

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

ATTACHMENT CV-5012

CASE NUMBER:

110CV181091

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable Kevin McKenney Department: 21

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: JAN 18 2011 Time: 2:15 pm in Department: 21

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

< **Mediation** is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

< Mediation may be appropriate when:

- < The parties want a non-adversary procedure
- < The parties have a continuing business or personal relationship
- < Communication problems are interfering with a resolution
- < There is an emotional element involved
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

< **Neutral evaluation**, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

< Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, needs to be evaluated
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- < The parties have complex facts to review
- < The case involves multiple parties and problems
- < The courthouse surroundings would be helpful to the settlement process

< Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) GREGORY D. HULL, SB# 57367 WEIL, GOTSHAL & MANGES LLP 201 Redwood Shores Parkway Redwood Shores, CA 94065 TELEPHONE NO.: _____ FAX NO.: Fax No. 650-802-3100 ATTORNEY FOR (Name): APPLE INC.		FOR COURT USE ONLY ENCLOSED FILED 2010 AUG 26 P 3:29 SANTA CLARA COUNTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First St. MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME		
CASE NAME: APPLE v. EASTMAN KODAK		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Complex Case Designation Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 10CV181091 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Five

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 26, 2010
 GREGORY D. HULL, SB# 57367
 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-PI/PD/WD Tort (35)
- Employment
 - Wrongful Termination (36)
 - Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (not unlawful detainer or wrongful eviction)
 - Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
 - Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County)
- Confession of Judgment (non-domestic relations)
- Sister State Judgment
- Administrative Agency Award (not unpaid taxes)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (non-harassment)
 - Mechanics Lien
 - Other Commercial Complaint Case (non-tort/non-complex)
 - Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief from Late Claim
 - Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: EASTMAN KODAK COMPANY
(AVISO AL DEMANDADO):**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENCLOSED
FILED

2009 AUG 26 P 3:29

Si HANRAJAYA

**YOU ARE BEING SUED BY PLAINTIFF: APPLE INC.
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court
191 North First St.

San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

GREGORY D. HULL, SB# 57367
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065

Fax No. 650-821-1890

DATE:

(Fecha) AUG 26 2010

DAVID H. YAMASAKI
Clerk, by _____
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

(SEAL)

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): EASTMAN KODAK COMPANY
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

1 MATTHEW D. POWERS (Bar No. 104795)
2 STEVEN S. CHERENSKY (Bar No. 168275)
3 GREGORY D. HULL (Bar No. 57367)
4 WEIL, GOTSHAL & MANGES LLP
5 201 Redwood Shores Parkway
6 Redwood Shores, CA 94065
7 Telephone: (650) 802-3000
8 Facsimile: (650) 802-3100
9 matthew.powers@weil.com
10 steven.cherensky@weil.com
11 greg.hull@weil.com

EMPOWERED
FILED

SEP 26 2011 P 3:29

ST. FRANCISCO

8 Attorneys for Plaintiff
9 APPLE INC.

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SANTA CLARA

110CV181091

12 APPLE INC.,
13 Plaintiff,
14 v.
15 EASTMAN KODAK COMPANY
16 Defendant.

Case No.
UNLIMITED CIVIL CASE
COMPLAINT FOR BREACH OF
CONTRACT, CONVERSION,
DECLARATION OF OWNERSHIP,
UNFAIR COMPETITION, AND BREACH
OF CONFIDENCE

JURY TRIAL DEMANDED

18 **COMPLAINT**

19 1. This is a civil action brought by Plaintiff Apple Inc. ("Apple") to enjoin
20 Kodak from further profiting from Apple's intellectual property and to recover economic damages
21 and intellectual property from Defendant Eastman Kodak Company ("Kodak") as a result of
22 Kodak's breach of contract under Cal. Civ. Code § 3300 et seq.; Kodak's conversion; Kodak's acts
23 of unfair competition under the common law and Cal. Bus. & Prof. Code § 17200 and 17500 et
24 seq.; and Kodak's breach of confidence.

