

SBSW 6643

**FILED**  
SAN MATEO COUNTY

IN THE SUPERIOR COURT OF THE COUNTY OF SAN MATEO APR 29 2010

STATE OF CALIFORNIA

Clerk of the Superior Court  
By [Signature]  
DEPUTY CLERK

**REQUEST FOR EX-PARTE ORDER TO SEAL DOCUMENTS**

San Mateo County Sheriff's Office Detective Matthew Broad, the affiant of the search warrant and affidavit for 40726 Greystone Terrace, Fremont, CA, requests that the search warrant, the affidavit in support of the search warrant, and the return of the search warrant when filed be sealed unless ordered unsealed by further order of this court.

Based on my experience and training it is my belief that release of the information to the media or to the public in general would hinder the progress of the investigation, as it may alert involved parties as to the direction of the investigation and the identity of witnesses and witness statements to investigators.

I declare, under penalty of perjury, that the above information is true and correct to the best of my knowledge.

[Signature]

Matthew Broad

**ORDER**

**IT IS ORDERED THAT:** The search warrant, the affidavit in support of the search warrant and the return to said search warrant described above be sealed unless ordered unsealed by further order of this court.

Dated: 4/28/10

[Signature]

JUDGE OF THE SUPERIOR COURT  
County of San Mateo, State of California



SBSW 6643

**FILED**  
SAN MATEO COUNTY

APR 29 2010

**RETURN TO SEARCH WARRANT**

IN THE  
SUPERIOR COURT FOR THE SAN MATEO COUNTY JUDICIAL DISTRICT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

Clerk of the Superior Court  
By [Signature]  
DEPUTY CLERK

The property taken from the premises located at 40726 Greystone Terrace, Fremont, state of California, and occupied by Jason Chen, by virtue of the search warrant dated 4/23/2010, and signed by Judge Cretan, Judge of the Superior Court, San Mateo County Judicial District, county of San Mateo, state of California, is described in the attached "Search Warrant Inventory," attached hereto and by reference made a part hereof as fully as though set forth herein.

I, Matthew Broad, by whom this warrant was executed, do swear that the inventory set forth in the attached, "Search Warrant Inventory," contains a true and detailed account of all the property taken by me under the warrant.

[Signature]  
Detective Matthew Broad

Subscribed and sworn before me  
this April 28, 2010

[Signature]  
Judge of the Superior Court



SBSW 6643



R.E.A.C.T.  
Rapid Enforcement Allied Computer Team  
1919 South Bascom Ave, 4th floor  
Campbell, Ca 95008  
408-558-1198

Case # 2010-0034  
**FILED**  
SAN MATEO COUNTY

APR 29 2010

Clerk of the Superior Court  
By   
DEPUTY CLERK

# Search Warrant Inventory

I, TFA Matt Broad, make this inventory to the attached Search Warrant. Said Search Warrant was issued on 4/23/10 and on its authority I, on 4/23/2010, diligently searched the person(s) and place described as follows, to wit:

**Chen Residence** 40726 Greystone Terrace, Fremont, CA

Item No.	Qty	Description	Serial Number	Sub-location
			None	
1	1	one box of business cards for suspect chen	None	rm.1 desk cab.
2	1	one apple macbook white w/power cord	W8719986YA2	rm.1 desk area
3	1	seagate external 250 GB hard drive	2GJ1003J	rm. 1 desk area
4	1	Samsung digital camera	none	room 1
5	1	Seagate external 500 GB HDD	2HCR002K	room 1
6	1	Motorola model A855 google cellular	msn K376LS5TN3	room 1
7	1	1 pg doc. Signed by Gaby Darbyshire pertaining to invalid search warrant.	None	room 1
8	1	indicia Calif. Berk. ID Card, Amex bill, check carbons for B of A acct ending in 0351	None	room 1
9	2	USB flash drives	None	room 1
10	1	HP MediaSmart searver	CN290201BS-new	room 1
11	1	black western digital external HD	WCANU1558384	room 1
12	1	Dell XPS410 desktop computer	ST:8K95KC1	room 1
13	1	Canon rebel XT digital camera	620301380	room 1
14	1	Apple Ipad 32 GB with power cord	GB010CHZZ39	room 2 kitchen counter
15	1	IBM Think Pad with power cord	R0-0KM6P	room 2 kitchen counter top
16	1	Apple MacBook Pro e/ power cable	W86504S0W0L	Room 2 coffee table
17	1	Iphone 16 GB	A1241	room 2 living room
18	1	Macbook Pro with power cord	W8011197AGW	room 2 on coffee table

I, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all property taken by me on the warrant.

  
\_\_\_\_\_

Officer's Signature

Magistrate of the county of Santa Clara  
State of California

Subscribed and sworn



R.E.A.C.T.  
Rapid Enforcement Allied Computer Team  
1919 South Bascom Ave, 4th floor  
Campbell, Ca 95008  
408-558-1198

Case # 2010-0034

## Search Warrant Inventory

19	1	1 GB thumbdrive Kingston brand	None	room 2 of coffee tabel
20	1	Apple airport exstream base station with power cord	6F731HLNYCP	room 1
21	1	Ioemega stor Center IX2 with power cord	K1A941198A	room 4 workout room
22	1	Dell demension 2400	ST JHQ4Q71	trunk of Nissan in gar. 6HJB720

I, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all property taken by me on the warrant.

