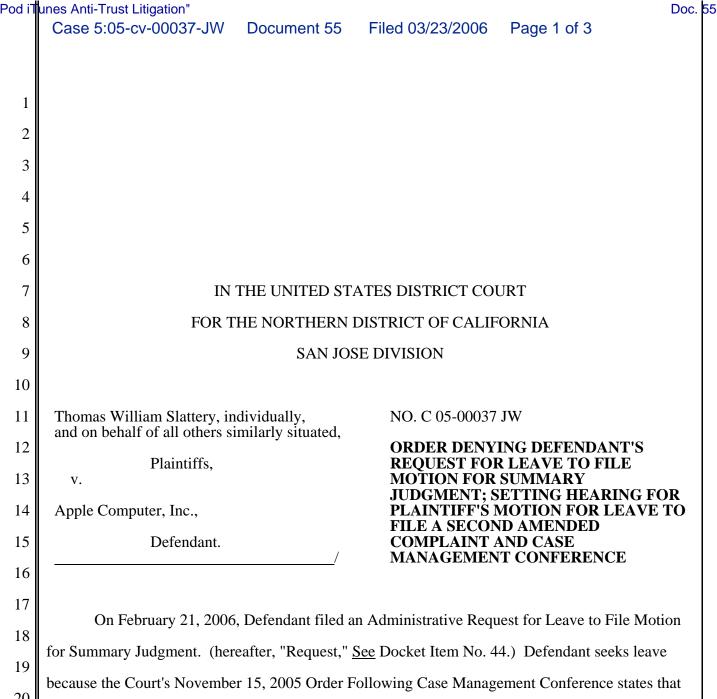
"The Apple iPod iTunes Anti-Trust Litigation"



20 "Defendant shall not file its motion for summary judgment before the motion for class certification 21 is decided." (See Docket Item No. 42.) 22

Defendant contends that the Court should permit them to file their motion for summary 23 judgment before Plaintiff's class certification because early discovery reveals that the allegations 24 contain in Plaintiff's complaint are false. (Request at 2.) Plaintiff's complaint alleges that Thomas 25 William Slattery, purchased music online from Apple's iTunes music store during the class period, 26 alleged as April 2003; that he was "force to purchase an Apple iPod device..." to play that music; 27 and that he "has been forced to continue purchasing online digital music files solely from Apple's

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iTunes store..." (Request at 2.) However, during his January 30, 2006 deposition, Slattery admitted that he had obtained no music from Apple's online store before buying an iPod. In fact, Slattery obtained music from Apple on only one occasion, and that was after filing his complaint. (Request at 3.) The Court finds that Defendant's request for leave to file a summary judgment motion is based purely on a challenge to Plaintiff Slattery's standing. Since this is a class action lawsuit, substitution of a proper class representative is permissible. Accordingly, the Court DENIES Defendant's request for leave to file a motion for summary judgment at this time.

8 The Court sets May 8, 2006 at 9 a.m. as a hearing date for Plaintiff's motion for leave to file
9 Second Amended Complaint. The parties shall follow the briefing schedule pursuant to the Civil
10 Local Rules of this Court. The Court will also conduct a case management conference on the same
11 date at 10 a.m. where the Court will discuss a new schedule for the case. The previously set case
12 management for April 17, 2006 is effectively vacated.

14 Dated: March 23, 2006

James Ware JAMES WARE United States District Judge

	Case 5:05-cv-00037-JW Document 55 File	d 03/23/2006 Page 3 of 3
1 2 3 4	 Adam Richard Sand <u>arsand@JonesDay.com</u> Caroline N. Mitchell <u>cnmitchell@jonesday.com</u> Eric J. Belfi <u>ebelfi@murrayfrank.com</u> Marc L. Godino <u>service@braunlawgroup.com</u> 	ORDER HAVE BEEN DELIVERED TO:
5	5	Pichard W. Wicking, Clark
6 7		Richard W. Wieking, Clerk
8]	By: <u>/s/ JW Chambers</u> Melissa Peralta
9		Courtroom Deputy
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