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

26 THE APPLE IPOD ITUNES ANTI-TRUST)	Lead Case No. C-05-00037-JW(HRL)
27 LITIGATION)	
28 _____)	<u>CLASS ACTION</u>
29 This Document Relates To:)	DECLARATION OF THOMAS R.
30 ALL ACTIONS.)	MERRICK IN SUPPORT OF PLAINTIFFS'
31 _____)	MEMORANDUM IN OPPOSITION TO
	APPLE'S MOTION TO DISMISS OR,
	ALTERNATIVELY, FOR SUMMARY
	JUDGMENT

32 Judge: Hon. James Ware
 33 Date: April 26, 2010
 34 Time: 9:00 am
 35 Location: 8, 4th Floor

36 **REDACTED EXHIBITS 2, 3, 4, 5, 7, 9**

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. I am associated with the law firm of Coughlin Stoia Geller Rudman & Robbins LLP,
4 Co-Lead Class Counsel of record for Plaintiffs Melanie Tucker, Mariana Rosen, and Somtai Troy
5 Charoensak in this action. I have personal knowledge of the matters stated herein, and, if called
6 upon, I could and would competently testify thereto.

7 2. I submit this declaration in support of Plaintiffs' Opposition to Apple's Motion to
8 Dismiss or Alternatively, for Summary Judgment.

9 3. Attached hereto are true and correct copies of the following documents:

- 10 Exhibit 1: Press Release, Changes Coming to The iTunes Store (January 6, 2009);
11 Exhibit 2: Apple AIIA00004083-118 [Filed Under Seal];
12 Exhibit 3: Apple AIIA 00004125-44 [Filed Under Seal];
13 Exhibit 4: Apple_AIIA00090405-07 [Filed Under Seal];
14 Exhibit 5: Apple_AIIA00090441-43 [Filed Under Seal];
15 Exhibit 6: Phillip Bohn, Attitudes Towards DRM in the Independent Music Sector,
August 19, 2005;
16 Exhibit 7: Apple_SOM00007134-84 [Filed Under Seal];
17 Exhibit 8: Press Release, Apple Motorola & Cingular Launch World's First Mobile
18 Phone with iTunes (September 7, 2005);
19 Exhibit 9: Apple_AIIA00091782 [Filed Under Seal];
20 Exhibit 10: Christine A. Varney, Asst. Att'y Gen. Antitrust Div., U.S. D.O.J., *Remarks*
as Prepared for the United States Chamber of Commerce: Vigorous
Antitrust Enforcement in This Challenging Era (May 12, 2009);
21 Exhibit 11: What is Harmony Technology?; and
22 Exhibit 12: iTunes Store Terms and Conditions.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct. Executed this 22nd day of March, 2010, at San Diego, California.

25
26 s/ Thomas R. Merrick
THOMAS R. MERRICK

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2010, 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 March 22, 2010.

s/ Thomas R. Merrick
THOMAS R. MERRICK

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Manual Notice List

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- (No manual recipients)