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20 UNITED STATES DISTRICT COURT
 21
 22 NORTHERN DISTRICT OF CALIFORNIA
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 24 SAN JOSE DIVISION

25 THE APPLE IPOD ITUNES ANTI-TRUST) 26 LITIGATION) _____) 27 This Document Relates To:) 28 ALL ACTIONS.) _____)	Lead Case No. C-05-00037-JW <u>CLASS ACTION</u> CONSOLIDATED COMPLAINT FOR VIOLATIONS OF SHERMAN ANTITRUST ACT, CLAYTON ACT, CARTWRIGHT ACT, CALIFORNIA UNFAIR COMPETITION LAW, CONSUMER LEGAL REMEDIES ACT, AND CALIFORNIA COMMON LAW OF MONOPOLIZATION
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29 DEMAND FOR JURY TRIAL

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1 **INTRODUCTION AND MARKET DEFINITIONS**

2 1. Plaintiffs Somtai Troy Charoensak, Mariana Rosen, and Melanie Tucker (“plaintiffs”)
3 on behalf of themselves and behalf of the Classes defined herein (the “Classes”), based on
4 information and belief and investigation of counsel, except for information pertaining to the named
5 plaintiffs, which is based on their personal knowledge, allege as follows:

6 2. Apple, Inc. (“Apple” or “defendant”) owns and operates iTunes Music Store (“Music
7 Store”), an internet site that offers digital music and digital video computer files for online purchase
8 and download (“Online Music” and “Online Video”). Unlike most internet sites, Music Store is
9 accessed with proprietary Apple software rather than with a web browser.

10 3. The “Online Music market” is defined as the market for digital music legally
11 delivered to the consumer by way of internet download. Online Music presents consumers
12 enormous advantages over purchasing music in compact disk (“CD”) form at retail stores. Online
13 Music stores offer for sale hundreds of thousands of songs at once, many times more than even the
14 largest traditional music retailer. Online Music is attractive to consumers because it allows them to
15 purchase *a la carte* only the songs that they want rather than having to buy an entire CD album in
16 order to get only one or two desirable 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 an approximately 85% 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 that can be viewed both on a home computer and a video
25 enabled Digital Music Player. Popular examples of Online Video include commercial-free television
26 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 90%.

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 only a fraction of the size of a typical
8 portable CD player, and by having few moving parts are more reliable and offer a much longer
9 battery life. Digital Music Players also dispense with the need to carry around CDs and allow
10 consumers to organize, categorize, and play their music in whatever manner or order they desire.
11 Further advantages include superior skip protection and in many models the ability to play video
12 games, play video files, and store digital photographs.

13 9. Apple sells Digital Music Players known as the iPod, iPod shuffle and iPod nano
14 (collectively, the "iPod"). Apple designs some of the hardware and software of its iPod while
15 manufacturing is outsourced to Asia.

16 10. Apple has an approximately 80% share of the Digital Music Player market.

17 11. The three relevant product markets are the markets for Online Video, Online Music,
18 and Digital Music Players (collectively, the "Product Markets").

19 12. Consumers and merchants have come to recognize the Online Music market as a
20 separate and distinct market from the market for music CDs.

21 13. Barriers to entry into the Online Music market are high. In addition the barriers to
22 entry into the Online Music market imposed by Apple's illegal anticompetitive behavior, discussed
23 in detail herein, other barriers to entry include the fact that: (1) the products are protected by
24 copyrights that any new entrant would have to obtain a license for in order to legally sell; (2) the
25 copyright holders are unlikely to license their copyrighted music files to any new entrant unless that
26 entrant can credibly show that it will be able to sell these files to a large audience, which the ties
27 effectively make impossible because most listeners of Online Music files are iPod owners; and
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1 (3) any new entrant would have to offer an inventory of millions of music files, necessitating (in
2 addition to the copyright license requirement), an inordinate investment of capital and resources.

