tying conduct, including the foreclosure of competition in the Online Music and Online Video.

65. This unlawful conduct has harmed competition in that market and has caused injury to every person who has purchased Online Music and Online Video from Music Store. The supply and selection of products available is lower than it would be in a competitive market; and the number and effectiveness of competitors have been diminished by unlawful means.

66. The anti-competitive conduct described herein has damaged Plaintiff and the alleged Classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §1.

Violations Resulting from Unlawful Tying of the Apple iPod to Online Video and FairPlay Protected Music Files

67. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above on behalf of the Classes.

68. Apple has substantial market power in each of the distinct Digital Music Player, Online Music, and Online Video markets.

69. All of these markets are for goods and not services.

70. There is no appropriate or legitimate business justification for Apple's use of technological restrictions to force those who purchase Online Music and Online Video from Music

1 Store to also purchase only Apple's Digital Music Players that would counterbalance the clear
2 anticompetitive effects of its tying conduct, including the foreclosure of competition in the Digital
3 Music Player market.

4 71. This unlawful conduct has harmed competition in that market, and has caused injury
5 to every buyer of an Apple iPod. Prices in the Digital Music Player market are higher than they
6 would have been in a competitive market; the supply and selection of products available is lower
7 than it would be in a competitive market; and the number and effectiveness of competitors have been
8 diminished by unlawful means.

9 72. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
10 classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §1.

11 **COUNT II: MONOPOLIZATION**

12 **(For Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2)**

13 **Violations Resulting from the Unlawful Acquisition or Maintenance**
14 **of Monopoly Power in the Digital Music Player Market**

15 73. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
16 above on behalf of the Classes.

17 74. Through the actions described herein, Apple has willfully acquired and maintained
18 monopoly power in the Digital Music Player market. This conduct has harmed competition in that
19 market, and has caused injury to every buyer of an Apple iPod. Prices in the Digital Music Player
20 market are higher than they would be in a competitive market; the supply and selection of products
21 available is lower than it would be in a competitive market; and the number and effectiveness of
22 competitors have been diminished by unlawful means.

23 75. There is no appropriate or legitimate business justification for the actions and conduct
24 which have facilitated Apple's monopolization of the Digital Music Player market.

25 76. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
26 Classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

1 **COUNT III: ATTEMPTED MONOPOLIZATION**

2 **(For Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2)**

3 **Violations Resulting from the Unlawful Acquisition or**
4 **Maintenance of Monopoly Power in the Online Music Market**

5 77. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
6 above on behalf of the Classes.

7 78. Through the actions described herein, Apple has willfully acquired and maintained
8 monopoly power in the Online Music market. This conduct has harmed competition in that market,
9 making the supply and selection of products available lower in the Online Music market than they
10 would be in a competitive market. The number and effectiveness of competitors have also been
11 diminished by Apple's unlawful conduct.

12 79. There is no appropriate or legitimate business justification for the actions and conduct
13 which have facilitated Apple's monopolization of the Online Music market.

14 80. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
15 classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

16 **Violations Resulting from the Unlawful Acquisition**
17 **or Maintenance of Monopoly Power in the Online Video Market**

18 81. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
19 above on behalf of the Classes.

20 82. Through the actions described herein, Apple has willfully acquired and maintained
21 monopoly power in the Online Video market. This conduct has harmed competition in that market,
22 making the supply and selection of products available lower and making prices higher than they
23 would be in a competitive market. The number and effectiveness of competitors have also been
24 diminished by Apple's conduct.

25 83. There is no appropriate or legitimate business justification for the actions and conduct
26 which have facilitated Apple's monopolization of the Online Video market.

27 84. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
28 classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. § 2.

1 **Violations Resulting from Unlawful Attempted**
2 **Monopolization of the Digital Music Player Market**

3 85. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
4 above on behalf of the Classes.

5 86. Apple has acted with specific intent to monopolize the Digital Music Player market.

6 87. There was and is a dangerous possibility that Apple will succeed in its attempt to
7 monopolize the Digital Music Player market because Apple controls a large percentage of that
8 market and has the ability and actually does exclude its competitors through use of anticompetitive
9 technological restrictions on its products. Further success in excluding competitors from the Digital
10 Music Player market will allow Apple to obtain an illegal monopoly over the Digital Music Player
11 market.