25 2. As the paragraphs below detail, in the early 1990s Apple developed a digital
26 camera architecture involving an LCD viewfinder for live motion preview of images. During this
27 period, Apple approached Kodak about potentially working with Apple to commercialize this
28 digital camera architecture. Apple revealed confidential details of its digital camera development

COMPLAINT FOR BREACH OF CONTRACT

1 program to Kodak. In breach of contractual and common law obligations—and unbeknownst to
2 Apple until recently—Kodak wrongfully took this information and claimed it as Kodak’s own in
3 applying for and obtaining one or more United States patents. Kodak subsequently engaged in an
4 aggressive licensing campaign supported by at least one such patent, earning Kodak over \$1 billion.

5 3. In support of its complaint, Apple alleges as follows:

6 **PARTIES**

7 4. Apple is a corporation organized under the laws of California with its
8 principal place of business located at 1 Infinite Loop, Cupertino, California 95014.

9 On information and belief, Kodak is a corporation organized under the laws of New
10 Jersey with its principal place of business located at 343 State Street, Rochester, New York 14650.

11 **JURISDICTION**

12 5. This is an action arising under the laws of the State of California, including
13 Cal. Civ. Code § 3300 *et seq.* and Cal. Bus. & Prof. Code § 17200 and 17500 *et seq.* The damages
14 sustained by Apple are in excess of the jurisdictional minimum of this Court.

15 6. Personal jurisdiction exists over Kodak because, as set forth below, Kodak
16 has committed acts in this State that are the subject of Apple’s claims herein and has injured Apple.
17 Kodak has specifically availed itself of the laws of California in doing so.

18 **VENUE**

19 7. Venue over Apple’s claims is proper in this district pursuant to the
20 California Code of Civil Procedure § 395(a) because Kodak conducts business in Santa Clara
21 County, Apple is located in Santa Clara County, and many of the acts complained of occurred in
22 Santa Clara County.

23 **BACKGROUND FACTS COMMON TO ALL CAUSES OF ACTION**

24 **I. Introduction**

25 8. Apple is a leading designer and manufacturer of personal computers,
26 portable digital media players, and mobile communications devices. Apple’s personal digital
27 media and communications products, such as the iPhone, the iPod line of digital media players, and
28 the iPad, are groundbreaking products that revolutionized their respective industries, enjoy

1 enormous commercial success and popular acclaim, and continue to lead their fields in innovation,
2 performance, and ease of use. Apple's product portfolio also includes its industry-leading line of
3 Macintosh desktop and notebook computers, including the iMac and MacBook products such as the
4 MacBook Pro and ultra-light MacBook Air, and its portfolio of software, such as the Mac OS X
5 operating system that comes pre-installed on every Macintosh computer.

6 9. Apple's history of launching technically innovative and commercially
7 successful products stems from its ongoing commitment to research and development ("R&D").
8 For decades Apple has made substantial investments in R&D in a wide variety of technical fields,
9 including digital camera technology, computer hardware and software, graphical and touch-based
10 user interfaces, digital media players, digital imaging, and personal communications.
11 Substantially all of this R&D has been conducted by employees located at the company
12 headquarters in Cupertino, Santa Clara County, California. The U.S. Patent and Trademark Office
13 has awarded Apple patent protection for many of Apple's innovations, including patents relating to
14 digital cameras, and Apple continues to seek and obtain patent protection for its recent and ongoing
15 innovations.

16 10. On information and belief, Kodak is a company engaged in the business of
17 selling, inter alia, digital cameras and accessories. Kodak sells many of these products and
18 services in Santa Clara County. But like its other operations, Kodak's sales and profits from the
19 sale of these devices has declined substantially. Kodak has earned an annual profit only once since
20 2004. In 2009, Kodak's net loss amounted to \$210 million, and in 2008, its sales shrunk 19%.
21 Kodak hired a new CEO in 2005, who turned to an aggressive patent litigation strategy as a means
22 to generate cash for the company's operations. One patent to which Kodak has turned to make up
23 for its inability to compete in the marketplace is U.S. Patent No. 6,292,218 (the "'218 patent"),
24 which claims a digital camera capable of capturing an image while previewing the scene to be
25 captured on an LCD screen. Within the last two years, Kodak has filed a number of patent
26 infringement actions based in part on the '218 patent, and has claimed to have received over one
27 billion dollars in settlement of those litigations.

