

NATURE OF THE ACTION

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2 1. This action is brought as a class action pursuant to Rule 23 of the Federal Rules of
3 Civil Procedure on behalf of a Class of Plaintiffs, defined more fully below.

4 2. Defendant Apple, Inc. (“Apple” or “Defendant”) has used its dominant market
5 position in the markets for Audio Downloads and Portable Digital Media Players to stifle
6 competition and strengthen its monopoly in these markets. Apple engaged in systematic conduct to
7 shut out rivals’ competing Audio Downloads and Portable Digital Media Players by cutting off their
8 access to the marketplace. In the process, Apple deprived consumers of choice and innovation in the
9 Audio Download Market and Portable Digital Media Player Market. Apple used unneeded
10 technological restrictions in conjunction with software updates to suppress new products that
11 threatened its monopoly power in the relevant product markets. This strategy succeeded in
12 maintaining Apple’s monopolies at the expense of consumers who have been denied access to
13 potentially superior, non-Apple products and lower prices.

14 3. As alleged in further detail below, Apple initially gained its monopoly power through
15 the use of proprietary software on Audio Downloads purchased from Apple’s iTunes Store (“iTTS”) and
16 Apple’s iPod, known as FairPlay. FairPlay prevented iPods from playing Audio Downloads
17 purchased from competitors of iTTS and prevented Audio Downloads purchased through iTTS from
18 playing on Portable Digital Media Players other than iPod. Thus, a purchaser who wished to play
19 Audio Downloads purchased from iTTS on a Portable Digital Media Player had to purchase an iPod
20 and a purchaser of an iPod who wished to buy Audio Downloads for direct playback on the iPod had
21 to purchase them from iTTS.

22 4. When competitors attempted to enter either market by selling products compatible
23 with Apple’s market-leading iPod or iTTS files, Apple promptly issued software updates to end the
24 compatibility. This allowed Apple to further entrench its monopolization of both markets and
25 enabled it to sell the iPod at prices far above those that would prevail in a competitive market for
26 Portable Digital Media Players.

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1 15. Audio Downloads are also attractive because they are more convenient, reliable, and
2 better for the environment. Consumers do not have to drive to a store to make their purchase, trucks
3 do not have to transport the CDs from factory to warehouse to retailer, and there is no material or
4 packaging produced only to be thrown away. Audio Downloads also promise superior audio fidelity
5 over time because, unlike CDs, Audio Downloads last indefinitely and cannot wear out or break.
6 Additionally, another appealing feature of Audio Downloads is that they can be easily stored and
7 played in mass quantities on a Portable Digital Media Player.

8 16. Apple owns and operates iTS, formally known as the iTunes Music Store, an internet
9 site that offers digital music and digital video computer files for online purchase and download.
10 Unlike most internet sites, iTS is accessed with proprietary Apple software, known as iTunes, rather
11 than with a web browser.

12 17. At all relevant times, Apple has been a competitor in the Audio Download Market.
13 Throughout the Class Period, Apple has maintained a market share of the United States Audio
14 Download Market of 70% or more.

15 18. Barriers to entry into the Audio Download Market are high. In addition to the
16 barriers to entry into the Audio Download Market imposed by Apple's illegal monopolistic
17 anticompetitive behavior, discussed in detail herein, other barriers to entry include: (a) Audio
18 Downloads are protected by copyrights that any new entrant would have to obtain a license for or
19 purchase at wholesale in order to legally sell; (b) the copyright holders are unlikely to license their
20 copyrighted Audio Downloads to any new entrant unless that entrant can credibly show that it will
21 be able to sell these files to a large audience; (c) any new entrant would have to offer an inventory of
22 Audio Downloads comparable to that of existing music stores which would necessitate an inordinate
23 investment of capital and resources; (d) purchasers are unlikely to switch to a new online Audio
24 Download store because switching means learning a new software; (e) technological costs for things
25 such as network fees are high; and (f) any new entrant would have to offer Audio Downloads that
26 were operable on the most popular media players.

27 19. Consumers and merchants have come to recognize the Audio Download Market as a
28 separate and distinct market from the market for music CDs.