3 14. The Online Music market offers a number of features not readily available at
4 traditional “brick and mortar” music stores, which help set it apart as a distinct market. For example,
5 whereas shoppers at traditional “brick and mortar” music stores must typically purchase an entire
6 album of the artist or group selected, online sales of Digital Music files offer consumers the option to
7 purchase only individual songs or tracks of music separately. This is borne out by sales statistics
8 showing that on iTunes, for every sale of a complete album online there are approximately 20 songs
9 purchased individually. By contrast, according to statistics compiled by the Recording Industry
10 Association of America, in the CD market in 2005, sales of CD albums were 705.4 million compared
11 to sales of CD singles of 2.8 million units.

12 15. Further, unlike brick and mortar music stores, the Online Music market offers
13 consumers the ability to create their own customized “playlists” wherein consumers can, in effect,
14 create their own customized collection of songs from different artists. Thus, for example, a
15 consumer of Online Music stores that had a liking for the song “Help” from the Beatles and the song
16 “Goodbye Yellow Brick Road” from Elton John could create a customized playlist that would
17 comprise of just these two songs. That consumer would only be charged for the particular songs
18 purchased (*i.e.* in this case, “Help” and “Goodbye Yellow Brick Road”). By contrast, if that same
19 consumer wished to avail himself of these same two songs by making purchases at a brick and
20 mortar music store, that consumer would have to purchase an entire Beatles album containing a
21 dozen songs or more, and an entire Elton John album, which also contains approximately a dozen
22 songs or tracks. Thus, while the Online Music purchaser would only pay in \$1.98 (99 cents each) in
23 total to obtain these two songs, the price paid by the same consumer at a traditional brick and mortar
24 store would likely be approximately \$30 – *i.e.*, the price for two CDs.

25 16. In addition, the music selection available in the Online Music market is not
26 coextensive with the music selection available at brick and mortar music stores. Online Music stores
27 provide a ready outlet for independent and less popular artists whose music is not readily available at
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1 brick and mortar music stores, which only have room to carry a small fraction of the inventory of
2 Online Music stores.

3 17. In the eyes of consumers, the Online Music market and the brick and mortar market
4 are not in price-competition with one another. The Online Music market focuses on selling
5 individual tracks or songs while the brick and mortar market is focused on selling whole albums or
6 CDs, thereby making price-comparison between these two distinct markets a *non sequitur*. Further,
7 because of the ubiquitous nature of the internet, Online Music sales are available to a whole host of
8 consumers who do not have ready access to a nearby brick and mortar music store, let alone a nearby
9 brick and mortar store stocking the particular recording desired by these consumers at any given
10 time. Similarly, because search costs on the internet are a fraction of search costs involved in the
11 brick and mortar market, consumers are not likely to and do not forego a purchase of a music
12 recording online even if they hypothetically would believe that the same recording could be obtained
13 somewhat less expensively at a traditional brick and mortar store. The costs associated with
14 traveling to brick and mortar music stores, searching one or more such stores for a particular
15 recording, and comparison shopping between these brick and mortar music stores and online stores
16 dissuade consumers from foregoing a purchase made from the comfort of their own home or office
17 for the same piece of music, even if doing the foregoing tasks could hypothetically result in a
18 savings of a few cents per song. Put differently, consumers are not likely to and do not travel miles
19 to their nearest brick and mortar music store in the hopes of saving a few cents off a song purchase
20 that they could make instantaneously on their home computer.

21 18. For these and other reasons, the Online Music market is and has been recognized as a
22 separate relevant product market.

