

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): George A. Riley (S.B. #118304) David R. Eberhart (S.B. #195474) O'Melveny & Myers, LLP 275 Battery Street, Suite 2600 San Francisco, California 94111 TELEPHONE NO.: (415) 984-8700 FAX NO.: (415) 984-8701 ATTORNEY FOR (Name): Apple Computer, Inc.		FOR COURT USE ONLY Document hosted at JDSUPRA™ http://www.jdsupra.com/post/documentviewer.aspx?fid=cce2175d-b5a7-4d0e-b5f1-db030f27ea71
NAME OF COURT: Santa Clara County Superior Court STREET ADDRESS: 191 North First Street MAILING ADDRESS: same as above CITY AND ZIP CODE: San Jose, California 95113 BRANCH NAME:		
PLAINTIFF/ PETITIONER: APPLE COMPUTER, INC.		
DEFENDANT/ RESPONDENT: DOE 1, ET AL		
DEPOSITION SUBPOENA For Production of Business Records		CASE NUMBER: 104-CV-032178

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Nfox.com c/o Karl Kraft

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): David R. Eberhart On (date): February 24, 2005 Location (address): O'Melveny & Myers, LLP 275 Battery Street, Suite 2600, San Francisco, California 94111	At (time): 9:00 A.M.
Do not release the requested records to the deposition officer prior to the date and time stated above.	

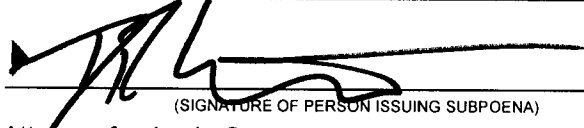
- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows:
 See attachment.
- Continued on Attachment 3.
4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: February 4, 2005

David R. Eberhart

 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorney for Apple Computer, Inc.

 (TITLE)

(Proof of service on reverse)

1 every.”

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

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

- 12 a. state the date of the document;
- 13 b. identify each and every author of the document;
- 14 c. identify each and every person who prepared or participated in the
15 preparation of the document;
- 16 d. identify each and every person who received the document;
- 17 e. identify each and every person from whom the document was received;
- 18 f. state the present location of the document and all copies thereof;
- 19 g. identify each and every person having custody or control of the document
20 and all copies thereof;
- 21 h. describe the subject and purpose of the document; and
- 22 i. provide sufficient further information concerning the document and
23 circumstances thereof to explain the claim of privilege or immunity and
24 permit the adjudication of the propriety of that claim.

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

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

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

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

Dated: February 4, 2005

GEORGE A. RILEY
DAVID R. EBERHART
DHAI VAT H. SHAH
IAN N. RAMAGE
O'MELVENY & MYERS LLP

By 

David R. Eberhart
Attorneys for Apple Computer, Inc.

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