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10 Apple Computer, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SANTA CLARA**

13 Apple Computer, Inc.,

14 Plaintiff,

15 v.

16 Doe 1, an unknown individual, and Does  
17 2-25, inclusive,

18 Defendants.

Case No. 104-cv-032178

COMMISSION

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

22 WHEREAS, Apple believes that Red Widget, owner of  
23 [www.powerpage.org](http://www.powerpage.org), is likely to have information relating to the identity of and tortious  
24 conduct by the proper defendant or defendants; and

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

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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

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CLERK OF THE SUPERIOR COURT

SF1:569854.1

1 ATTACHMENT 3

2 **DEFINITIONS AND INSTRUCTIONS**

3 Unless the context indicates otherwise, the following words and phrases  
4 have the meanings given:

5 1. "You" or "your" mean and refer to Powerpage.org., and of its  
6 employees, agents, representatives and attorneys, and its corporate predecessors,  
7 successors, affiliates, divisions, branches, subsidiaries and related entities, and all persons  
8 acting for or on behalf of Powerpage.org.

9 2. Your production must include requested documents, materials and  
10 files from any file server, mainframe computer, mini computer, personal computer,  
11 notebook or laptop computer, personal data assistant, or other storage device, including  
12 but not limited to e-mail. All requested files that are still on storage media and identified  
13 as erased, but are still recoverable, shall be included.

14 3. The term "document" is used as interpreted under the California Civil  
15 Code and the California Evidence Code and includes, without limitation, all originals and  
16 copies, duplicates, drafts, and recordings of any written, printed, graphic, photographic,  
17 electronic or otherwise recorded matter, however produced or reproduced, and all  
18 writings, as defined in California Evidence Code § 250, of any nature, whether on paper,  
19 magnetic tape, electronic or optical media or other information storage means, including  
20 film, tapes, computer disks or cards, or personal data assistant memory; and where any  
21 such items contain any marking not appearing on the original or are altered from the  
22 original, then such items shall be considered to be separate original documents.

23 4. The term "relate," "related," "relates," or "relating" means  
24 concerning, referring to, summarizing, reflecting, constituting, containing, embodying,  
25 pertaining to, involved with, mentioning, discussing, consisting of, comprising, showing,  
26 commenting on, evidencing, describing or otherwise relating to the subject matter.

27 5. The words "and" and "or" shall be construed in the conjunctive or  
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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;
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- 1 h. describe the subject and purpose of the document; and  
2 i. provide sufficient further information concerning the  
3 document and circumstances thereof to explain the claim of  
4 privilege or immunity and permit the adjudication of the  
5 propriety of that claim.

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

## 10 DOCUMENT REQUESTS

### 11 DOCUMENT REQUEST NO. 1:

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

17 (a) All documents identifying any individual or individuals who  
18 provided information relating to the Product, including: true name(s), address(es),  
19 internet protocol (“IP”) address(es), and e-mail address(es);

20 (b) All communications relating to the Product.

21 (c) All documents relating to the Product.

22 (d) All images, including photographs, sketches, schematics and  
23 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