28

1 11. In furtherance of its litigation strategy, on January 14, 2010, Kodak
2 requested that the U.S. International Trade Commission (“ITC”) institute an investigation to
3 determine whether Apple’s iPhone products—which contain a digital camera—violated Section
4 337 of the Tariff Act of 1930 by reason of Apple’s purported infringement of the ‘218 patent. That
5 complaint resulted in the institution of Investigation No. 337-TA-703 (“the 703 Investigation”).
6 As part of that complaint, Kodak requested an order that would prohibit importation of all of
7 Apple’s current iPhone products into the United States, and enjoin Apple from selling any such
8 products already in the United States. Kodak also filed a complaint asserting the ‘218 patent
9 (along with another Kodak patent) in the United States District Court for the Western District of
10 New York (Civil Action No. 6:10-CV-06021)(“the ‘021 case”) seeking monetary damages based on
11 Apple’s alleged infringement of the ‘218 patent. Given the potential economic severity of Kodak’s
12 requested relief, in early 2010, Apple launched an extensive internal investigation into Apple’s
13 prior relationship with Kodak in the 1990s to determine what Apple disclosed to Kodak concerning
14 the development of digital camera technology. Apple’s investigation, summarized in sections
15 II-IV below, revealed that Apple is the rightful owner of the ‘218 patent pursuant to disclosures
16 made by Apple to Kodak and contracts made between the parties in the early 1990s. Indeed,
17 Apple disclosed the architecture for its confidential digital camera technology to Kodak subject to
18 non-disclosure agreements, which also provided that any improvements Kodak made to Apple’s
19 disclosures remain the property of Apple. By using Apple’s disclosures to draft and prosecute the
20 ‘218 patent and claim ownership thereof, Kodak is in breach of its agreements with Apple, has
21 unlawfully converted Apple’s intellectual property for Kodak’s use, and has improperly reaped
22 substantial benefits from such conversion. Kodak has also breached its duty of confidence owed
23 to Apple and has engaged in unfair competition.

24 **II. Apple and the Relevant Technology**

25 12. By the early 1990s, Apple was already researching a variety of digital
26 camera technologies within its Advanced Technology Group. In 1992, the typical consumer
27 camera user was a film camera that needed to be held up to the user’s face in order to capture an
28 image. Apple developed prototypes and completed user studies to explore possible digital camera

1 implementations. This research sparked enough interest within Apple that Apple began
2 investigating whether the research could be developed into a viable product. Apple employee Eric
3 Zarakov and his team eventually developed a set of features and an architecture for a digital
4 camera.

5 13. The camera architecture was developed around the central concept of a
6 digital still camera with an LCD viewfinder for live color preview, including sound annotations for
7 still images, review and playback of images and sounds, and easy transfer of the images to a
8 computer or other digital device.

9 14. As early as February 1992, Apple had built a working prototype to
10 demonstrate the experience of using a color display as a live viewfinder and review tool.

11 15. During Apple's development of the digital camera architecture, Apple
12 sought potential original equipment manufacturer ("OEM") to work with Apple to commercialize
13 and manufacture the camera. Because Apple's core expertise was in computers and digital
14 processing, Apple looked for OEMs with experience producing sensors, lens systems, and displays
15 it could use to implement the architecture Apple had designed. Kodak was one such potential
16 OEM.

17 **III. The Relationship Between Apple and Kodak**

18 16. Apple formalized an agreement with Kodak in early 1990. Apple and
19 Kodak explored how the two companies could work together on various projects, including the
20 commercialization of Apple's digital cameras. Apple was considering whether Kodak could
21 supply certain components for its digital camera. In 1991 and 1992, representatives from Apple
22 and Kodak met to discuss digital camera technology. Named inventors of the '218 patent,
23 Timothy Tredwell and Kenneth Parulski, each attended at least one such meeting each.

