

1 Robert A. Mittelstaedt #060359
 Craig E. Stewart #129530
 2 JONES DAY
 555 California Street, 26th Floor
 3 San Francisco, CA 94104
 Telephone: (415) 626-3939
 4 Facsimile: (415) 875-5700
 ramittelstaedt@jonesday.com
 5 cestewart@jonesday.com

6 Attorneys for Defendant
 APPLE INC.

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

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

**Case No. C 05-00037 JW
 C 06-04457 JW**

**DECLARATION OF MICHAEL SCOTT IN
 SUPPORT OF APPLE'S MEMORANDUM
 IN OPPOSITION TO MOTION FOR
 CLASS CERTIFICATION**

Date: December 15, 2008

Time: 9:00 A.M.

Place: Courtroom 8, 4th Floor

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1 I, Michael Scott, declare as follows:

2 1. I am an associate in the law firm of Jones Day, located at 555 California Street,
3 26th Floor, San Francisco, CA 94104. I am a member in good standing of the State Bar of
4 California (#255282) and represent Apple Inc. in this case. I make this declaration in support of
5 Apple's Opposition to Plaintiffs' Motion for Class Certification. I have personal knowledge of
6 the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of Thomas O. Barnett,
8 *Interoperability between Antitrust and Intellectual Property*, Sept. 13, 2006,
9 <http://www.usdoj.gov/atr/public/speeches/218316.htm>, printed on October 16, 2008.

10 3. Attached hereto as Exhibit 2 is a true and correct copy of Michelle Megna,
11 *APPLE'S SHINING MOMENT*, May 11, 2003, [http://www.nydailynews.com/archives/lifestyle/
12 2003/05/11/2003-05-11_apple_s_shining_moment__the_.html?print=1&viewall=1](http://www.nydailynews.com/archives/lifestyle/2003/05/11/2003-05-11_apple_s_shining_moment__the_.html?print=1&viewall=1), printed on
13 October 16, 2008.

14 4. Attached hereto as Exhibit 3 is a true and correct copy of Tom Merrit, *Top 10*
15 *products*, http://www.cnet.com/1990-11136_1-6312246-1.html, printed on October 16, 2008.

16 5. Attached hereto as Exhibit 4 is a true and correct copy of Peter Lewis, *Product of*
17 *the Year Apple iTunes Music Store*, Dec. 22, 2003, [http://money.cnn.com/magazines/fortune/
18 fortune_archive/2003/12/22/356108/](http://money.cnn.com/magazines/fortune/fortune_archive/2003/12/22/356108/), printed on October 16, 2008.

19 6. Attached hereto as Exhibit 5 is a true and correct copy of Ed Oswald, *Napster*
20 *Blames Microsoft for Failures*, March 1, 2006, [http://www.betanews.com/article/print/Napster_
21 Blames_Microsoft_for_Failures/1141237255](http://www.betanews.com/article/print/Napster_Blames_Microsoft_for_Failures/1141237255), printed on October 16, 2008.

22 7. Attached hereto as Exhibit 6 is a true and correct copy of Jon Healy, *Napster and*
23 *Rhapsody compete for headlines*, Sept. 20, 2006, [http://opinion.latimes.com/bitplayer/2006/09/
24 napster_and_rha.html](http://opinion.latimes.com/bitplayer/2006/09/napster_and_rha.html), printed on October 16, 2008.

25 8. Attached hereto as Exhibit 7 is a true and correct copy of Todd Bishop, *Software*
26 *Notebook: Microsoft Zune doesn't do 'PlaysForSure'*, Sept. 18, 2006,
27 http://seattlepi.nwsourc.com/business/285407_software18.html, printed on October 16, 2008.

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1 9. Attached hereto as Exhibit 8 is a true and correct copy of Reuters, *Zune Launch*
2 *sparks DRM fallout*, Nov. 20, 2006, <http://www.mp3.com/news/stories/7248.html>, printed on
3 October 16, 2008.

4 10. Attached hereto as Exhibit 9 is a true and correct copy of an Apple support
5 webpage entitled *iTunes 3: How to Convert Song to a Different Format*, printed from
6 <http://support.apple.com/kb/HT2427> on October 15, 2008.

7 11. Attached hereto as Exhibit 10 are true and correct copies of Apple support
8 webpages explaining how to burn and import audio CDs, printed from [http://docs.info.apple.com/](http://docs.info.apple.com/article.html?path=iTunesWin/7.6/en/15323.html)
9 [article.html?path=iTunesWin/7.6/en/15323.html](http://docs.info.apple.com/article.html?path=iTunesWin/7.6/en/15323.html) and <http://support.apple.com/kb/HT1473> on
10 October 16, 2008.

11 12. Attached hereto as Exhibit 11 is a true and correct copy of a WikiAnswers
12 webpage, printed from [http://wiki.answers.com/Q/Can_you_download_music_from_iTunes](http://wiki.answers.com/Q/Can_you_download_music_from_iTunes_to_a_Sandisk_MP3_player)
13 [_to_a_Sandisk_MP3_player](http://wiki.answers.com/Q/Can_you_download_music_from_iTunes_to_a_Sandisk_MP3_player) on October 15, 2008.

14 13. Attached hereto as Exhibit 12 is a true and correct copy of Conseil de la
15 Concurrence [French Republic Competition Council], decision no. 04-D-54, Nov. 9, 2004,
16 <http://www.conseil-concurrence.fr/pdf/avis/04d54.pdf>, printed on October 15, 2008.

17 14. Attached hereto as Exhibit 13 is a true and correct copy of an English translation
18 of Exhibit 12 prepared by Sébastien Evrard and Cecelia Kye, an associate and consultant,
19 respectively, in the Brussels office of Jones Day, in November and December, 2004.

20 15. Attached hereto as Exhibit 14 are true and correct copies of price listings for the
21 2GB SanDisk Sansa Express [<http://go.shopsansa.com/content/express>]; the 2GB Creative MuVo
22 T200 [[http://us.creative.com/products/product.asp?category=213&subcategory=215&product](http://us.creative.com/products/product.asp?category=213&subcategory=215&product=17474)
23 [=17474](http://us.creative.com/products/product.asp?category=213&subcategory=215&product=17474)]; the 16GB SanDisk Sansa View [<http://go.shopsansa.com/content/view>]; and the 16GB
24 Sony Walkman Video [[http://www.sonystyle.com/webapp/wcs/stores/servlet/ProductDisplay?](http://www.sonystyle.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921665368511)
25 [catalogId=10551&storeId=10151&langId=-1&productId=8198552921665368511](http://www.sonystyle.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921665368511)], each printed
26 on October 16, 2008.

27 16. Attached hereto as Exhibit 15 is a true and correct copy of transcript excerpts of
28 the deposition of Thomas William Slattery, taken in this matter on January 30, 2006.

