

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THE APPLE IPOD ITUNES ANTI-TRUST LITIGATION,	)	Case No. C 07-6507 JW
	)	
This Document Relates To:	)	[PROPOSED] ORDER GRANTING
	)	PLAINTIFF'S MOTION FOR CLASS
<i>Somers v. Apple, Inc.</i> , Case No. C 07-6507 JW,	)	CERTIFICATION AND APPOINTING
	)	ZELDES & HAEGGQUIST, LLP AND
	)	MEHRI & SKALET PLLC AS CO-LEAD
	)	CLASS COUNSEL
	)	

1 This matter came before the undersigned Honorable James Ware of the above-entitled Court  
2 upon plaintiff's 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. Plaintiff's 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 and entities in the United States (excluding federal, state and local  
10 governmental entities, Apple, its directors, officers and members of their families)  
11 that from December 31, 2003 to the present ("Class Period") purchased an Apple  
12 iPod indirectly from Apple for their own use and not for resale.

13 3. The Court also certifies plaintiff Stacie Somers as the Class Representative. Pursuant  
14 to Fed. R. Civ. P. 23(g), the Court appoints the following law firms as Co-Lead Class Counsel:  
15 Zeldes & Haeggquist, LLP and Mehri & Skalet, PLLC.

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

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

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

24 (i) the definition of the relevant markets;

25 (ii) Apple's market power within these markets;

26 (iii) whether Apple monopolized and continues to monopolize the relevant  
27 markets in violation of Section 2 of the Sherman Act;

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

1 (v) whether Apple’s technological tie-violates Section 1 of the Sherman  
2 Act and California’s Cartwright Act;

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

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

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

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

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

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

27 \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Good Cause Appearing Therefore: Plaintiff’s motion for class certification is granted, the class as defined above is certified, plaintiff Stacie Somers is certified as the Class Representative and the law firms of Zeldes & Haeggquist, LLP and Mehri & Skalet, PLLC are appointed Co-Lead Class Counsel.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE JAMES WARE  
UNITED STATES DISTRICT JUDGE

Submitted by:

ZELDES & HAEGGQUIST, LLP  
HELEN I. ZELDES  
ALREEN HAEGGQUIST  
655 West Broadway, Suite 1410  
San Diego, CA 92101  
Telephone: 619/955-8218  
Fax: 619/342-7878  
helenz@zhlaw.com  
alreenh@zhlaw.com

MEHRI & SKALET, PLLC  
STEVEN A. SKALET  
CRAIG L. BRISKIN  
1250 Connecticut Ave NW, Suite 300  
Washington, DC 20036  
Telephone: 202/822-5100  
Fax: 202/822-4997  
sskalet@findjustice.com  
cbriskin@findjustice.com

Attorneys for Plaintiff Stacie Somers

1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 23, 2009, I electronically filed the foregoing with the Clerk  
3 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 February 23, 2009.

9 s/ Helen I. Zeldes

10 HELEN I. ZELDES

11 ZELDES & HAEGGQUIST, LLP  
12 HELEN I. ZELDES  
13 ALREEN HAEGGQUIST  
14 655 West Broadway, Suite 1410  
San Diego, CA 92101  
Telephone: 619/955-8218  
Fax: 619/342-7878

15 Email Addresses: helenz@zhlaw.com  
16 alreenh@zhlaw.com

1 **MAILING INFORMATION FOR CASE C 07-06507**

2

3 **Electronic Mail Notice List**

4 The following are those who are currently on the list to receive e-mail notices for this case.

- 5 • **Craig L. Briskin**  
cbriskin@findjustice.com, Pleadings@findjustice.com
- 6 • **Alreen Haeggquist**  
alreenh@zhlaw.com
- 7 • **Robert Allan Mittelstaedt**  
ramittelstaedt@jonesday.com, ybennett@jonesday.com
- 8 • **Tracy Strong**  
tstrong@jonesday.com, dharmon@jonesday.com
- 9 • **Elaine Wallace**  
rchavez@jonesday.com, ewallace@jonesday.com, clok@jonesday.com
- 10 • **Helen I. Zeldes**  
helenz@zhlaw.com

11

12

13

14

15 **Manual Notice List**

16 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).

17 **Steven A. Skalet**  
18 Mehri & Skalet, PLLC  
19 1250 Connecticut Avenue NW, Suite 300  
Washington, DC 20036



1 **Manual Notice List**

2 The following is the list of attorneys who are not on the list to receive e-mail notices for this case  
3 (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.

4 Todd David Carpenter  
Bonnett, Fairbourn, Friedman, & Balint  
5 2901 N. Central Avenue  
Suite 1000  
6 Phoenix, AZ 85012

7 Elaine A. Ryan  
Bonnett Fairbourn Friedman & Balint, P.C  
8 2901 N. Central Avenue  
Suite 1000  
9 Phoenix, AZ 85012

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28