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APPLE INC.

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN JOSE DIVISION

20 APPLE INC., a California corporation,

21 Plaintiff,

22 v.

23 RIVOS, INC., a Delaware corporation; WEN  
24 SHIH-CHIEH a/k/a RICKY WEN, and BHASI  
KAITHAMANA,

25 Defendants.

Case No. 5:22-cv-2637-EJD

**APPLE'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF *EX PARTE* MOTION  
FOR TEMPORARY RESTRAINING  
ORDER, EXPEDITED DISCOVERY,  
AND ORDER TO SHOW CAUSE**

Date: \*\*

Time: \*\*

Courtroom: 4, 5th Floor

Judge: Hon. Edward J. Davila

Action Filed: April 29, 2022

28

**TABLE OF CONTENTS**

		<b>Page</b>
1		
2		
3	I. INTRODUCTION .....	1
4	II. STATEMENT OF FACTS .....	2
5	A. Apple’s Proprietary and Trade Secret SoC Designs Are Key to Apple’s Competitive Edge in Personal and Mobile Computing .....	2
6	B. Apple Diligently Protects Its Trade Secret SoC Designs.....	3
7	C. The Individual Defendants and Other Former Apple Employees Violated Their Obligations to Apple When They Took and Retained Apple’s Trade Secrets After Accepting Rivos’s Job Offers .....	5
8	1. Ricky Wen.....	6
9	2. Bhasi Kaithamana .....	7
10	3. Other Apple Employees Departing for Rivos Retained Apple Information and Wiped Their Apple Devices To Cover Their Tracks.....	8
11		
12	D. Apple Informed Rivos and Apple’s Former Employees of Their Obligations and Sought Return of Its Trade Secrets Before Filing This Motion.....	9
13	III. LEGAL STANDARD.....	12
14	IV. ARGUMENT .....	12
15	A. A Temporary Restraining Order Is Needed To Enjoin Defendant Wen from Using or Disseminating Apple’s Trade Secrets .....	12
16	1. Apple Is Likely To Succeed on Its DTSA and Breach of Contract Claims Against Wen .....	12
17	a. Apple’s SoC Designs Are Trade Secrets .....	14
18	b. Wen Misappropriated Apple’s Trade Secrets .....	15
19	c. Wen Breached his Contract with Apple.....	16
20	2. Apple Will Suffer Imminent and Irreparable Harm Unless the Court Issues Immediate Injunctive Relief.....	17
21	3. The Balance of Hardships Strongly Favors Apple.....	20
22	4. The Relief Apple Seeks Supports the Public’s Strong Interest in Protecting Trade Secrets .....	21
23	B. Expedited Discovery Is Needed To Uncover the Full Extent of the Misappropriation and To Prevent Further Misuse of Apple’s Trade Secrets .....	21
24	V. CONCLUSION .....	25
25		
26		
27		
28		

**TABLE OF AUTHORITIES**

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

**Page(s)**

**Cases**

*Al Otro Lado v. Gaynor*,  
513 F. Supp. 3d 1253 (S.D. Cal. 2021).....12

*All. for the Wild Rockies v. Cottrell*,  
632 F.3d 1127 (9th Cir. 2011).....12

*Am. LegalNet, Inc. v. Davis*,  
673 F. Supp. 2d 1063 (C.D. Cal. 2009) .....22

*Blizzard Ent. Inc. v. Ceiling Fan Software LLC*,  
28 F. Supp. 3d 1006 (C.D. Cal. 2013) .....12

*Carl Zeiss Meditec, Inc. v. Topcon Med. Sys., Inc.*,  
19-4162 SBA, 2021 WL 1186335 (N.D. Cal. Mar. 1, 2021).....17, 21

*Comet Techs. USA Inc. v. Beuerman*,  
No. 1:18-cv-01441-LHK, 2018 WL 1990226 (N.D. Cal. Mar. 15, 2018)..... *passim*

*Cutera, Inc. v. Lutronic Aesthetics, Inc.*,  
444 F. Supp. 3d 1198 (E.D. Cal. 2020).....16, 18

*eHealthinsurance Servs., Inc. v. Healthpilot Techs. LLC*,  
No. 21-CV-4061-YGR, 2021 WL 3052918 (N.D. Cal. July 20, 2021).....22

*Farmers Ins. Exch. v. Steele Ins. Agency, Inc.*,  
No. 2:13-cv-00784-MCE-DAD, 2013 WL 2151553 (E.D. Cal. May 16, 2013) .....13, 20

