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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 STACIE SOMERS, On Behalf of Herself and
 12 All Others Similarly Situated,
 13 Plaintiff,
 14 v.
 15 APPLE INC.,
 16 Defendant.

Case No. C 07 6507 HRL
 JOINT CASE MANAGEMENT
 STATEMENT AND PROPOSED
 ORDER

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1 On April 7, 2008, counsel for the parties in the above-entitled action held a telephonic
2 meet and confer session to discuss their respective proposals for this Joint Case Management
3 Statement. As such, the parties jointly submit this Case Management Statement and Proposed
4 Order, and request that the Court adopt it as its Case Management Order in this case.

5 **JURISDICTION AND SERVICE**

- 6 1. Jurisdiction is conferred upon this judicial district pursuant to 15 U.S.C. §§ 15 and 26, and
7 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction over Plaintiff's
8 state law claims pursuant to 28 U.S.C. § 1367(a).
- 9 2. This Court also has original jurisdiction over this action under the Class Action Fairness
10 Act of 2005, 28 U.S.C. § 1332(d)(2) ("CAFA"), as to the named Plaintiff and every
11 member of the alleged class, because the proposed class contains more than 100 members,
12 the aggregate amount in controversy exceeds \$5 million, and members of the alleged class
13 reside across the United States, and are therefore diverse from Defendant.
- 14 3. The parties are aware of no other jurisdictional issues (e.g., service of process, personal
15 jurisdiction, or venue) that remain unresolved.
- 16 4. All parties to the complaint (i.e., Apple) have been served.
- 17 5. No joinder of additional parties is intended or planned by the parties at this time.

18 **FACTS**

19 6. This is a putative class action antitrust case brought by Plaintiff Stacie Somers,
20 individually and on behalf of all others who purchased an Apple iPod indirectly from
21 Apple, or who purchased audio or video content from Apple's Music Store. Somers filed
22 her original complaint on December 31, 2007 ("Complaint"). Count I of the Complaint
23 alleges that Apple violated Section 1 of the Sherman Act through unlawful bundling or
24 tying of music and video files sold through its iTunes store to its iPod portable hard-drive
25 digital media player, and vice-versa. Counts II and III of the Complaint allege that Apple
26 has unlawfully monopolized and attempted to monopolize the relevant markets for the
27 sale of legal online digital music and video files and for portable hard-drive digital media
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1 players. Counts IV-VII allege supplemental claims for violation of California and
2 common law antitrust and consumer protection laws.

3 7. On February 21, 2008, Apple filed its answer to Somers's complaint.

4 8. The principal factual issues that the parties dispute include: the definitions of the relevant
5 market(s) applicable to this action; whether Apple improperly attained and maintained
6 market power in the relevant market(s); whether Somers and the putative class members
7 were coerced into buying an iPod or subscribing to iTunes online music store; whether
8 Apple engaged in any exclusionary conduct; whether Apple's alleged anticompetitive
9 conduct has caused Somers and the putative class members to sustain any harm or injury
10 to their business and/or property, and if so, the measure of damages, if any, suffered by
11 Somers and the putative class members.

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13 **LEGAL ISSUES**

14 9. The principal legal issues that the parties dispute include: whether this action may proceed
15 as a class action under Federal Rule of Civil Procedure 23 and, if so, the proper class
16 definition; whether plaintiff can prove legally cognizable relevant market definitions;
17 whether plaintiff's characterization of Apple's alleged market power is legally correct;
18 whether Apple's alleged conduct is unlawful under the Sherman Act, California state law,
19 and the common law of monopolization; whether Apple's alleged conduct is the
20 proximate cause of any harm allegedly suffered by plaintiff and the putative class; the
21 proper measure of damages, if any; and whether Somers and/or the putative class is
22 entitled to injunctive relief against Apple.

23 **MOTIONS**

24 10. Plaintiff plans to file a Motion for Class Certification on November 3, 2008.

25 11. Defendant anticipates filing a Motion for Summary Judgment.

26 **AMENDMENT OF PLEADINGS**

27 12. The parties agree that all amendments to the pleadings must be done 30 days after the
28 ruling on class certification.

1 **EVIDENCE PRESERVATION**

2 13. The parties have taken steps to preserve evidence relevant to the issues reasonably evident
3 in this action, including interdiction of all pertinent document-destruction programs and
4 any ongoing erasures of relevant e-mails and other electronically-recorded material.

5 **DISCLOSURES**

6 14. The parties stipulate and agree that they will exchange initial disclosures under Fed. R.
7 Civ. P. 26 (a) no later than June 9, 2008.

8 **DISCOVERY**

9 15. On March 14, 2008, the Court entered a stipulated order limiting discovery to class
10 certification issues and other specified preliminary issues until after class certification
11 briefing occurs. See Docket Item No. 19. The parties believe that consistent with this
12 Court's approach in the related cases, it is premature at this time to set deadlines for the
13 completion of all discovery in this case, given that the Court's ruling on class certification
14 could affect the discovery needs of the parties in ways they cannot anticipate. The parties
15 propose that the Court hold a status conference as soon as possible after its ruling on
16 Plaintiff's motion for class certification, in order to set out a schedule for merits
17 discovery.

