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7 Attorneys for Defendant
 8 APPLE COMPUTER, INC.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 **THOMAS WILLIAM SLATTERY,**
 12 **Individually, And On Behalf Of All**
 13 **Others Similarly Situated,**

14 **Plaintiff,**

15 v.

16 **APPLE COMPUTER, INC.,**

17 **Defendant.**

Case No. C 05 00037 JW

CLASS ACTION

**DECLARATION OF TRACY M. STRONG
 IN SUPPORT OF APPLE COMPUTER,
 INC.'S ADMINISTRATIVE REQUEST
 FOR LEAVE TO FILE MOTION FOR
 SUMMARY JUDGMENT**

[Redacted Version]

18
 19 I, Tracy M. Strong, declare:

20 1. I am an associate in the law firm of Jones Day, located at 555 California Street,
 21 26th Floor, San Francisco, California, 94104, a member in good standing of the State Bar of
 22 California, and one of the attorneys of record in this case for defendant. I have personal
 23 knowledge of the facts set forth herein and, if called as a witness, I could and would competently
 24 testify thereto. I make this declaration in support of defendant's request for leave to file a motion
 25 for summary judgment.

26 2. The Court's November 15, 2005 Order Following Case Management Conference
 27 requires defendant to seek leave to file a summary judgment motion if it wishes to do so before
 28 plaintiff's motion for class certification is decided. Defendant's counsel emailed plaintiff's

1 counsel on February 15, 2005 asking plaintiff to stipulate that he did not oppose defendant's
2 request for leave. Plaintiff's counsel did not respond prior to the filing of this administrative
3 request for leave.

4 3. **[Redacted]** Exhibit A is a true and correct copy of excerpts from the deposition
5 transcript of Thomas William Slattery, taken January 30, 2006.

6 4. Attached hereto as Exhibit B is a true and correct copy of plaintiff's iTunes Music
7 Store purchase history produced by plaintiff in this litigation as SLA000031.

8 5. Attached hereto as Exhibit C is a true and correct copy of excerpts from the
9 transcript of the hearing on defendant's motion to dismiss, held June 6, 2005.

10 I declare under penalty of perjury of the laws of California and the United States of
11 America that the foregoing is true and correct of my personal knowledge. Executed this 21st day
12 of February, 2006 at San Francisco, California.

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EXHIBIT A

[REDACTED]

EXHIBIT B

Purchase History
Latest Purchase

Item	Artist	Type	Down
Astronaut	Duran Duran	Playlist	
(Reach Up for The) Sunrise	Duran Duran	Song	
Want You More!	Duran Duran	Song	
What Happens Tomorrow	Duran Duran	Song	
Astronaut	Duran Duran	Song	
Bedroom Toys	Duran Duran	Song	
Nice	Duran Duran	Song	
Taste the Summer	Duran Duran	Song	
Finest Hour	Duran Duran	Song	
Chains	Duran Duran	Song	
One of Those Days	Duran Duran	Song	
Point of No Return	Duran Duran	Song	
Still Breathing	Duran Duran	Song	
Virus	Duran Duran	Song	
Love, Angel, Music, Baby	Gwen Stefani	Playlist	
What You Waiting For?	Gwen Stefani	Song	
Rich Girl	Gwen Stefani & Eve	Song	
Hollaback Girl	Gwen Stefani	Song	
Cool	Gwen Stefani	Song	
Bubble Pop Electric	Gwen Stefani & J...	Song	
Luxurious	Gwen Stefani	Song	
Harajuku Girls	Gwen Stefani	Song	
Crash	Gwen Stefani	Song	
The Real Thing	Gwen Stefani	Song	
Serious	Gwen Stefani	Song	
Danger Zone	Gwen Stefani	Song	
Long Way to Go	Gwen Stefani & ...	Song	

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THOMAS WILLIAM) C-05-00037-JW
SLATTERY,)
) JUNE 6, 2005
)
PLAINTIFF,)
) MOTION
)
V.)
) PAGES 1-34
)
APPLE COMPUTER, INC.,)
)
)
DEFENDANT.)
_____)

COPY

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S :

FOR THE PLAINTIFF: THE KATRIEL LAW FIRM
BY: ROY A. KATRIEL
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BRAUN LAW GROUP
BY: MICHAEL D. BRAUN
12400 WILSHIRE BOULEVARD
SUITE 920
LOS ANGELES, CALIFORNIA 90025

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

1 IN THIS VALLEY?

2 MR. KATRIEL: EXCEPT, AS EXHIBIT A TO OUR
3 COMPLAINT, WHICH IS THE LAST PAGE OF THE COMPLAINT,
4 APPLE'S OWN REPRESENTATIONS, WHICH IT MAKES TO ITS
5 CONSUMERS, IS THAT PARAGRAPH 3, SONGS PURCHASED
6 FROM I-TUNES MUSIC STORES ARE ENCODED USING THE AAC
7 PROTECTED FORMAT AND CANNOT BE CONVERTED TO MP3
8 FORMAT. YOU CAN BURN THEM AND PLAY THEM IN AUDIO
9 CD PLAYERS.

