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14	(according to an or or or or granter of page)	
15	UNITED STATES	DISTRICT COURT
16	NORTHERN DISTR	ICT OF CALIFORNIA
17	SAN JOSI	E DIVISION
17		
17	MARTIN VOGEL and KENNETH MAHONEY on Behalf of Themselves	Case No. C06-05208-JF
	MARTIN VOGEL and KENNETH MAHONEY, on Behalf of Themselves and All Others Similarly Situated,	Case No. C06-05208-JF STIPULATION AND <del>[PROPOSED]</del> ORDER REGARDING SCHEDULING
18	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs,	STIPULATION AND [PROPOSED]
18 19	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v.	STIPULATION AND <del>[PROPOSED]</del> ORDER REGARDING SCHEDULING AND RELATED MATTERS
18 19 20	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V.	STIPULATION AND <del>[PROPOSED]</del> ORDER REGARDING SCHEDULING
18 19 20 21	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V. CAMPBELL, MILLARD S. DREXLER,	<b>STIPULATION AND [PROPOSED]</b> <b>ORDER REGARDING SCHEDULING</b> <b>AND RELATED MATTERS</b> Department: Ctrm 3, 5 <sup>th</sup> Floor
18 19 20 21 22	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V.	<b>STIPULATION AND [PROPOSED]</b> <b>ORDER REGARDING SCHEDULING</b> <b>AND RELATED MATTERS</b> Department: Ctrm 3, 5 <sup>th</sup> Floor
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V. CAMPBELL, MILLARD S. DREXLER, ALBERT GORE, JR., ARTHUR D. LEVINSON, JEROME P. YORK and	<b>STIPULATION AND [PROPOSED]</b> <b>ORDER REGARDING SCHEDULING</b> <b>AND RELATED MATTERS</b> Department: Ctrm 3, 5 <sup>th</sup> Floor
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V. CAMPBELL, MILLARD S. DREXLER, ALBERT GORE, JR., ARTHUR D. LEVINSON, JEROME P. YORK and APPLE COMPUTER, INC., Defendants.	<b>STIPULATION AND [PROPOSED]</b> <b>ORDER REGARDING SCHEDULING</b> <b>AND RELATED MATTERS</b> Department: Ctrm 3, 5 <sup>th</sup> Floor
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V. CAMPBELL, MILLARD S. DREXLER, ALBERT GORE, JR., ARTHUR D. LEVINSON, JEROME P. YORK and APPLE COMPUTER, INC.,	<b>STIPULATION AND [PROPOSED]</b> <b>ORDER REGARDING SCHEDULING</b> <b>AND RELATED MATTERS</b> Department: Ctrm 3, 5 <sup>th</sup> Floor
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	MAHONEY, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. STEVEN P. JOBS, PETER OPPENHEIMER, FRED ANDERSON, WILLIAM V. CAMPBELL, MILLARD S. DREXLER, ALBERT GORE, JR., ARTHUR D. LEVINSON, JEROME P. YORK and APPLE COMPUTER, INC., Defendants.	<b>STIPULATION AND [PROPOSED]</b> <b>ORDER REGARDING SCHEDULING</b> <b>AND RELATED MATTERS</b> Department: Ctrm 3, 5 <sup>th</sup> Floor

Dockets.Justia.com

1 2	MARTIN VOGEL and KENNETH MAHONEY, on Behalf of Themselves and All Others Similarly Situated,	Case No. C08-03123-JF
3	Plaintiffs,	
4	V.	
5	APPLE, INC., STEVEN P. JOBS, FRED	
6	ANDERSON, NANCY HEINEN, WILLIAM V. CAMPBELL, MILLARD S. DREXLER,	
7	ARTHUR D. LEVINSON, and JEROME P. YORK	
8	Defendants.	
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		STIPULATION & [PROPOSED] ORDER C06-05208-JF
		C00-05208-JF

