

OKI - INA

FILED
San Diego Superior Court

FEB 23 2012

Clerk of the Superior Court
BY: H. HENSON

1 LYNNE C. HERMLE (STATE BAR NO. 99779)
 2 JESSICA R. PERRY (STATE BAR NO. 209321)
 3 JULIA COLLINS RIECHERT (STATE BAR NO. 254078)
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 5 1000 Marsh Road
 6 Menlo Park, CA 94025
 Telephone: (650) 614-7400
 Facsimile: (650) 614-7401
 lhermle.orrick.com
 jperry@orrick.com
 jrieichert@orrick.com

7 Attorneys for Defendant
 8 APPLE INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SAN DIEGO

11
 12 BRANDON FELCZER, on behalf of himself
 13 and all others similarly situated,
 14 Plaintiffs,
 15 v.
 16 APPLE INC., a California corporation; and
 17 DOES 1 through 300, inclusive.
 18 Defendants.

CASE NO. 37-2011-00102593-CU-OE-
 CTL [IMAGED]
**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER RE USE OF
 CONFIDENTIAL MATERIAL**
 Dept.: 60
 Judge: Hon. Gonzalo Curiel

FILED

19
 20
 21
 22
 23
 24
 25
 26
 27
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STIPULATION

Subject to and without waiving any objections any party may have as to the discoverability of any information, and without waiving any objection or cause of action any party may have (including but not limited to any objection or cause of action arising out of the acquisition, retention, or other handling of documents containing confidential or proprietary information), and solely for the purposes of providing a procedure for the handling and protection of Confidential Information, as defined herein, the parties to this action hereby agree on the following procedures for handling such Confidential Information. Certain documents, things and information disclosed through discovery or otherwise, may constitute or contain secret, proprietary, private, or confidential information. This information may include but is not limited to (i) financial performance information, including but not limited to annual revenues, monthly revenues, department revenues, product revenues, item revenues, store revenues, and sales numbers; (ii) information regarding company structure, operations and strategies; (iii) proprietary information; (iv) customer data; (v) personnel data of persons other than the named plaintiff in this action; and (vi) any non-public information.

The parties hereby agree that access to and use of such documents, things and information shall be governed and limited by the provisions of this Protective Order as set forth herein, subject to the approval of the Court.

A. DEFINITION OF CONFIDENTIAL INFORMATION

Confidential Information, as used herein, means any type or classification of information which is designated as Confidential when it is produced by the supplying party or received by the receiving party whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as Confidential Information, the supplying party or receiving party will make such designation only as to that information which it believes contains trade secret, confidential, private, and/or proprietary information. Each party shall exercise good faith in designating information as Confidential Information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. PROCEDURE FOR DESIGNATING MATERIAL AS CONFIDENTIAL INFORMATION

1. Confidential Information shall include all documents provided by a party which have been designated as confidential by marking the page: CONFIDENTIAL or CONFIDENTIAL INFORMATION. In lieu of marking the original of documents, the party may mark the copies that are produced or exchanged.

2. The identification of information as Confidential shall be made at a time when a response to an interrogatory or a response to a request for admission is served, when a copy of a document is provided to the other party, and when an inspection of premises or tangible things is made.

3. Information disclosed at a deposition may be designated as Confidential by either (a) indicating on the record at the deposition that the testimony is Confidential Information and subject to the provisions of this Order; or (b) notifying the opposing party in writing within thirty (30) business days of the receipt of the transcript of those pages and lines or exhibits that contain Confidential Information. No Confidential Information may be read by anyone other than Qualified Persons (as defined in Section C). Upon being informed that certain portions of a deposition disclose Confidential Information, each party must cause each copy in their custody or control to be so marked immediately.

4. A party receiving information may designate information as Confidential by stating in writing the specific pages of the information to be designated within thirty (30) days after receipt of the information for which the designation is proposed.

5. If any party believes that a document or other information, which has been designated as Confidential, should not properly be treated as Confidential within this protective order, that party will notify the disclosing party of its disagreement with the Confidential designation as soon as possible. Counsel for the parties will then endeavor to reach an agreement regarding the status of that document or information within two (2) business days of the notice of disagreement. If no agreement can be reached after ten days, the party seeking to challenge the confidentiality of the document shall file a motion for relief immediately thereafter.

1
2 Notwithstanding the forgoing, nothing in this Protective Order shall preclude either party from
3 seeking relief on an ex parte basis. Until the Court resolves the motion or application, the
4 document or information will be treated as Confidential Information subject to the terms of this
5 protective order.