18 16. Plaintiff proposes that, other than expert depositions, the parties shall be limited to fifteen
19 depositions each prior to the motion for class certification, and an additional fifteen
20 depositions each after the motion for class certification is filed; that the parties shall be
21 limited to 100 interrogatories each; and that any party, for good cause, may move the
22 Court for an extension of the foregoing discovery limits. Defendant submits that no good
23 cause exists at this point to extend the provisions of Rule 30 which limit parties to ten
24 depositions, or the provisions of Rule 33, which limit the parties to twenty-five
25 interrogatories.

26 **CLASS ACTIONS**

27 17. Plaintiff brings this action on behalf of herself, and all others similarly situated, pursuant
28 to Rules 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

1 18. Plaintiff seeks to represent the following Classes:

- 2 a. Injunctive Relief Class (for injunctive relief under the Clayton Act, 15 U.S.C. §
3 26): All persons or entities in the United States (excluding federal, state and local
4 governmental entities, Apple, its directors, officers and members of their families),
5 that, during the Class Period, purchased an Apple iPod, or who purchased audio or
6 video content from Apple's Music Store, from December 28, 2003 through the
7 conclusion of the trial of this matter.
- 8 b. Indirect Purchaser Damages Class (for damages under the Cartwright Act, Cal.
9 Bus. & Prof. Code § 16720): All persons or entities in the United States
10 (excluding federal, state and local governmental entities, Apple, its directors,
11 officers and members of their families) that during the Class Period purchased an
12 Apple iPod indirectly from Apple or video content from Apple's Music Store from
13 December 28, 2003 through the conclusion of the trial of this matter.

14 19. Plaintiff believes that she is entitled to maintain this action pursuant to Rule 23(b)(2) and
15 (3) of the Federal Rules of Civil Procedure, based on the following facts:

- 16 a. The Classes are so numerous that joinder of all members is impractical. There are
17 thousands of members in each Class who are geographically dispersed throughout
18 the United States.
- 19 b. Plaintiff's claims are typical of the claims of the members of the Classes, because
20 Plaintiff and all Class members were damaged by the same wrongful conduct of
21 the Defendant alleged in the Complaint.
- 22 c. There are questions of law and fact common to the Classes that predominate over
23 any questions affecting only individual Class members.
- 24 d. The claims of Plaintiff are typical of the claims of the Classes, and Plaintiff has no
25 interest adverse to the interest of other members of the Classes.
- 26 e. Plaintiff will fairly and adequately protect the interests of the Classes, and has
27 retained counsel experienced and competent in the prosecution of complex class
28 actions and antitrust litigation.

1 f. A class action is superior to other available methods for the fair and efficient
2 adjudication of the controversy. Such treatment will permit a large number of
3 similarly situated persons to prosecute their common claims in a single forum
4 simultaneously, efficiently, and without duplication of effort and expense that
5 numerous individual actions would engender. Class treatment will also permit the
6 adjudication of relatively small claims by many Class members who could not
7 afford on their own to individually litigate an antitrust claim against a large
8 corporate defendant. There are no difficulties likely to be encountered in the
9 management of this class action that would preclude its maintenance as a class
10 action, and no superior alternative exists for the fair and efficient adjudication of
11 the controversy.

12 20. Defendant disagrees that this action is appropriate for class certification. Among other
13 things, the courts have uniformly recognized that where, as here, no contractual tie exists
14 and the products may be and are purchased and used separately, proof of a tying claim
15 requires individual proof of coercion and thus class treatment is inappropriate. A
16 consumer, for example, who purchased an iPod to give as a gift or to play music from the
17 consumer's CD collection rather than from the iTunes Store was not coerced and has no
18 claim. The same is true for countless consumers who buy iPods and/or music from the
19 iTunes Store because they are the best MP3 player and best online music store. Class
20 certification is also precluded because consumers are differently situated with respect to
21 any alleged injury or any proposed remedy.

22 21. Subject to Court approval, the parties agree to the following scheduling plan for class
23 certification:

- 24 a. Plaintiff shall file and serve her class certification motion no later than November
25 3, 2008;
- 26 b. Apple shall file and serve its opposition to the motion for class certification no
27 later than January 15, 2009;
- 28

- 1 c. Plaintiff shall file and serve her reply brief in further support of her motion for
2 class certification no later than March 2, 2009; and
- 3 d. Subject to Court availability, the hearing on the motion for class certification shall
4 be held on March 16, 2009.
- 5 e. The parties further agree that should they submit any declarations or affidavits in
6 support of their class certification briefing papers, they will make such affiants or
7 declarants available for deposition by the opposing party sufficiently in advance of
8 the next briefing deadline.

9 **RELATED CASES**

10 22. Upon filing, this action was transferred to Judge James Ware, as a related action to *The*
11 *Apple iPod iTunes Antitrust Litigation*, C-05-00037 JW and *Tucker v. Apple Computer,*
12 *Inc.*, C-06-4457-JW, consolidated cases involving direct purchasers who make similar
13 allegations of anticompetitive behavior against Apple concerning its iPod player and
14 iTunes store.