1 20. The Audio Download Market offers a number of features not readily available at
2 traditional “brick and mortar” music stores, which help set it apart as a distinct market. For example,
3 whereas shoppers at traditional “brick and mortar” music stores must typically purchase an entire
4 album of the artist or group selected, online sales of Audio Downloads offer consumers the option to
5 purchase only individual songs or tracks of music separately. This is borne out by sales statistics
6 showing that on iTS, for every sale of a complete album online there are approximately 20 songs
7 purchased individually. By contrast, according to statistics compiled by the Recording Industry
8 Association of America, in the CD market in 2005, sales of CD albums were 705.4 million compared
9 to sales of CD singles of 2.8 million units.

10 21. Further, unlike “brick and mortar” music stores, the Audio Download Market offers
11 consumers the ability to create their own customized “playlists” wherein consumers can, in effect,
12 create their own customized collection of songs from different artists.

13 22. In addition, the music selection available in the Audio Download Market is not
14 coextensive with the music selection available at “brick and mortar” music stores. Audio Download
15 sites provide a ready outlet for independent and less popular artists whose music is not readily
16 available at “brick and mortar” music stores, which only have room to carry a small fraction of the
17 inventory of Audio Download stores.

18 23. In the eyes of consumers, the Audio Download Market and the “brick and mortar”
19 market are not in price-competition with one another. The Audio Download Market focuses on
20 selling individual tracks or songs while the “brick and mortar” market is focused on selling whole
21 albums or CDs, thereby making price-comparison between these two distinct markets a *non sequitur*.
22 Further, because of the ubiquitous nature of the internet, Audio Download sales are available to a
23 whole host of consumers who do not have ready access to nearby “brick and mortar” music stores,
24 let alone a nearby “brick and mortar” store stocking the particular recording desired by these
25 consumers at any given time. Similarly, because search costs on the internet are a fraction of search
26 costs involved in the “brick and mortar” market, consumers are not likely to and do not forego a
27 purchase of a music recording online even if they hypothetically would believe that the same
28 recording could be obtained somewhat less expensively at a traditional “brick and mortar” store.

1 The costs associated with traveling to “brick and mortar” music stores, searching one or more such
2 stores for a particular recording, and comparison shopping between these “brick and mortar” music
3 stores and online stores dissuade consumers from foregoing a purchase made from the comfort of
4 their own home or office for the same piece of music, even if doing the foregoing tasks could
5 hypothetically result in a savings of a few cents per song. Put differently, consumers are not likely
6 to and do not travel miles to their nearest “brick and mortar” music stores in the hopes of saving a
7 few cents off a song purchase that they could make instantaneously on their home computer.

8 24. For these and other reasons, the Audio Download Market is and has been recognized
9 as a separate relevant product market.

10 **Portable Digital Media Player Market**

11 25. The “Portable Digital Media Player Market” is defined as the market for portable
12 consumer electronic battery-powered devices that can store and play large numbers of digital media
13 files. Portable Digital Media Players are enormous improvements over portable CD players. While
14 a traditional CD can hold no more than 15 to 25 songs, Portable Digital Media Players can store up
15 to 40,000 songs. Even the largest Portable Digital Media Players are only a fraction of the size of a
16 typical portable CD player. Portable Digital Media Players also dispense with the need to carry
17 around CDs and allow consumers to organize, categorize, and play their digital media files in
18 whatever manner or order they desire. Further advantages include superior skip protection and in
19 many models the ability to play video games, video files, and store digital photographs.

20 26. At all relevant times, Apple has sold Portable Digital Media Players known as iPods.
21 These include all generations of the iPod Classic, iPod Shuffle, iPod Nano, iPod Mini and iPod
22 Touch (collectively, the “iPod”).

23 27. During the Class Period, Apple has maintained a market share of the Portable Digital
24 Media Player Market of 60% or more.

25 28. Barriers to entry in the Portable Digital Media Player Market are high. In addition to
26 the barriers to entry into the Portable Digital Media Player Market imposed by Apple’s illegal,
27 anticompetitive conduct, discussed in detail herein, other barriers to entry include: (a) high fixed
28 costs related to product development, production, manufacturing and marketing; (b) purchasers are

1 unlikely to switch to a new Portable Digital Media Player unless it is compatible with their existing
2 libraries of Audio Downloads; (c) new entrants were required to license Digital Rights Management
3 software (“DRM”) so that their Portable Digital Media Players were capable of playing DRM-
4 encrypted Audio Downloads purchased from online stores; and (d) certain DRM’s, including
5 FairPlay, were proprietary and not available to license.

6 29. The relevant geographic market for the relevant product markets is the United States.

7 **CLASS ACTION ALLEGATIONS**

8 30. Plaintiffs seek to represent the following Class:

9 31. 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) who purchased an
11 iPod directly from Apple between October 1, 2004 and March 31, 2009 (“Class Period”).

