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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 MELANIE TUCKER, On Behalf of Herself)
and All Others Similarly Situated,)

19 Plaintiff,)

20 vs.)

21 APPLE COMPUTER, INC., a California)
22 corporation,)

23 Defendant.)

No. C-06-04457-JW

) CLASS ACTION

) JOINT CASE MANAGEMENT

) STATEMENT AND [PROPOSED] ORDER

) DATE: January 22, 2007

) TIME: 10:00 A.M.

) JUDGE: Honorable James Ware

) PLACE: Courtroom 8, 4th Floor

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1 The parties jointly submit this further Case Management Statement and Proposed Order, and
2 respectfully request the Court to approve and adopt this further Case Management Order in this
3 action.

4 **I. DESCRIPTION OF THE CASE**

5 1. This antitrust case is a proposed class action brought by plaintiff Melanie Tucker
6 (“Tucker” or “plaintiff”) individually and on behalf of all other similarly situated consumers. Tucker
7 filed her complaint on July 21, 2006, alleging that Apple, Inc., f/k/a Apple Computer, Inc. (“Apple”
8 or “defendant”) violates Sections 1 and 2 of the Sherman Act, California’s Cartwright Act, Section
9 17200 of California’s Unfair Competition Law, the Consumer Legal Remedies Act, and engages in
10 unlawful common law monopolization by tying its iPod portable hard-drive and flash memory
11 digital music players to online digital music and video files sold through its iTunes Music Store
12 (“iTMS”). Plaintiff also alleges that Apple has unlawfully engaged in tying its online digital music
13 and video files to its iPod portable hard drive and flash memory digital music players. Further,
14 plaintiff alleges that Apple unlawfully monopolized or attempted to monopolize the markets for the
15 online legal sales of digital music and video files and for portable digital music players. This case
16 was originally randomly assigned to Magistrate Judge Howard R. Lloyd, but upon plaintiffs’ motion
17 for administrative relief pursuant to Civil L. R. 3-12 for the purpose of determining the relationship
18 to *Slattery v. Apple Computer, Inc.*, No. C-05-00037 JW (N.D. Cal.), the case was reassigned to the
19 Honorable James Ware by the Related Case Order entered on August 23, 2006.

20 2. On August 28, 2006, after the Related Case Order was entered and the *Slattery* action
21 was dismissed, a second amended complaint was filed by plaintiffs Somtai Troy Charoensak and
22 Mariana Rosen (collectively “Charoensak” or “plaintiffs”) in lieu of former plaintiff Thomas
23 William Slattery. The action originally brought by Thomas William Slattery in this Court on
24 January 3, 2005 is therefore now captioned as *Charoensak v. Apple Computer, Inc.*, No. 05-cv-
25 00037-JW.

26 3. Apple filed a motion to dismiss the *Tucker v. Apple Computer, Inc.*, No. 06-04457
27 JW (N.D. Cal.) action on August 21, 2006. After this action was reassigned to Judge Ware, Apple
28 re-submitted its motion to dismiss Tucker’s complaint on September 8, 2006. Tucker filed her

1 opposition on October 30, 2006, and Apple filed its reply brief on November 6, 2006. Oral
2 arguments were heard on November 20, 2006 and Apple's motion to dismiss plaintiff's federal
3 antitrust claims was denied on December 20, 2006.

4 4. On November 21, 2006, this Court entered in the *Charoensak* action the Order
5 Following Further Case Management Conference providing that discovery in the *Tucker* and
6 *Charoensak* actions be used interchangeably and conducted cooperatively so as to maximize judicial
7 efficiency. The Court ordered that depositions be cross-noticed in each of the related cases; that any
8 discovery produced in *Tucker* be usable and made available to the plaintiffs' counsel in *Charoensak*
9 to the same extent as if it had been produced in that action; and that any discovery produced in
10 *Charoensak* be usable and made available to plaintiffs' counsel in this action to the same extent as if
11 it had been produced in this action. Towards that end, plaintiff proposes that any protective order
12 dealing with confidential information in *Tucker* be identical to any such order entered in
13 *Charoensak*.

14 5. The principal factual issues which the parties dispute include: the definitions of the
15 relevant market(s) applicable to this action; whether Apple improperly attained and maintained
16 monopoly power in the relevant market(s); whether Tucker and the putative class members were
17 coerced into buying an iPod or purchasing music or videos from the iTMS; whether Apple engaged
18 in exclusionary conduct; and whether Apple's alleged anticompetitive conduct has caused Tucker
19 and the proposed class members injury to their business and/or property, and if so, the measure of
20 such damages.

21 6. The principal legal issues which the parties dispute include: whether this action may
22 proceed as a class action under Fed. R. Civ. P. 23 and, if so, the proper class definition; whether
23 plaintiff can prove legally cognizable relevant market definitions; whether plaintiff's
24 characterization of Apple's alleged market power is legally correct; whether Apple's alleged conduct
25 is unlawful under the Sherman Act, California state law, and the common law of monopolization;
26 whether Apple's alleged conduct is the proximate cause of any harm allegedly suffered by plaintiff
27 and the proposed class; the proper measure of damages, if any; and whether Tucker and/or the
28 putative class is entitled to injunctive relief against Apple.

1 7. There are presently no other factual issues (*e.g.*, service of process, personal
2 jurisdiction, subject matter jurisdiction or venue) which remain unresolved.

