

1 GEORGE A. RILEY (S.B. #118304)
2 DAVID EBERHART (S.B. #195474)
3 O'MELVENY & MYERS LLP
Embarcadero Center West
4 275 Battery Street
San Francisco, California 94111-3344
5 Telephone: (415) 984-8700
Facsimile: (415) 984-8701

6 Attorneys for Plaintiff
Apple Computer, Inc.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10
11 Apple Computer, Inc.,

12 Plaintiff,

13 v.

14 Doe 1, an unknown individual, and Does
15 2-25, inclusive,

16 Defendants.

Case No. 104-cv-032178

COMMISSION

17
18 WHEREAS, a certain civil action is pending in the Superior Court for Santa
19 Clara County, California in which Apple Computer, Inc. ("Apple") is plaintiff and
20 defendants are unknown individuals; and

21 WHEREAS, Apple believes that Red Widget, owner of
22 www.powerpage.org, is likely to have information relating to the identity of and tortious
23 conduct by the proper defendant or defendants; and

24 WHEREAS, Plaintiff Apple has requested that the Clerk of the Court issue a
25 commission for a subpoena seeking documents and/or a deposition of Red Widget, owner
26 of Powerpage.com, by service at Red Widget's place of business at 1107 Ranch Road 620
27 South, Lakeway, Texas, 78734; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREAS, pursuant to California Code of Civil Procedure Section 2026(c) the Clerk may issue a commission for deposition in a foreign jurisdiction; and

WHEREAS, pursuant to California Code of Civil Procedure Section 2029 the Court will honor commissions from another state for deposition in California; and

NOW THEREFORE, the Court requests that process issue requiring the attendance and enforcing the obligations of Red Widget to produce documents. Any document production may be effectuated and/or enforced by the methods authorized under the laws of the State of Texas.

DATED: December 14, 2004

Kiri Torre
Chief Executive Officer/Clerk

Rose Rojas

CLERK OF THE SUPERIOR COURT

SF1:569854.1

1 disjunctive, whichever makes the request more inclusive.

2 6. As used herein, “all,” “any,” “each,” or “every” means “all, any, each
3 and every.”

4 7. The term “including” means “including, but not limited to.”

5 8. The use of the plural shall be deemed to include the singular and the
6 use of the singular shall be deemed to include the plural.

7 9. All documents shall be produced in the booklet, binder, file, folder,
8 envelope, or other container in which the documents are kept or maintained by you. If for
9 any reason the container cannot be produced, please produce copies of all labels or other
10 identifying markings. Documents attached to each other should not be separated.

11 10. In the event any document is withheld on a claim of attorney/client
12 privilege or work product immunity, provide a detailed privilege log that describes the
13 nature and basis for your claim and the subject matter of the document withheld, in a
14 manner sufficient to disclose facts upon which you rely in asserting your claim, and to
15 permit the grounds and reasons for withholding the document to be identified. Such
16 description should, at a minimum:

17 a. state the date of the document;

18 b. identify each and every author of the document;

19 c. identify each and every person who prepared or participated in
20 the preparation of the document;

21 d. identify each and every person who received the document;

22 e. identify each and every person from whom the document was
23 received;

24 f. state the present location of the document and all copies
25 thereof;

26 g. identify each and every person having custody or control of
27 the document and all copies thereof;

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- h. describe the subject and purpose of the document; and
- i. provide sufficient further information concerning the document and circumstances thereof to explain the claim of privilege or immunity and permit the adjudication of the propriety of that claim.

11. If a document once existed, but has been lost, destroyed, erased or otherwise is no longer in your possession, identify the document and state the details concerning the loss or destruction of such document, including the name and address of the present custodian of any such document known to you.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents relating to any information posted on Powerpage.com (the "Website") relating to an unreleased Apple product code named "Asteroid" or "Q97" (the "Product"), including postings that appeared on the Website on November 19, 2004, November 22, 2004, November 23, 2004, and November 26, 2004. These documents include:

- (a) All documents identifying any individual or individuals who provided information relating to the Product, including: true name(s), address(es), internet protocol ("IP") address(es), and e-mail address(es);
- (b) All communications relating to the Product.
- (c) All documents relating to the Product.
- (d) All images, including photographs, sketches, schematics and renderings of the Product.

1 **DOCUMENT REQUEST NO. 2:**

2 All documents relating to the identity of any individual or individuals who have
3 knowledge regarding the source of information regarding the Product. These documents
4 include:

5 (a) All documents relating to the identity of any individual or individuals
6 associated with the Website who has or have used the name "Jason O'Grady," including
7 true name(s), address(es), IP address(es), and email address(es) for such individual(s).

8 (b) All documents relating to the identity of any individual or individuals
9 associated with the Website who has or have used the name "Bob Borries," including true
10 name(s), address(es), IP address(es), and email address(es) for such individual(s).

11 (c) All documents relating to the identity of any individual or individuals
12 associated with the Website who has or have used the name "Dr. Teeth and the Electric
13 Mayhem," including true name(s), address(es), IP address(es), and email address(es) for
14 such individual(s).

15 (d) All documents relating to the identity of any individual or
16 individuals who received and/or edited any information relating to the Product, including
17 true name(s), address(es), IP address(es), and email address(es) for such individual(s).

18
19 Dated: December 13, 2004

20 GEORGE A. RILEY
21 DAVID R. EBERHART
22 O'MELVENY & MYERS LLP

23 By 
24 David R. Eberhart
25 Attorneys for Plaintiff Apple Computer, Inc.

26 SF1:570030.1