23 19. For similar reasons, the Online Video market is distinct from the brick and mortar
24 market for DVDs. Again online consumers do not have to endure the hassle and expense of going to
25 a brick and mortar store selling DVDs. Furthermore, most Online Video sales are for television
26 shows, and typically sell for \$1.99 per episode, with "Season Passes" allowing for the download of
27 an entire season of TV shows that sell for less than when broken down on a per-episode basis. Most
28 DVD sales are for movies, and while some television shows are eventually available on DVD,

1 consumers are unable to purchase single episodes, and have to wait months or years for the DVD of
2 the show to arrive in stores. By contrast, Online Video copies of TV shows are typically available
3 the same day the show is first broadcast. Finally, while portable DVD players exist, they are
4 significantly larger, heavier, more cumbersome, and have fewer features than video-enabled Digital
5 Music Players. Another segment of the Online Video market is the sale of short music videos,
6 typically two to five minutes long, for \$1.99. Short music videos are rarely, if ever, available in
7 DVD form.

8 20. The relevant geographic market for the three Product Markets is the United States.

9 21. Apple has and is engaged in tying and monopolizing behavior, placing unneeded and
10 unjustifiable technological restrictions on its most popular products in an effort to restrict consumer
11 choice and restrain competition in the Product Markets. Apple's CEO Steve Jobs has himself
12 compared Apple's digital music dominance in the Online Music market to Microsoft's personal
13 computer operating system dominance, calling Apple's Music Store "the Microsoft of music stores"
14 in a meeting with financial analysts.

15 22. As alleged in further detail below, Apple deliberately makes Online Music purchased
16 at the Music Store inoperable with its competitor's Digital Music Players. Thus, a consumer who
17 wishes to play music from Apple's Music Store, the dominant Online Music retailer, directly on a
18 Digital Music Player can do so only with an iPod. Accordingly, Apple can and does sell the iPod at
19 prices far above those that would prevail in a competitive market for Digital Music Players.

20 23. Conversely, as also alleged in detail below, Apple deliberately makes the iPod unable
21 to play music sold at rival Online Music stores. Consumers with iPods can only buy Online Music
22 to play on them from Apple's Music Store, allowing Apple to further entrench its monopoly in both
23 of these Product Markets.

24 24. In the past two years, as improved hard drive and video compression technology have
25 made playing video content such as television shows on Digital Music Players feasible, Apple has
26 begun using these same illegal tactics to block consumers from purchasing and playing Online Video
27 from its rivals' online stores and video-enabled Digital Music Players.

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PARTIES

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

26. Plaintiff Somtai Troy Charoensak is a resident of California, plaintiff Mariana Rosen is a resident of New Jersey, and plaintiff Melanie Tucker is a resident of California. During April 28, 2003 through the conclusion of the trial of this matter (“Class Period”), plaintiffs purchased iTunes music and iPods directly from Apple and plan to purchase and/or have purchased Online Videos from Apple.

JURISDICTION AND VENUE

27. Jurisdiction is conferred upon this judicial district pursuant to 15 U.S.C. §§15 and 26, and 28 U.S.C. §§1331 and 1337.

28. Venue is proper in this district pursuant to 15 U.S.C. §§15, 22 and 26, and 28 U.S.C. §1391 because defendant transacts business in this district, defendant has its principle corporate office in this district, and because thousands of Class members are located in this district. Additionally, a substantial part of the interstate trade and commerce involved and affected by the alleged violations of the antitrust laws was and is carried on in part within this district. The acts complained of have had, and will have, substantial anticompetitive effects in this district. A substantial number of putative plaintiffs reside in this district.

TRADE AND COMMERCE

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

CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves, and all others similarly situated, pursuant to Rules 23(b)(2)-(3) of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the following Classes:

1 **INJUNCTIVE RELIEF CLASS**
2 **(For injunctive relief under the Clayton Act, 15 U.S.C. §26)**

3 31. All persons or entities in the United States (excluding federal, state and local
4 governmental entities, Apple, its directors, officers and members of their families) who:
5 (a) purchased an iPod from Apple or (b) purchased audio or video files from the Music Store during
6 the Class Period.

7 **DAMAGES CLASS**
8 **(For damages under the Clayton Act, 15 U.S.C. §15)**

9 32. All persons or entities in the United States (excluding federal, state and local
10 governmental entities, Apple, its directors, officers and members of their families) who purchased an
11 iPod directly from Apple during the Class Period.

