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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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| THE APPLE IPOD ITUNES ANTI-TRUST LITIGATION |) | Lead Case No. C-05-00037-JW(HRL) |
| |) | |
| |) | <u>CLASS ACTION</u> |
| This Document Relates To: |) | [PROPOSED] ORDER GRANTING |
| ALL ACTIONS. |) | PLAINTIFFS' MOTION FOR CLASS |
| |) | CERTIFICATION AND APPOINTING |
| |) | ROBBINS GELLER RUDMAN & DOWD |
| |) | LLP AS LEAD CLASS COUNSEL |

1 This matter came before the Honorable James Ware of the above-entitled Court upon
2 Plaintiffs' renewed motion for class certification. The Court having considered the renewed motion
3 and all other papers filed concerning that renewed motion, and all other pertinent documents and
4 pleadings filed in this action,

5 NOW, therefore, it is hereby ORDERED and ADJUDGED:

6 1. Plaintiffs' renewed motion for class certification is hereby granted.

7 2. The following class is hereby certified pursuant to Rule 23(b)(2) and 23(b)(3) of the
8 Federal Rules of Civil Procedure:

9 All persons or entities in the United States (excluding federal, state and local
10 governmental entities, Apple, its directors, officers and members of their families)
11 who purchased an iPod directly from Apple between October 1, 2004 and
12 March 31, 2009.

13 3. The Court also certifies Plaintiffs Melanie Tucker, Mariana Rosen, and Somtai Troy
14 Charoensak as Class Representatives. Pursuant to Rule 23(g) of the Federal Rules of Civil
15 Procedure, the Court appoints the law firm of Robbins Geller Rudman & Dowd LLP as Lead Class
16 Counsel.

17 4. This Court bases this certification and appointment order on the following findings,
18 all of which are amply supported by Plaintiffs' well-pleaded allegations, Defendant Apple Inc.'s own
19 documents, and expert testimony:

20 (a) **Numerosity.** Plaintiffs have demonstrated that "the class is so numerous that
21 joinder of all members is impracticable" within the meaning of Rule 23(a)(1).

22 (b) **Commonality.** Rule 23(a)(2) requires that there be "questions of law or fact
23 common to the class." Plaintiffs have satisfied the commonality requirement here by identifying,
24 inter alia, the following common questions of law and fact:

25 (i) the definition of the relevant markets;

- 1 (ii) Apple’s market power within these markets;
2 (iii) whether Apple maintained its monopolies of the relevant markets in
3 violation of Section 2;
4 (iv) whether Apple attempted to maintain its monopolies the relevant
5 markets in violation of Section 2 of the Sherman Antitrust Act, 15 U.S. C. §2;
6 (v) whether Defendant’s conduct caused prices of iPods to be set at
7 supracompetitive levels; and
8 (vi) whether Defendant’s conduct injured Plaintiffs and other members of
9 the class and, if so, the appropriate class-wide measure of damages.

10 (c) **Typicality.** Pursuant to Rule 23(a)(3), Plaintiffs must also show that “the
11 claims or defenses of the representative parties are typical of the claims or defenses of the class.”
12 The same common questions identified above also serve to satisfy Plaintiffs’ burden on typicality.
13 The Court accordingly finds that typicality is met here because Plaintiffs and Class Members seek
14 the same remedies for similar harms under the same legal theories.

15 (d) **Adequacy.** Pursuant to Rule 23(a)(4), the Court finds that the “representative
16 parties will fairly and adequately protect the interests of the class.” The interests of the Plaintiffs are
17 fully aligned with those of the Class, and their chosen counsel are fully capable of effectively
18 prosecuting this litigation.

19 5. The Court further finds that certification is proper under Rule 23(b)(3). The common
20 questions identified above predominate over any individualized issues concerning the allocation of
21 damages. In other words, “[a] common nucleus of facts and potential legal remedies dominates this
22 litigation.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Further, a class action
23 is superior to a series of potentially millions of individual suits. Even if it were feasible for
24 individual Class Members to bring suit, it would be inefficient to re-litigate the numerous common
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1 questions in case after case. Moreover, the Court is unaware of any other litigation concerning the
2 controversy at issue herein, and the Court foresees no manageability problems that would militate
3 against class certification.

4 IT IS SO ORDERED.

5 DATED: _____
6 THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

7 Submitted by:

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[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND
APPOINTING ROBBINS GELLER RUDMAN & DOWD LLP AS LEAD CLASS COUNSEL - C-05-
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