24 17. One such meeting occurred on November 17 and 18, 1992, in Rochester,
25 New York. Apple and Kodak met to discuss more specifically what Kodak could offer as part of
26 Apple's development of Apple's proposed digital camera architecture. Apple employees Eric
27 Anderson, Eric Zarakov, and Scott Fullam attended that meeting. A named inventor of the '218
28 patent, Timothy Tredwell, among others, attended the meeting for Kodak. At that meeting, Apple

1 presented to Kodak the confidential architecture and design of Apple's digital camera, and Kodak
2 presented to Apple information about Kodak's lenses and CCDs. Members of Apple's digital
3 camera project team met with members of Kodak's imaging department, and Apple disclosed to
4 Kodak's imaging department the architecture for a digital still camera with live color preview.
5 Apple also disclosed the use of a high-powered, multitasking processor.

6 18. Apple's disclosures to Kodak at the November 17-18, 1992 meeting are
7 confirmed in contemporaneous documents. For example, Mr. Zarakov of Apple sent a letter to
8 David Lewis of Kodak on January 25, 1993 in order to commemorate the details of Apple's
9 disclosure to Kodak. Specifically, Mr. Zarakov described that Apple disclosed a digital signal
10 processor as a microprocessor, as well as certain video subsystem architectures. In a voicemail
11 transcribed at the time it was received, Mr. Lewis of Kodak acknowledged receipt of Mr. Zarakov's
12 letter without disputing Mr. Zarakov's description of what Apple disclosed.

13 19. Apple made another presentation to Kodak on February 19, 1993, specifying
14 details such as the resolution and color filter pattern of the CCD and the LCD display. The
15 February 1993 presentation also further memorialized the processing of still images disclosed by
16 Apple to Kodak at the November 17-18, 1992 meeting and as described in a November 24, 1992
17 technical overview presentation.

18 20. In parallel with the February 19, 1993 presentation, Mr. Fullam drafted
19 several block diagrams showing the components of Apple's camera architecture that supported still
20 image capture and live color viewfinder. Those block diagrams further evidence the state of the
21 development project at Apple in February 1993.

22 21. Kodak worked together with Apple to develop the Apple QuickTake 100
23 camera, released in early 1994. That camera did not include Apple's live color preview
24 architecture, but the digital imaging personnel at Apple continued to develop a digital still camera
25 with live color preview. The core aspects of the live color preview camera architecture were
26 incorporated into next-generation camera projects. These camera projects were also proposed by
27 Apple to third parties, including Sanyo, and were ultimately developed by Apple in co-operation
28 with Kodak.

1 22. In 1996, Apple's digital camera projects and certain of Apple's digital
2 camera intellectual property and personnel were transferred to a company called FlashPoint.
3 Apple's camera architecture, comprising a digital still camera with live color preview, was
4 incorporated into a number of cameras using Apple's concept that were jointly developed by Kodak
5 and FlashPoint, and sold by Kodak, including the Kodak DC-220, DC-260, DC-265, and DC-290.

6 23. During this period of cooperation, unbeknownst to Apple, Kodak was
7 secretly taking Apple's innovations and claiming them as Kodak's own in at least one patent
8 application filed with the U.S. Patent and Trademark Office. That application, which ultimately
9 issued as the '218 patent, describes and appears to be based upon technology included in the
10 confidential, proprietary disclosures Apple made to Kodak in the 1992-1993 time period.

11 **IV. The Agreements Between Apple and Kodak**

12 24. Both Apple and Kodak understood that the discussions between them
13 included the exchange of confidential information, and that each party would protect and respect
14 the confidential information of the other, neither disclosing it to anyone else nor misusing the
15 information for its own benefit. Indeed, the disclosures described above that were made by Apple
16 to Kodak were made subject to non-disclosure agreements. The non-disclosure agreements
17 contain provisions that any patentable improvements made to information disclosed under the
18 non-disclosure agreement belong to the discloser and *not* the party who made the improvement.
19 One such agreement signed by Kodak and Apple was dated December 20, 1994—ten days prior to
20 the filing of the application that led to the '218 Patent.