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

14 34. Plaintiffs' claims are typical of the claims of the members of the Classes because
15 plaintiffs and all Class members were damaged by the same wrongful conduct of the defendant
16 alleged herein.

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

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

1 (g) the appropriateness of injunctive relief to restrain ongoing and future
2 violations of the law.

3 36. The claims of the plaintiffs are typical of the claims of the Classes, and plaintiffs have
4 no interest adverse to the interest of other members of the Classes.

5 37. Plaintiffs will fairly and adequately protect the interests of the Classes and have
6 retained counsel experienced and competent in the prosecution of complex class actions and antitrust
7 litigation.

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

17 **APPLE ENGAGES IN ILLEGAL TYING CONDUCT**

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

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

25 41. Online Music purchased from the Music Store, however, is in AAC format encoded
26 by Apple with DRM restrictions that Apple calls "FairPlay."

27 42. Apple encodes Online Music purchased from the Music Store with FairPlay-DRM
28 even as to: (i) public domain material; and (ii) music that the music labels and/or artists themselves

1 request be sold DRM-free, because doing so requires the consumer to use an iPod to transfer the
2 music directly to a Digital Music Player.

3 43. For the purposes of this Consolidated Complaint, the tied product is the iPod, and the
4 tying product is FairPlay-DRM Online Music purchased from the Music Store. Apple deliberately
5 makes the FairPlay-DRM music files purchased from the Music Store incapable of being played by
6 other Digital Music Players. Thus, consumers who have purchased Online Music from Apple will
7 have no choice but to buy an iPod if they want to play their music directly on a Digital Music Player.

8 44. After purchasing their Digital Music library from the Music Store, consumers are
9 locked into making all future Digital Music Player purchases from Apple. They might want to buy a
10 non-Apple Digital Music Player for a family member or to replace their original iPod, but to do so
11 would mean they could not utilize any of the songs they purchased from the Music Store in their new
12 Digital Music Player. As Josh Bernoff, principle analyst with Forrester Research stated, Apple's
13 "overwhelming market share is based in large part on its ability to lock people into that device."

14 45. Apple could license its FairPlay-DRM format to other manufacturers of Digital Music
15 Players, so that music purchased from the Music Store could be transferred directly to Digital Music
16 Players other than the iPod.

17 46. There are no technological limitations preventing the iPod from supporting WMA
18 playback. Apple outsources most of the production of the iPod to third party manufacturers in Asia.
19 One third party part used in the iPod is its "core processor," the Portal Player System-On-A-Chip.
20 The System-On-A-Chip by default supports the WMA format. Apple, however, deliberately
21 designed the iPod's software so that it would only play a single protected digital format, Apple's
22 FairPlay-modified AAC format. Deliberately disabling a desirable feature of a computer product is
23 known as "crippling" a product, and software that does this is known as "crippleware."

24 47. The software Apple has designed for the iPod, which disables the iPod's inherent
25 ability to play WMA format files, is a classic example of crippleware. By preventing the iPod from
26 playing WMA or any other protected music format besides FairPlay-DRM format, iPod owners only
27 option to purchase Online Music is to purchase from the Music Store. This conduct reinforces the
28 illegal tie-in violation of the federal and state antitrust laws.

1 48. In place of the Portal Player System-On-A-Chip, Apple uses the SigmaTel
2 STMP3550 in its low end iPod shuffles. Like the Portal Player System-On-A-Chip, the SigmaTel
3 STMP3550 was designed to decode and play WMA files and does indeed play them on every Digital
4 Music Player that contains the STMP3550 chip except the iPod. As in its higher end models,
5 Apple's crippleware operating system software prevents the iPod shuffle from playing WMA files.

6 49. The cost to Apple of licensing the WMA format would likely not exceed \$800,000
7 per year or less than two cents per iPod sold in 2006.

