

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

_____ )	
In Re Digital Music Antitrust Litigation )	
_____ )	MDL Docket # 1780
This Document Relates to: ALL ACTIONS )	Assigned to Judge: Loretta Preska
_____ )	

**[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR CLASS  
CERTIFICATION PURSUANT TO FED. R. CIV. P. 23(b)(2) and (b)(3)**

Upon consideration of the Motion of Indirect-Purchaser Plaintiffs for Class Certification, and the materials filed and submitted herewith, and defendants’ opposition thereto, the Court ORDERS as follows:

1. The Motion of Indirect-Purchaser Plaintiffs for Class Certification is hereby GRANTED, and the following nationwide injunctive relief class is hereby certified for injunctive relief pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2):

All persons and entities residing in the United States who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

2. The following state classes (the “Indirect-Purchaser Statewide Classes”) are hereby certified for damages pursuant to Federal Rule of Civil Procedure 23(a) and 23

(b)(3):

**ARIZONA:**

All persons and entities in Arizona who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in Arizona indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

**CALIFORNIA:**

All persons and entities in California who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in California indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

**DISTRICT OF COLUMBIA:**

All persons and entities in District of Columbia who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in District of Columbia indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

**FLORIDA:**

All persons and entities in Florida who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in Florida indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

IOWA:

All persons and entities in Iowa who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in Iowa indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

MICHIGAN:

All persons and entities in Michigan who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in Michigan indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

MINNESOTA:

All persons and entities in Minnesota who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in Minnesota indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action,

members of their immediate families and judicial staffs, and any juror assigned to this action.

NEVADA:

All persons and entities in Nevada who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in Nevada indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

SOUTH DAKOTA:

All persons and entities in South Dakota who, from December 4, 2001 to the conclusion of trial in this action, purchased Digital Music in South Dakota indirectly from any defendant or subsidiary thereof, or any named affiliate or any named co-conspirator, for their own use and not for resale. Specifically excluded from this Class are defendants; the officers, directors, or employees of any defendant; the parent companies and subsidiaries of any defendant; the legal representatives and heirs or assigns of any defendant; and the named affiliates and coconspirators. Also excluded are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

3. The following individuals and entities are hereby named as class

representatives:

Arizona	Shawn Sellers
California	Matthew Putman
California	Cynthia Seley
California	Lisa Owens
District of Columbia	Kathryn E. Kelly
Florida	Michael J. Newton
Illinois	Alexandra Nordlinger <sup>1</sup>

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<sup>1</sup> Representative for Nationwide Class.

Iowa	Randal Schaffer
Michigan	David Paschkett
Minnesota	Richard Benham
Nevada	Cynthia Walker
South Dakota	Ronald Donahue

4. Rule 23(a)(1). The classes are so numerous that joinder of all members is impracticable such that Rule 23(a)(1) is satisfied.

5. Rule 23(a)(2). There are questions of law or fact common to the classes such that Rule 23(a)(2) is satisfied.

6. Rule 23(a)(3). The claims or defenses of the representative parties are typical of the claims or defenses of the classes such that Rule 23(a)(3) is satisfied.

7. Rule 23(a)(4). The representative parties will fairly and adequately protect the interests of the classes such that Rule 23(a)(4) is satisfied.

8. Rule 23(b)(2). The parties opposing the Nationwide Injunctive Relief Class have acted or refused to act on grounds that apply generally to the Nationwide Injunctive Relief Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Nationwide Injunctive Relief Class as a whole such that Rule 23(b)(2) is satisfied.

9. Rule 23(b)(3). The questions of law or fact common to the State Law Class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy such that Rule 23(b)(3) is satisfied.

10. Lovell Stewart Halebian and Jacobson LLP and Robbins Geller Rudman & Dowd LLP are designated and appointed as Class Counsel for Indirect-Purchaser Plaintiffs.

**SO ORDERED**

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HONORABLE LORETTA A. PRESKA  
UNITED STATES DISTRICT COURT JUDGE

Dated: New York, New York

\_\_\_\_\_, 2014