*Henry Schein, Inc. v. Cook*,  
191 F. Supp. 3d 1072 (N.D. Cal. 2016) .....16

*Miloedu, Inc. v. James*,  
No. 21-CV-09261-JST, 2021 WL 6072821 (N.D. Cal. Dec. 23, 2021) .....16, 19, 21, 24

*Oculus Innovative Scis., Inc. v. Nofil Corp.*,  
No. C 06-1686-SI, 2007 WL 4044867 (N.D. Cal. Nov. 15, 2007).....17

*Penson & Co., LLC v. Cloudstyle Store*,  
No. 20-cv-05174-JST, 2020 WL 11885744 (N.D. Cal. Aug. 27, 2020).....23

*Posdata Co. v. Kim*,  
No. C-07-02504 RMW, 2007 WL 1848661 (N.D. Cal. June 27, 2007).....15, 17

*Pyro Spectaculars N., Inc. v. Souza*,  
861 F. Supp. 2d 1079 (E.D. Cal. 2012).....15, 20, 21, 24

1 *Reichert v. Gen. Ins. Co.*,  
 2 68 Cal. 2d 822 (1968) .....16

3 *Semitoool, Inc. v. Tokyo Electron Am., Inc.*,  
 4 208 F.R.D. 273 (N.D. Cal. 2002).....21

5 *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,  
 6 739 F.2d 1415 (9th Cir. 1984).....12

7 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*,  
 8 240 F.3d 832 (9th Cir. 2001).....12

9 *Trulite Glass & Aluminim Sols., LLC v. Smith*,  
 10 No. 21-601798, 2016 WL 8738432 (E.D. Cal. Aug. 10, 2016).....21

11 *Waymo LLC v. Uber Techs., Inc.*,  
 12 No. 17-00939-WHA, 2017 WL 2123560 (N.D. Cal. May 15, 2017) .....18, 20

13 *WeRide Corp. v. Huang*,  
 14 379 F. Supp. 3d 834 (N.D. Cal. 2019) .....19, 24, 25

15 *Winter v. Nat. Res. Def. Council*,  
 16 555 U.S. 7 (2008).....12

17 **Statutes and Other Authorities**

18 18 U.S.C.  
 19 § 1836(b)(3)(A).....12  
 20 § 1839(3) .....13, 14  
 21 § 1839(5) .....13  
 22 § 1839(6) .....13

23 Fed. R. Civ. P. 26(d)(1).....25

24

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1 **I. INTRODUCTION**

2 Apple brings this motion to prevent its ex-employees from exploiting Apple’s most  
3 sensitive and valuable trade secrets at their new employer, competing startup Rivos. Apple has  
4 attempted to reach agreement with counsel for Defendants Ricky Wen and Rivos on the  
5 reasonable measures it requests in this motion, but counsel has responded with only generalized  
6 denials and no specific information.

7 For decades, Apple has spent billions on research and development to support its industry-  
8 leading advances in the field of systems-on-chips (“SoCs”). Those investments have resulted in  
9 Apple’s most advanced, cutting-edge SoCs, including the A15 mobile computing SoC at the heart  
10 of Apple’s iPhone products and the M1 family of personal computing SoCs. Rivos, a start-up in  
11 self-described “stealth mode,” intends to build competing SoCs, and has specifically targeted  
12 Apple engineers with access to Apple’s most valuable trade secrets to do it. In July 2021, just  
13 after Rivos began its coordinated campaign to target these employees, Apple promptly sent Rivos  
14 a letter informing Rivos of the confidentiality obligations of Apple’s former employees, but Rivos  
15 never responded. Since then, Rivos has continued to recruit from Apple, wooing away more than  
16 40 employees, with the most recent departures occurring in May 2022.

17 Apple’s forensic investigation has revealed that after receiving his offer from Rivos,  
18 Defendant Ricky Wen took hundreds of sensitive SoC documents related to both Apple’s existing  
19 and unreleased SoCs. This was not an isolated incident—over a dozen others, including  
20 Defendant Bhasi Kaithamana (collectively with Mr. Wen, “Individual Defendants”), either wiped  
21 their computers or saved Apple confidential information in places beyond Apple’s reach just  
22 before leaving for Rivos. Some used multiple USB storage drives to offload material to personal  
23 devices, accessed proprietary specifications stored within collaboration applications, and used  
24 AirDrop to wirelessly transfer files to personal devices. Others saved voluminous presentations  
25 on existing and unreleased Apple SoCs—marked Apple Proprietary and Confidential—to their  
26 personal cloud storage drives. And several of the employees deleted information or wiped their  
27 Apple devices entirely to try to cover their tracks, while falsely representing to Apple that they  
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