12 88. This conduct has harmed competition in that market, making the supply and selection
13 of products available lower than it would be in a competitive market. Apple's unlawful attempted
14 monopolization has also reduced the number and effectiveness of competitors in the Digital Music
15 Player market and forced consumers to pay higher prices in the Digital Music Player market than
16 they would in a competitive market.

17 89. There is no appropriate or legitimate business justification for the actions and conduct
18 which have facilitated Apple's attempted monopolization of the Digital Music Player market.

19 90. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
20 classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. § 2.

21 **Violations resulting from the Unlawful Attempted**
22 **Monopolization of the Online Music Market**

23 91. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
24 above on behalf of the Classes.

25 92. Apple has acted with specific intent to monopolize the Online Music market.

26 93. There was and is a dangerous possibility that Apple will succeed in its attempt to
27 monopolize the Online Music market because Apple controls a large percentage of that market and
28 has the ability and actually does exclude its competitors through use of anticompetitive technological

1 restrictions on its products. Further success in excluding competitors from the Online Music market
2 will allow Apple to obtain an illegal monopoly over the Online Music market.

3 94. This conduct has harmed competition in that market, making the supply and selection
4 of products available lower than it would be in a competitive market. Apple's unlawful attempted
5 monopolization has also reduced the number and effectiveness of competitors in the Online Music
6 market.

7 95. There is no appropriate or legitimate business justification for the actions and conduct
8 which have facilitated Apple's attempted monopolization of the Online Music market.

9 96. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
10 classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. § 2.

11 **Violations Resulting from the Unlawful**
12 **Attempted Monopolization of the Online Video Market**

13 97. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
14 above on behalf of the Classes.

15 98. Apple has acted with specific intent to monopolize the Online Video market.

16 99. There was and is a dangerous possibility that Apple will succeed in its attempt to
17 monopolize the Online Video market because Apple controls a large percentage of that market and
18 has the ability and actually does exclude its competitors through use of anticompetitive technological
19 restrictions on its products. Further success in excluding competitors from the Online Video market
20 will allow Apple to obtain an illegal monopoly over the Online Video market.

21 100. This conduct has harmed competition in that market, making prices higher and the
22 supply and selection of products available lower than they would be in a competitive market.

23 101. This conduct has harmed competition in that market, making the supply and selection
24 of products available lower and making prices higher than they would be in a competitive market.
25 Apple's unlawful attempted monopolization has also reduced the number and effectiveness of
26 competitors in the Online Video market.

27 102. There is no appropriate or legitimate business justification for the actions and conduct
28 which have facilitated Apple's attempted monopolization of the Online Video market.

1 103. The anti-competitive conduct described herein has damaged Plaintiff and the alleged
2 classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

3 **COUNT IV**

4 **(For Violation of the Cartwright Act, Cal. Bus. & Prof. Code § 16270 et seq.)**

5 104. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
6 above on behalf of the Classes.

7 105. Apple's actions as described above constituted an unreasonable restraint of trade or
8 commerce throughout California and the rest of the United States in violation of the Cartwright Act,
9 § 16270 et seq. of the California Business and Professions Code.

10 106. The Classes have been injured in their business and property as a result of Apple's
11 illegal conduct, for which they seek damages (trebled where appropriate) including pre-judgment
12 interest.

13 107. Apple's conduct is continuing and unless equitable relief is granted, artificially
14 inflated prices for Portable Music Players and Online Video will continue unabated.

15 **COUNT V**

16 **(For Violation of California Unfair Competition Law,
17 Cal. Bus. & Prof. Code § 17200 et seq.)**

18 108. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
19 above on behalf of the Classes.

20 109. The conduct alleged in this complaint constitutes unlawful, unfair, and fraudulent
21 business acts and practices within the meaning of the California Unfair Competition Law, § 17200
22 et seq. of the California Business and Professions Code. Plaintiff and the Classes have suffered
23 injury in fact and lost money or property as a result of Apple's violations of law and wrongful
24 conduct.

25 110. Apple's actions are unlawful and unfair because it has violated, *inter alia*, the
26 Sherman Antitrust Act, the Cartwright Act, the Consumers Legal Remedies Act and because it has
27 monopolized the markets for Online Music, Online Video, and Portable Music Players in violation
28 of California common law.

