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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE APPLE IPOD ITUNES ANTI-TRUST)
LITIGATION)

Lead Case No. C-05-00037-JW(RS)

CLASS ACTION

This Document Relates To:)
ALL ACTIONS.)

AMENDED [PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION AND
APPOINTING COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP AND THE
KATRIEL LAW FIRM AS CO-LEAD
CLASS COUNSEL

1 This matter came before the undersigned Honorable James Ware of the above-entitled Court
2 upon Plaintiffs' motion for class certification. The Court having considered the motion and all other
3 papers filed concerning that motion, and all other pertinent documents and pleadings filed in this
4 action,

5 NOW, therefore, it is hereby ORDERED and ADJUDGED:

6 1. Plaintiffs' motion for class certification is hereby granted.

7 2. The following class is hereby certified pursuant to Rule 23(b)(2) and (3) of the
8 Federal Rules of Civil Procedure:

9 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 since April 28, 2003 purchased an iPod directly from Apple.

11 3. The Court also certifies Plaintiffs Melanie Tucker, Mariana Rosen, and Somtai Troy
12 Charoensak as Class Representatives. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the
13 following law firms as Co-Lead Class Counsel: Coughlin Stoia Geller Rudman & Robbins LLP and
14 The Katriel Law Firm.

15 4. This Court bases this certification and appointment order on the following findings,
16 all of which are amply supported by Plaintiffs' well-pleaded allegations, Defendants' own
17 documents, and expert testimony:

18 (a) **Numerosity.** Plaintiffs have demonstrated that "the class is so numerous that
19 joinder of all members is impracticable" within the meaning of Fed. R. Civ. P. 23(a)(1).

20 (b) **Commonality.** Fed. R. Civ. P 23(a)(2) requires that there be "questions of law
21 or fact common to the class." Plaintiffs have satisfied the commonality requirement here by
22 identifying, *inter alia*, the following common questions of law and fact:

- 23 (i) the definition of the relevant markets;
24 (ii) Apple's market power within these markets;
25 (iii) whether Apple monopolized and continues to monopolize the relevant
26 markets in violation of Section 2;

1 (iv) whether Apple attempted to monopolize and continues to attempt to
2 monopolize the relevant markets in violation of Section 2;

3 (v) whether Apple’s technological tie-in violated Section 1;

4 (vi) whether Defendant’s conduct caused prices of iPods to be set at
5 supracompetitive levels;

6 (vii) whether Defendant’s conduct injured Plaintiffs and other members of
7 the class and, if so, the appropriate class-wide measure of damages; and

8 (viii) the appropriateness of injunctive relief to restrain ongoing and future
9 violations of the law.

10 (c) **Typicality.** Pursuant to Fed. R. Civ. P. 23(a)(3), Plaintiffs must also show that
11 “the claims or defenses of the representative parties are typical of the claims or defenses of the
12 class.” The same common questions identified above also serve to satisfy Plaintiffs’ burden on
13 typicality. The Court accordingly finds that typicality is met here because Plaintiffs and Class
14 Members seek the same remedies for similar harms under the same legal theories.

15 (d) **Adequacy.** Pursuant to Fed. R. Civ. P. 23(a)(4), the Court finds that the
16 “representative parties will fairly and adequately represent the [C]lass.” The interests of the
17 Plaintiffs are fully aligned with those of the Class, and their chosen counsel are fully capable of
18 effectively prosecuting this litigation.

19 5. The Court further finds that certification is proper under Rule 23(b)(3). The common
20 questions identified above predominate over any individualized issues concerning the allocation of
21 damages. In other words, “[a] common nucleus of facts and potential legal remedies dominates this
22 litigation.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Further, a class action
23 is superior to a series of potentially millions of individual suits. Even if it were feasible for
24 individual Class Members to bring suit, it would be inefficient to re-litigate the numerous common
25 questions in case after case. Moreover, the Court is unaware of any other litigation concerning the
26 controversy at issue herein, and the Court foresees no manageability problems that would militate
27 against class certification.

1 6. The Court further finds that certification is proper under Rule 23(b)(2). Apple has
2 acted or refused to act in a manner generally applicable to the class as a whole. *Westways World*
3 *Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003).

4 IT IS SO ORDERED.

5 DATED: _____

THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

7 Submitted by:

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C-05-00037-JW(RS)

1 CERTIFICATE OF SERVICE

2 I hereby certify that on November 17, 2008, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail
4 addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have
5 mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF
6 participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on November 17, 2008.

9 s/ BONNY E. SWEENEY
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