21 25. The 1994 agreement governed the parties' rights, both with regard to past
22 and future work and specifies that any derivative work belongs to the company that made the
23 original disclosure upon which the derivative work was based.

24 26. Another agreement is a confidentiality agreement between Apple and Kodak
25 dated February 28, 1991—the same date that Apple and Kodak met to discuss, among other things,
26 low-cost digital cameras. This agreement likewise has a provision specifying that any derivatives
27 of information disclosed remain the property of the discloser. The five-year term of this
28 agreement extends beyond the filing date of the application that led to the '218 Patent. Thus,

1 under the 1991 agreement, Apple owns any patent derived from confidential information provided
2 by Apple.

3 27. There is no doubt that Apple considered its proprietary digital camera
4 designs to be confidential. Mr. Zarakov wrote Mr. Lewis to notify him of that fact. Included with
5 that letter were three figures reflecting various proprietary architectures disclosed to Kodak.
6 There is also no doubt that Kodak had notice of that fact and agreed to it. As explained above, Mr.
7 Lewis left a voicemail for Mr. Zarakov acknowledging receipt of a letter from Apple informing
8 Kodak that Apple considered its architecture to be confidential.

9 28. Apple satisfied its confidentiality and other obligations under its agreements
10 with Kodak.

11 **V. Kodak's Wrongful Acts**

12 29. Apple revealed its confidential information to Kodak in confidence, which
13 Kodak unlawfully used to prepare its application for the '218 patent. The purpose of the patent
14 system is to encourage innovation by conferring on the patent holder a limited right to control who
15 can use its invention. Part of that control includes the ability to exclude others from using the
16 patented invention, as well as the ability to issue exclusive or nonexclusive licenses to the patented
17 invention, which can be extremely lucrative, as it has been for Kodak based on its litigation efforts
18 related to the '218 patent.

19 30. Kodak's agreements that any derivatives based on Apple's disclosures
20 remain Apple's property makes Apple the rightful owner of the '218 patent. Moreover, Kodak's
21 agreement to assign ownership to Apple on derivatives of Apple's disclosures gives Apple
22 equitable rights in the '218 Patent. Additionally, Kodak's use of Apple's confidential information
23 and its failure to disclose and assign its rights to the '218 patent to Apple constitute breaches of the
24 parties' agreements and has unjustly enriched Kodak. Kodak has also unlawfully converted
25 Apple's intellectual property into its own property, has breached its duty of confidence with Apple,
26 and has committed acts of unfair competition.

27 31. As explained above, Kodak has recently enjoyed litigation settlements and
28 royalties for the '218 patent that amount to over \$1 billion. Kodak has further been unjustly

1 enriched at least in these amounts, and Apple has suffered and will continue to suffer actual
2 damages by Kodak's unlawful assertion of ownership rights in the '218 patent. Indeed, Kodak has
3 gone so far as to assert the '218 patent against Apple, thereby forcing Apple to incur attorneys' fees
4 and other expenses in defending itself.

5 **VI. Statutes of Limitations**

6 32. The causes of action alleged below carry either a two, three, or four-year
7 statute of limitations, placing the operative date in August of 2008, 2007, or 2006.

8 33. California uses the "discovery rule" to determine when a cause of action
9 accrues for purposes determining the statute of limitations. A claim accrues when the plaintiff
10 discovers, or could have discovered through reasonable diligence, the injury and its cause.

11 34. Apple did not discover, and could not have discovered through reasonable
12 diligence, Kodak's wrongful acts prior to August of 2008. Indeed, Kodak's very failure to
13 disclose to Apple its improvements on Apple's technology prevented Apple from having any
14 knowledge of Kodak's wrongful acts; Kodak secretly pursued the '218 patent without informing
15 Apple of its activities.

16 35. Kodak holds thousands of patents, and Apple could not have discovered
17 through reasonable diligence prior to August 2008 that any one of those patents might implicate
18 Apple's rights arising out of the parties' relationship in the early 1990s. In California, a plaintiff is
19 under no duty to continuously monitor a defendant's activities to determine if a cause of action
20 exists. Moreover, the '218 patent did not issue until 2001, some eight years after the parties'
21 relationship had grown stale.