8 50. Apple has not licensed or given access to its FairPlay-DRM format to any other
9 Digital Music Player manufacturer, thereby ensuring two results – both of which are anticompetitive.
10 First, through the foregoing, Apple has ensured that the iPod is the only Digital Music Player that
11 can directly play songs purchased from the Music Store. Second, through the foregoing, Apple has
12 managed to ensure that owners of iPods wishing to purchase music files online to be directly played
13 on their iPod can only do so by purchasing these files at the Music Store.

14 51. Despite this anticompetitive restriction, RealNetworks, a rival seller of online digital
15 music recordings through its RealNetworks music store, managed to independently analyze the
16 firmware within the Apple iPod. As a result of this analysis, RealNetworks was able to discern the
17 necessary extra software code added by Apple to make downloaded songs playable on the iPod.
18 Armed with this knowledge, RealNetworks was able to insert a corresponding code of its own into
19 song files sold through its RealNetworks music store so that they too would be playable on the
20 Apple iPod.

21 52. Thus, on July 26, 2004, RealNetworks announced publicly that songs sold through its
22 online RealNetworks music store would now be playable on the Apple iPod, thereby giving iPod
23 owners a competitive outlet for their purchases of Online Music files. This announcement was
24 significant not only because it represented the first alternative to the stronghold that Apple's Music
25 Store had heretofore exerted as the sole supplier of downloaded digital music files that could be
26 played on the iPod, but also because RealNetworks began selling its digital online songs for as low
27 as 49 cents per track, well below the 99 cents per track charged by Apple's Music Store.

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1 53. Rather than embracing this competitive offering to iPod owners, Apple immediately
2 threatened RealNetworks and iPod users. On Thursday, July 29, 2004, merely four days after
3 RealNetworks' announcement, Apple issued its own public statement warning RealNetworks and
4 iPod users that "[w]e are stunned that RealNetworks has adopted the tactics and ethics of a hacker to
5 break into the iPod, and we are investigating the implications of their actions under the DMCA and
6 other laws. We strongly caution Real and their customers that when we update our iPod software
7 from time to time it is highly likely that Real's Harmony technology will cease to work with current
8 and future iPods."

9 54. True to its threat, by December 2004, Apple updated its iPod software to prevent
10 songs downloaded from RealNetworks music store (or any other Online Music store) from being
11 played on iPods. Thus, Apple continues to impede competition, and forces iPod users who wish to
12 buy music online to do so exclusively from Apple's Music Store.

13 55. In addition to the software change used to block music iPod owners from listening to
14 Online Music purchased from RealNetworks, at least twice Apple has changed iPod and Music Store
15 software, under the guise of "updating" it, to add new restrictions to music that customers previously
16 purchased from Apple. Consumers, locked into Apple's monopoly in the Online Music market, are
17 subject to such unannounced, unilateral, and one-sided changes to their rights to listen to the music
18 they purchased from Apple by Apple's enormous market power.

19 56. Apple's tying of the iPod to Online Music and Online Video constitutes a *per se*
20 violation of United States and California antitrust law. None of the anticompetitive conduct
21 described in this complaint has a legitimate business justification, and all of it is in violation of
22 antitrust law under the rule of reason.

23 57. Apple applies its FairPlay-DRM to Online Music sold through the Music Store even
24 though it admits that doing so serves no genuine antipiracy purpose. In a web-posting dated
25 February 6, 2007, Apple's CEO Steve Jobs conceded that "DRM's haven't worked, and may never
26 work, to halt music piracy."

27 58. These ongoing injuries can be halted and abated by an injunction that would compel
28 Apple to: (a) make Online Music and Online Video sold through the Music Store compatible with

1 Digital Music Players other than the iPod; and (b) make the iPod compatible with Online Music and
2 Online Video purchased on stores other than Music Store.

3 59. Apple has acted on grounds generally applicable to the Injunctive Relief Class,
4 thereby making final injunctive relief appropriate with respect to the Class as a whole. Such an
5 injunction would be of immense benefit to the plaintiffs, the Classes, and the general public while
6 imposing only a trifling burden upon Apple.

