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7  
 8 Attorneys for Defendant  
 APPLE INC.

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13 **THE APPLE IPOD iTUNES ANTI-**  
 14 **TRUST LITIGATION**

**Case No. C 05 00037 JW**

**DECLARATION OF TRACY M.  
 STRONG IN SUPPORT OF APPLE'S  
 OPPOSITION TO MOTION TO  
 COMPEL PRODUCTION OF  
 DOCUMENTS "RELATING TO CLASS  
 CERTIFICATION"**

Date: January 16, 2008  
 Time: 9:30 a.m.  
 Courtroom: 4, 5<sup>th</sup> Floor  
 Judge: Magistrate Judge Richard Seeborg

28

1 I, Tracy M. Strong, hereby declare as follows:

2 1. I am an associate in the law firm of Jones Day, located at 555 California Street,  
3 26<sup>th</sup> Floor, San Francisco, CA 94104. I am a member in good standing of the State Bar of  
4 California, and one of the attorneys of record in this case for defendant. I have personal  
5 knowledge of the facts set forth herein and, if called as a witness, I could and would testify  
6 competently thereto. I make this declaration in support of defendant's opposition to plaintiffs'  
7 motion to compel production of documents.

8 2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' First Set of  
9 Requests for the Production of Documents and Things Directed At Defendant Apple Computer,  
10 Inc., from *Slattery v. Apple Computer, Inc.*, C 05-00037 JW, dated January 30, 2006. After  
11 plaintiff Slattery withdrew from the case and was replaced by plaintiffs Charoensak and Rosen,  
12 these discovery requests were deemed to have been propounded by the *Charoensak* plaintiffs.

13 3. In response to the *Charoensak* plaintiffs' document requests, Apple produced  
14 redacted "iTunes Music Store Business P&L" statements through the fourth quarter of fiscal year  
15 2006 showing unit sales numbers for iTunes Store songs. Apple also produced a document  
16 showing the quarterly unit sales numbers for iPods sold directly by Apple in the United States  
17 through the fourth quarter of fiscal year 2006. The *Charoensak* plaintiffs did not object to the  
18 redactions, nor did they seek any further financial information.

19 4. On July 16, 2007, Apple produced in response to document request nos. 10 and 19  
20 propounded by plaintiff Tucker updated unit sales information beyond what it had previously  
21 produced in *Charoensak*, including unit sales numbers for iTS music and video files and monthly  
22 iPod unit sales broken down by type of iPod through period six of fiscal year 2007.

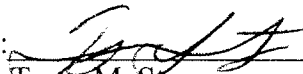
23 5. On September 26, 2007, Apple produced to plaintiffs documents it had previously  
24 produced as a third-party in the *Napster* litigation. These documents included non-redacted  
25 iTunes Music Store Results and "Business P&L" statements through the fourth quarter of fiscal  
26 year 2004, showing revenue, cost and margin numbers for iTS.

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6. On December 19, 2007, I called Greg Weston, counsel for plaintiffs, and offered to produce unredacted versions of the previously produced iTunes Business P&L statements as a compromise to avoid burdening the Court with this motion, but plaintiffs' counsel did not accept.

I declare under penalty of perjury under the laws of the United States and California that the foregoing is true and correct. Executed this 20th day of December, 2007.

By:   
Tracy M. Strong

SFI-576137v1

Exhibit A

1/30/06 SV  
Sub 50

1 Michael D. Braun (#167416)  
2 BRAUN LAW GROUP, P.C.  
3 12400 Wilshire Boulevard,  
4 Suite 920  
5 Los Angeles, CA 90025  
6 Telephone: (310) 442-7755  
7 Facsimile: (310) 442-7756

8 Roy A. Katriel (*pro hac vice*)  
9 THE KATRIEL LAW FIRM  
10 1101 30<sup>TH</sup> Street, NW  
11 Suite 500  
12 Washington, DC 20007  
13 Telephone: (202) 625-4342

14 Jacqueline Sailer  
15 Eric J. Belfi (*pro hac vice*)  
16 MURRAY, FRANK & SAILER LLP  
17 275 Madison Avenue  
18 Suite 801  
19 New York, NY 10016-1101  
20 Telephone: (212) 682-1818  
21 Facsimile: (212) 682-1892

22 *Counsel for Plaintiff*

23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 SAN JOSE DIVISION

26 THOMAS WILLIAM SLATTERY,  
27 Individually and on Behalf of All Others  
28 Similarly Situated,

Plaintiff,

v.

APPLE COMPUTER, INC..

Defendants.

No. C-05-00037 JW

**PLAINTIFF'S FIRST SET OF REQUESTS  
FOR THE PRODUCTION OF  
DOCUMENTS AND THINGS DIRECTED  
AT DEFENDANT APPLE COMPUTER,  
INC,**

Propounding Party: Plaintiff Thomas William Slattery

Responding Party: Defendant Apple Computer, Inc.