22 36. Kodak and Apple had additional discussions in the 2007-2008 time frame,
23 but, again, at no time during that period did Kodak assert or otherwise identify the '218 patent.
24 Thus, Apple could not have discovered the wrongful acts committed by Kodak until after October
25 2008, when Kodak first brought the '218 patent to Apple's attention.

1 **FIRST CAUSE OF ACTION**
2 **(Breach of Contract)**

3 37. Apple incorporates by reference paragraphs 1 through 36 as though fully set
4 forth herein.

5 38. Apple and Kodak entered into various contracts, including contracts dated
6 February 28, 1991 and December 20, 1994. Kodak committed significant acts in violation of these
7 various contracts, and Kodak failed to perform other significant acts that the various contracts
8 required Kodak to do. For example, Kodak breached the 1991 agreement in multiple ways,
9 including: 1) by unlawfully using Apple's confidential information without Apple's consent, 2)
10 by unlawfully claiming ownership of the '218 patent, and 3) by failing to grant Apple a royalty-free
11 license to the '218 patent and/or acknowledging Apple's ownership of the '218 patent. Kodak
12 likewise breached the 1994 agreement in multiple ways, including: 1) by unlawfully using
13 Apple's confidential information without Apple's consent, 2) by claiming ownership of the '218
14 patent, 3) by failing to disclose to Apple Kodak's derivative work, and 4) by failing to assign to
15 Apple Kodak's rights to the '218 patent.

16 39. At no time was Kodak excused from having to perform all of the significant
17 acts that the contracts required, nor was Kodak permitted to commit acts in violation of the
18 contracts. Likewise, Apple has satisfied its obligations under its various agreements with Kodak.

19 40. Apple has been and continues to be harmed significantly from Kodak's
20 breach of contract.

21 **SECOND CAUSE OF ACTION**
22 **(Conversion)**

23 41. Apple incorporates by reference paragraphs 1 through 36 as though fully set
24 forth herein.

25 42. Apple had ownership rights to the intellectual property it disclosed to Kodak
26 in the early 1990s concerning digital camera technology, and to all improvements thereon. Kodak
27 received Apple's intellectual property and made improvements to it in filing and prosecuting the
28 applications that led to the '218 patent. Kodak intentionally took possession of Apple's

1 intellectual property for a significant period of time, and in claiming ownership to the '218 patent,
2 prevented Apple from having access to its intellectual property.

3 43. Apple did not consent to Kodak's use, possession, or ownership of Apple's
4 intellectual property and improvements thereon.

5 44. Apple has been and continues to be harmed significantly from Kodak's
6 unlawful conversion of Apple's property.

7 45. Kodak's conduct was the legal cause of Apple's harm.

8 **THIRD CAUSE OF ACTION**
9 **(Declaration of Ownership)**

10 46. Apple incorporates by reference paragraphs 1 through 36 as though fully set
11 forth herein.

12 47. California Code of Civil Procedure § 1060 provides that "[a]ny person
13 interested under a written instrument, . . . or under a contract, or who desires a declaration of his or
14 her rights or duties . . . in respect to, in, over or upon property, . . . may, in cases of actual
15 controversy relating to the legal rights and duties of the respective parties, bring an original action
16 or cross-complaint in the superior court for a declaration of his or her rights."

17 48. Apple requests that, based on the actions described herein, Apple be
18 declared the rightful owner of the '218 patent.

19 **FOURTH CAUSE OF ACTION**
20 **(Unfair Competition)**

21 49. Apple incorporates by reference paragraphs 1 through 36 as though fully set
22 forth herein.

23 50. Kodak has engaged in unfair competition under the California Business and
24 Professions Code § 17200 and 17500 *et seq.*, which provide that "unfair competition shall mean
25 and include any unlawful, unfair or fraudulent business act or practice."

