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October 31, 2008

VIA FACSIMILE

The Honorable Kenneth M. Karas :  
United States District Court  
Southern District of New York  
United States Courthouse  
300 Quarropas St., Room 533  
White Plains, NY 10601-4150

Re: International Business Machines Corporation v. Papermaster, Case No. 08-CV-9078 (KMK)

Dear Judge Karas:

We represent the Defendant, Mark Papermaster, in the above-captioned case. Pursuant to Your Honor's Individual Rules of Practice, Mr. Papermaster's opposition papers in response to Plaintiff's motion for preliminary injunction are due to be filed next Tuesday, November 4<sup>th</sup>. For the reasons discussed below, we respectfully request that Mr. Papermaster be permitted to file those materials under seal.

On October 24, 2008, Plaintiff International Business Machines Corporation ("IBM") filed a motion for a preliminary injunction, seeking to enjoin Mr. Papermaster, a former employee of IBM, from working for Apple Inc. ("Apple"). IBM claims that by doing so Mr. Papermaster will be in breach of a former Noncompetition Agreement that he signed while at IBM.

Mr. Papermaster's response will demonstrate that IBM is not entitled to the relief it seeks because, among other things, (1) IBM and Apple are focused on entirely different markets and are not competitors, and (2) the job Mr. Papermaster has taken at Apple has nothing to do with the work he did at IBM. Mr. Papermaster was hired not because of any specific knowledge or experience he gained at IBM, but because of his general skill and experience as an engineer, his strong managerial skills, and Apple's perception that he would fit within its corporate culture.

The evidence Mr. Papermaster will submit in support of his opposition includes material involving sensitive internal personnel issues at Apple that are not yet public, as well as some confidential information regarding Apple's business. Courts regularly afford confidentiality protection to such materials. See, e.g., *Standard Inv. Chartered, Inc. v. National Ass'n of*

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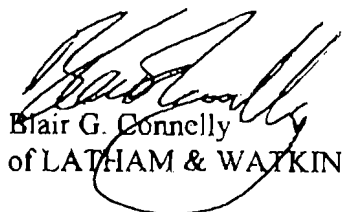
*Securities Dealers*, No. 07-CV-2014, 2008 WL 199537, at \*8 (S.D.N.Y. Jan. 22, 2008) (granting motion for a protective order to restrict public access to confidential business information); *Sterbens v. Sound Shore Medical Center*, No. 01-CV-5980, 2001 WL 1549228, at \*3 (S.D.N.Y. Dec. 5, 2001) (granting motion for a protective order to prevent disclosure to non-parties of certain personnel documents).

We have submitted a proposed protective order to Plaintiff's counsel, which they are currently reviewing; assuming you can reach an agreement we will submit the proposed order for Your Honor's consideration. However, given the expedited nature of Plaintiff's motion, we respectfully request that Mr. Papermaster be permitted to file his opposition papers under seal in advance of that determination, and that those materials be deemed confidential for the time being. (We will, of course, serve the papers on Plaintiff's counsel and provide courtesy copies to the Court today as required by your Honor's Individual Rules of Practice.)

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We thank the Court for its attention to this matter.

Respectfully submitted.

  
Blair G. Connelly  
of LATHAM & WATKINS LLP

cc: Evan R. Chesler  
Stephen S. Madsen

Mr. Papermaster may file his opposition to Plaintiff's Preliminary Injunction motion under Seal, provided that a redacted version will be filed within 30 days of the date of this ~~memo~~ memo endorsement.

SO ORDERED  
  
KENNETH M. KARAS U.S.D.J.  
11/3/08