

1 THOMAS E. MOORE III (SB # 115107)
2 **TOMLINSON ZISKO LLP**
3 200 Page Mill Rd 2nd Fl
4 Palo Alto, CA 94306
5 Telephone: (650) 325-8666
6 Facsimile No.: (650) 324-1808

7 RICHARD R. WIEBE (SB # 121156)
8 **LAW OFFICES OF RICHARD R. WIEBE**
9 425 California St #2025
10 San Francisco, CA 94104
11 Telephone: (415) 433-3200
12 Facsimile No.: (415) 433-6382

13 KURT B. OPSAHL (SB # 191303)
14 KEVIN S. BANKSTON (SB # 217026)
15 **ELECTRONIC FRONTIER FOUNDATION**
16 454 Shotwell Street
17 San Francisco, CA 94110
18 Telephone: (415) 436-9333
19 Facsimile No.: (415) 436-9993

20 Attorneys for Non-Parties MONISH BHATIA,
21 KASPER JADE, and JASON D. O'GRADY

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 IN AND FOR THE COUNTY OF SANTA CLARA

24 APPLE COMPUTER, INC.,

25 Plaintiff,

26 v.

27 DOE 1, et al.,

28 Defendants.

No. 1-04-CV-032178

**DECLARATION OF JASON D.
O'GRADY IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER**

Date: April 8, 2005
Time: 8:30 a.m.
Location: Department 14
Judge: Hon. James Kleinberg

I, Jason D. O'Grady, of Abington, Pennsylvania, declare:

1. I own and operate "O'Grady's PowerPage" ("PowerPage"), an online news magazine that provides its readers with news and information about Apple Macintosh and Apple Macintosh-compatible software and hardware.

2. I have been working with Macintosh computers since 1985, starting with the

1 original 128k Macintosh computer. I co-founded the first dedicated Apple PowerBook User Group
2 (PPUG) in the United States.

3 3. I have contributed articles to print magazines such as MacWEEK, MacWorld,
4 MacAddict, and MacPower (Japan). These print magazines are exclusively dedicated to the same
5 news beat as PowerPage, i.e., news related to Apple Macintosh and Apple Macintosh-compatible
6 products. I most recently had an article published in MacWorld's February 2005 issue and am
7 currently writing an article for an upcoming edition. I have also written chapters for The
8 Macintosh Bible, Eighth Edition and The Macintosh Bible, Panther Edition (Peachpit Press), books
9 that provide information on how to make the best use of Macintosh computers.

10 4. I am not a current or former employee of Apple Computer Inc., and do not
11 otherwise owe Apple any contractual duty of confidentiality.

12 5. PowerPage began publishing daily technology news in December 1995.

13 6. PowerPage has its principal place of business in Abington, Pennsylvania.

14 7. PowerPage has been published using the web address www.powerpage.org since
15 2002. Previously, PowerPage was published at the web addresses www.go2mac.com and
16 www.ogrady.org.

17 8. I function as the publisher and one of nine editors and reporters for PowerPage.
18 PowerPage's staff list is available at [http://www.powerpage.org/cgi-bin/WebObjects/powerpage.
19 woa/wa/about](http://www.powerpage.org/cgi-bin/WebObjects/powerpage.woa/wa/about)>. A true and correct copy of the staff list is also attached hereto as Exhibit A.

20 9. PowerPage includes news reports, feature stories and editorials, as well as how-to's,
21 tips and other practical advice for Macintosh users. Attached hereto as Exhibit B is a true and
22 correct copy of PowerPage's front page as of February 4, 2005.

23 10. PowerPage publishes an average of 15-20 individual news items per week, typically
24 publishing about four articles each weekday. For example, PowerPage published over 60 articles
25 in November 2004.

26 11. Over the last two years, PowerPage has averaged over 300,000 unique visits per
27 month.

28 12. I have been credentialed as media for the MacWorld Exposition, which is the

1 premier trade show and conference dedicated to Apple Macintosh computers and peripherals. A
2 true and correct copy of email correspondence with MacWorld to this effect is attached hereto as
3 Exhibit C.

4 13. Apple has provided me with free access to its “.Mac” service for purposes of review
5 on PowerPage. A true and correct copy of email correspondence with Apple to this effect is
6 attached hereto as Exhibit D.

7 14. Apple Chief Executive Officer Steven Jobs has personally provided quotes for
8 PowerPage in response to my media inquiries.

9 15. On November 19, 2004, I authored and published on PowerPage an article
10 discussing a rumored new product from Apple called “Asteroid.” A true and correct copy of that
11 article is attached hereto as Exhibit E.

12 16. I authored and published on PowerPage two follow-up articles regarding
13 “Asteroid,” on November 22 and 23, 2004. A true and correct copy of each article is attached
14 hereto as Exhibits F and G, respectively.

15 17. I received information about Asteroid contained in my three articles from a
16 confidential source or sources.

17 18. I gathered that news material about Asteroid from my confidential source(s) with
18 the intent of disseminating it to the public.

19 19. PowerPage invites members of the public to submit news for possible publication
20 using an online form, and specifically allows anonymous or pseudonymous submissions.
21 PowerPage began inviting such submissions with the intent of gathering news for dissemination to
22 the public. Submissions through this form are forwarded to the email address
23 [REDACTED]@powerpage.org.

24 20. On November 26, 2004, PowerPage published an article about Asteroid attributed to
25 “Dr. Teeth and the Electric Mayhem.” That article was a pseudonymous submission made through
26 PowerPage’s online form. A true and correct copy of that article is attached hereto as Exhibit H.

27 21. Apple’s counsel, George A. Riley of O’Melveny & Myers LLP, sent an email to
28 [REDACTED]@powerpage.org dated December 7, 2004 and sent on December 8, 2004 at 8:54 PM EST,

1 demanding that the four articles about Asteroid be removed from the PowerPage site. A true and
2 correct copy of that email as I received it is attached hereto as Exhibit I. (The replacement of
3 certain punctuation marks with question marks is likely the result of encoding issues with Riley's
4 email.)

5 22. I complied with Apple's demand and removed the articles shortly thereafter.

6 23. Non-party Nfox.com, Inc. is a Nevada corporation based in Las Vegas that provides
7 an electronic communications service to the public, with email servers physically located in Texas.

8 24. During November and December 2004, Nfox provided email service to PowerPage
9 and stored copies of email messages sent to my email addresses: [REDACTED]@powerpage.org,
10 [REDACTED]@powerpage.org, and [REDACTED]@powerpage.org.

11 25. I have corresponded with my attorneys in this matter using Nfox's email service.

12 I declare under penalty of perjury under the laws of the California that the foregoing is true
13 and correct. Executed on this the _____ day of February 2005 in Miami, Florida.

14
15 DATED: February __, 2005

16 By _____
17 Jason D. O'Grady