10 WHAT MR. MITTELSTAEDT IS NOW REPRESENTING
11 TO THE COURT IS THAT YOU CAN TAKE AN EXTRA STEP AND
12 USE THAT AUDIO CD TO CONVERT IT BACK TO ANOTHER
13 PORTABLE DIGITAL MUSIC PLAYER. I DON'T KNOW IF
14 THAT'S TRUE OR NOT. WE CERTAINLY ARE NOT MAKING
15 ANY ALLEGATIONS WITH RESPECT TO THAT IN THE
16 COMPLAINT BUT ASSUMING THAT WERE TRUE FOR THE
17 PURPOSES OF ARGUMENT, THAT STILL DOESN'T SOLVE THE
18 PROBLEM BECAUSE THE ARGUMENT IS THAT BASICALLY THAT
19 THERE'S A METHOD BY WHICH YOU CAN CIRCUMVENT THE
20 TIE. OF COURSE THERE ALWAYS IS. ASSUME THIS
21 DIDN'T EXIST. I COULD ALWAYS SPEND MY MONEY AND
22 HIRE SOMEONE TO CRACK THE CODE AND THEN CIRCUMVENT
23 THE TIE. NOW WHAT THEY'RE SAYING IS THAT YOU CAN
24 GO OUT AND BUY A DVD BURNER.

25 THE COURT: BUT THE TIE, THE TIE IS NOT

1 ONE THAT IS COMPELLED THEN BY THE DEFENDANT IN THIS
2 CASE.

3 IN OTHER WORDS, I CAN BUY BOTH PRODUCTS
4 SEPARATELY. I CAN SUBSCRIBE TO I-TUNES ON MY
5 COMPUTER AND NEVER BUY AN IPOD AND I CAN THEN
6 LISTEN TO THE MUSIC THAT I DOWNLOAD AND I CAN TAKE
7 IT WITH ME; IS THAT CORRECT?

8 MR. KATRIEL: NOT UNLESS YOU MAKE AN
9 EXTRA PURCHASE AND THAT'S THE POINT. YOU HAVE TO
10 SPEND ANOTHER HUNDRED.

11 THE COURT: WHAT OTHER PURCHASE DO I HAVE
12 TO MAKE?

13 MR. KATRIEL: YOU HAVE TO BUY A DVD
14 BURNER.

15 THE COURT: IT WON'T DO IT ON A CD?

16 MR. KATRIEL: WELL, A CD BURNER.

17 THE COURT: BUT THAT'S ALL PART OF MY
18 COMPUTER EQUIPMENT.

19 MR. KATRIEL: BUT THERE'S A COST
20 ASSOCIATED WITH THAT.

21 THE COURT: THAT'S WHY I ASK WHETHER OR
22 NOT THE COMPUTER IS AN IMPORTANT INGREDIENT. BOTH
23 PRODUCTS NEED A COMPUTER, IT'S JUST A QUESTION OF
24 WHAT DEVICES ARE IN THE COMPUTER. YOU'RE TELLING
25 ME YOU NEED A COMPUTER WITH CERTAIN DEVICES IN

1 MR. KATRIEL: WELL, IN A SENSE THAT'S
2 CORRECT BUT I WOULD SHARPEN IT THIS WAY. THE,
3 THE -- HOW MUCH DO YOU HAVE TO SPEND TO BE ABLE TO
4 GET AROUND THE TIE IS THE WAY WE LOOK AT IT.

5 YOUR HONOR GAVE THE EXAMPLE OF THE
6 PHOTOCOPIER MACHINE FOR KEY LOCK IN THE SERVICE.
7 SO YOU CAN'T DO IT. SO YOU'RE COERCED BECAUSE YOU
8 CAN'T DO IT UNLESS YOU HAVE THE KEY FROM THE
9 MANUFACTURER.

10 BUT I WOULD IMAGINE THAT YOU COULD HIRE
11 SOMEBODY TO CRACK THAT KEY AND THE QUESTION IS IF
12 YOU HAVE TO HIRE SOMEONE FOR \$10,000 TO UNLOCK THAT
13 WITH THAT KEY, IS IT A TIE? HOW MUCH DO YOU HAVE
14 TO SPEND? BECAUSE THE POINT THE MARKET REALITIES
15 IS THAT YOU WON'T SPEND IT. HERE THE REALITIES IS
16 THAT. YOU'RE NOT GOING TO BUY A \$49 CD BURNER TO
17 BUY A .49 SONG.

18 THE COURT: NOW, LET ME ASK ONE QUESTION,
19 I'M INCLINED TO GRANT THE MOTION BUT AT THE SAME
20 TIME WORRIED I SHOULD ALLOW YOUR COMPLAINT AND WAIT
21 FOR THE INEVITABLE MOTION SO I COULD HAVE MORE
22 INFORMATION BECAUSE I HAVE TO ACCEPT, AS I SAID,
23 THE WELL PLEADED FACTS AS TRUE FOR PURPOSES OF THIS
24 MOTION AND IF I'M IN SUMMARY JUDGMENT MODE THEN I
25 AM GOING TO GET MORE INFORMATION FROM YOU ALL.

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Case No. C 05 00037 JW

CLASS ACTION

**[PROPOSED] ORDER GRANTING APPLE
COMPUTER, INC.'S ADMINISTRATIVE
REQUEST FOR LEAVE TO FILE
MOTION FOR SUMMARY JUDGMENT**

18
19 IT IS HEREBY ORDERED that defendant may file a motion for summary judgment at
20 any time.

21
22 Dated: _____

Hon. James Ware