Officer's Signature

Magistrate of the county of Santa Clara  
State of California

Subscribed and sworn

SBSW 6643

IN THE SUPERIOR COURT OF THE COUNTY OF SAN MATEO  
STATE OF CALIFORNIA  
SEARCH WARRANT

**FILED**  
SAN MATEO COUNTY

APR 29 2010

Clerk of the Superior Court

By [Signature]  
DEPUTY CLERK

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF SAN MATEO: proof by affidavit having been made before me by Detective Matthew Broad, San Mateo County Sheriff's Office demonstrates that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully sizeable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

- it was stolen or embezzled;
- it was used as the means of committing a felony;
- it is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery;
- it tends to show that a felony has been committed or that a particular person has committed a felony;
- it tends to show that sexual exploitation of a child, in violation of Penal Code Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring;
- there is a warrant to arrest the person;
- a provider of electronic communication service or remote computing service has records of evidence, as specified in Penal Code Section 1524.3, showing that property was stolen or embezzled constituting a felony/public offense, or that property or things are in possession of any person with intent to use them as a means of committing a felony/public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery;

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**Premise(s):** The premises, structure, rooms, receptacles, outbuildings, storage areas, and safes situated at the residence located at:

40726 Greystone Terrace  
Fremont, Alameda County, CA

See Appendix A for description – attached hereto and incorporated herein

**Person(s):** The persons described as: Jason Shao Chen, DOB 2/16/1981, CDL B8607050, Male, 5-11, 150 lbs

**Vehicles(s):** In the vehicles described as: Any vehicle that is at the location of the search warrant and under the dominion and control of Jason Chen.

**FOR THE FOLLOWING PROPERTY:**

See Appendix B – attached hereto and incorporated herein

**AND TO SEIZE IT IF FOUND** and to retain the same in your custody pending disposition according to law. Return of this search warrant shall be to the above entitled court.

Or

The court further orders that, upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, and with the written concurrence of the District Attorney's Office, the property may be disposed of in accordance with the procedures set forth in California Penal Code §1407 to 1422, without the necessity of a further Court Order issued pursuant to California Penal Code §1536.

NIGHT SEARCH APPROVED: YES ( ) NO (X)

GIVEN MY HAND and dated this 23 day of April, 2010, at 7<sup>00</sup> A.M./P.M.

(SEAL)

*one available*

*[Handwritten Signature]*

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

*cu*

## Appendix "A"

### **Description of Items to be searched:**

40726 Greystone Terrace, Fremont, Alameda County, California is a townhouse located in a three-story structure located at the intersection of Westerly Common and Greystone Terrace. The building has a green painted exterior with white trim. There is a gray concrete patio with three concrete steps leading to the front door. The door is a brown wooden door with two square glass windows in the upper portion. Black metal numerals depicting the number "40726" are affixed on the front of the building to the right of the brown wooden door. There is a two-pane sliding window in the front wall to the right of the metal numerals. The front door to 40726 Greystone Terrace is between 40734 Greystone Terrace and 40718 Greystone Terrace.

*Car*

## Appendix "B"

### **Description of property to be seized:**

1. Computer systems, digital storage devices, computer hardware (including peripherals and cables), and data, including but not limited to central processing units (CPUs), hard disk drives, thumb drives, flash drives, digital cameras, digital video cameras, floppy disk drives, tape drives, removable media drives, optical/CD-ROM drives, servers, workstations, display screens, thumb drives, memory cards, cellular telephones, digital cameras, input devices (including but not limited to keyboards, mice, and trackballs), printers, modems, peripherals, floppy disks, magnetic tapes, cassette tapes, removable storage media, and/or optical CD-ROM disks or cartridges, found together or separately from one another. Such systems also commonly include cables linking computer systems to other systems or phone lines.
2. Documentation or other material describing the operation of any computer systems, computer hardware, software, and/or computer peripherals found at the premises, including instructions on how to access disks, files, or other material stored within same, including but not limited to computer manuals, printouts, passwords, file name lists, "readme" and/or "help files."
3. All records and data **located and/or stored on** any computers, hard drives, or memory storage devices, located at the listed location including digital photographs and/or video of the Apple prototype 4G iPhone, email communications pertaining to the sale of photographs of the prototype phone and/or the sale of the physical prototype 4G Apple iPhone, internet history, cache files, and/or Internet pages pertaining to searches and/or research conducted on Apple employee Gray Powell, call records, contact lists, text messages related to the sale of photographs of the prototype iPhone and/or physical prototype iPhone, and indicia that identifies the owner and/or operators of the computer or electronic device. I further request that the above items be allowed to be examined by a forensic computer examiner and that the examination be conducted at an offsite facility due to the need for special equipment to properly conduct the examination and preserve the evidence and





that said search may be continued beyond the ten-day period beginning upon issuance of this Search Warrant, to the extent necessary to complete the search on the computer systems.