1 111. Apple's actions are unfair because in its pursuit of monopoly pricing it has made its
2 products less useful to consumers and prevented them from choosing which companies to do
3 business within the relevant markets based on the merits of each company's products. Moreover,
4 there is no legitimate business justification for Apple's conduct, and any business justification is
5 further outweighed by the harm Apple's conduct has caused to consumers and competitors.

6 112. Apple's actions are fraudulent and unfair because it does not inform the purchasers of
7 its products that it has deliberately made them incompatible with the products of its competitors.
8 Apple has deceived consumers who reasonably believed they could purchase Online Music and
9 Online Video from any store to play on Apple's Portable Music Player products, and likewise that
10 the Online Video and Online Music they purchase from Music Store are compatible with any
11 standard Portable Music Player. This belief is reasonable under the circumstances given that
12 consumers when purchasing media products are accustomed to the fact that the CDs, DVDs, audio
13 cassettes, and VHS cassettes they purchase from any American store are compatible with any
14 standard CD, DVD, audio cassette, and VHS cassette player.

15 113. Accordingly, Apple has violated the Unfair Competition Law proscription against
16 engaging in unlawful, unfair, and fraudulent business practices.

17 114. As a result of this unlawful, unfair, and fraudulent conduct, Apple has been unjustly
18 enriched at the expense of Plaintiff, other members of the Classes, and the general public.

19 115. Apple's conduct is continuing and unless equitable relief is granted, artificially
20 inflated prices for Portable Music Players and Online Video will continue unabated.

21 **COUNT VI**

22 **(For Violation of the Consumer Legal Remedies Act,**
23 **Cal. Civil Code §1750 et seq.)**

24 116. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
25 above on behalf of the Classes.

26 117. Plaintiff and each member of the Class are "consumers" within the meaning of
27 Consumer Legal Remedies Act, California Civil Code § 1761(d).
28

1 118. The Consumer Legal Remedies Act applies to Apple's actions and conduct, described
2 herein, because it extends to transactions that are intended to result, or which have resulted, in the
3 sale or lease of goods or services to consumers.

4 119. Defendant violated and continues to violate the deceptive practices proscribed by Cal.
5 Civ. Code § 1770(a)(19) by "Inserting an unconscionable provision in the contract."

6 120. Apple is a monopolist with market shares of 75% or more in each of the relevant
7 markets and a stock market capitalization of more than fifty billion dollars. The unnecessary
8 technological restrictions it places on its products offer no benefit to consumers while preventing
9 them from using any Apple product they have already bought from being used with a competitor's
10 digital music player or online store.

11 121. Apple's size, completely dominant market share, and unreasonable and unfair
12 technological restrictions, place it in a greatly unequal bargaining position relative to consumers in
13 each of the relevant markets.

14 122. Apple unconscionably exploits this unequal bargaining power by imposing prices,
15 contractual terms, and one sided technological restrictions into contracts with consumers in the
16 digital music markets. This behavior has violated and continues to violate the Consumers Legal
17 Remedies Act, California Civil Code § 1750 *et seq.*

18 123. Pursuant to § 1782 of the CLRA, Plaintiffs have notified Defendant in writing of the
19 particular violations of § 1770 of the CLRA and demanded Defendant rectify the actions described
20 above by providing complete monetary relief, agreeing to be bound by its legal obligations and give
21 notice to all affected customers of its intent to do so. Plaintiffs sent this notice by certified mail,
22 return receipt requested, to Apple's principal place of business.

23 124. If Apple fails to rectify or agree to rectify the problems associated with the actions
24 detailed above and give notice to all affected consumers within 30 days of the date of written notice,
25 pursuant to § 1782 of the CLRA, Plaintiffs will amend their Complaint to seek actual, punitive and
26 statutory damages and all other relief available to Plaintiffs and the Class under Cal. Civ. Code §
27 1780.

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COUNT VII

(For Common Law Monopolization Business Practices)

125. Plaintiff re-alleges and incorporates by reference each of the allegations set forth above on behalf of the Classes.