1	WHEREAS, on August 24, 2006, plaintiffs Vogel and Mahoney filed a class action	
2	complaint in this Court alleging that certain defendants violated the Securities Exchange Act of	
3	1934 (the "Exchange Act"), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That	
4	action is styled as Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al., Case No. 5:06-cv-	
5	05208-JF (N.D. Cal.) ("Vogel I");	
6	WHEREAS, on January 19, 2007, this Court appointed the New York City Employees'	
7	Retirement System ("NYCERS") as Lead Plaintiff in Vogel I and Grant & Eisenhofer P.A. as	
8	Lead Counsel in Vogel I;	
9	WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, the Consolidated	
10	Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and for the alleged	
11	breach of the common law duty of disclosure. The Consolidated Complaint did not assert any	
12	claims for alleged violations of §10(b) of the Exchange Act or Rule 10b-5 thereunder;	
13	WHEREAS, on November 14, 2007, this Court granted the defendants' motion to dismiss	
14	the Consolidated Complaint ("Dismissal Order");	
15	WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First	
16	Amended Consolidated Class Action Complaint to assert claims for alleged violations of § 10(b)	
17	of the Exchange Act and Rule 10b-5 thereunder;	
18	WHEREAS, on May 14, 2008, this Court denied NYCERS's motion for leave to file a	
19	First Amended Consolidated Class Action Complaint ("Denial Order");	
20	WHEREAS, on June 12, 2008, this Court entered Judgment for the defendants	
21	("Judgment");	
22	WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal	
23	Order, the Denial Order, and the Judgment ("NYCERS's Appeal");	
24	WHEREAS, on June 27, 2008, plaintiffs Vogel and Mahoney filed a new class action	
25	complaint in this Court alleging that certain defendants violated the Exchange Act, including	
26	§ 10(b) and Rule 10b-5 thereunder, and § 20(a). That action is styled Martin Vogel and Kenneth	
27	Mahoney v. Apple Inc., et al., Case No. 5:08-cv-03123-JF (N.D. Cal.) ("Vogel II");	
28		

1	WHEREAS, pursuant to the parties' stipulation, on July 22, 2008, this Court entered an
2	Order staying Vogel II pending resolution of NYCERS's Appeal;
3	WHEREAS, on January 28, 2010, the Ninth Circuit Court of Appeals issued a ruling in
4	NYCERS's Appeal affirming the Dismissal Order and reversing the Denial Order;
5	WHEREAS, on February 19, 2010, the Ninth Circuit issued a mandate in NYCERS's
6	Appeal;
7	WHEREAS, on March 22, 2010, NYCERS filed a First Amended Consolidated Class
8	Action Complaint in Vogel I captioned In Re Apple Inc. PSLRA Backdating Litigation ("First
9	Amended Complaint");
10	WHEREAS, the Court has scheduled a Case Management Conference in Vogel I on April
11	30, 2010, at 10:30 a.m.;
12	WHEREAS, the Court has scheduled a Case Management Conference in Vogel II on April
13	9, 2010, at 10:30 a.m.;
14	WHEREAS, the parties believe that Vogel I and Vogel II concern substantially the same
15	parties, transactions or events and involve common questions of law or fact, and should be
16	deemed related pursuant to Civil Local Rule 3-12 and consolidated pursuant to Rule 42 of the
17	Federal Rules of Civil Procedure to avoid unnecessary cost or delay;
18	NOW, THEREFORE, THE PARTIES STIPULATE, AND THE COURT HEREBY
19	ORDERS, THAT:
20	1. <i>Vogel I</i> and <i>Vogel II</i> shall be deemed related pursuant to Civil Local Rule 3-
21	12 and Vogel II shall be consolidated with Vogel I pursuant to Rule 42 of the Federal Rules
22	of Civil Procedure and 15 U.S.C. § 78u-4(a)(3)(B). NYCERS shall be Lead Plaintiff and
23	Grant & Eisenhofer P.A. shall be Lead Counsel with respect to the consolidated action.
24	2. The docket in <i>Vogel I</i> (Case No. 5:06-cv-05208-JF) shall constitute the Master
25	Docket for this proceeding.
26	//
27	//
28	//