7 **IN EUROPE, APPLE'S MONOPOLY PRICING AND TYING CONDUCT HAS BEEN**
8 **THE TARGET OF FORMAL GOVERNMENT INVESTIGATIONS, PRIVATE**
9 **LAWSUITS, AND LEGISLATION SPECIFICALLY DESIGNED TO COUNTER**
10 **APPLE'S ANTICOMPETITIVE CONDUCT**

11 60. In France, a consumer rights organization has filed suit against Apple for deliberately
12 making the iPod and Online Music purchased from Music Store incompatible with competing
13 products.

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

23 62. Denmark's Minister of Culture plans on introducing in 2007 legislation similar to the
24 French law.

25 63. The Office of the Norwegian Consumer Ombudsman on July 6, 2006 ruled that Apple
26 violates Norwegian law by tying purchases of music from its Music Store to the purchase of an
27 Apple iPod, stating that "[t]he way Apple uses DRM is illegal." Using language that echoes the
28 American common law standard of an unconscionable contract, Ombudsman Bjørn Erik Thon ruled:

[Apple] goes to great lengths to ensure that its standard customer contract
protects the company's own interest. . . . "The contracts are both vague and hard to

1 understand for the customers, and they're clearly unbalanced to disfavor the
2 customer. The consumers are clearly the inferior partner in the contract, and this in
3 itself is illegal" "[Apple's restrictive] technology renders the customers without
rights in dealing with a company which on a whim can dictate what kind of access
customers will have to products they have already paid for"

4 64. Norway may begin levying fines or shut down Apple's Norway iTunes store if it does
5 not cease violating Norwegian law by a September 30, 2007 deadline.

6 65. In the Netherlands, the Consumer Ombudsman has also filed suit against what it calls
7 Apple's "illegal practices" and "abuse of dominant market position" noting that "[w]hat we want
8 from Apple is that they remove the limitations that prevent you from playing a song you download
9 from iTunes on any player other than an iPod When you buy a music CD it doesn't play only
10 on players made by Panasonic. People who download a song from iTunes shouldn't be bound to an
11 iPod for the rest of their lives."

12 66. Similar investigations of Apple's anticompetitive practices in tying the iPod to Music
13 Store downloads are underway in Finland, Sweden, Denmark, and Germany.

14 67. The European Union Consumer Affairs Commissioner criticized Apple on March 12,
15 2007, saying "Do you think it's fine that a CD plays in all CD players but that a song purchased from
16 iTunes only plays in an iPod? I don't."

17 68. Several of the above European governments issued a joint statement saying "[w]e
18 believe consumers have a right to play material purchased online on a portable device of their own
19 choice. Contract clauses that make this impossible or too inconvenient are unfair and should be
20 revoked."

21 69. European and British antitrust authorities are currently investigating Apple's pricing
22 practices in the European Union. Leveraging its worldwide monopoly power in the Online Music
23 market, Apple has set the price of music downloads in the United Kingdom higher than countries
24 that use the Euro as their currency, which in turn are priced higher than downloads in the United
25 States, and maintains these higher prices by placing technological restrictions preventing European
26 residents from purchasing music from Apple's non-EU Music Store sites.

27 70. On April 3, 2007 the European Commission issued a press release announcing it had
28 sent Apple a "Statement of Objections" regarding its anticompetitive price-discrimination policies.

1 The press release noted that “Statements of Objections are a formal step in European antitrust
2 investigations.”

3 71. Following these governmental investigations and public denunciations, and after
4 Apple’s repeated motions to dismiss the antitrust claims brought by plaintiffs were denied by this
5 Court, Apple announced on April 2, 2007, that it would begin selling a limited number of songs
6 without the FairPlay-DRM restrictions, but for the higher price of \$1.29, while continuing to sell the
7 same songs with the FairPlay-DRM for 99 cents. Apple also offered to remove FairPlay DRM on
8 songs consumers had already purchased, but only if the consumer paid the 30 cents difference in
9 price for each song, and only for the limited number of songs it sells without FairPlay DRM.