15 **RELIEF**

16 23. Plaintiff and the Classes seek multiple forms of relief: damages, penalties and other
17 monetary relief provided by applicable law, including treble damages; injunctive relief;
18 full restitution of all funds acquired from Apple's unfair business practices, including
19 disgorgement of revenues and/or profits; and costs of suit, including reasonable attorneys'
20 fees and pre- and post-judgment interest.

21 **SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

22 24. The parties have not filed a Stipulation and Proposed Order Selecting an ADR process,
23 and the parties believe that it is premature to select such a process at this time.

24 **CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

25 25. The parties do not consent to assignment of this case to a United States Magistrate Judge
26 for trial.

1 **OTHER REFERENCES**

2 26. The parties agree that this case is not suitable for reference to binding arbitration, a special
3 master, or the Judicial Panel on Multidistrict Litigation.

4 **NARROWING OF ISSUES**

5 27. The parties agree that they are not aware of any issues that can be narrowed by agreement
6 or by motion at this time.

7 **EXPEDITED SCHEDULE**

8 28. The parties agree that this is not the type of case that can be handled on an expedited
9 basis.

10 **SCHEDULING**

11 29. Consistent with this Court's approach in the related cases, Defendant believes that
12 discovery and other deadlines should be set by the Court following the Court's ruling on
13 class certification.

14 30. Plaintiff believes the following deadlines should be set after the close of merits discovery:

- 15 a. Plaintiff will serve her Rule 26(a)(2) expert disclosures within 30 days after the
16 close of fact discovery;
- 17 b. Plaintiff will make her expert(s) available for deposition on request within 20 days
18 of Plaintiff's Rule 26(a)(2) expert disclosures;
- 19 c. Defendant will serve its expert disclosures within 30 days of Plaintiff's expert
20 disclosures;
- 21 d. Plaintiff will depose Defendant's expert(s) within 10 days after Defendant's expert
22 disclosures;
- 23 e. Plaintiff will serve her rebuttal disclosures, if any, within 21 days of service of
24 Defendant's expert disclosures;
- 25 f. Expert discovery will end within 31 days of Defendant's expert disclosures.
- 26 g. The deadline for filing dispositive motions shall be forty-five (45) days after the
27 close of expert discovery. Oppositions to the dispositive motions shall be filed no
28 later than thirty (30) days after the filing of the dispositive motions, and replies

1 shall be due no later than twenty-one (21) days after the filing of the opposition
2 briefs. Subject to Court availability, the hearing on the parties' dispositive
3 motions shall be held fourteen (14) days after the filing of the reply briefs, or as
4 soon thereafter as is practicable under the Court's schedule. Should any
5 declarations or affidavits be filed in support of dispositive motion briefing papers,
6 the parties should make such affiants or declarants available for deposition by the
7 opposing party sufficiently in advance of the next briefing deadline.

8 h. Plaintiff requests that a trial be set to commence sixty (60) days after the Court has
9 issued its written ruling on the parties' dispositive motions.

10 TRIAL

11 31. Plaintiff expects that the jury trial will last for approximately eight weeks; defendant
12 estimates four weeks.

13 DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS


14 32. Pursuant to Civil L.R. 3-16, defendant filed a Certification of Interested Entities or
15 Persons on January 22, 2008. See Docket Item No. 9. The Certification provided that the
16 following listed persons have a financial interest, as defined by 28 U.S.C. §455(d)(4), in
17 the defendant, Apple Inc.: (1) Board of Directors: Bill Campbell, Millard Drexel, Albert
18 Gore Jr., Steve Jobs, Andrea Jung, Arthur D. Levinson, Ph.D, Dr. Eric Schmidt, Jerry
19 York; (2) Officers: Steve Jobs, Peter Oppenheimer, Timothy Cook, Donald Cooperman,
20 Philip Schiller, Tony Fadell, Ronald B. Johnson, Bertrand Serlet, Sina Tamaddon,
21 Jonathan Ive; (3) Others: Apple is a publicly held company with numerous shareholders.
22 It has no parent company and no one with an ownership interest that must be disclosed
23 pursuant to Federal Rule 7.1. Shares of Apple stock change ownership on a frequent
24 basis. Additionally, Apple has many employees who actively participate in its affairs.
25 Apple has identified the officers and directors in this disclosure, but not lower level
26 employees.

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33. Plaintiff states that as of this date, other than the named parties, there are no other interested entities or persons to report.

Dated: April 18, 2008

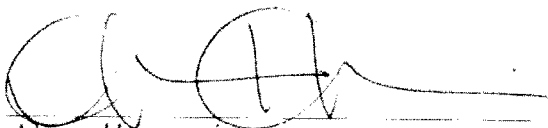
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By: 
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Dated: April 18, 2008

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CASE MANAGEMENT [PROPOSED] ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

IT IS SO ORDERED.

Dated: _____, 2008

Hon. James Ware
United States District Judge

SIJ-582127v1