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13 Attorneys for Plaintiffs

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 15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN JOSE DIVISION**

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

21 Plaintiffs,

22 v.

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

26 Defendants.

CASE NO.: C08-03123-JF

**CLASS ACTION**

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

**Date: January 8, 2010**

**Time: 10:30 a.m.**

**Judge: Hon. Jeremy Fogel**

**Dept: Ctrm. 3, 5th Floor**

1 Plaintiffs Martin Vogel and Kenneth Mahoney (“Plaintiffs”) and Defendants Apple  
2 Inc. (“Apple”), Fred D. Anderson, Nancy R. Heinen, Steven P. Jobs, William V. Campbell,  
3 Millard S. Drexler, Arthur D. Levinson, and Jerome B. York (collectively, the  
4 “Defendants”) hereby stipulate as follows:

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

11 WHEREAS, on October 24, 2006, New York City Employees' Retirement System  
12 (“NYCERS”) moved for their appointment as Lead Plaintiff of the Apple Backdating Action No.  
13 1 pursuant to 15 U.S.C. § 78u-4;

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

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

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

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

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

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

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

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

6 WHEREAS, Plaintiffs filed this action ("Apple Backdating Action No. 2") on June 27,  
7 2008, alleging that Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder  
8 and § 20(a) of the Exchange Act by, *inter alia*, issuing backdated stock options to themselves and  
9 other Apple employees;

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

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

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

18 WHEREAS, on September 3, 2009, this Court continued the Case Management  
19 Conference set for September 4, 2009, to January 8, 2010, at 10:30 a.m.;

20 WHEREAS, the Ninth Circuit heard oral argument in NYCERS's Appeal on October 7,  
21 2009, and took the matter under submission;

22 WHEREAS, the Ninth Circuit has not yet issued a ruling on NYCERS's Appeal;

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

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1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

2 1. The Case Management Conference should be continued, if this Court is so  
3 amenable, for approximately 90 days from Friday, January 8, 2010, to Friday, April 9,  
4 2010, or a later date as ordered by the Court.

5 2. Plaintiffs and Defendants promptly shall notify this Court after the Ninth  
6 Circuit issues a ruling on NYCERS's Appeal.

7 IT IS SO STIPULATED.

8 Dated: December 29, 2009

Patrice L. Bishop  
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By: /s/ Patrice L. Bishop

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1 Dated: December 29, 2009

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9 Dated: December 29, 2009

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19 Dated: December 29, 2009

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Attorneys for Defendant Fred D. Anderson

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Dated: December 29, 2009

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Attorneys for Defendant Nancy R. Heinen

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, Yohance C. Edwards, and Sarah A. Good have concurred in this filing.

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

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**PROPOSED ORDER**

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

1. The Case Management Conference scheduled for Friday, January 8, 2010, at 10:30 a.m. is hereby continued to Friday, April 9, 2010, at 10:30 a.m.
2. Plaintiffs and Defendants promptly shall notify this Court after the Ninth Circuit issues a ruling on NYCERS's Appeal.

Dated: 1/4/2010

  
\_\_\_\_\_  
Honorable Jeremy Fogel  
United States District Court Judge

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