10 **ANTITRUST INJURY TO CONSUMERS**

11 72. Through the unlawful acts and practices described above Apple has harmed
12 competition, consumers and innovation by causing consumers to pay supracompetitive prices for
13 iPods. Those practices, described herein, have also allowed Apple to obtain and maintain illegal
14 monopolies in the three Product Markets.

15 73. By preventing consumers who have purchased music files from Music Store from
16 playing their music on its competitors’ Digital Music Players, Apple has been able to charge
17 purchasers of the iPod a supracompetitive price.

18 74. Likewise, by preventing owners of iPods from buying music from any Online Music
19 retailer other than Music Store, Apple deters consumers from even considering doing business with
20 its competitors’ music and video stores, allowing it to monopolize these markets, and further exclude
21 competing Digital Music Players from the market, lock consumers into iPod and iTunes, and charge
22 supracompetitive prices for the iPod.

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

3 76. Apple's anticompetitive conduct has deterred the development of competing
4 products, damaging consumers by depriving them of a choice of products with different and possibly
5 superior sets of features.

6 77. Normally markets for consumer electronic goods such as Digital Music Players are
7 characterized by intense competition and narrow profit margins. Apple's pricing in the Digital
8 Music Player market, by contrast, is exactly that of a monopolist, excessive and arbitrary. For
9 example, in June 2006 the only difference between the 1GB and 4GB models of the iPod nano was
10 the capacity of their NAND flash memory parts. At spot prices in the NAND flash memory market
11 at the time, the 1GB part cost approximately \$4.15, while the 4GB part cost approximately \$9.67.
12 Nonetheless, Apple charged an additional one hundred dollars for the 4GB model.

13 78. Plaintiffs and the Classes have been injured by this anticompetitive conduct and will
14 continue to suffer injury unless the relief prayed for herein is granted.

15 **COUNT I: TYING**

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

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

19 79. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
20 above on behalf of the Classes.

21 80. Apple has substantial market power in the Online Music and Online Video markets.

22 81. All of these markets are for goods and not services.

23 82. There is no appropriate or legitimate business justification for Apple's use of
24 technological restrictions to force those who purchase Online Music and Online Video from Music
25 Store to also purchase only Apple's Digital Music Players that would counterbalance the clear
26 anticompetitive effects of its tying conduct, including the foreclosure of competition in the Digital
27 Music Player market.

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

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

8 92. The anticompetitive conduct described herein has damaged plaintiffs and the alleged
9 Classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

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

12 93. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
13 above on behalf of the Classes.

14 94. Through the actions described herein, Apple has willfully acquired and maintained
15 monopoly power in the Online Video market. This conduct has harmed competition in that market,
16 making the supply and selection of products available lower than they would be in a competitive
17 market. The number and effectiveness of competitors have also been diminished by Apple's
18 conduct.

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

21 96. The anticompetitive conduct described herein has damaged plaintiffs and the alleged
22 Classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

23 **COUNT III: ATTEMPTED MONOPOLIZATION**

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

25 **Violations Resulting from Unlawful Attempted**
26 **Monopolization of the Digital Music Player Market**

27 97. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
28 above on behalf of the Classes.

28 98. Apple has acted with specific intent to monopolize the Digital Music Player market.

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

7 100. This conduct has harmed competition in that market, making the supply and selection
8 of products available lower than it would be in a competitive market. Apple's unlawful attempted
9 monopolization has also reduced the number and effectiveness of competitors in the Digital Music
10 Player market and forced consumers to pay higher prices in the Digital Music Player market than
11 they would in a competitive market.

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

14 102. The anticompetitive conduct described herein, if not halted and abated, will damage
15 plaintiffs and the alleged Classes, and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

16 **Violations Resulting from the Unlawful Attempted**
17 **Monopolization of the Online Music Market**

18 103. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
19 above on behalf of the Classes.

