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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

MARTIN VOGEL and KENNETH MAHONEY, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

APPLE, INC., STEVEN P. JOBS, FRED ANDERSON, NANCY HEINEN, WILLIAM V. CAMPBELL, MILLARD S. DREXLER, ARTHUR D. LEVINSON, and JEROME P. YORK,

Defendants.

CASE NO.: C08-03123-JF

CLASS ACTION

STIPULATION AND ~~[PROPOSED]~~ ORDER CONTINUING CASE MANAGEMENT CONFERENCE

Date: September 4, 2009
Time: 10:30 a.m.
Judge: Hon. Jeremy Fogel
Dept: Ctrm. 3, 5th Floor

Plaintiffs Martin Vogel and Kenneth Mahoney ("Plaintiffs") and Defendants Apple Inc. ("Apple"), Fred D. Anderson, Steven P. Jobs, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, and Jerome B. York (collectively, the "Defendants") hereby stipulate as follows:

WHEREAS, on August 24, 2006, Plaintiffs filed a class action complaint before this Court alleging that certain defendants violated the Securities Exchange Act of 1934 (the "Exchange Act"), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action was entitled *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-05208-JF (N.D. Cal.) (the "Apple Backdating Action No. 1"), and concerning alleged practice of issuing backdating stock options;

WHEREAS, on October 24, 2006, New York City Employees' Retirement System ("NYCERS") moved for their appointment as Lead Plaintiff of the Apple Backdating Action No. 1 pursuant to 15 U.S.C. § 78u-4;

WHEREAS, on January 19, 2007, this Court appointed NYCERS as Lead Plaintiff of that litigation;

WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, its Consolidated Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and the common law duty of disclosure. The Consolidated Complaint did not assert any claims for Defendants' alleged violations of §10(b) of the Exchange Act;

WHEREAS, on November 14, 2007, this Court granted Defendants' motion to dismiss the Consolidated Complaint on the ground, *inter alia*, that NYCERS failed to plead standing to bring a direct claim ("Dismissal Order");

WHEREAS, this Court granted NYCERS leave to amend its complaint but held that NYCERS could only amend for the purpose of attempting to plead a derivative claim, not a direct class action claim;

WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First Amended Consolidated Class Action Complaint that contained direct class action claims for alleged violations of § 10(b) of the Exchange Act;

WHEREAS, on May 14, 2008, this Court denied NYCERS's motion for leave to file an amended complaint ("Denial Order");

WHEREAS, on June 12, 2008, this Court entered Judgment for defendants ("Judgment");

WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal Order, the Denial Order and subsequent Judgment ("NYCERS's Appeal");

WHEREAS, Plaintiffs filed this action ("Apple Backdating Action No. 2") on June 27, 2008, alleging that Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder and § 20(a) of the Exchange Act by, *inter alia*, issuing backdated stock options to themselves and other Apple employees;

WHEREAS, Plaintiffs and Defendants agreed that if this litigation were to go forward prior to resolution of NYCERS's appeal(s) of the Apple Backdating Action No. 1, there was a risk of duplicative litigation regarding Defendants' alleged backdating and alleged violations of the Exchange Act, and that this risk could result in a waste of judicial resources;

WHEREAS, pursuant to the parties' stipulation, on July 22, 2008, this Court entered an Order staying this action pending the resolution of NYCERS's Appeal;

WHEREAS, on March 10, 2009, this Court continued the Case Management Conference set for March 6, 2009, to September 4, 2009, at 10:30 a.m.;

WHEREAS, the NYCERS's Appeal has been fully briefed and oral argument is currently scheduled before the Ninth Circuit on October 7, 2009;

WHEREAS, Plaintiffs and Defendants agree that it would be premature and a waste of judicial resources to hold the status conference prior to oral argument and the Ninth Circuit's ruling on the NYCERS's Appeal;

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NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

The Case Management Conference should be continued, if this Court is so amenable, for at least 120 days from Friday, September 4, 2009, to Friday, January 8, 2010, or a later date as ordered by the Court.

IT IS SO STIPULATED.

Dated: September 2, 2009

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Dated: September 2, 2009

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Dated: September 2, 2009

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Dated: September 2, 2009

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Attorneys for Defendant Fred D. Anderson

I, Robert D. Tronnes, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Continuing Case Management Conference. In compliance with General Order 45, X.B., I hereby attest that Patrice L. Bishop, Douglas R. Young, and Yohance C. Edwards have concurred in this filing.

By: /s/ Robert D. Tronnes
Robert D. Tronnes

~~[PROPOSED]~~ ORDER

Pursuant to the stipulation of the parties, and for good cause shown, IT IS HEREBY ORDERED THAT:

The Case Management Conference scheduled for Friday, September 4, 2009, at 10:30 a.m. is hereby continued to Friday, January 8, 2010. at 10:30 a.m.

Dated: 9/3/2009

Honorable Jeremy Fogel
United States District Court Judge

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