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22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
24 SAN JOSE DIVISION

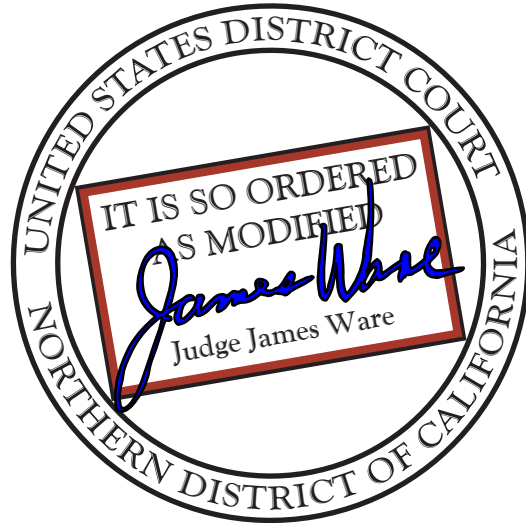
25 THE APPLE IPOD iTUNES ANTI-TRUST
26 LITIGATION.

27 Case No. C 05-00037 JW
28 C 07-06507 JW¹

29 STIPULATION AND [PROPOSED]
30 ORDER RE SCHEDULE FOR
31 BRIEFING AND HEARING
32 PENDING MOTIONS

33
34 **Whereas** three motions have been noticed for hearing on October 5, 2009 related to the
35 Court's orders of July 17, 2009 (Doc. 228) and May 15, 2009 (Doc. 213), *i.e.*, Apple's motion for
36 reconsideration of the Rule 23(b)(2) class for injunctive relief (Doc. 245/250), plaintiffs' motion
37 to modify their injunctive relief class definition to include iTS customers (Doc. 236), and Apple's
38 motion for judgment on the pleadings re rule of reason tying claim (Doc. 229);

¹ The Court notes that the parties' mistakenly included case no. C-06-04457 JW, *Melanie Tucker v. Apple Computer, Inc.* on their double captioned Stipulation. The Tucker action is a member case to the consolidated action, C-05-0037-JW", *The Apple iPod iTunes Anti-Trust Litigation*". The Court notes that the related action, C-07-06507-JW, *Stacie Somers v. Apple Inc.* should have been the correct case to be included on the double caption. Counsel should correct any future pleadings that may be double captioned to reflect the correct case numbers and titles.



1 **Whereas**, at the Court’s request, the parties in this case and the coordinated indirect
2 purchaser case, *Somers v. Apple, Inc.*, Case No. C 07-6507 JW, have submitted additional
3 briefing regarding the intersection of the claims in the direct and indirect purchaser actions, the
4 scope of the injunctive relief classes, and the relationship between their injunctive relief theories
5 and the asserted theories of liability;

6 **Whereas** Apple has also noticed its motion to decertify the Rule 23(b)(3) class for
7 damages (Doc. 240) for October 5, 2009;

8 **Whereas** plaintiffs have requested a continuance of the briefing and hearing schedule for
9 that motion so that they can depose Apple’s expert and so that their expert, if appropriate, can
10 prepare a report;

11 **Whereas** plaintiffs’ expert is unavailable this month and most of October and plaintiffs’
12 lead counsel is scheduled to be on the East Coast for family and business reasons on October 4
13 and 6, 2009, and Apple is agreeable to modifying the briefing and hearing schedule;

14 **Whereas** Plaintiffs have begun the process of meeting and conferring with Apple on the
15 proposed content of and a plan for dissemination of class notice, if any; and

16 **Whereas** the parties believes that it may be advantageous not to hear all of these motions
17 at a single hearing and have been advised that the Court’s next available hearing date after
18 October 5 is November 9, 2009;

19 IT IS HEREBY STIPULATED by the parties, subject to Court approval, as follows:

20 1. The hearing on Apple’s motion for reconsideration of the Rule 23(b)(2) class and
21 plaintiffs’ motion to expand the class definition to include iTS purchasers, shall be continued
22 from October 5 to **November 9, 2009**, at 9 a.m., with opposition briefs to be filed September 28
23 and replies to be filed by October 12, 2009.

24 2. The hearing on Apple’s motion for judgment on the pleadings re the rule of reason
25 tying claim shall remain on calendar as previously set for **October 5, 2009 at 9 a.m.** Apple shall
26 file its reply brief on **September 18, 2009.**

27 3. If the Court intends to hold a hearing on the additional issues as to which the Court
28 requested additional briefing, including those raised in the indirect purchaser’s brief filed

1 Aug. 31, 2009 (Dkt. No. 83), the hearing shall be set for **November 9, 2009**, at 9 a.m. Any
2 additional briefing shall be filed by September 28, 2009.

3 3. The hearing on Apple's motion to decertify the Rule 23(b)(3) class shall be continued
4 from October 5 to **November 9, 2009 at 9 a.m.**

5 Briefing for this Motion shall be completed on or before **October 19, 2009.**

6 **In light of these pending Motions, the Court will set a separate hearing date with**
7 **respect to any class notice once all of these Motions are resolved.**

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13 Dated: September 14, 2009

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DATED: September 14, 2009

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IT IS SO ORDERED AS MODIFIED.

Dated: September 16, 2009



Hon. James Ware