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 APPLE COMPUTER, INC.

8
 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SOMTAI TROY CHAROENSAK and**
 12 **MARIANA ROSEN, individually, and**
 13 **on behalf of all others similarly situated,**
 14 **Plaintiffs,**
 15 v.
 16 **APPLE COMPUTER, INC.,**
 17 **Defendant.**

Case No. C 05 00037 JW
CLASS ACTION

**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER REGARDING
 CONFIDENTIAL INFORMATION**

18
 19 WHEREAS, in the course of discovery in this case it may be necessary for the parties or
 20 third parties to disclose personal confidential information, trade secrets, proprietary or other
 21 confidential commercial information; and

22 WHEREAS, the parties do not wish unreasonably to impede or burden the discovery
 23 process, but also wish to assure the reasonable protection of such personal, confidential
 24 information, trade secrets, proprietary or other confidential commercial information;

25 IT IS THEREFORE STIPULATED that:

26 1. This confidentiality stipulation and protective order ("Protective Order") shall
 27 govern the production and disclosure of information by or on behalf of any party or nonparty
 28 through the discovery and all pretrial processes. This Protective Order is not intended to govern

1 at trial. The parties will cooperate in establishing procedures acceptable to the Court with respect
2 to the protection of information designated as “CONFIDENTIAL” and “CONFIDENTIAL -
3 ATTORNEYS EYES ONLY” pursuant to this Protective Order at any trial and upon any appeal
4 of this case.

5 2. For purposes of this Protective Order, “Discovery Materials” shall include
6 documents produced pursuant to Rule 34 of the Federal Rules of Civil Procedure, interrogatory
7 responses, deposition testimony, subpoenas and all other information that may be disclosed in the
8 course of discovery in this action, as well as compilations or excerpts of such materials.
9 Discovery Materials shall be used for the prosecution and defense of this action only.

10 3. This Protective Order shall not abrogate or diminish any privilege or any
11 contractual, statutory or other legal obligation or right of any party with respect to Discovery
12 Materials.

13 4. Any party or nonparty may identify any Discovery Materials it deems to be
14 entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure, by designating
15 such Discovery Materials as “CONFIDENTIAL.” Any such designation shall be made in good
16 faith. Discovery Materials so designated shall be marked “CONFIDENTIAL.”

17 5. If any party or nonparty believes that disclosure of Discovery Materials would
18 substantially affect its competitive position or security interests in an adverse manner, that party
19 or nonparty may designate the Discovery Materials as “CONFIDENTIAL – ATTORNEYS EYES
20 ONLY.” The designation of “CONFIDENTIAL – ATTORNEYS EYES ONLY” shall be limited
21 to Discovery Materials that the disclosing party believes in good faith are commercially or
22 competitively sensitive. Any such designation shall be made in good faith. If a party or nonparty
23 produces Discovery Materials that it does not designate as “CONFIDENTIAL – ATTORNEYS
24 EYES ONLY,” but later wishes to do so designate such Discovery Materials, it shall be entitled
25 to do so; but the provisions of this Protective Order applicable to CONFIDENTIAL –
26 ATTORNEYS EYES ONLY Discovery Materials shall not apply until and unless such
27 designation is made. Unless otherwise ordered by this Court or agreed to in writing by the party
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1 producing such information, information designated CONFIDENTIAL – ATTORNEYS EYES
2 ONLY shall not be revealed to any person except as provided in this Protective Order.

3 6. In the event that a party or nonparty makes documents available for inspection,
4 rather than delivering copies to another party, no marking need be made in advance of the initial
5 inspection. For purposes of the initial inspection, all documents produced shall be considered as
6 marked “CONFIDENTIAL.” Thereafter, upon the inspecting party’s selection of documents for
7 copying, the party producing the documents may mark the copies “CONFIDENTIAL” or
8 “CONFIDENTIAL – ATTORNEYS EYES ONLY” pursuant to paragraphs 4 and 5, above.
9 Deposition transcript pages may be designated “CONFIDENTIAL” or “CONFIDENTIAL –
10 ATTORNEYS EYES ONLY” within two weeks of receipt of the transcript, and shall be deemed
11 to have been designated “CONFIDENTIAL” in their entirety until those two weeks have elapsed.
12 Testimony may also be designated on the record of any deposition as “CONFIDENTIAL” or
13 “CONFIDENTIAL – ATTORNEYS EYES ONLY.”

14 7. Access to Discovery Materials designated “CONFIDENTIAL” or
15 “CONFIDENTIAL – ATTORNEYS EYES ONLY” shall be restricted in accordance with the
16 following provisions:

17 (a) “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
18 ONLY” Discovery Materials and all information extracted from them shall be used solely
19 for the purposes of prosecuting or defending this action, and for no other purposes.

