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8 Attorneys for Defendant  
 APPLE INC.  
 9

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

14 THE APPLE IPOD iTUNES ANTI-TRUST  
 LITIGATION.  
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**Case No. C 05-00037 JW (HRL)**  
**C 06-04457 JW (HRL)**

**DECLARATION OF MICHAEL  
 SCOTT IN SUPPORT OF APPLE'S  
 MOTION TO DISMISS OR,  
 ALTERNATIVELY, FOR SUMMARY  
 JUDGMENT**

20 I, Michael Scott, declare as follows:  
 21

22 1. I am an associate in the law firm of Jones Day, located at 555 California Street,  
 23 26th Floor, San Francisco, CA 94104. I am a member in good standing of the State Bar of  
 24 California (#255282) and represent Apple Inc. in this case. I make this declaration in support of  
 25 Apple's Motion to Dismiss Or, Alternatively, for Summary Judgment. I have personal  
 26 knowledge of the facts set forth herein and, if called as a witness, I could and would testify  
 27 competently thereto.  
 28

1           2.       Attached hereto as Exhibit 1 is a true and correct copy of Ina Fried & Daniel  
2 Terdiman, *Microsoft's Zune to Rival Apple's iPod*, CNET News, July 21, 2006, printed from  
3 [http://news.cnet.com/Microsofts-Zune-to-rival-Apples-iPod/2100-1041\\_3-6097196.html](http://news.cnet.com/Microsofts-Zune-to-rival-Apples-iPod/2100-1041_3-6097196.html) on  
4 February 17, 2010.

5           3.       Attached hereto as Exhibit 2 is a true and correct copy of excerpts of the transcript  
6 of the deposition of Gary L. French, Ph.D., taken in *Somers v. Apple* (Case No. C 07-6507) on  
7 April 3, 2009.

8           4.       Attached hereto as Exhibit 3 is a true and correct copy of Thomas O. Barnett,  
9 Assistant Attorney General, Antitrust Division, U.S. Department of Justice, *Interoperability*  
10 *Between Antitrust and Intellectual Property*, Presentation to the George Mason University School  
11 of Law Symposium, *Managing Antitrust Issues in a Global Marketplace*, September 13, 2006,  
12 printed from <http://www.justice.gov/atr/public/speeches/218316.htm> on February 17, 2010.

13           5.       Attached hereto as Exhibit 4 is a true and correct copy of excerpts of  
14 RealNetworks, Inc.'s Form 10-Q report to the Securities and Exchange Commission for the  
15 quarter ended June 30, 2005, printed from  
16 <http://www.sec.gov/Archives/edgar/data/1046327/000095012405004817/v11277e10vq.htm> on  
17 February 17, 2010.

18           6.       Attached hereto as Exhibit 5 is a true and correct copy of A.B. 671, 1989-1990  
19 Leg., Reg. Sess. (Cal. 1989).

20           7.       Attached hereto as Exhibit 6 is a true and correct copy of S.B. 1814, 2001-2002  
21 Leg., Reg. Sess. (Cal. 2002).

22           8.       Attached hereto as Exhibit 7 is a true and correct copy of S.B. 1274, 2005-2006  
23 Leg., Reg. Sess. (Cal. 2006).

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 22nd day of February, 2010 in San Francisco, California.

/s/ Michael Scott

Michael Scott

SFI-630339v1