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22 SUPERIOR COURT OF CALIFORNIA
23 FOR THE COUNTY OF SANTA CLARA

24 APPLE COMPUTER, INC.,

25 Plaintiff,

26 vs.

27 DOE 1, et al.,

28 Defendants.

Case No. 1-04-CV-032178

**DECLARATION OF KURT B. OPSAHL
IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

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

I, Kurt B. Opsahl, declare and state

1. I am an attorney at law, duly licensed and admitted to practice in all the courts of the State of California. I am a staff attorney at the Electronic Frontier Foundation, a non-profit legal services organization. The facts contained in the following declaration are known to me of my own personal knowledge and if called upon to testify, I could and would competently do so.

2. I am informed and believe that Karl Kraft is affiliated with Internet service provider Red Widget and president of email service provider Nfox.com, Inc. Attached hereto as Exhibit A

1 is a true and correct copy of the Nevada Secretary of State's Corporation Details page for Nfox.

2 3. In a telephone conversation on January 18, 2005, Mr. Kraft informed me that he told
3 Apple Computer of his belief that certain email messages in PowerPage's account contained the
4 term "Asteroid." On February 3, 2005, David Eberhart, counsel to Apple, submitted a declaration
5 in this matter confirming his conversation with Mr. Kraft and stating that Mr. Kraft said "he would
6 collect those e-mails, as well as additional relevant documents, and forward them to" Mr. Eberhart.
7 Attached hereto as Exhibit B is a true and correct copy of the Declaration of David R. Eberhart
8 dated February 3, 2005.

9 4. Attached hereto as Exhibit C is a true and correct copy of a letter dated February 3,
10 2005, notifying me of Apple's intention to seek an *ex parte* order authorizing expedited discovery
11 to Nfox on the following morning, February 4.

12 5. Attached hereto as Exhibit D is a true and correct copy of a letter dated February 3,
13 2005, from myself to Apple's counsel, asking Apple to meet and confer about the important issues
14 raised by Apple's discovery requests and suggesting a briefing schedule and a hearing on March
15 25, 2005.

16 6. In a telephone conversation with David Eberhart on February 3, 2005, my colleague
17 Kevin Bankston and I engaged in a further good faith attempt at an informal resolution of each
18 issue presented by this motion.

19 7. Attached hereto as Exhibits E, F and G are true and correct copies of Deposition
20 Subpoena for Production of Business Records to Nfox, Notice of Deposition of Nfox, and Notice
21 of Deposition of Karl Kraft, which Apple contends were served on February 4, 2005.

22 8. Attached hereto as Exhibit H is a true and correct copy of three Nevada subpoenas
23 to Karl Kraft and Nfox, which Apple contends were served on February 11, 2005.

24 9. Attached hereto as Exhibit I is a true and correct copy of MacWorld's circulation
25 numbers, showing an average monthly paid circulation of 253,241 for the first six months of 2004.
26 In addition, MacWorld gave out an average of 132,826 non-paid copies to newly-registered users
27 of Apple products.

28 10. Attached hereto as Exhibit J is a true and correct copy of an email message from

1 David Eberhart sent on February 11, 2005, regarding his availability for a hearing on this motion
2 on April 8, 2005.

3 11. Attached hereto as Exhibit K is a true and correct copy of an email message I sent to
4 David Eberhart on February 11, 2005, regarding this motion.

5 12. Attached hereto as Exhibit L is a true and correct copy of an email message received
6 from David Eberhart on February 11, 2005, regarding this motion.

7 I declare under penalty of perjury under the laws of the California that the foregoing is true
8 and correct. Executed on this the ___ day of February 2005 in San Francisco, California.

9
10 _____
11 Kurt B. Opsahl
12 Attorneys for Non-Parties
13 MONISH BHATIA, KASPER JADE and
14 JASON D. O'GRADY
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