Set: One

1 Pursuant to Federal Rule of Civil Procedure 33 and this Court's Case Management Order,  
2 Plaintiff Thomas William Slattery, by and through his undersigned counsel, hereby propounds this  
3 First Set of Interrogatories on Defendant Apple Computer, Inc. Defendant Apple Computer  
4 Corporation is directed to serve its responses to these interrogatories within 30 days after service.  
5

6 **DEFINITIONS**

- 7 1. "YOU," "YOUR," "YOURSELF" OR "DEFENDANT" means Apple  
8 Computer, Inc., and all persons acting or purporting to act on its behalf, including attorneys.  
9 2. "iTMS" means the iTunes ONLINE MUSIC STORE.  
10 3. "ONLINE MUSIC STORE" means any place on the Internet from which  
11 DIGITAL MUSIC FILES may be purchased or acquired.  
12 4. "iPod" refers to the PORTABLE HARD DRIVE DIGITAL MUSIC PLAYER  
13 manufactured by Apple and all versions of that product.  
14 5. "PORTABLE HARD DRIVE DIGITAL MUSIC PLAYER" means any  
15 device that can be easily transported, is capable of playing a DIGITAL MUSIC FILE, employs a  
16 hard drive within the device, but does not employ external media such as compact discs, cartridges,  
17 cassettes, etc.  
18 6. "DIGITAL MUSIC FILE" means a computer file regardless of format,  
19 including without limitation, AAC, MP3, Real Audio, WAV, WMA, and MIDI, that allows music to  
20 be played on a computer or other device that utilizes computer software (e.g., a PORTABLE  
21 DIGITAL MUSIC PLAYER).  
22 7. The term "RIP" or "RIPPING" is used herein in the same manner as used in page 1 of  
23 Apple Computer, Inc.'s Reply In Support of Its motion to Dismiss Class Action Complaint filed in  
24 this action.  
25 8. "APPLE" means Apple Computer, Inc., the defendant in this action.

26 **DOCUMENT REQUESTS**

- 27 1. Provide all versions of the iTMS Terms of Service Agreements that were in effect  
28 during any portion of the time period from April 28, 2003 to the present, as well as all versions of

1 any documents setting forth the policies, practices, licenses and/or agreements applicable to the use  
2 of the iTMS by consumers during the period April 28, 2003 to the present.

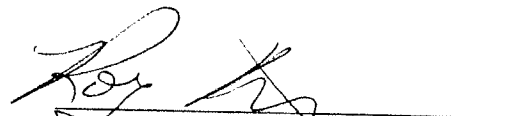
3  
4 2. Documents sufficient to show the number of DIGITAL MUSIC FILES sold by iTMS  
5 during the period April 28, 2003 to the present.

6 3. For each different model of iPod sold by Apple, documents sufficient to show the  
7 number of iPod units sold directly by Apple during the period April 28, 2003 to the present.

8 4. Documents sufficient to show the number of iPod units that have received DIGITAL  
9 MUSIC FILE downloads purchased from iTMS during the period April 28, 2003 to the present.

10 Dated: January 30, 2006

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12  
13 Respectfully submitted:

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16 

17 Roy A. Katriel (*pro hac vice*)  
18 THE KATRIEL LAW FIRM  
19 1101 30<sup>TH</sup> Street, NW  
20 Suite 500  
21 Washington, DC 20007  
22 Telephone: (202) 625-4342

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28 Counsel for Plaintiff

1/30/06 JV  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THOMAS WILLIAM SLATTERY,  
Individually and on Behalf of All Others  
Similarly Situated,

No. C-05-00037 JW

Plaintiff,

**PROOF OF SERVICE BY HAND  
DELIVERY**

v.

APPLE COMPUTER, INC..

Defendants.

I, Roy A. Katriel, declare that I am a citizen of the United States of America, am over the age of eighteen years, and am not a party to the above-entitled action. My business address is The Katriel Law Firm, 1101 30<sup>th</sup> Street, NW Suite 500 in Washington, DC 20007. I further declare that on January 30, 2006, I delivered via hand delivery personal service the following documents:

**PLAINTIFF'S FIRST SET OF INTERROGATORIES DIRECTED AT DEFENDANT APPLE COMPUTER, INC.**

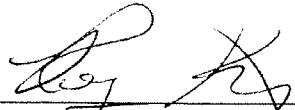
**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS DIRECTED AT DEFENDANT APPLE COMPUTER, INC.**

on the following individuals:

Robert A. Mittelstaedt, Esq.  
JONES DAY  
555 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 30, 2006 in San Francisco, California.

  
\_\_\_\_\_  
Roy A. Katriel