26
27 51. California Businesses and Professions Code § 17203 further provides that
28 "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be

1 enjoined in any court of competent jurisdiction. The court may make such orders or judgments . .
2 . as may be necessary to prevent the use or employment by any person of any practice which
3 constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any
4 person in interest any money or property, real or personal, which may have been acquired by means
5 of such unfair competition.”

6 52. The acts described in paragraphs 1 through 36 of this Complaint constitute
7 unlawful, unfair, and/or fraudulent business acts or practices on the part of Kodak.

8 **(Unfair Business Acts)**

9 53. Given the exclusionary power that a patent conveys, Kodak’s actions have
10 had a direct, discernible and anticompetitive impact on competition; that said anticompetitive
11 conduct included, *inter alia*, Kodak’s unfair demand for the royalties that Kodak has exclusively
12 extracted from competitors in the marketplace for access to the ‘218 patent; in addition, Kodak has
13 unfairly asserted a right and an ability to exclude others, including Apple, from practicing the
14 disclosed invention. The above mentioned conduct, which has occurred as a result of Kodak’s
15 unfair use of the information disclosed to Kodak by Apple in confidence, has significantly
16 threatened and harmed competition, and has therefore engaged in unfair conduct which constitutes
17 unfair competition under § 17200 et seq. of the Business & Professions Code of the State of
18 California.

19 **(Unlawful Business Acts)**

20 54. Apple invested substantial sums of money in the research and development
21 of digital camera technology. Apple disclosed that technology to Kodak in confidence and
22 pursuant to non-disclosure agreements, with the hopes of a possible joint development of digital
23 camera projects. Kodak was prohibited from using Apple’s technology or any improvements
24 thereon, and from claiming ownership of Apple’s technology or any improvements thereon.
25 Kodak was further required to disclose to Apple any derivative works, and to assign to Apple the
26 rights to any such derivative works. Rather than abiding its contractual obligations, Kodak instead
27 used Apple’s disclosure to prosecute an application for a U.S. patent, and claimed Apple’s
28 technology as its own. By doing so, Kodak has earned over a billion of dollars in litigation

1 settlements and royalties. In addition, and by reason of said conduct, Kodak violated one or more
2 of the following statutes and regulations: 35 U.S.C. §§ 115 and 116; and 37 CFR 1.56 and 19 CFR
3 210.4, and has therefore engaged in unlawful conduct which constitutes unfair competition under
4 §§ 17200 et seq. of the Business & Professions Code of the State of California.

5 55. Apple has been and continues to be harmed significantly from Kodak's
6 wrongful acts.

7 **(Common Law Unfair Competition)**

8 56. That by reason of the facts and circumstances mentioned above, Kodak has
9 engaged in common law unfair competition; rather than abiding its contractual obligations, Kodak
10 unlawfully used Apple's disclosures to prosecute an application for a U.S. patent and thereby
11 passed off Apple's technology as its own.

12 **FIFTH CAUSE OF ACTION**
13 **(Breach of Confidence)**

14 57. Apple incorporates by reference paragraphs 1 through 36 as though fully set
15 forth herein.

16 58. The acts described in paragraphs 1 through 36 of this complaint constitute a
17 breach of confidence by Kodak against Apple under the common law of the State of California.

18 59. Under the common law of California, a breach of confidence claim arises
19 when (1) an idea, whether or not protectable, is offered to another in confidence, (2) is voluntarily
20 received in confidence with the understanding that it is not to be disclosed, and (3) is not to be used
21 by the receiving party beyond the limits of the confidence without express permission provided.

22 60. The information that Apple disclosed to Kodak, as described above, was
23 highly confidential in nature. Apple took steps to protect the confidentiality of this information,
24 including by entering into non-disclosure agreements with Kodak. Apple disclosed the
25 information to Kodak in confidence, pursuant to the non-disclosure agreements. Pursuant to these
26 agreements, Kodak had a duty of confidence not to use the information that Apple disclosed, and to
27 disclose to Apple any works derived from Apple's disclosure.
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9. For such other and further relief and damages as the Court deems proper.

Dated: August 25, 2010

WEIL, GOTSHAL & MANGES LLP

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APPLE INC.