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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

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THE APPLE IPOD ITUNES ANTI-TRUST
LITIGATION

CASE NO. C 05-00037-JW
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED

[Civ. LR 3-12]

This Document Relates To:

The Honorable Judge James Ware

STACIE SOMERS V. APPLE, INC.,
Case No. 5:07-cv-060507-HRL

1 **TO THE COURT AND ALL PARTIES OF RECORD:**

2 Pursuant to Civil Local Rule 3-12, plaintiff Stacie Somers respectfully submits this
3 administrative motion to consider whether a recently filed case, *Stacie Somers v. Apple, Inc.*,
4 Case No. 5:07-cv-060507-HRL, filed on December 31, 2007 (“Somers”), should be related to the
5 following two other cases filed in this District:
6

- 7 1. *Slattery v. Apple Computer, Inc.*, Case No. C 05-00037-JW (filed Jan. 3,
8 2005)(“*Slattery*”); and
- 9 2. *Melanie Tucker v. Apple Computer, Inc.*, Case No. 5:06-cv-04457-JW (filed on
10 July 21, 2006) (“*Tucker*”).

11 The *Slattery*¹ and *Tucker* cases were consolidated² on March 21, 2007 and are now titled “*The*
12 *Apple iPod iTunes Anti-Trust Litigation*,” Case No.C-5-00037 JW. *The Apple iPod iTunes Anti-*
13 *Trust Litigation* and the *Somers* action are “related cases” according to the criteria set forth in
14 Civil Local Rule 3-12(a).
15

16 Local Rule 3-12 of the United States District Court for the Northern District of California
17 provides that cases are related when they (1) concern substantially the same parties, property,
18 transaction or event, and (2) it appears likely that there will be an unduly burdensome duplication
19 of labor and expense or conflicting results if the cases are conducted before different Judges.
20

21 The *Apple iPod iTunes Anti-Trust Litigation* and the *Somers* action involve substantially
22 the same factual antitrust tying and monopolization allegations on behalf of purchasers of
23 portable media players and electronic files. Both allege substantially similar causes of action,
24

25 ¹ Plaintiff *Slattery* withdrew his claims and was replaced as a class representative by Somtai
26 Troy Charoensak and Mariana Rosen. The *Slattery* case was then known as the *Charoensak* case
for a short time.

27 ² At the time of consolidation, the *Slattery* case was titled *Somtai Charoensak, et al. v. Apple*
28 *Computer, Inc.*, Case No.C-5-00037 JW.

1 asserting that Apple, Inc. monopolized, attempted to monopolize, and engaged in illegal tying in
2 the market for online music and portable digital music players. The difference between the cases
3 is that the *Apple iPod iTunes Anti-Trust Litigation* is brought on behalf of a class of direct
4 purchasers whereas the *Somers* action is brought on behalf of a class of indirect purchasers.

5
6 Because this action arises from the same transactions, happenings or events, calls for
7 determination of the same questions of law and/or fact, and is likely to entail substantial duplication
8 of labor if heard by a different judge, it is related within the meaning of Local Rule 3-12(a).

9 Pursuant to Local Rule 3-12(a)(2), it appears likely that there will be an undue
10 burdensome duplication of labor and expense or the possibility of conflicting results if the cases
11 are conducted before different Judges.

12 Apple, Inc. as well as plaintiffs in *The Apple iPod iTunes Anti-Trust Litigation* stipulate
13 that the *Somers* action should be related to *The Apple iPod iTunes Anti-Trust Litigation*.

14 Accordingly, for all the aforementioned reasons, the *Somers* action should be deemed
15 “related” and assigned to the Honorable Judge James Ware, the Judge in the earlier-filed action,
16 *The Apple iPod iTunes Anti-Trust Litigation*.

17
18 DATED: January 29, 2008

Respectfully submitted,

19
20 By: /s/ Helen Zeldes
HELEN ZELDES

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10 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

11 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
12 named parties, there is no such interest to report.

13 _____
14 /s/ Helen I. Zeldes

15 HELEN I. ZELDES, ATTORNEY OF RECORD FOR PLAINTIFF
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 29, 2008, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the e-mail
4 addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have
5 caused the foregoing document or paper to be mailed via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List and Service List.

7 s/ HELEN I. ZELDES

8 HELEN I. ZELDES

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1 Mailing Information for a Case 5:05-cv-00037-JW

2 Electronic Mail Notice List

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25 Manual Notice List

26 The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case
27 (who therefore require manual noticing). You may wish to use your mouse to select and copy
28 this list into your word processing program in order to create notices or labels for these recipients.

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Mailing Information for a Case 5:07-cv-060507-HRL

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- No manual recipients