4. Printed documents, images, and/or notations pertaining to the sale and/or purchase of the stolen iPhone prototype and/or the sale and/or transfer of trade secret information pertaining to the iPhone prototype.
5. Any article of personal property tending to establish the identity of persons who have dominion and control over the premises and vehicles to be searched, including all keys to the described location and vehicles, rent receipts, utility bills, telephone bills, addressed mail, purchase receipts, sales receipts, and articles of personal property tending to show ownership of vehicles including, but not limited to vehicle pink slips and vehicle registration. All personal property and documents used by the persons named as means of identification, including but not limited to driver's licenses, credit cards, passports, social security cards, and photographs relative to the person(s) described.

*cu*

SBSW 6643

**FILED**  
**SAN MATEO COUNTY**  
APR 29 2010

**IN THE SUPERIOR COURT OF THE COUNTY OF SAN MATEO**  
**STATE OF CALIFORNIA**

**AFFIDAVIT FOR SEARCH WARRANT**

Clerk of the Superior Court  
By   
DEPUTY CLERK

The undersigned, being first duly sworn, deposes and says: That on or about 3/18/2010, in the County of San Mateo, State of California, the crime(s) of

496(a) PC – Buy or receive stolen property (a felony)

499c(b)(3) PC – Theft; Without authority make or cause to be made a copy (definition includes photograph) of any article representing a trade secret (a felony)

594(b)(1) – Maliciously damages property of another valued over \$400 (a felony)

was/were committed by **Jason Shao Chen, DOB 2/16/1981, CDL B8607050, Male, 5-11, 150**

That there is probable cause to believe that certain articles and property, consisting of:

See Appendix B – attached hereto and incorporated herein

are now concealed on the person(s) of **Jason Shao Chen, DOB 2/16/1981, CDL B8607050, Male, 5-11, 150**

in the vehicle(s) described as any vehicle that is at the location of the search warrant and under the dominion and control of Jason Chen.

and in and upon the premises and building known and designated as, and commonly called,

40726 Greystone Terrace  
Fremont, CA

in said county and state described as Alameda, CA

That the following facts established the existence of grounds for the issuance of a Search Warrant for the search of the person(s), vehicle(s), and premises above described:

I, Detective Matthew Broad, am your affiant. I have been a peace officer in the State of California since July of 1996 and am in possession of an Advanced POST Certificate. I have been employed by the San Mateo County Sheriff's Office since August of 2001 and I am currently assigned to the Rapid Enforcement Allied Computer Team (REACT) as of July 2005.

From 1999 through 2001, I held the position of Special Agent with the United States Secret Service (USSS). During my tenure with the USSS, I attended a 12-week Criminal Investigators Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. I also attended a 12-week training course at the John J. Rowley Training Center in Beltsville, Maryland. During my training, I received blocks of instruction concerning financial crimes investigations including (but not limited to) theft, internet fraud, identity theft, credit card fraud,



check fraud, counterfeit currency, bank fraud, wire fraud, money laundering, access device fraud, cellular telephone fraud, and organized crime. During my tenure as a Special Agent assigned to the San Jose Resident Office, I conducted numerous investigations regarding the above-mentioned crimes.

From 1996 through 1998, I held the position of Police Officer with the San Carlos Police Department. During my tenure at the department, I attended an 18-week basic police academy that was sanctioned by the California Commission for Peace Officer Standards and Training (POST). Portions of the academy's curriculum included blocks of instruction concerning the investigation of theft, credit card fraud, burglary, identity theft, forged checks, cellular telephone fraud, and access device fraud. As a police officer and as a deputy, I have conducted numerous investigations in the areas of Internet fraud, credit card fraud, access device fraud, forged financial instruments, counterfeit software, and identity theft.

While assigned to the REACT Task Force, I have received approximately 480 hours of specialized training in the preservation and examination of digital and computer related evidence and I have conducted approximately 110 forensic examinations on criminal cases. I was also certified as an Encase Certified Examiner (EnCE) through Guidance Software in 2008.

I have learned the following information through my own investigative efforts and through official law enforcement channels:

### **Summary:**

Suspect Brian Hogan found or stole a prototype iPhone 4G that was accidentally left at a restaurant by Apple employee Robert "Gray" Powell. Hogan identified the owner of the phone as Apple Engineer Gray Powell through the contents of the phone and through Internet searches. Rather than return the prototype phone to Powell and/or Apple, Hogan subsequently sold the iPhone Jason Chen in Fremont for \$5000. Upon receiving the stolen property, Chen disassembled the iPhone, thereby causing it to be damaged. Chen created copies of the iPhone prototype in the form of digital images and video, which were subsequently published on the Internet based magazine Gizmodo.com.

This search warrant seeks authorization to search the residence of Jason Chen for evidence related to the purchase of the iPhone prototype, copying (photographic images and video), and publishing of the iPhone prototype by Jason Chen who is residing at 40726 Greystone Terrace in Fremont, CA.

### **Facts:**

On 4/20/2010, I met with representatives from Apple regarding the theft and/or loss of an Apple iPhone 4G prototype iPhone. I met with Rick Orloff (Director, Information Security), Bruce Sewell (Senior Vice President, General Counsel and Secretary), and George Riley (O'Melveny and Myers, LLP) regarding the theft of an unreleased Apple iPhone 4G.