12 32. The membership of the Class is so numerous that joinder of all members is
13 impractical. There are millions of Class members who are geographically dispersed throughout the
14 United States.

15 33. Plaintiffs’ claims are typical of the claims of the members of the Class because
16 Plaintiffs and all Class members were damaged by the same wrongful conduct of the Defendant
17 alleged herein.

18 34. There are questions of law and fact common to the Class which predominate over any
19 questions affecting only individual Class members. Such common questions include:

20 (a) The definition of the relevant product markets;

21 (b) Apple’s market power within the relevant product markets;

22 (c) Whether Apple monopolized and continues to monopolize the relevant
23 product markets;

24 (d) Whether Apple attempted to monopolize and continues to attempt to
25 monopolize the relevant product markets;

26 (e) Whether the contractual conditions Apple imposes upon its customers are
27 unconscionable; and

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1 (f) Whether Apple's conduct caused damage to Plaintiffs and members of the
2 Class, including the degree to which prices paid by the Class are higher than the prices that would
3 have been paid in a market free from monopolization and other illegal conduct.

4 35. The claims of Plaintiffs are typical of the claims of the Class, and Plaintiffs have no
5 interest adverse to the interest of other members of the Class.

6 36. Plaintiffs will fairly and adequately protect the interests of the Class and have retained
7 counsel experienced and competent in the prosecution of complex class actions and antitrust
8 litigation.

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

18 **APPLE'S USE OF FAIRPLAY TO MAINTAIN MONOPOLY POWER**

19 38. On January 9, 2001, Apple released a digital media player application known as
20 iTunes that is used for playing and organizing digital media files on a personal computer. iTunes
21 allows the user to, *inter alia*, organize music, record CDs, and download the files onto a Portable
22 Digital Media Player.

23 39. On October 23, 2001, Apple released the iPod, its first Portable Digital Media Player.
24 At the time, iPod was capable of playing only unprotected Audio Downloads in MP3 format either
25 downloaded from the internet or transferred from a user's CD ("burned").

26 40. On April 28, 2003, Apple opened iTS, known at the time as the iTunes Music Store.
27 iTS offered over 200,000 songs from the major record labels for sale for 99 cents each. This was the
28 largest online music store of its time. iTS now offers more than 11,00,000 songs. iTS is accessible

1 only through iTunes. At the same time as the release of iTunes, Apple also released a new generation of
2 iPod and updated the iTunes software so that iTunes and iPod software was compatible with
3 FairPlay.

4 41. Traditionally, Audio Downloads have come in both unprotected and protected digital
5 file formats. Unlike unprotected formats, protected formats include technological encumbrances,
6 commonly known as DRM, designed to restrict a consumer's use of the file and illegal unauthorized
7 copies of the digital file.

8 42. From the inception of Apple's iTunes, the major record labels, Sony, Universal, EMI,
9 Warner, and BMG, all required Audio Downloads to be sold in protected format. Apple elected to
10 encode the Audio Downloads sold through the iTunes with its own proprietary software, FairPlay.

11 43. Because FairPlay was not licensed to any other manufacturers of Portable Digital
12 Media Players or sellers of Audio Downloads, songs purchased from iTunes that were encoded with
13 FairPlay were incapable of being played by Portable Digital Media Players other than iPods. Thus,
14 consumers who purchased Audio Downloads from Apple had no choice but to buy an iPod if they
15 wanted to play those songs directly on a Portable Digital Media Player. Conversely, iPods were
16 unable to play any files encrypted with a DRM format other than FairPlay that were sold on
17 competing Audio Download stores.

18 44. Apple encoded all Audio Downloads sold through the iTunes with FairPlay even as to:
19 (a) public domain material; and (b) music that certain music labels and/or artists themselves
20 requested be sold DRM-free.

21 45. Apple used its proprietary DRM to gain an overwhelming market share in the Audio
22 Download and Portable Digital Media Player markets.

23 46. After purchasing their Audio Download library from the iTunes, purchasers were locked
24 into making all future Portable Digital Media Player purchases from Apple. They may have wanted
25 to buy a non-Apple Portable Digital Media Player to replace their iPod, but to do so would mean
26 they could not utilize any of the FairPlay-protected songs they purchased from the iTunes on their new
27 Portable Digital Media Player.