126. The conduct described in this complaint is in violation of California common law prohibiting monopolization.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Somers, on her own behalf and on behalf of the putative classes prays that the Court declare, adjudge and decree the following:

A. That this action may be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to Plaintiff’s claims for injunctive relief, and Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the claims for damages and other monetary relief, and declaring Plaintiff as representatives of the Classes and her counsel as counsel for the Classes;

B. That the conduct alleged herein constitutes unlawful tying, monopolization, and attempted monopolization in violation of Cartwright Act, California common law, and sections 1 and 2 of the Sherman Antitrust Act;

C. That the conduct alleged herein is in violation of the California Unfair Competition Law and appropriate injunctive relief be granted pursuant to this law;

D. That the conduct alleged herein is in violation of the Consumer Legal Remedies Act;

E. For an order permanently restraining and enjoining Apple from continuing the unfair and anti-competitive activities alleged herein;

F. That Plaintiff and the Classes are entitled to damages, penalties and other monetary relief provided by applicable law, including treble damages;

G. That Plaintiff and the Classes recover their costs of suit, including reasonable attorneys’ fees and pre- and post-judgment interest;

H. For an order requiring full restitution of all funds acquired from Apple’s unfair business practices, including disgorgement of revenues and/or profits;

1 I. Awarding Plaintiff and the Class their expenses and costs of suit, including
2 reasonable attorneys' fees, to the extent provided by law; and

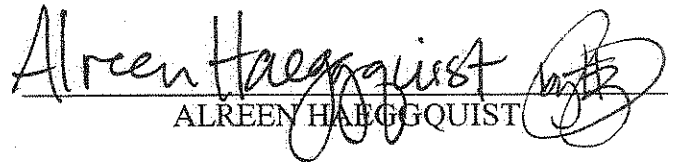
3 J. That Plaintiff and the Classes are granted such other, further, and different relief as
4 the nature of the case may require or as may be determined to be just, equitable, and proper by this
5 Court.

6 **JURY DEMAND**

7 Plaintiff demands a trial by jury on all issues so triable.

8 DATED: December 31, 2007

HAEGGQUIST LAW GROUP

9
10 
11 ALREEN HAEGGQUIST

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13 San Diego, CA 92101
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15 619/342-7878 (fax)

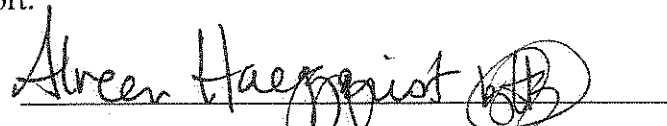
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28 202/822-4997 (fax)
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Attorneys for Plaintiff

29 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

30 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
31 named parties, there is no such interest to report.

32 
33 ALREEN HAEGGQUIST, ATTORNEY OF RECORD FOR PLAINTIFF

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

15 STACIE SOMERS, On Behalf of Herself and
16 All Others Similarly Situated,

Plaintiff,

vs.

19 APPLE, INC., a California Corporation,

Defendant.

Case No.

6507

CLASS ACTION

AFFADAVIT OF HELEN I. ZELDES

HRL

I, HELEN I. ZELDES, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am one of the counsel of record for plaintiff in the above-entitled action. I have personal

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FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 knowledge of the matters stated herein and, if called upon, I could and would competently testify
2 thereto.

3 2. The Complaint in this action has been filed in the proper place for the trial on this
4 matter, which is the County of San Jose. Defendant's headquarters are in Santa Clara County, a
5 substantial portion of the acts, events, and omissions giving rise to this action occurred in Santa Clara
6 County, and defendant conducts substantial business there. Assignment to the San Jose Division is
7 proper because Santa Clara County is within the purview of the San Jose Division of the Northern
8 District Court.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed this 31st day of December, 2007, at San Diego, California.

11
12 
13 HELEN I. ZELDES

14 Subscribed to and sworn before me
15 this 31st day of December, 2007.

16
17 NOTARY PUBLIC

18 My commission expires on: _____

19
20
21 State of California, County of SAN DIEGO
22 Subscribed and sworn to (or affirmed) before me
23 on this 31st day of DEC, 2007.
24 by HELEN I. ZELDES
25 proved to me on the basis of satisfactory evidence to
26 be the person(s) who appeared before me.
27 Signature: 