The above Apple representatives told me that on or about 3/25/2010, Apple employee Robert Gray Powell (known as Gray Powell) lost a prototype iPhone 4G cellular device while he was at the Gourmet Haus Staudt restaurant located at 2615 Broadway in Redwood City, San Mateo County, CA. At the time the phone was lost, it possessed a case that was intended to make it look like an Apple iPhone 3GS. At the time of the theft, the 3GS was a consumer product that

was being sold by Apple at retail stores, unlike the unreleased prototype 4G iPhone which is a trade secret of Apple.

The missing iPhone prototype subsequently appeared in video and picture format on the Internet based web magazine Gizmodo.com. The internet site also posted pictures and/or copies of the iPhone. The pictures included images of the phone disassembled and they showed details of the phone's internal components. Per Penal Code section 499c(a)(7), the definition of "copy," includes "any facsimile, replica, photograph, or other reproduction."

Riley stated the publication of the device and its features is immensely damaging to Apple. By publishing details about the phone and its features, sales of current Apple products are hurt wherein people that would have otherwise purchased a currently existing Apple product would wait for the next item to be released, thereby hurting overall sales and negatively effecting Apple's earnings. Riley stated he could not currently provide an estimated loss, but he believed it was, "huge."

I asked Riley what the value of the missing iPhone was. He stated that it was invaluable and that he could not place an amount on it. We discussed the fact that the phone was sold by Suspect Hogan for \$8500.00 (discussed below) and I asked if the phone was worth at least that amount. Riley said that it was.

Orloff (Director, Information Security) told me that on 4/19/2010, he received a telephone call from a female who identified herself as Katherine Martinson. Martinson reported to Orloff that her roommate, Brian Hogan, was previously in possession of the lost/stolen prototype iPhone and that Hogan sold the iPhone to the web based magazine Gizmodo.com.

Orloff showed me a photograph of a sticker that Martinson sent to him via email. The depicted sticker possessed serialized type number that Orloff said belonged to the prototype iPhone. Martinson told him the sticker was still inside of their (Martinson and Hogan's) residence as of 4/19/2010. The stickers were on what appeared to be a coffee table.

Orloff said that Witness Martinson contacted him due to the fact that Suspect Hogan connected the stolen iPhone to her computer and she believed that Apple would eventually trace the iPhone back to her via IP addresses. Therefore she contacted Apple in order to absolve herself of criminal responsibility. Orloff also stated that by attaching the iPhone to a computer, evidence of the connection will likely be found within the computer's "Library," folder. The "Library" folder is a directory that stores user settings, maintains system logs, stores application information, and other system information for the computer and/or particular user.

Sewell told me that after Gizmodo.com released its story regarding the iPhone prototype on or about 4/19/2010, Steve Jobs (Apple CEO) contacted the editor of Gizmodo.com, Brian Lam. Jobs requested that Lam return the phone to Apple. Lam responded via the email address [blam@gizmodo.com](mailto:blam@gizmodo.com) that he would return the iPhone on the condition that Apple provided him with a letter stating the iPhone belonged to Apple. The letter stated the following:

From: brian lam <[blam@brianlam.net](mailto:blam@brianlam.net)>  
Date: April 19, 2010 4:08:07 PM PDT  
To: Steve Jobs <[sjobs@apple.com](mailto:sjobs@apple.com)>  
Subject: Let's see if this goes through.

Hey Steve, this email chain is off record on my side.

I understand the position you're in, and I want to help, but it conflicts with my own responsibilities to give the phone back without any confirmation that its real, from apple, officially.

Something like that-- from you or apple legal--is a big story, that would make up for giving the phone back right away. If the phone disappears without a story to explain why it went away, and the proof it went to apple, it hurts our business. And our reputation. People will say this is a coordinated leak, etc.

I get that it would hurt sales to say this is the next iphone. I have no interest in hurting sales. That does nothing to help Gizmodo or me.

Maybe Apple can say it's a lost phone, but not one that you've confirmed for production -- that it is merely a test unit of sorts. Otherwise, it just falls to apple legal, which serves the same purpose of confirmation. I don't want that, either.

Gizmodo lives and dies like many small companies do. We don't have access, or when we do, we get it taken away. When we get a chance to break a story, we have to go with it, or we perish. I know you like wait and pogue, and like working with them, but I think Gizmodo has more in common with old Apple than those guys do. So I hope you understand where I'm coming from.

Right now, we have nothing to lose. The thing is, Apple PR has been cold to us lately. It affected my ability to do my job right at iPad launch. So we had to go outside and find our stories like this one, very aggressively.

I want to get this phone back to you ASAP. And I want to not hurt your sales when the products themselves deserve love. But I have to get this story of the missing prototype out, and how it was returned to apple, with some acknowledgement it is Apple's.

And I want to work closer with Apple, too. I'm not asking for more access--we can do our jobs with or without it--but again, this is the only way we can survive while being cut out of things. That's my position on things.

B

Sewell said that after the letter confirming the ownership of the phone was sent to Lam, Lam responded via email that the phone was in the possession of Jason Chen at 40726 Graystone Terrace in Fremont, CA. The contents of the email included the following:

Bruce, thanks.

Here's Jason Chen, who has the iPhone. And here's his address. You two should coordinate a time.

40726 Greystone Terrace  
Fremont CA 94538

Happy to have you pick this thing up. Was burning a hole in our pockets. Just so you know, we didn't know this was stolen when we bought it. Now that we definitely know it's not some knockoff, and it really is Apple's, I'm happy to see it returned to its rightful owner.