20 (b) Counsel for each party shall restrict access to “CONFIDENTIAL –
21 ATTORNEYS EYES ONLY” Discovery Materials produced by any other party or
22 nonparty by limiting the dissemination of such material to attorneys representing the
23 parties in this lawsuit, including in-house counsel for a party (“Counsel of Record”). Any
24 and all further disclosure of “CONFIDENTIAL – ATTORNEYS EYES ONLY”
25 Discovery Materials shall be governed by the provisions of subparagraphs (c) - (g) and
26 paragraphs 8 and 10, below.

27 (c) No copies, extracts or summaries of any “CONFIDENTIAL” or
28 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials shall be made

1 except by or on behalf of Counsel of Record; and such copies, extracts or summaries shall
2 also be designated and treated as “CONFIDENTIAL” or “CONFIDENTIAL –
3 ATTORNEYS EYES ONLY” Discovery Materials and shall not be delivered or exhibited
4 to any persons except as provided by this Protective Order.

5 (d) Counsel of Record may allow access to “CONFIDENTIAL” and
6 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials produced by
7 another party to consultants, including consultants designated to testify as expert
8 witnesses, provided that any such consultant shall first be provided with a copy of this
9 Protective Order and shall execute an undertaking in the form annexed hereto as Exhibit
10 A. Consultants are hereby specifically advised that their written work product which
11 contains or discloses the substance of “CONFIDENTIAL” and “CONFIDENTIAL –
12 ATTORNEYS EYES ONLY” Discovery Materials is subject to all the provisions of this
13 Protective Order. Counsel of Record disclosing “CONFIDENTIAL” and
14 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials to consultants
15 shall be responsible for obtaining the executed undertaking in advance of such disclosure
16 and also shall retain the original executed copy of said undertaking. However,
17 notwithstanding the provisions of this paragraph 7(d), plaintiffs may not disclose
18 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery
19 Materials produced by Apple to an employee or agent of any competitor of Apple.

20 (e) During depositions, Counsel of Record may question any witness about
21 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery
22 Materials. Any “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
23 ONLY” document so referred to may be marked as an exhibit, but no such
24 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” document,
25 or any portion thereof, shall be attached to any publicly-available deposition or other
26 transcript without the written consent of the party that designated the document as
27 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY.” Portions of
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1 deposition transcripts designated “CONFIDENTIAL” and “CONFIDENTIAL –
2 ATTORNEYS EYES ONLY” shall be so marked and “CONFIDENTIAL” and
3 “CONFIDENTIAL – ATTORNEYS EYES ONLY” portions, including exhibits
4 consisting of “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
5 ONLY” documents, shall be bound under seal separately from the non-confidential
6 portions of the transcript.

7 (f) In the event that any “CONFIDENTIAL” or “CONFIDENTIAL –
8 ATTORNEYS EYES ONLY” Discovery Materials are attached to, or quoted or
9 summarized in, any pleadings, motion papers or other papers filed with this Court or any
10 other court and said “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
11 ONLY” Discovery Materials would be disclosed in any way therein, such Discovery
12 Materials, pleadings or papers shall be filed under seal in accordance with this Court’s
13 Civil Local Rule 79-5. Copies of such documents containing information subject to this
14 Protective Order that are served on counsel for the parties shall be similarly identified and
15 shall be maintained as “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS
16 EYES ONLY” as described herein.

17 (g) Any pleadings, motion papers or other papers not filed under seal shall
18 have deleted therefrom all “CONFIDENTIAL” Discovery Materials and all portions of
19 such pleadings or papers that would disclose the substance of “CONFIDENTIAL”
20 Discovery Materials, provided, however, that any “CONFIDENTIAL” Discovery
21 Materials served upon Counsel of Record need not have said materials deleted therefrom.

22 8. Should Counsel of Record for any party wish to disclose any “CONFIDENTIAL”
23 or “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials produced by another
24 party to a person not authorized by this Protective Order to review such “CONFIDENTIAL” and
25 “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery Materials, said counsel shall first
26 provide counsel for the producing party with a short statement of the reason for the proposed
27 disclosure and the name, address and business or professional affiliation and title (e. g., officer,
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1 director, etc.) of such person, by written notice, delivered by hand or by fax, at least ten days prior
2 to the proposed disclosure. If counsel for the producing party objects to the disclosure within said
3 ten-day period, then the party requesting consent shall not proceed with the proposed disclosures,
4 the parties shall engage in good faith efforts to resolve the matter informally and, if those efforts
5 should fail, the party requesting consent may file with this Court an application or motion seeking
6 authorization to make the proposed disclosure pursuant to paragraph 10 below.