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1 47. This quickly increased Apple's market share in both the Portable Digital Media
2 Player and Audio Download Markets. After the release of iTunes in April 2003, Apple steadily
3 maintained a 70% or more market share of the Audio Download Market. Additionally, prior to
4 release of iTunes, Apple's iPod maintained about 11% of the market compared to up to 92% after the
5 release of iTunes. As Josh Bernoff, principle analyst with Forrester Research stated, Apple's
6 "overwhelming market share is based in large part on its ability to lock people into that device."

7 48. Apple could have licensed its FairPlay software to other manufacturers of Portable
8 Digital Media Players, so that music purchased from the iTunes could be transferred directly to Portable
9 Digital Media Players other than the iPod. Additionally, Apple could have licensed its FairPlay to
10 other Audio Download stores so that music files purchased from those stores could be played
11 directly on iPods.

12 49. However, Apple did not license or give access to FairPlay to any other Portable
13 Digital Media Player manufacturer, thereby ensuring two results. First, Apple ensured that the iPod
14 was the only Portable Digital Media Player that could directly play songs purchased from the iTunes.
15 Second, Apple ensured that owners of iPods who wanted to purchase Audio Downloads to be
16 directly played on their iPod could only do so by purchasing these files at the iTunes.

17 50. But for Apple's anticompetitive intent, it would have been rational and profitable for
18 Apple to license FairPlay to competing manufacturers of Portable Digital Media Players because it
19 would have expanded the consumer base for iTunes. The more Portable Digital Media Players on the
20 market that were interoperable with files purchased from iTunes, the more profitable iTunes would have
21 been.

22 51. Instead, Apple used its dominant position obtained as a result of FairPlay, to obtain
23 monopoly power in the relevant product markets and to make substantial profits in the sale of iPods.
24 Indeed, Apple claims that it has operated the iTunes at just above cost, instead taking its monopoly
25 profits in the sale of iPods. In the first quarter of 2008, Apple reported \$9.6 billion in revenue, 42%
26 of which came from the sale of iPods. Instead, Apple took its anticompetitive profits from the sale
27 of iPods.
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APPLE'S ANTICOMPETITIVE USE OF SOFTWARE UPDATES

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2 52. In order to maintain its monopoly power in the market for Audio Downloads and the
3 market for Portable Digital Media Players, Apple has used software updates to shut out competitors
4 and cut off their access to the marketplace. Apple's anticompetitive tactics were intended to, and
5 had the effect of, preventing and/or delaying entry of competitive products that threatened Apple's
6 monopolies in the relevant product markets.

7 53. On July 26, 2004, RealNetworks, a rival seller of Audio Downloads, announced that
8 songs sold through its online store could be played on the iPod in addition to other competing
9 Portable Digital Media Players. This gave iPod owners a competitive alternative to the iTS for their
10 purchases of Audio Downloads. RealNetworks had independently analyzed the firmware within the
11 iPod and was able to discern the required extra software code added by Apple to make downloaded
12 songs playable on the iPod. Armed with this knowledge, RealNetworks was able to convert their
13 Helix DRM into the necessary DRM so that Audio Downloads sold through RealNetworks' online
14 store could be playable on Apple's iPod. This technology was known as Harmony. RealNetworks
15 maintained that its conduct was legal.

16 54. RealNetworks' Harmony was significant not only because it represented the first
17 alternative to Apple's monopolistic stronghold of Audio Downloads for playback on the iPod, but
18 also because RealNetworks began selling its Audio Downloads for as low as 49 cents per track, well
19 below the 99 cents per track charged by Apple's iTS.

20 55. At the time of RealNetworks' announcement, although there were several Portable
21 Digital Media Players in the marketplace, the iPod was the number one seller and controlled 60%
22 market share. Thus, in order to compete with Apple's iTS, which had 70% market share and was the
23 only Audio Download store that sold downloads compatible with iPod, RealNetworks had to make
24 its products compatible with iPods.

25 56. Moreover, RealNetworks' announcement was met with approval from the major
26 record labels. This was because RealNetworks sold its Audio Downloads with DRM protection that
27 ensured the files could not be improperly copied but also allowed for compatibility with over 100
28 Portable Digital Media Players, including Apple's iPod.

1 57. Indeed, in its first three weeks of selling iPod-compatible music files, RealNetworks
2 sold three million music files. RealNetworks alleged that with Harmony RealNetworks increased its
3 market share in the Audio Download Market to 20% from 10% and decreased Apple's market share
4 from 60% to 70%.