P.S. I hope you take it easy on the kid who lost it. I don't think he loves anything more than Apple except, well, beer. Maybe some spankings.

Sewell subsequently communicated with Jason Chen via email to arrange the return of the phone. Chen utilized the email [jchen@gizmodo.com](mailto:jchen@gizmodo.com) and provided Sewell with an internet link showing the location of his residence. Sewell subsequently went to the above location, met with Chen and received the missing iPhone. Chen provided the phone to him with the SIM card removed and the case (3GS disguise) removed.

I asked Sewell if the male who returned the iPhone to him was the same male who appeared in the Gizmodo video with the stolen prototype iPhone. He said that it was.

Sewell said that upon returning to Apple, employees attempted to power the phone and found that it no longer functioned. Upon examining the phone, they found the following damage occurred to it as a result of the phone being disassembling:

1. Broken ribbon cable
2. One screw was inserted into the wrong location and caused an electrical short
3. Back plate snaps were broken.

4. Stripped screws.

Continuing on 4/20/2010, I accessed Gizmodo's website at Gizmodo.com and viewed pictures and video of the missing/stolen iPhone. The web pages include photographs of the phone in both assembled and disassembled forms, images and video of an Asian male who identifies himself as "Jason Chen" holding the phone, a copy of the letter sent by Apple confirming that the phone belongs to Apple, and a narrative about how the phone was found and bought by Gizmodo.

Riley (Attorney, O'Melveny and Myers, LLP) said the missing/stolen iPhone prototype was currently in the possession of Apple and they would provide the phone to me to be booked into evidence as soon as a transfer could be arranged.

On 4/21/2010, I met and interviewed Witness Katherine Martinson at the REACT San Mateo office. Martinson said she currently resides at 3615 Farm Hill Blvd., #14 in Redwood City with Brian Hogan and Thomas Warner. Hogan and Warner share a room while Martinson has her own bedroom.

Martinson said that on 3/26/2010 her housemate (identified as Brian Hogan, DOB: 1/9/1989) told her that he found an iPhone while he was visiting the Gourmet Haus Staudt restaurant located at 2615 Broadway in Redwood City. Hogan told her that he was drinking with friends when an intoxicated male tried to give him an iPhone that was left on a stool, incorrectly believing it belonged to Hogan. Hogan told Martinson he remained at the bar "a while longer," but no one claimed the phone.

Hogan told Martinson that upon his return home to 3615 Farm Hill Blvd #14, Redwood City, he removed the case (iPhone 3GS disguise) and saw that the phone was not a typical iPhone. From the applications on the phone, Hogan told Martinson he previously accessed a Facebook (social networking website) application and learned that the owner of the phone was Gray Powell. When Hogan first showed the phone to Martinson on the afternoon of 3/26/2010, the phone no longer worked and they believed that Apple remotely wiped the contents of the phone.

Martinson described Hogan as technically knowledgeable. She said that based upon the appearance of the phone, the new features that were present (like a forward facing camera), and statements he made to her, he knew that the phone was a prototype that belonged to Apple and/or Gray Powell. Martinson said that together, they conducted an Internet search for Gray Powell and located his Linked In (professional social networking site) profile that identified him as an engineer for Apple.

Martinson said Hogan understood that he possessed a valuable piece of technology and that people would be interested in buying it. He subsequently contacted the periodicals Gizmodo.com, PC World, and Engadget.com in an attempt to start bidding for the iPhone prototype. Martinson said Hogan communicated via email and that it is highly likely that evidence of those emails reside on Hogan's computer, which was located in a downstairs common area of their residence.

Martinson said that while Hogan possessed the phone, he attached it to his computer and to Martinson's computer without her permission. He attached the iPhone in an attempt to re-install the phone's operating system in order to make the phone functional again. Both attempts failed.

*cu*

Martinson said that within approximately 10 days of obtaining the prototype iPhone, Hogan made contact with Jason Chen, who offered Hogan \$10,000 for the iPhone. Martinson said she believes Hogan met with Chen on three occasions for unknown purposes. When Hogan told Martinson that he was offered \$10,000 for the phone she asked him why they would pay that sum of money. Hogan told Martinson that Chen would pay that sum because, "They know it's valuable. They [Gizmodo.com] would receive millions and millions of hits." Martinson indicated "hits" meant the number of persons that would visit Gizmodo's website as a result of publishing information about the iPhone prototype.

Martinson said that Hogan is knowledgeable on the subjects of economics. From her conversations with Hogan, she believes he was aware that selling the phone to a magazine would hurt Apple sales and/or profits.

Martinson said she and other friends attempted to talk Hogan out of selling the iPhone prototype on the basis that the sale would ruin the career of Robert "Gray" Powell (Apple engineer who lost the phone). Hogan's response to her was that it, "Sucks for him. He lost his phone. Shouldn't have lost his phone."

Martinson said Hogan later showed her a camera box that contained \$5000.00 in \$100 US Treasury Notes. Hogan told her that the money was a result of selling the phone to Jason Chen. Martinson said Hogan told her he has received a total of \$8500.00 the sale of the phone, but she is not sure of the source of the additional \$2500.00. Martinson said Hogan also told her that he will receive a cash bonus from Gizmodo.com in July if and when Apple makes an official product announcement regarding the new iPhone.