7 9. The disclosure of any Discovery Materials pursuant to the terms of this Protective
8 Order is not intended to be and shall not be construed as a waiver of any right or a relinquishment
9 of any confidentiality claim as to said Discovery Materials or as a waiver of any claim that the
10 information disclosed is a trade secret or is proprietary.

11 10. If any dispute arises concerning whether information designated as
12 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” should in fact be
13 considered “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” for
14 purposes of this Protective Order, then the parties shall try first to resolve such dispute in good
15 faith on an informal basis. If the dispute cannot be so resolved, the party who has objected to the
16 designation of the information as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS
17 EYES ONLY” shall give written notice that such informal attempts have failed. After the party’s
18 receipt of such notice, the objecting party may file a motion asking the Court to resolve the issue.
19 On such motion, the party asserting confidentiality shall have the burden of proving that the
20 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” information: (a)
21 constitutes a trade secret or other confidential research, development, or commercial information
22 within the meaning of Rule 26(c)(7) of the Federal Rules of Civil Procedure or (b) is otherwise
23 entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure. Prior to the
24 determination of such motion, the disputed information shall be treated by the parties as
25 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY.” If such motion is
26 granted and five days have passed after entry of an order granting the motion, then the party may
27 proceed with the proposed disclosure.

1 11. Upon final resolution of this litigation, including any appellate proceedings or
2 expiration of the time allowed therefor:

3 (a) Unless otherwise agreed, counsel for each party shall return all Discovery
4 Materials marked “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES
5 ONLY” received hereunder, including all copies thereof, to counsel for the party or nonparty
6 that produced said materials. Counsel for each party shall also destroy all extracts or
7 summaries of “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY”
8 Discovery Materials or documents containing such material. Certification of such destruction,
9 under penalty of perjury, is to be made in writing to counsel for the party who produced such
10 “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY” Discovery
11 Materials; and

12 (b) The Clerk of the Court shall, upon request of a party or nonparty that
13 produced any “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS EYES ONLY”
14 Discovery Materials, return to such party or nonparty all documents and things containing or
15 referring to such Discovery Materials that were filed under seal pursuant to this Protective
16 Order. As to those documents or things containing such information which cannot be so
17 returned, they shall continue to be kept under seal and shall not be examined by any other
18 person without a prior Court order issued after due notice to all parties, or a written stipulation
19 of counsel for all parties.

20 12. Nothing contained in this Protective Order shall preclude any party or nonparty
21 from seeking or obtaining, upon an appropriate showing, additional protection with respect to any
22 documents, information, or other Discovery Materials or trade secrets. Nothing contained herein
23 relieves any party of its obligation to respond to discovery.

24 13. The Court may modify this Protective Order at any time or consider any dispute
25 which may arise hereunder upon motion of any of the parties.

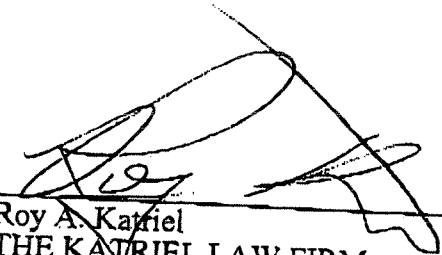
26 14. This Protective Order shall remain in effect for the duration of the action unless
27 terminated by stipulation or pursuant to Court order. Insofar as they restrict the disclosure,
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treatment, or use of information subject to this Protective Order, the provisions of this Protective Order shall continue to be binding after the termination of this action, unless the Court orders otherwise.

It is hereby STIPULATED:

Dated: 12/8, 2006


Roy A. Katziel
THE KATRIEL LAW FIRM
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Washington, DC 20007
Counsel for Plaintiffs

Dated: 12/10, 2006


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Counsel for Defendant
APPLE COMPUTER, INC.

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ORDER

The parties having stipulated to the foregoing and good cause appearing, IT IS SO ORDERED.

Dated: _____, 2006

The Honorable James Ware
United States District Judge

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EXHIBIT A

AGREEMENT TO BE BOUND BY THE STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION

I, _____, hereby acknowledge that I have read the Stipulation and Protective Order Regarding Confidential Information entered into on behalf of the parties to *Somtai Troy Charoensak et al. v. Apple Computer, Inc.*, Case No. C05-00037 JW, filed in the United States District Court, Northern District of California. I understand the provisions prohibiting the disclosure of confidential information for any purpose or in any manner not connected with the prosecution or defense of this action and I agree to be bound by all provisions of that stipulation and order.

Date: _____ Signature: _____

Print Full Name and Address: _____