5 58. As Forrester Research pointed out about RealNetworks' actions at the time, "more
6 compatibility means more competition."

7 59. Rather than embracing this competitive offering to iPod owners, Apple immediately
8 threatened RealNetworks and iPod users. On July 29, 2004, merely four days after RealNetworks'
9 announcement, Apple issued its own public statement warning RealNetworks and iPod users: "We
10 strongly caution Real and their customers that *when we update our iPod software from time to time*
11 *it is highly likely that Real's Harmony technology will cease to work with current and future*
12 *iPods.*" (emphasis added).

13 60. True to its threat, beginning in October 2004, Apple updated its iPod and iTunes
14 software to prevent songs downloaded from RealNetworks' music store from being played on iPods.
15 Unlike other software updates previously issued by Apple, purchasers were required to update the
16 iTunes software in order to use iTS. This sent a clear message to other Apple competitors, that
17 Apple was not willing to allow genuine competition in the relevant product markets and would take
18 aggressive steps to prevent competition.

19 61. In the wake of this episode, RealNetworks and other companies were reluctant to
20 invest the necessary capital to develop music stores that would allow them to adequately compete
21 with Apple by selling Audio Downloads compatible with iPods. As RealNetworks stated in an SEC
22 filing in August 2005: "There are other risks associated with our Harmony technology, including the
23 risk that Apple will continue to modify its technology to 'break' the interoperability that Harmony
24 provides to consumers, which Apple has done in connection with the release of certain new products.
25 If Apple chooses to continue this course of action, Harmony may no longer work with Apple's
26 products, which could harm our business and reputation, or we may be forced to incur additional
27 development costs to refine Harmony to make it interoperate again."

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1 62. Because Apple was able to maintain its monopoly power in the Audio Download
2 Market, competing manufacturers of Portable Digital Media Players were unable to compete with
3 Apple's iPod because any media player they created would not be compatible with iTS. Consumers
4 who purchased Audio Downloads from iTS would not purchase a Portable Digital Media Player
5 unless those iTS files could be played on their Portable Digital Media Player. Because iTS
6 maintained 70% or more of the Audio Download Market, interoperability with files purchased from
7 iTS was critical. However, because Apple would not license FairPlay and issued software updates
8 intended to prevent interoperability when achieved, competitors were unable to genuinely compete.
9 Accordingly, Apple willfully maintained its monopoly of both the Audio Download Market and
10 Portable Digital Media Player Market.

11 63. Apple also issued several software updates intended to prevent Audio Downloads
12 purchased from iTS from being played on competing Portable Digital Media Players.

13 64. For example, in or about the beginning of 2005, a software program known as JHymn
14 was developed so that Audio Downloads purchased from iTS could be played on any AAC-
15 compatible music player, including Apple's iPod or any non-Apple device. This gave consumers a
16 clear choice of using an iPod for playback of their iTS purchases or an alternative Portable Digital
17 Media Player.

18 65. Apple immediately began issuing software updates to prevent iTS files that were
19 made interoperable with other Portable Digital Media Players using JHymn software from being
20 played. In October 2005, iTunes 6.0 was released and included changes specifically intended to stop
21 JHymn and other similar software programs.

22 66. Again in September 2006, Apple released iTunes 7.0 intended to prevent JHymn and
23 other programs from being used to create interoperability between Audio Downloads purchased
24 from iTS and non-Apple Portable Digital Media Players. Throughout the Class Period, Apple issued
25 software updates intended to prevent the use of other similar programs including QTFairUse and
26 PlayFair.

27 67. Apple continually redesigned its software even though it admitted that doing so
28 served no genuine antipiracy purpose. In a web-posting dated February 6, 2007, Apple's CEO Steve

1 Jobs conceded that “DRMs haven’t worked, and may never work, to halt music piracy.” Moreover,
2 the record companies that contractually required DRM did not require all of the anticompetitive
3 software updates issued by Apple.

4 **Removal of FairPlay**

5 68. On April 2, 2007, EMI began selling its entire catalog of music on iTS without DRM
6 restrictions and hence no FairPlay. As Eric Nicoli, CEO of EMI Group stated, “[b]y providing
7 DRM-free downloads, we aim to address the lack of interoperability which is frustrating for many
8 music fans. We believe that offering consumers the opportunity to buy higher quality tracks and
9 listen to them on the device or platform of their choice will boost sales of digital music.” This
10 represented only a fraction of the entire catalog available on iTS at the time.