Martinson said she believes Hogan took photographs of the iPhone for the purpose of selling the images to Internet based magazines. She said she saw Hogan in possession of an SLR (Single Lens Reflex) type camera in their residence during the time frame of the sale of the iPhone prototype.

Martinson said Hogan owns a desktop computer at her residence and it is the only computer he utilizes. Based upon the fact it is the only computer available to him and the fact that he told her he corresponded via email with Gizmodo.com and other magazines, she believes copies of the iPhone images and email communications will be found upon his computer at their residence.

Martinson said there is no hard telephone line to the residence and all three occupants utilize personal cellular telephones. She said Hogan has utilized the same cellular telephone with the number 650.454.0557 since he moved into the residence in December, 2009.

Martinson brought a camera with her to the interview and stated that Hogan removed two stickers from the iPhone prototype. She said the stickers were still on Hogan's desk located with his computer in a common area of the residence. Martinson said she took pictures of the stickers. I subsequently removed the storage card from the camera and downloaded the pictures as evidence.

I viewed the images and saw one visible sticker with a second possibly below the first. The visible sticker possessed the following numbers with a bar code:

N90\_DVT\_GEAX\_0493  
iPhone SWE + L200221

*Cu*

George Riley (Attorney, O'Melveny and Myers, LLP) provided me with a written statement that states the above numbers were unique to the missing/stolen prototype iPhone.

Continuing on 4/21/2010, I spoke with Witness/Victim Robert "Gray" Powell via telephone. He told me that on 3/25/2010, he left work at approximately 2030 hours and went home. He picked up his uncle (name unknown) and went to the Gourmet Haus Staudt located at 2615 Broadway in Redwood City, CA. Powell remained at the restaurant for approximately 2 hours until closing at approximately 2300 hours.

Powell said he sat at the bar with his uncle. He said the last memory he had of the prototype phone was placing it in his bag, which he then put on the floor by his feet. Powell said that his bag was knocked over at one point in time and it was possible the prototype iPhone fell out of the bag and onto the floor.

I asked Powell if it was possible that someone stole the prototype iPhone from his bag. He said he did leave his bag with his uncle at one point during the evening when he went to the bathroom and it was possible, although unlikely, that someone removed the prototype iPhone from his bag.

Powell said he left the restaurant when the restaurant started to close and believes the finder of the prototype iPhone could not have remained in the restaurant more than 15 minutes.

Powell said he did not give Brian Hogan, Jason Chen, and/or any other person permission to view, take, carry away, possess, sell, or otherwise use the Apple iPhone prototype that was lost and/or stolen from him while at the Gourmet Haus Staudt located at 2615 Broadway in Redwood City, CA

Continuing on 4/21/2010, I prepared a search warrant and affidavit for presentation on 4/22/2010 seeking authorization to search the residence of Brian Hogan. That evening and before the presentation of the warrant could be made, Witness Martinson telephoned me at approximately 2245 hours, and said that Hogan and Warner were aware of the investigation and were in the process of removing evidence from the residence. I subsequently responded to their residence at 3516 Farm Hill Blvd., #14 in Redwood City in an attempt to prevent the evidence from leaving the residence, however by the time San Mateo County Sheriff's Office units arrived at the scene, Hogan and Warner had departed with Hogan's computer, the iPhone 4G stickers, and other digital media.

I spoke with Witness Katherine Martinson and Witness Zackary Corbin who were present inside of the apartment. Corbin stated that Hogan and Warner departed in separate vehicles and based upon the direction they walked while removing evidence, that they did not load the items into the vehicle that Hogan departed in; a black VW Jetta.

Continuing on 4/21/2010 at approximately 2330 hours, REACT Det. Josh McFall went to 247 Hillview in Redwood City and he located a black VW Jetta bearing CA license plate 5CSB531 parked in front of the residence with a warm engine. Det. McFall also observed a skylight illuminate while he watched the house, thereby indicating the occupants were awake.

I responded to 247 Hillview in Redwood City and I knocked on the front door. A male (John Hogan, 11/21/1949) almost immediately answered the door. John Hogan identified himself as the father of Brian Hogan. John was aware of the investigation and I informed him that Brian

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and/or Thomas Warner were attempting to conceal/destroy evidence. I then asked John if I could enter the house for the purpose of locating the missing evidence and speaking with Brian. John then allowed us to enter the residence and he led me to an upstairs bedroom where I found Christy Gilmore (3/10/1989, Brian Hogan's girlfriend) and Brian Hogan seated on a bed.

While in the residence, I told Brian that he was not under arrest, nor was I going to place him under arrest at this time for the sale of the missing iPhone Prototype. I indicated to Brian Hogan that the removal and/or destruction of evidence was a demonstration of his consciousness of guilt and that it was imperative that we recover any items that were removed and/or concealed by him or Warner. Hogan stated he wanted to cooperate with the investigation and he told me that he and Warner removed his computer, a thumb drive, a flash card, and the Apple iPhone prototype stickers from his residence. Hogan said that all of the items were in the possession of Warner and that Warner took the items in order to "protect" him (Hogan).