3 8. All parties to the complaint have been served.

4 9. No joinder of additional parties is intended or planned by the parties at this time.

5 10. The parties do not consent to assignment of this case to a United States Magistrate
6 Judge for trial.

7 **II. COORDINATION OF THE RELATED CASES**

8 1. Tucker believes that coordination of the class certification proceedings in *Tucker* and
9 *Charoensak* is essential. Though the *Tucker* and *Charoensak* actions overlap in the factual and legal
10 issues raised, there are several important differences between these related actions because *Tucker*
11 asserts claims against defendant that are not alleged in *Charoensak*. First, in addition to the antitrust
12 claims alleged in the *Charoensak* action on behalf of consumers who purchased products directly
13 from Apple, *Tucker* also asserts pendent claims under the California Cartwright Act and other
14 California laws on behalf of both direct and indirect purchasers. Second, *Tucker* asserts claims
15 arising from sales of all iPod portable digital music players, including those that use flash drives and
16 those that use hard drives as their storage medium, while *Charoensak* includes only iPod's that
17 contain hard drives. Third, *Tucker* alleges claims arising from purchases of online videos from the
18 iTunes while *Charoensak's* complaint does not include video purchases. By virtue of these
19 differences the *Tucker* class encompasses the entire class which *Charoensak* seeks to represent, as
20 well as purchasers of flash-based iPods, online videos and indirect purchasers of iPods. Apple's
21 view is that it is inappropriate for Tucker to be filing any motion to certify a class, at least until the
22 Court resolves the motion to be filed January 22, 2007 in *Charoensak*.

23 2. Because the proposed classes in *Tucker* and *Charoensak* are overlapping but not
24 coextensive, plaintiff's counsel believe that class certification proceedings should be coordinated to
25 avoid duplicative, inconsistent, wastefully expensive and confusing class notices. Further,
26 coordination of class certification proceedings will conserve the Court's resources and avoid
27 duplicative oral argument of common class certification issues.

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1 **III. ALTERNATIVE DISPUTE RESOLUTION**

2 1. On November 16, 2006, the Court entered an Order granting an independent, private
3 ADR process.

4 **IV. DISCLOSURES**

5 1. The parties have agreed that their respective due dates for initial disclosures of
6 documents shall be deferred to coincide with each party's deadline for responding to the other's First
7 Set of Requests for Production of Documents and Things, provided, however, that no later than
8 February 15, 2007, the parties shall serve the names and, if known, the addresses and telephone
9 numbers of individuals most likely to have discoverable information relevant to the disputed facts
10 alleged with particularity in the pleadings and shall identify the subjects of the information for each
11 individual listed.

12 **V. CLASS CERTIFICATION BRIEFING SCHEDULE**

13 1. Plaintiff proposes that Tucker shall file and serve her class certification motion no
14 later than March 16, 2007; defendant shall file and serve its opposition to the motion for class
15 certification no later than April 20, 2007; plaintiff shall file her reply in support of class certification
16 by May 11, 2007. Plaintiff proposes that should she submit any declarations or affidavits in support
17 of her class certification papers, she will make such affiants or declarants available for deposition by
18 the opposing party sufficiently in advance of the next briefing deadline if such affiants or declarants
19 have not been previously deposed.

20 2. Plaintiff proposes that the Court schedule a Case Management Conference in this
21 action on March 19, 2007, the same date as the next Case Management Conference in *Charoensak*,
22 to address coordination of the class certification proceedings in *Tucker* and *Charoensak*. At that
23 Case Management Conference, the Court shall set a date for the hearing on plaintiff's motion for
24 class certification.

25 **VI. DISCOVERY PLAN**

26 1. Parties propose that the Court establish a pretrial schedule setting forth the remaining
27 pretrial deadlines at the Case Management Conference to be held on March 19, 2007.

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1 2. While the parties disagree on whether discovery should be bifurcated, plaintiff is
2 mindful of the Order issued by the Court in the *Charoensak* action. Plaintiff understands that the
3 Court in *Charoensak* has directed the parties to focus discovery at this time on issues legitimately
4 bearing on class certification. Assuming the Court enters a similar direction in this case, plaintiff
5 will immediately meet and confer with Apple about pending discovery, in an attempt to reach
6 agreement regarding which requests bear on class certification.

7 3. Plaintiff proposes that each side be permitted to take 30 depositions, other than expert
8 depositions, that each side be permitted to serve 100 interrogatories; and that any party may move
9 the Court for an extension of the foregoing discovery limits. Plaintiff believes that additional
10 depositions are warranted by the complex nature of this action and the anticipated need to conduct
11 depositions of third-party witnesses. Defendant submits that no good cause exists at this point to
12 extend the provisions of Fed. R. Civ. P. 30 which limit parties to 10 depositions or the provisions of
13 Fed. R. Civ. P. 33 which limit the parties to 25 interrogatories. Defendant submits that the resolution
14 in *Charoensak* – to raise the issue with the Magistrate Judge if and when it becomes ripe – should
15 also apply here.

16 DATED: January 17, 2007

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DATED: January 17, 2007

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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: _____

THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have e-mailed the foregoing document or paper to the non-CM/ECF participants indicated on the attached Manual Notice List.

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Manual Notice List

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