11 69. In January 2008, Amazon.com became the first music store to sell all Audio
12 Downloads without DRM restrictions. Its initial catalog contained over 2 million songs. The current
13 catalog now offers over 10 million songs.

14 70. In January 2009, Apple announced that it would begin selling most Audio Downloads
15 through iTS without FairPlay restrictions. Purchasers that previously bought Audio Downloads
16 from iTS in the past could also upgrade these files to a FairPlay-free format for an additional cost of
17 30 cents per file or 30% of the original album price. By the end of March 2009, all Audio
18 Downloads sold through iTS were FairPlay-free.

19 71. This presented the first time when all iPod owners could freely purchase Audio
20 Downloads from any online store for playback on their iPods. This also presented the first time
21 when Apple could no longer re-design FairPlay software through software updates to control
22 competition in the relevant product markets and restrict consumer choice. Indeed, in 2009, Apple’s
23 market share in the Audio Download Market began to slip for the first time since its creation.
24 Apple’s share in the Audio Download Market slipped from 68.3% to 67.1%, whereas, by
25 comparison Amazon’s MP3 Store jumped from 6.2% to 9.1%.

26 72. Despite Apple’s decision to sell Audio Downloads unencumbered by FairPlay on a
27 going-forward basis, the impact of Apple’s prior conduct did not end. The billions of songs already
28 downloaded by consumers that remain locked by FairPlay continued to allow Apple to charge

1 monopoly prices for its iPod because it is the only Portable Digital Media Player that can play those
2 files.

3 **APPLE'S CONDUCT HAS BEEN THE TARGET OF FORMAL GOVERNMENT**
4 **INVESTIGATIONS AND LEGISLATION IN EUROPE**

5 73. In August 2006, France's government approved a law that was specifically designed
6 to force Apple to allow other companies to sell protected music files on the iPod, and to force Apple
7 to make music purchased on its iTunes compatible with competing Portable Digital Media Players. In
8 an interview, a French official explained that his government believes that "[s]omeone who buys a
9 song has to be able to listen to it, no matter which device or the software of choice" and that Apple is
10 designing its products to prevent consumers from using other companies' products is "not in the
11 interest of the consumer, nor the interest of the creator. It only benefits the company and we're there
12 to defend the consumer, our citizens." Apple unsuccessfully lobbied against the law, calling it "state
13 sponsored piracy."

14 74. In 2006, the consumer ombudsmen in Norway, the Netherlands, Finland, Sweden,
15 Denmark, and Germany began investigating Apple's use of FairPlay.

16 75. On July 6, 2006, the Office of the Norwegian Consumer Ombudsman found "[t]he
17 way Apple uses DRM is illegal." Using language that echoes the American common law standard of
18 an unconscionable contract, Ombudsman Bjørn Erik Thon ruled:

19 [Apple] goes to great lengths to ensure that its standard customer contract
20 protects the company's own interest. . . . "The contracts are both vague and hard to
21 understand for the customers, and they're clearly unbalanced to disfavor the
22 customer. The consumers are clearly the inferior partner in the contract, and this in
23 itself is illegal" "[Apple's restrictive] technology renders the customers without
24 rights in dealing with a company which on a whim can dictate what kind of access
25 customers will have to products they have already paid for"

26 76. Similarly, in the Netherlands, the Consumer Ombudsman filed suit against what it
27 called Apple's "illegal practices" "abuse of dominant market position" noting that "[w]hat we want
28 from Apple is that they remove the limitations that prevent you from playing a song you download
from iTunes on any player other than an iPod When you buy a music CD it doesn't play only
on players made by Panasonic. People who download a song from iTunes shouldn't be bound to an
iPod for the rest of their lives."

1 with its competitors' music stores, allowing it to monopolize the Audio Download Market, and
2 further exclude competing Portable Digital Media Players from the market, lock consumers into iPod
3 and iTunes, and charge supracompetitive prices for the iPod.

4 84. Moreover, through the use of software updates intended to prevent interoperability
5 between Audio Downloads purchased through the iTunes and competing Portable Digital Media
6 Players, Apple was able to discourage the purchase of competitors products, allowing it to
7 monopolize the Portable Digital Player Market and charge supracompetitive prices for iPods.

