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

25 THE APPLE IPOD iTUNES ANTI-TRUST  
 26 LITIGATION.

27 Case No. C 05-00037 JW  
 28 C 06-04457 JW

STIPULATION AND [PROPOSED]  
 ORDER RE SCHEDULE FOR  
 BRIEFING AND HEARING  
 PENDING MOTIONS

29 **Whereas** three motions have been noticed for hearing on October 5, 2009 related to the  
 30 Court's orders of July 17, 2009 (Doc. 228) and May 15, 2009 (Doc. 213), *i.e.*, Apple's motion for  
 31 reconsideration of the Rule 23(b)(2) class for injunctive relief (Doc. 245/250), plaintiffs' motion  
 32 to modify their injunctive relief class definition to include iTS customers (Doc. 236), and Apple's  
 33 motion for judgment on the pleadings re rule of reason tying claim (Doc. 229);

STIP. RE SCHEDULE  
 Case No. C-05-00037-JW

1           **Whereas**, at the Court's request, the parties in this case and the coordinated indirect  
2 purchaser case, *Somers v. Apple, Inc.*, Case No. C 07-6507 JW, have submitted additional  
3 briefing regarding the intersection of the claims in the direct and indirect purchaser actions, the  
4 scope of the injunctive relief classes, and the relationship between their injunctive relief theories  
5 and the asserted theories of liability;

6           **Whereas** Apple has also noticed its motion to decertify the Rule 23(b)(3) class for  
7 damages (Doc. 240) for October 5, 2009;

8           **Whereas** plaintiffs have requested a continuance of the briefing and hearing schedule for  
9 that motion so that they can depose Apple's expert and so that their expert, if appropriate, can  
10 prepare a report;

11           **Whereas** plaintiffs' expert is unavailable this month and most of October and plaintiffs'  
12 lead counsel is scheduled to be on the East Coast for family and business reasons on October 4  
13 and 6, 2009, and Apple is agreeable to modifying the briefing and hearing schedule;

14           **Whereas** Plaintiffs have begun the process of meeting and conferring with Apple on the  
15 proposed content of and a plan for dissemination of class notice, if any; and

16           **Whereas** the parties believes that it may be advantageous not to hear all of these motions  
17 at a single hearing and have been advised that the Court's next available hearing date after  
18 October 5 is November 9, 2009;

19           IT IS HEREBY STIPULATED by the parties, subject to Court approval, as follows:

20           1. The hearing on Apple's motion for reconsideration of the Rule 23(b)(2) class and  
21 plaintiffs' motion to expand the class definition to include iTS purchasers, shall be continued  
22 from October 5 to **November 9, 2009**, at 9 a.m., with opposition briefs to be filed September 28  
23 and replies to be filed by October 12, 2009.

24           2. The hearing on Apple's motion for judgment on the pleadings re the rule of reason  
25 tying claim shall also be continued from October 5 to **November 9, 2009**, at 9 a.m. Apple shall  
26 file its reply brief on September 21, 2009.

27           3. If the Court intends to hold a hearing on the additional issues as to which the Court  
28 requested additional briefing, including those raised in the indirect purchaser's brief filed

1 Aug. 31, 2009 (Dkt. No. 83), the hearing shall be set for **November 9, 2009**, at 9 a.m. Any  
2 additional briefing shall be filed by September 28, 2009.

3 3. The hearing on Apple's motion to decertify the Rule 23(b)(3) class shall be continued  
4 from October 5 to **December 21, 2009**, at 9 a.m. Plaintiffs' opposition papers shall be filed  
5 November 9, 2009, with the understanding that they will depose Apple's expert prior thereto and  
6 that, if they file a supplemental expert report, they will make their expert available for deposition  
7 by Apple shortly thereafter. Apple's reply papers shall be filed by December 7, 2009.

8 4. To the extent the parties cannot resolve any issues regarding the content and method of  
9 dissemination of class notice, if any, plaintiffs' request to send class notice shall also be heard on  
10 **December 21, 2009**, at 9 a.m. Their moving papers shall be filed on October 26, 2009; Apple's  
11 response shall be filed on November 16, 2009; and any reply shall be filed by  
12 November 30, 2009.

13 Dated: September 14, 2009

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DATED: September 14, 2009

JONES DAY

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Attorneys for Defendant, Apple, Inc.

IT IS SO ORDERED.

Dated: September \_\_\_\_, 2009

\_\_\_\_\_  
Hon. James Ware