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12 Attorneys for Non-Parties MONISH BHATIA,

KASPER JADE and JASON D. O'GRADY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF SANTA CLARA

17 APPLE COMPUTER, INC.,

18 Plaintiff,

19 v.

20 DOE 1, et al.,

21 Defendants.

Case No. 1-04-CV-032178

**NOTICE OF AND MOTION BY NON-
PARTY JOURNALISTS FOR
PROTECTIVE ORDER AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

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

24 **NOTICE OF AND MOTION BY NON-PARTY JOURNALISTS FOR**
25 **PROTECTIVE ORDER AND MEMORANDUM OF POINTS AND**
26 **AUTHORITIES IN SUPPORT THEREOF**

27 TO PLAINTIFF APPLE COMPUTER, INC. AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that the Court will hear the motion of non-parties Jason

1 O'Grady, Monish Bhatia and Kasper Jade (collectively the "Non-Party Journalists") for a
2 protective order, pursuant to Code of Civil Procedure Section 2017(c), on April 8, 2005 at 8:30
3 a.m. before the Honorable James Kleinberg of the Superior Court for the County of Santa Clara, at
4 191 North First Street, San Jose, California, 95113. Code of Civil Procedure section 2017(c)
5 provides that the Court "shall limit the scope of discovery . . ." if, pursuant to a motion for
6 protective order by a party or other affected person, it determines that ". . . the intrusiveness of that
7 discovery clearly outweighs the likelihood that the information sought will lead to the discovery of
admissible evidence."

8 Good cause exists to grant the Non-Party Journalists' motion for protective order because
9 their sources and unpublished information are protected under the reporter's shield embodied in
10 both Article I, section 2(b) of the California Constitution and in California Evidence Code Section
11 1070, as well as the reporter's privilege under the First Amendment of the United States
12 Constitution. The reporter's privilege protects the Non-Party Journalists from disclosing the source
13 of any information procured in connection with his journalistic endeavors, as well as any
14 unpublished information obtained or prepared while gathering, receiving or processing information
15 for communication to the public. These doctrines also protect a reporter's sources and unpublished
information regardless of the location where the information is stored.

16 This motion is based upon this Notice of Motion, the attached Memorandum of Points and
17 Authorities in Support of Protective Order, on all papers and records on file herein, and on
18 evidence and argument to be presented at the time of the hearing.

19 DATED: February 14, 2005

Respectfully submitted,

ELECTRONIC FRONTIER FOUNDATION

22 _____
23 Kurt B. Opsahl
24 Attorneys for Non-Parties MONISH BHATIA,
25 KASPER JADE and JASON D. O'GRADY
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