6 **C. QUALIFIED PERSONS WITH ACCESS TO CONFIDENTIAL**
7 **INFORMATION**

8 Qualified Persons, as used herein, means:

- 9 1. The named parties in this litigation and their attorneys, including in-house
10 attorneys, paralegal personnel, and secretaries employed by counsel to the named parties;
- 11 2. Consultants and experts retained or employed to assist the attorneys of the
12 named parties in the preparation of this litigation for trial, such as statisticians, economists,
13 accountants, or other technical or legal experts or consultants, who have signed an appropriate
14 stipulation reflecting an agreement to abide by the terms of this protective order. The stipulation
15 shall be in the form set forth in Exhibit A.
- 16 3. In preparation for or during the course of testifying in the case, either at
17 trial or in a deposition, a current or former employee witness, provided the witness has signed a
18 stipulation, in the form set forth in Exhibit A, reflecting an agreement to abide by the terms of this
19 protective order.
- 20 4. The Court and the court personnel, and stenographic reporters and
21 videographers, and/or interpreters at depositions taken in this action.

22 **D. RESTRICTIONS ON THE USE AND DISCLOSURE OF CONFIDENTIAL**
23 **INFORMATION**

- 24 1. Any information designated as Confidential Information shall not be made
25 available or disclosed to any person other than a Qualified Person, as defined in Paragraph C.
26 Persons who, by virtue of the conduct of this litigation, have knowledge of the designated
27 Confidential Information shall not intentionally suffer or permit its disclosure or that of any
28 information obtained, derived, compiled, or ascertained therefrom, to any person or persons not
entitled under this Protective Order to receive such information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Disclosure of all items designated as Confidential Information in this action shall be solely for the purposes of this action (*Brandon Felczer v. Apple Inc., Superior Court of the State of California for the County of San Diego - Case No. 37-2011-00102593-CU-OE-CTL*), unless and until such designation is removed either by stipulation by attorneys for the named parties or by order of the Court.

3. With respect to information designated as Confidential Information, no copy of any documents, testimony, or other information shall be received, kept, or maintained by any individual other than a Qualified Person(s), as defined above.

4. In the event that any portion of any document, answer to interrogatory or request for admission, or deposition transcript identified as containing Confidential Information is submitted to the Court for any purpose, or if any pleading, motion, brief, or declaration containing or disclosing Confidential Information is submitted to the Court for any purpose, the party submitting the Confidential Information will lodge the Confidential Information with the Court in accordance with California Rule of Court 2.551. In addition, the party intending to file/lodge Confidential Information shall clearly identify, by Bates stamp number or other reasonable description, to opposing counsel the specific documents that are to be filed/lodged with the Court, which Confidential Information shall be deemed filed/lodged as of the date the filing/lodging party submits it to the Court and serves the other party. The party to whom the Confidential Information belongs may then file the appropriate motion with the Court to have the Confidential Information filed under seal in accordance with California Rules of Court 2.550-2.551 and 2.585. Pending resolution of the motion to seal, any submission of Confidential Information, by either party, will be filed and/or lodged in an envelope or container marked "CONDITIONALLY UNDER SEAL" pending the Court's ruling on the motion. Any documents which the Court declines to order sealed, do not lose their status as Confidential Information as a result thereof.

In the alternative, the party who intends to submit any document, answer to interrogatory or request for admission, or deposition transcript identified as containing Confidential Information with the Court for any purpose, may contact the party who has produced the Confidential Information and seek consent to the filing of such information without compliance

1
2 with the requirements of Rule 2.551. In the absence of such consent, the procedures set forth
3 above in compliance with the California Rules of Court must be followed.

4 5. In the event an attorney to this litigation seeks to show any document or
5 other information denominated as Confidential Information to anyone other than a Qualified
6 Person, that attorney shall first advise opposing counsel and seek to reach an informal resolution
7 of such matters. In the event that agreement cannot be reached, the party seeking access to
8 Confidential Information shall apply to the Court for relief from this Protective Order.

9 **E. NON-APPLICABILITY TO THE TRIAL OF THIS ACTION**

10 The terms of this Order shall continue to apply during the time period in which the trial of
11 this action occurs, but shall not apply to the trial itself, as all decisions concerning the conduct of
12 the trial shall be made by the trial judge. Any party may, at or before the time of trial, seek an
13 order of the Court by way of motion in limine to restrict access to particular documents or
14 testimony in the trial.