8 85. Consumers have been further injured as innovative companies such as Dell, Olympus,
9 and Rio have withdrawn from the Portable Digital Media Player Market. These companies had little
10 choice but to give up and exit the market because Apple's anticompetitive conduct excluded them
11 from reaching the majority of their potential customers no matter how much cheaper or how much
12 better their products were from iPods. There could be no real competition in the Audio Download
13 and Portable Digital Media Player Market as long as Apple's conduct foreclosed even the possibility
14 of its competitors reaching most potential customers.

15 86. Apple's anticompetitive conduct has deterred the development of competing
16 products, damaging consumers by depriving them of a choice of products with potentially different
17 and innovative features.

18 87. Normally markets for consumer electronic goods such as Portable Digital Media
19 Players are characterized by intense competition and narrow profit margins. Apple's pricing in the
20 Portable Digital Media Player Market, by contrast, is exactly that of a monopolist, excessive and
21 arbitrary. For example, in June 2006 the only difference between the 1GB and 4GB models of the
22 iPod nano was the capacity of their NAND flash memory parts. At spot prices in the NAND flash
23 memory market at the time, the 1GB part cost approximately \$4.15, while the 4GB part cost
24 approximately \$9.67. Nonetheless, Apple charged an additional one hundred dollars for the 4GB
25 model.

26 88. Plaintiffs and the Class have been injured by this anticompetitive conduct. As a direct
27 result of Apple's anticompetitive use of software updates, Plaintiffs and members of the Class paid
28 supracompetitive prices for iPods.

COUNT I: MONOPOLIZATION

(For Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2)

**Violations Resulting from the Unlawful Maintenance
of Monopoly Power in the Portable Digital Media Player Market**

89. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth above, on behalf of the Class.

90. Apple has monopoly power in the Portable Digital Player Market.

91. Through the anticompetitive use of software updates described herein, Apple has willfully maintained its monopoly of the Portable Digital Media Player Market. This conduct has harmed competition in that market, and has caused injury to every buyer of an iPod from Apple during the Class Period. Prices in the Portable Digital Media Player Market were higher than they would have been in a competitive market; the supply and selection of products available was lower than it would have been in a competitive market; innovation has been stifled; and the number and effectiveness of competitors have been diminished by unlawful means.

92. As a result of this violation of law, Apple's prices for iPods paid by the Class and Plaintiffs were higher than they otherwise would have been.

93. There is no appropriate or legitimate business justification for the actions and conduct which have facilitated Apple's monopolization of the Portable Digital Media Player Market.

94. The anticompetitive conduct described herein has damaged Plaintiffs and the alleged Class and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

**Violations Resulting from the Unlawful Maintenance
of Monopoly Power in the Audio Download Market**

95. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth above, on behalf of the Class.

96. Apple has monopoly power in the Audio Download Market.

97. Through Apple's anticompetitive use of software updates described herein, Apple has willfully maintained monopoly power in the Audio Download Market. This conduct has harmed competition in that market, making the supply and selection of products available lower in the Audio

1 Download Market than they would be in a competitive market. The number and effectiveness of
2 competitors have also been diminished by Apple's unlawful conduct.

3 98. There is no appropriate or legitimate business justification for the actions and conduct
4 which have facilitated Apple's monopolization of the Audio Download Market.

5 99. The anticompetitive conduct described herein has damaged Plaintiffs and the alleged
6 Class and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

7 **COUNT II: ATTEMPTED MONOPOLIZATION**

8 **(For Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2)**

9 **Violations Resulting from Unlawful Attempted**
10 **Monopolization of the Portable Digital Media Player Market**

11 100. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth
12 above, on behalf of the Class.

13 101. Apple has acted with specific intent to monopolize the Portable Digital Media Player
14 Market by using software updates intended to stifle competition and restrict consumer choice.

15 102. There was and is a dangerous possibility that Apple will succeed in its attempt to
16 monopolize the Portable Digital Media Player Market because Apple controls a large percentage of
17 that market and has the ability, and actually does, exclude its competitors through use of
18 anticompetitive technological restrictions on its products. Further success in excluding competitors
19 from the Portable Digital Media Player Market will allow Apple to obtain an illegal monopoly over
20 the Portable Digital Media Player Market.

21 103. This conduct has harmed competition in that market, making the supply and selection
22 of products available lower than it would be in a competitive market. Apple's unlawful attempted
23 monopolization has also reduced the number and effectiveness of competitors in the Portable Digital
24 Media Player Market and forced consumers to pay higher prices in the Portable Digital Media Player
25 Market than they would in a competitive market.