1	3. Every pleading in this proceeding shall bear the following caption:	
2	UNITED STATES DISTRICT COURT	
3	NORTHERN DISTRICT OF CALIFORNIA	
4	SAN JOSE DIVISION	
5	IN RE APPLE INC. ) Case No. C06-05208-JF	
6	SECURITIES LITIGATION ) CLASS ACTION	
7	THIS DOCUMENT RELATES TO:	
8	)	
9	4. When a pleading is intended to be applicable to all actions to which this	
10	Order is applicable, the phrase "All Actions" shall appear immediately after the words "This	
11	Document Relates To:" in the caption set out above. When a pleading is intended to be	
12	applicable only to some, but not all, of such actions, the document shall list, immediately	
13	after the phrase "This Document Relates To:", the docket number for each individual action	
14	to which the document applies, along with the last name of the first-listed plaintiff in any	
15	such action.	
16	5. The Case Management Conference set for April 9, 2010, at 10:30 a.m. in	
17	<i>Vogel II</i> shall be vacated.	
18	6. The Case Management Conference set for April 30, 2010, at 10:30 a.m. in	
19	<i>Vogel I</i> shall remain on calendar.	
20	7. The First Amended Complaint filed in <i>Vogel I</i> shall be the operative	
21	complaint for the consolidated action. Plaintiffs shall re-file the First Amended Complaint	
22	with a corrected caption page to reflect the caption for the consolidated action. This	
23	consolidation does not affect any separate right or defense asserted in any of the	
24	consolidated actions.	
25	8. Defendants shall file their responses to the First Amended Complaint by	
26	June 25, 2010.	
27	9. In the event that Defendants respond to the First Amended Complaint by	
28	filing motions, the briefing and hearing schedule for Defendants' motions will be:	
	- 3 - STIPULATION & [PROPOSED] ORDER C06-05208-JF	

1	Plaintiffs' Oppositions Due:	July 27, 2010
2	Defendants' Replies Due:	August 17, 2010
3	Hearing:	To be set by the Court.
4	10. Defendants shall not be required	d to file any responsive pleading to the
5	pending complaint in Vogel II.	
6	IT IS SO STIPULATED.	
7	Dated: April 7, 2010	GEORGE A. RILEY
8		O'MELVENY & MYERS LLP
9		By:/s/ George A. Riley
10		George A. Riley
11		Attorneys for Defendant APPLE INC.
12		
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21		CAMPBELL, MILLARD S. DREXLER, ARTHUR D. LEVINSON and JEROME B.
22		YORK
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1	Dated: April 7, 2010	JEROME C. ROTH (S.B. #159483)
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7		By: /s/ Yohance C. Edwards Yohance C. Edwards
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9		Attorneys for Defendants FRED D. ANDERSON and NANCY R. HEINEN
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11	Dated: April 7, 2010	JAY W. EISENHOFER (admitted pro hac vice)
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23		THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM
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		- 5 - STIPULATION & [PROPOSED] ORDER

C06-05208-JF

1	Dated: April 7, 2010 PATRICE L. BISHOP (S.B. #182256)	
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14		
15	Attorneys for Plaintiffs MARTIN VOGEL and KENNETH	
16	MAHONEY	
17	I, George A. Riley, am the ECF User whose ID and password are being used to file this	
18	Stipulation and [Proposed] Order Regarding Scheduling and Related Matters. In compliance with	
19	General Order 45, X.B., I hereby attest that Douglas R. Young, Yohance C. Edwards, Michael J.	
20	Barry, and Patrice L. Bishop have concurred in this filing.	
21	By: _/s/ George A. Riley	
22	George A. Riley	
23	<u>O R D E R</u>	
24	PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.	
25		
26	DATED: April <u>8</u> , 2010	
27	The Nonorable er and oger Unded States Distant Judge	
28	MP1:1191444.3	
	- 6 - STIPULATION & [PROPOSED] ORDER C06-05208-JF	