15 **F. NO ADMISSION OR WAIVER**

16 The execution of this Order shall not:

17 1. constitute a waiver of any party's right to seek from the Court at a future
18 time an order which provides greater, lesser or no restriction of access to Confidential
19 Information; or

20 2. be construed as an admission or agreement that any document designated
21 as Confidential Information is, in fact, confidential or otherwise entitled to any protective relief
22 except by virtue of this Protective Order.

23 **G. RETURN OF DOCUMENTS**

24 Within thirty (30) days of final termination of this litigation (including any
25 subsequent appeals), the parties to whom Confidential Information belongs may send written
26 request to the other party for return of all such Confidential Information previously furnished in
27 the litigation. Within sixty (60) days after receiving such written request, the parties to this
28 litigation shall return to the parties producing Confidential Information all documents (and copies

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

thereof) and all materials which have been furnished and identified as Confidential Information pursuant to this Protective Order.

Dated: February 7/2012

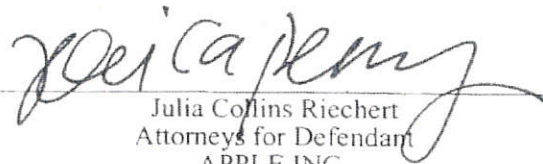
TYLER BELONG
HOGUE & BELONG



Tyler Belong
Attorneys for Plaintiff
BRANDON FELCZER

Dated: February 14, 2012

LYNNE C. HERMLE
JESSICA R. PERRY
JULIA COLLINS RIECHERT
Orrick, Herrington & Sutcliffe LLP



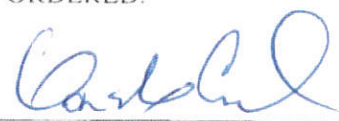
Julia Collins Riechert
Attorneys for Defendant
APPLE INC.

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 02/23/12

By:



GONZALO CURIEL
JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

LYNNE C. HERMLE (STATE BAR NO. 99779)
JESSICA R. PERRY (STATE BAR NO. 209321)
JULIA COLLINS RIECHERT (STATE BAR NO. 254078)
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 614-7400
Facsimile: (650) 614-7401
lhermle@orrick.com
jperry@orrick.com
jrieichert@orrick.com

Attorneys for Defendant
APPLE INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRANDON FELCZER, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

APPLE INC., a California corporation; and
DOES 1 through 300, inclusive,

Defendants.

CASE NO. 37-2011-00102593-CU-OE-
CTL

**ACKNOWLEDGEMENT AND
UNDERTAKING RE STIPULATION
AND PROTECTIVE ORDER RE USE
OF CONFIDENTIAL MATERIAL**

Dept.: 60
Judge: Hon. Gonzalo Curiel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that I have carefully read the Stipulation and Protective Order Re Use Of Confidential Material in the above-captioned case and that I fully understand the terms of the Court's Order. I recognize that I am bound by the terms of that Order, and I agree to comply with those terms. I hereby consent to be subject to the personal jurisdiction of the San Diego County Superior Court with respect to any proceedings relative to the enforcement of that Order, including any proceeding related to contempt of court.

Date: _____
Executed at _____
Signature: _____
Name: _____
Affiliation: _____
Business Address: _____
Home Address: _____

1 **PROOF OF SERVICE BY MAIL**

2 I am more than eighteen years old and not a party to this action. My business address is
3 Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025. On
4 February 14, 2012, I served the following document(s):

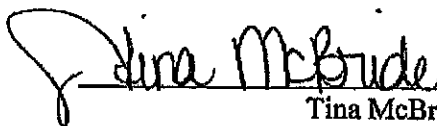
5 **STIPULATION AND [PROPOSED] PROTECTIVE ORDER RE USE OF**
6 **CONFIDENTIAL MATERIAL**

7 on the interested parties in this action by placing true and correct copies thereof in sealed
8 envelope(s) addressed as follows:

9 Jeffrey L. Hogue, Esq.
10 Tyler J. Belong, Esq.
11 Hogue & Belong
430 Nutmeg Street, Second floor
San Diego, CA 92103

12 I am employed in the county from which the mailing occurred. On the date indicated
13 above, I placed the sealed envelope(s) for collection and mailing at this firm's office business
14 address indicated above. I am readily familiar with this firm's practice for the collection and
15 processing of correspondence for mailing with the United States Postal Service. Under that
16 practice, the firm's correspondence would be deposited with the United States Postal Service on
17 this same date with postage thereon fully prepaid in the ordinary course of business.

18 I declare under penalty of perjury that the foregoing is true and correct. Executed on
19 February 14, 2012, at Menlo Park, California.

20
21 
22 Tina McBride