I subsequently observed Hogan telephone Thomas Warner and tell Warner to bring the computer and other evidence to the 247 Hillview. When Warner did not respond, Christy Gilmore (Hogan's girlfriend) and I both made phone calls to Warner in an attempt to locate him and the evidence. Gilmore subsequently received a call from Warner wherein Warner told her that he left Hogan's computer at the Sequoia Christian Church located on Topaz St, between Harding Avenue and Brewster Avenue in Redwood City.

While in the residence, I observed Hogan utilize a black LG cellular telephone (bearing SN 911KPFX363699) to make and receive telephone calls. Based upon my training and experience, I know that persons who buy and sell stolen property often use cellular devices to negotiate via telephone calls, email, and/or text message. I also know that the continued use of the phone would likely overwrite and destroy evidence that currently exists on the phone. Based upon the above facts and the fact that the cellular device was in plain view, I seized the phone as evidence and to prevent any further destruction of the digital evidence.

Sgt. Ken Taylor, Christy Gilmore, and I then drove to the above mentioned church and located a black desktop HP computer bearing SN MXX7120MY5 and a flat screen monitor on the church property and in front of an office door. Gilmore said the computer belonged to Hogan and I seized it as evidence.

I made additional telephone calls to Warner in an attempt to locate the other missing evidence items. Warner claimed that he did not know where the stickers were and he never possessed the thumb drive and/or the flash card. I subsequently obtained consent for the search of vehicles belonging to Brian Hogan and Christy Gilmore. During the searches, I located a Canon SLR digital camera with no memory card in the memory card slot. The camera was located in Hogan's white Acura bearing CA license plate 5GTN988. The car was parked behind Hogan's apartment on Farm Hill Blvd. I did not locate the stickers and/or storage devices during either search.

At approximately 0100 hours, I observed Thomas Warner arrive at 247 Hillview Ave in Redwood City while driving a white Ford bearing CA license plate 3CJJ702. Warner stated that he helped Hogan move out of the apartment by taking his computer. Warner claimed he lost the iPhone prototype sticker and he believed it fell out of his wallet when he paid for gas at a Chevron station located at Whipple Ave and Veterans Blvd in Redwood City. I asked Warner for consent to search his wallet and vehicle for evidence related to this case. He consented to both searches. During the search of the vehicle, I located a 1<sup>st</sup> generation iPhone in the front

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passenger's seat of the vehicle. Also on the front passenger's seat, I located a BlackBerry model 8310 cellular device bearing SN 359158027638348. Both cellular devices were powered on.

Based upon the fact that Warner directly assisted Hogan with the removal and concealment of evidence directly related to this case, I believe it is highly likely that Warner was involved and/or conspired with Hogan in the negotiation and subsequent sale of the prototype iPhone and that his efforts to conceal and/or destroy the evidence as an indication of his consciousness of guilt.

I also know that cellular devices like BlackBerries and iPhones function as small computing devices and that they maintain large quantities of data which include, but are not limited to call logs, email communications, system logs, GPS logs, text messages, applications, and Internet browsing history. Additionally, based upon my training and experience, I know that continued use of the devices can result in the deletion of data and/or potential evidence on the phone. Therefore, I seized the items as evidence.

A records check through County Communications revealed two (2) outstanding misdemeanor warrants for Suspect Warner. Warner was subsequently arrested and handcuffed by Deputy Jim Goulart of the Sheriff's Office for the outstanding warrants only. While seated in the back of a patrol car, Warner made a spontaneous statement to Det. Josh McFall that he knew where the missing flash drive was located. Det. McFall read a Miranda Advisement to Warner and Warner waived his rights. Warner subsequently directed us to a bush located on the north side of Harding Ave at the intersection of Lancaster Way, Redwood City. In the bush, I located a 512 MB Memorex thumb drive and a 1GB Lexar Media compact flash card. The Lexar 1GB flash card appeared to be of the same type that would be utilized by the previously mentioned and seized Canon SLR camera.

Continuing on the 4/22/2010 at approximately 0230 hours, I went to the Chevron Gas Station located at 585 Whipple Avenue in Redwood City. I conducted a search of the premises and located the missing Apple prototype sticker in the parking lot near the entrance to the convenience store.

On 4/22/2010 at approximately 1245 hours, Apple employee Venkat Memula delivered the prototype iPhone to me at the REACT San Mateo Office to be retained as evidence in this case.

Continuing on 4/23/2010, I conducted a query on the address 40726 Greystone Terrace in Fremont. The address was the where Bruce Sewell of Apple reportedly retrieved the stolen iPhone from Suspect Jason Chen. The address was listed on the database Clear as being occupied by Jason Chen (2/16/1981) via a credit bureau source. The records produced by Clear also listed Chen as the owner of the residence. From my prior experience, I have found the Clear database to be accurate and reliable.

Det Josh McFall conducted a DMV search for Chen and located DMV CDL B8607050. The license's record possesses a photograph of a male that appears to be the same male who identified himself as Jason Chen while showing the stolen iPhone on one of the videos that was found on Gizmodo.com.

### **Conclusions:**

Based upon fact that Witness Bruce Sewell met Jason Chen at 40726 Greystone Terrace in Fremont and Chen returned the stolen iPhone to Sewell at that location, the fact that the Clear

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database lists Chen as the owner of the residence, the fact that Brian Lam identified Chen's address as the above listed residence, and upon the fact that the DMV photograph associated with Jason Chen appears to be the same person who appears on Gizmodo.com with the stole iPhone, I believe Suspect Chen is currently residing at 40726 Greystone Terrace in Fremont, Alameda County, CA.