26 104. There is no appropriate or legitimate business justification for the actions and conduct
27 which have facilitated Apple's attempted monopolization of the Portable Digital Media Player
28 Market.

1 105. The anticompetitive conduct described herein, if not halted and abated, will damage
2 Plaintiffs and the alleged Class, and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

3 **Violations Resulting from the Unlawful Attempted**
4 **Monopolization of the Audio Download Market**

5 106. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth
6 above, on behalf of the Class.

7 107. Apple has acted with specific intent to monopolize the Audio Download Market by
8 issuing software updates intended to stifle competition and restrict consumer choice.

9 108. There was and is a dangerous possibility that Apple will succeed in its attempt to
10 monopolize the Audio Download Market because Apple controls a large percentage of that market
11 and has the ability and actually does exclude its competitors through use of anticompetitive
12 technological restrictions on its products. Further success in excluding competitors from the Audio
13 Download Market will allow Apple to obtain an illegal monopoly over the Audio Download Market.

14 109. This conduct has harmed competition in that market, making the supply and selection
15 of products available lower than it would be in a competitive market. Apple's unlawful attempted
16 monopolization has also reduced the number and effectiveness of competitors in the Audio
17 Download Market.

18 110. There is no appropriate or legitimate business justification for the actions and conduct
19 which have facilitated Apple's attempted monopolization of the Audio Download Market.

20 111. The anticompetitive conduct described herein has damaged Plaintiffs and the alleged
21 Class and is in violation of the Sherman Antitrust Act, 15 U.S.C. §2.

22 **COUNT III**

23 **(For Violation of the Cartwright Act, Cal. Bus. & Prof. Code §§16270, et seq.)**

24 112. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth
25 above, on behalf of the Class.

26 113. Apple's actions as described above constituted an unreasonable restraint of trade or
27 commerce throughout California and the rest of the United States in violation of the Cartwright Act,
28 §§16270, et seq. of the California Business and Professions Code.

1 **COUNT V**

2 **(For Violation of the Consumers Legal Remedies Act,**
3 **Cal. Civil Code §§1750, et seq.)**

4 121. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth
5 above, on behalf of the Class.

6 122. Plaintiffs and each member of the Class are “consumers” within the meaning of
7 Consumers Legal Remedies Act, California Civil Code §1761(d) (“CLRA”).

8 123. On July 7, 2006, Plaintiff Melanie Tucker sent a letter to Apple’s general counsel
9 demanding Apple cease its conduct in violation of the CLRA.

10 124. The CLRA applies to Apple’s actions and conduct, described herein, because it
11 extends to transactions that are intended to result, or which have resulted, in the sale or lease of
12 goods or services to consumers.

13 125. Apple is a monopolist with market shares of 70% or more in each of the relevant
14 product markets and a stock market capitalization of more than fifty billion dollars. Through the use
15 of FairPlay, Apple has continued to shut out competitors at no benefit to consumers while preventing
16 them from using any Apple product they have already bought from being used with a competitor’s
17 Portable Digital Media Player or iTS.

18 126. Apple’s size, completely dominates market share, and unreasonable and unfair
19 technological restrictions along with its use of software updates, place it in a greatly unequal
20 bargaining position relative to consumers in each of the relevant product markets.

21 127. Apple unconscionably exploits this unequal bargaining power by imposing prices,
22 contractual terms, and one sided technological restrictions into contracts with consumers in the
23 Audio Download Market and Portable Digital Media Player Markets. This behavior has violated and
24 continues to violate the CLRA.

25 **COUNT VI**

26 **(For Common Law Monopolization Business Practices)**

27 128. Plaintiffs re-allege and incorporate by reference each of the allegations, set forth
28 above, on behalf of the Class.

1 F. That Plaintiffs and the Class recover their costs of suit, including reasonable pre- and
2 post-judgment interest;

3 G. For an order requiring full restitution of all funds acquired from Apple's unfair
4 business practices, including disgorgement of revenues and/or profits;

5 H. Awarding Plaintiffs and the Class their expenses and costs of suit, including
6 reasonable attorneys' fees, to the extent provided by law; and

7 I. That Plaintiffs and the Class are granted such other, further, and different relief as the
8 nature of the case may require or as may be determined to be just, equitable, and proper by this
9 Court.

10 **JURY DEMAND**

11 Plaintiffs respectfully demand a trial by jury on all issues so triable.

12 DATED: January 25, 2010

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 26, 2010, 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 mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF
6 participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on January 26, 2010.

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- (No manual recipients)