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11 Co-Lead Counsel for Plaintiffs

12 [Additional counsel appear on signature page.]

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

| | |
|---------------------------------------|------------------------------------|
| 16 THE APPLE IPOD ITUNES ANTI-TRUST) | Lead Case No. C-05-00037-JW(RS) |
| 17 LITIGATION) | |
| 18 _____) | <u>CLASS ACTION</u> |
| 19 This Document Relates To:) | DECLARATION OF THOMAS R. |
| 20 ALL ACTIONS.) | MERRICK IN SUPPORT OF PLAINTIFFS' |
| _____) | MOTION TO MODIFY INJUNCTIVE |
| | RELIEF CLASS DEFINITION TO INCLUDE |
| | iTMS PURCHASERS |

21 Judge: Hon. James Ware
 22 Date: October 5, 2009
 23 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 Direct Purchaser Plaintiffs' Motion to Modify
9 Injunctive Relief Class Definition to Include iTMS Purchasers.

10 4. Attached hereto are true and correct copies of the following documents:

11 Exhibit 1: Relevant excerpts from the deposition transcript of Somtai Charoensak, taken
12 January 12, 2007;

13 Exhibit 2: Relevant excerpts from the deposition transcript of Mariana Rosen, taken
14 January 24, 2007; and

15 Exhibit 3: Relevant excerpts from the deposition transcript of Melanie Tucker, taken
16 October 26, 2007.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct. Executed this 31st day of August, 2009, at San Diego, California.

19 _____
20 s/ Thomas R. Merrick
21 THOMAS R. MERRICK

22 S:\CasesSD\Apple Tying\DEC 00061422.doc

1 CERTIFICATE OF SERVICE

2 I hereby certify that on August 31, 2009, I electronically filed the foregoing with the Clerk of
3 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 August 31, 2009.

9
10 s/ Thomas R. Merrick
THOMAS R. MERRICK

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Mailing Information for a Case 5:05-cv-00037-JW

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Manual Notice List

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