Based upon my training and experience as well as the statements of Witness Katherine Martinson, Bruce Sewell, and upon the fact that digital evidence was posted on the website Gizmodo.com with Jason Chen's image, I believe that evidence of the theft of the iPhone prototype, the vandalism of the iPhone prototype, and the sale of its associated trade secrets will be found in and/or upon the items requested in Appendix A.

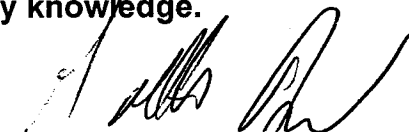
Based upon my training and experience, I know that computers, cameras, and other digital storage devices would likely have been utilized in this case to create copies of the iPhone prototype and to communicate with co-conspirators regarding the sale, transfer, and publication of the iPhone prototype. I therefore believe evidence in the form of digital images, email communications, instant message communications, internet files associated with searches for Gray Powell and/or iPhone prototypes, contact lists, address books, written notes, documents, telephone call records, text messages, and other information requested in Appendix A will be located in or upon the items sought in this search warrant.

Based upon my training and experience, I also know that information stored on digital storage devices can remain on said devices for an indefinite period of time and that even deleted data and/or files can often be recovered with the use of specialized forensic tools.

I therefore pray that a search warrant be issued so the items set forth in Appendix B can be recovered.

I also request that, upon adjudication of the case(s) against all defendant(s) in this action, including the resolution of any and all appeals, and the written concurrence of the District Attorney's Office, the property be disposed of in accordance with the procedures set forth in California Penal Code §1407 to 1422, without the necessity of a further Court Order issued pursuant to California Penal Code §1536.


**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.**

  
\_\_\_\_\_  
Det. Matthew Broad  
San Mateo County Sheriff's Office

Subscribed and sworn to before  
me this 23 day of April, 2010

(SEAL)

*Unrecorded*

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
County of San Mateo, State of California

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## Appendix "A"

### **Description of Items to be searched:**

40726 Greystone Terrace, Fremont, Alameda County, California is a townhouse located in a three-story structure located at the intersection of Westerly Common and Greystone Terrace. The building has a green painted exterior with white trim. There is a gray concrete patio with three concrete steps leading to the front door. The door is a brown wooden door with two square glass windows in the upper portion. Black metal numerals depicting the number "40726" are affixed on the front of the building to the right of the brown wooden door. There is a two-pane sliding window in the front wall to the right of the metal numerals. The front door to 40726 Greystone Terrace is between 40734 Greystone Terrace and 40718 Greystone Terrace.

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## Appendix "B"

### **Description of property to be seized:**

1. Computer systems, digital storage devices, computer hardware (including peripherals and cables), and data, including but not limited to central processing units (CPUs), hard disk drives, thumb drives, flash drives, digital cameras, digital video cameras, floppy disk drives, tape drives, removable media drives, optical/CD-ROM drives, servers, workstations, display screens, thumb drives, memory cards, cellular telephones, digital cameras, input devices (including but not limited to keyboards, mice, and trackballs), printers, modems, peripherals, floppy disks, magnetic tapes, cassette tapes, removable storage media, and/or optical CD-ROM disks or cartridges, found together or separately from one another. Such systems also commonly include cables linking computer systems to other systems or phone lines.
2. Documentation or other material describing the operation of any computer systems, computer hardware, software, and/or computer peripherals found at the premises, including instructions on how to access disks, files, or other material stored within same, including but not limited to computer manuals, printouts, passwords, file name lists, "readme" and/or "help files."
3. All records and data **located and/or stored on** any computers, hard drives, or memory storage devices, located at the listed location including digital photographs and/or video of the Apple prototype 4G iPhone, email communications pertaining to the sale of photographs of the prototype phone and/or the sale of the physical prototype 4G Apple iPhone, internet history, cache files, and/or Internet pages pertaining to searches and/or research conducted on Apple employee Gray Powell, call records, contact lists, text messages related to the sale of photographs of the prototype iPhone and/or physical prototype iPhone, and indicia that identifies the owner and/or operators of the computer or electronic device. I further request that the above items be allowed to be examined by a forensic computer examiner and that the examination be conducted at an offsite facility due to the need for special equipment to properly conduct the examination and preserve the evidence and

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that said search may be continued beyond the ten-day period beginning upon issuance of this Search Warrant, to the extent necessary to complete the search on the computer systems.

4. Printed documents, images, and/or notations pertaining to the sale and/or purchase of the stolen iPhone prototype and/or the sale and/or transfer of trade secret information pertaining to the iPhone prototype.
  
5. Any article of personal property tending to establish the identity of persons who have dominion and control over the premises and vehicles to be searched, including all keys to the described location and vehicles, rent receipts, utility bills, telephone bills, addressed mail, purchase receipts, sales receipts, and articles of personal property tending to show ownership of vehicles including, but not limited to vehicle pink slips and vehicle registration. All personal property and documents used by the persons named as means of identification, including but not limited to driver's licenses, credit cards, passports, social security cards, and photographs relative to the person(s) described.

*CM*