20 104. Apple has acted with specific intent to monopolize the Online Music market.

21 105. There was and is a dangerous possibility that Apple will succeed in its attempt to
22 monopolize the Online Music market because Apple controls a large percentage of that market and
23 has the ability and actually does exclude its competitors through use of anticompetitive technological
24 restrictions on its products. Further success in excluding competitors from the Online Music market
25 will allow Apple to obtain an illegal monopoly over the Online Music market.

26 106. This conduct has harmed competition in that market, making the supply and selection
27 of products available lower than it would be in a competitive market. Apple's unlawful attempted
28

1 monopolization has also reduced the number and effectiveness of competitors in the Online Music
2 market.

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

5 108. The anticompetitive conduct described herein has damaged plaintiffs and the alleged
6 Classes and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

7 **Violations Resulting from the Unlawful**
8 **Attempted Monopolization of the Online Video Market**

9 109. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
10 above on behalf of the Classes.

11 110. Apple has acted with specific intent to monopolize the Online Video market.

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

17 112. This conduct has harmed competition of the Online Video market, making the supply
18 and selection of products available lower than they would be in a competitive market. Apple's
19 unlawful attempted monopolization has also reduced the number and effectiveness of competitors in
20 the Online Video market.

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

23 114. The anticompetitive conduct described herein, if not halted and abated, will damage
24 plaintiffs and the alleged classes, and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

25 **COUNT IV**

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

27 115. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
28 above on behalf of the Classes.

1 116. Apple's actions as described above constituted an unreasonable restraint of trade or
2 commerce throughout California and the rest of the United States in violation of the Cartwright Act,
3 §§16270, *et seq.* of the California Business and Professions Code.

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

7 118. Apple's conduct is continuing and unless equitable relief is granted, artificially
8 inflated prices for Portable Music Players will continue unabated.

9 **COUNT V**

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

12 119. Plaintiffs re-allege and incorporate by reference each of the allegations set forth
13 above on behalf of the Classes.

14 120. The conduct alleged in this Consolidated Complaint constitutes unlawful, unfair, and
15 fraudulent business acts and practices within the meaning of the California Unfair Competition Law,
16 §§17200, *et seq.* of the California Business and Professions Code. Plaintiffs and the Classes have
17 suffered injury in fact and lost money or property as a result of Apple's violations of law and
18 wrongful conduct.

19 121. Apple's actions are unlawful and unfair because it has violated, *inter alia*, the
20 Sherman Antitrust Act, the Cartwright Act, the Consumers Legal Remedies Act and because it has
21 monopolized the markets for Online Music, Online Video, and Digital Music Players in violation of
22 California common law.

23 122. Apple's actions are unfair because in its pursuit of monopoly pricing it has made its
24 products less useful to consumers and prevented them from choosing which companies to do
25 business within the relevant markets based on the merits of each company's products. Moreover,
26 there is no legitimate business justification for Apple's conduct, and any business justification is
27 further outweighed by the harm Apple's conduct has caused to consumers and competitors.
28

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

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

6 D. That the conduct alleged herein is in violation of the Consumer Legal Remedies Act;
7 and appropriate damages and injunctive relief be granted pursuant to this law;

8 E. For an order permanently restraining and enjoining Apple from continuing the unfair
9 and anticompetitive activities alleged herein;

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

12 G. That plaintiffs and the Classes recover their costs of suit, including reasonable
13 attorneys' fees and pre- and post-judgment interest;

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

16 I. Awarding plaintiffs and the Classes their expenses and costs of suit, including
17 reasonable attorneys' fees, to the extent provided by law; and

18 J. That plaintiffs and the Classes are granted such other, further, and different relief as
19 the nature of the case may require or as may be determined to be just, equitable, and proper by this
20 Court.

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JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all issues so triable.

DATED: April 19, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 19, 2007.

s/ BONNY E. SWEENEY
BONNY E. SWEENEY

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)