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20 Co-Lead Counsel for Plaintiffs

21 [Additional counsel appear on signature page.]

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

25 THE APPLE IPOD ITUNES ANTI-TRUST) 26 LITIGATION) 27 _____) 28 This Document Relates To:) ALL ACTIONS.) _____)	Lead Case No. C-05-00037-JW(RS) <u>CLASS ACTION</u> DECLARATION OF THOMAS R. MERRICK IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' RULE OF REASON CLAIMS
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Judge: Hon. James Ware
 Date: October 5, 2009
 Time: 9:00 a.m.
 Ctrm: 8 – 4th Floor

1 I, Thomas R. Merrick, hereby declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California and am associated with the law firm of Coughlin Stoia Geller Rudman & Robbins LLP. I
4 have personal knowledge of the matters stated herein, and, if called upon, I could and would
5 competently testify thereto.

6 2. I am Co-Lead Counsel on behalf of Melanie Tucker, Mariana Rosen, and Somtai
7 Troy Charoensak (collectively, "Plaintiffs") in the above-captioned action.

8 3. I submit this declaration in support of Plaintiffs' Opposition to Defendant's Motion
9 for Judgment on the Pleadings as to Plaintiffs' Rule of Reason Tying Claims.

10 4. Attached is a true and correct copy of the following exhibit:

11 Exhibit 1: Christine A. Varney, Asst. Att'y Gen., Antitrust Div., U.S. D.O.J. Remarks
12 as Prepared for the United States Chamber of Commerce: Vigorous Antitrust
Enforcement in this Challenging Era (May 12, 2009).

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct. Executed this 27th day of August, 2009, at San Diego, California.

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s/ Thomas R. Merrick
THOMAS R. MERRICK

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2009, 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 August 27, 2009.

s/ Thomas R. Merrick
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