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KIRI TORRE, CDO
SUPERIOR COURT OF CA.
CO. OF SANTA CLARA
BY _____ DEPUTY

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FILED Santa Clara
12/13/04 10:08am
Chief Executive Officer
Joseph J. Hickey
R#200-5042-224
Case: 1-04-09-0017

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Apple Computer, Inc.,

Plaintiff,

v.

Doe 1, an unknown individual, and Docs
2-25, inclusive,

Defendants.

Case No. 104CV03278

**EX PARTE APPLICATION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF AN
ORDER SEALING (1) THE
DECLARATION OF ROBIN ZONIC,
AND (2) THE EX PARTE
APPLICATION FOR AN ORDER
FOR ISSUANCE OF COMMISSION
AND GRANTING LEAVE TO SERVE
SUPOENAS AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF THE SAME**

Pursuant to California Rule of Court 243, Plaintiff Apple Computer, Inc. ("Apple") applies *ex parte* for an order sealing the "Declaration Of Robin Zonic," and the "Ex Parte Application For An Order For Issuance Of Commission And Granting Leave To Serve Subpoenas And Memorandum Of Points And Authorities In Support Of Same." The basis for this application is that these pleadings contain detailed information about Apple's trade secrets, and Apple's interest in protecting its trade secret information is an overriding interest that supports the sealing of the record.

1 This *ex parte* application is based on this notice, the Memorandum of Points
2 and Authorities set forth below, the Declaration of Robin Zonic submitted herewith, the
3 Complaint filed in this action, and any other oral or documentary evidence that may be
4 presented at or prior to the hearing on the application.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 Good cause exists to grant Apple's motion to seal the above-mentioned
7 pleadings. Defendants, one or more individuals acting alone or in concert, have posted on
8 Internet sites accessible to the public trade secret information about Apple's unreleased
9 products. The posting of Apple's trade secret information both unfairly advantages
10 Apple's competitors and deprives Apple of the benefit of its substantial investments in
11 activities planned for its new product launch. Apple issued cease and desist letters to the
12 websites with the unauthorized postings and is conducting an internal investigation to
13 prevent further leaks of its trade secret information. This application seeks an order to
14 seal pleadings that contain highly confidential information in order to prevent the details
15 of Apple's trade secret information, as well as the measures Apple takes to protect against
16 unauthorized disclosures, from becoming known to the public and causing Apple
17 irreparable harm.

18 This application is properly brought on an *ex parte* basis. Doe 1's activities
19 are ongoing and are causing irreparable harm to Apple. Apple does not know the identity
20 of Doe 1 and, consequently, cannot inform Doe 1 of this application.

21 **Apple's Overriding Interest in Protecting Its Trade Secrets Supports Closure and**

22 **Sealing of the Record**

23 Under California Rule of Court 243.1(d), the court may order that a record
24 be filed under seal only if it expressly finds that:

25 (1) There exists an overriding interest that overcomes the right of public
26 access to the record;

27 (2) The overriding interest supports sealing the record;

28

1 (3) A substantial probability exists that the overriding interest will be
2 prejudiced if the record is not sealed;

3 (4) The proposed sealing is narrowly tailored; and

4 (5) No less restrictive means exist to achieve the overriding interest.
5 Apple's interest in protecting its trade secrets is the type of overriding

6 interest that supports the sealing of pleadings with highly confidential information. (See
7 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, n. 46
8 [86 Cal.Rptr.2d 778, 980 P.2d 337].) The pleadings that Apple seeks to seal contain
9 valuable trade secret information. (Zonic Decl. ¶19.) Disclosure of the contents of these
10 pleadings would expose the confidential details of an unreleased product and allow
11 Apple's competitors to acquire an unfair advantage over Apple. (Id. ¶20.) The
12 disclosures would also serve to validate the accuracy of the information that defendants
13 have disclosed and compound the harm to Apple. (Id.) Apple's overriding interest in
14 protecting its trade secrets overcomes the right of public access to the record and supports
15 sealing these pleadings.

16 A substantial probability exists that Apple's overriding interest in protecting
17 its trade secrets will be prejudiced if the relevant pleadings are not sealed. Public
18 disclosure of these pleadings will destroy Apple's valuable trade secret protection under
19 California Civil Code § 3426.1.

20 The proposed sealing of these pleadings is narrowly tailored and there are
21 no less restrictive means to achieve the overriding interest. Apple is not seeking the
22 sealing of the Complaint or the pleadings in their entirety, but only those pleadings that
23 contain detailed trade secret information. Thus, Apple is pursuing the least restrictive
24 remedy to protect only against disclosure of valuable trade secret information
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1 Conclusion

2 For the reasons set forth above, Apple respectfully requests that the Court
3 grant its *ex parte* application to seal the "Declaration Of Robin Zonic," and the "Ex Parte
4 Application For An Order For Issuance Of Commission And Granting Leave To Serve
5 Subpocnas And Memorandum Of Points And Authorities In Support Of Same."
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7 Dated: December 2, 2004

8 GEORGE A. RILEY
9 DAVID EBERHART
10 O'MELVENY & MYERS LLP

11 By 
12 George A. Riley
13 Attorney for Plaintiff Apple Computer, Inc.
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