

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           CASE NUMBER: 104-CV-032178
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	
<b>DEPOSITION SUBPOENA</b> <b>For Production of Business Records</b>	

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      At (time): 9:00 A.M.  
 Location (address): O'Melveny & Myers, LLP 275 Battery Street, Suite 2600, San Francisco, California 94111

**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.

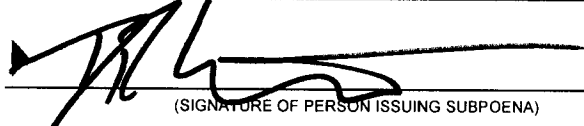
Continued on Attachment 3.

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 ATTACHMENT 3

2 **DEFINITIONS AND INSTRUCTIONS**

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

5 1. "You" or "your" mean and refer to Nfox.com, its employees, agents,  
6 representatives and attorneys, and its corporate predecessors, successors, affiliates,  
7 divisions, branches, subsidiaries and related entities, and all persons acting for or on its  
8 behalf; and Karl Kraft, his agents, representatives and attorneys, and all persons acting for  
9 or on his behalf.

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

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

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

28 5. As used herein, "all," "any," "each," or "every" means "all, any, each and

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.

1 **DOCUMENT REQUESTS**

2 **DOCUMENT REQUEST NO. 1:**

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

8 (a) all documents identifying any individual or individuals who provided  
9 information relating to the Product ("Disclosing Person(s)"), including true name(s),  
10 address(es), internet protocol ("IP") address(es), and e-mail address(es);

11 (b) all communications from or to any Disclosing Person(s) relating to the  
12 Product;

13 (c) all documents received from or sent to any Disclosing Person(s) relating to  
14 the Product; and

15 (d) all images, including photographs, sketches, schematics and renderings of  
16 the Product received from or sent to any Disclosing Person(s).

17  
18 Dated: February 4, 2005

19  
20 GEORGE A. RILEY  
21 DAVID R. EBERHART  
22 DHAI VAT H. SHAH  
23 IAN N. RAMAGE  
24 O'MELVENY & MYERS LLP

25 By 

26 David R. Eberhart  
27 Attorneys for Apple Computer, Inc.

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