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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

File via fax

██████████ and ██████████
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.

CASE NO.

CLASS ACTION

COMPLAINT FOR VIOLATION OF
FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

1 Plaintiffs, by and through their attorneys, bring this Complaint and allege on personal
2 knowledge as to themselves and their own activities, and on information and belief as to all other
3 matters, based on investigation and discovery conducted by counsel, including but not limited to: (a)
4 review and analysis of public filings made by Apple Computer, Inc. ("Apple" or the "Company"),
5 with the Securities and Exchange Commission (the "SEC"); (b) review and analysis of press
6 releases and other publications disseminated by defendants; and (c) other publicly available
7 information about Apple.

8 NATURE AND SUMMARY OF THE ACTION

9 1. This is a class action complaint brought on behalf of purchasers of Apple securities
10 and/or who sold put options on Apple shares (the "Class"), between December 1, 2005 and August
11 11, 2006, inclusive (the "Class Period") against Apple and the Individual Defendants, as described
12 *infra*, who were members of the Company's Board of Directors (the "Board") and/or executive
13 officers of the Apple and signed its Form 10-K for its fiscal 2005 year ended September 24, 2005
14 (the "2005 Form 10-K"), and/or authorized the issuance of its Proxy Statement on or about March
15 13, 2006, for the Company's annual meeting held on April 27, 2006 (the "2006 Proxy Statement").

16 2. Stock options give employees of a publically traded company the right to purchase
17 company stock at a fixed price in the future. The general policy behind a grant of stock options is to
18 link employees' compensation to the value of the company's shares and, therefore, to the wealth of
19 the company's shareholders. Typically, the options' fixed price is aligned with the price of the stock
20 on the day of the grant. If the stock price rises from the fixed grant price the employee profits by
21 exercising the options and selling the shares. In contrast, backdated stock options allow the
22 employees of a publically traded company, such as Apple, to maximize their wealth at the expense
23 of the company and its shareholders.

24 3. As further alleged below, defendants improperly backdated (and/or had knowledge
25 and approved of, or acquiesced in, such backdating) stock option grants to certain senior Apple
26 executives so that the options appeared to granted on dates when the market price of Apple stock
27 was lower than the market price on the actual grant date, and then concealed this practice from the
28 investing public during the Class Period. This improper backdating resulted in option grants with

1 lower exercise prices which improperly increased the value of the options to the recipients and
2 improperly reduced the amounts the recipients of these option had to pay the Company upon
3 exercise of the options, unfairly transferring shareholder equity to defendants while diluting the
4 value of the shares owned by the Class. Defendants' conduct also violated the Company's: (i)
5 shareholder-approved stock option plans; (ii) corporate governance guidelines; (iii) standards of
6 business conduct; and (iv) conflicts of interest policy.

7 4. Moreover, during the Class Period defendants caused Apple to file materially false
8 and misleading statements with the SEC, including but not limited to Apple's 2005 Form 10-K and
9 its 2006 Proxy Statement, which stated that options issued to employees and/or executives of the
10 Company were granted at the fair market value as of the date of grant. In reality, because of
11 defendants' scheme of backdating options, recipients received stock options priced lower than the
12 "fair market value" of the stock on actual date of the grant.

13 5. In fact, defendants were aware that the practices employed by the Board frequently
14 allowed the stock option grants to be backdated to a price when the Company's shares were at the
15 near low trading price of the relevant period. Indeed, as of 2001, defendants' backdating scheme
16 had yielded stock option grants to the Company's executive officers worth millions of dollars.

17 6. On June 29, 2006, Apple announced that an internal investigation discovered
18 irregularities related to stock option grants from 1997 to 2001, including a problematic grant to CEO
19 Steven P. Jobs ("Jobs"). This particular problematic grant was later cancelled.

20 7. On August 4, 2006, Apple shares declined 4.02%, from a close of \$67.81 on August
21 3 to close at \$64.96 on August 4, on news that Apple would "likely need" to restate earnings and
22 would delay filing its quarterly report because of additional irregularities related to its accounting
23 for stock options granted to its executives and that its financial results issued since September 29,
24 2002 could not be relied upon.

25 8. On August 11, 2006, Apple announced that its mishandling of its employee stock
26 options would require "significant" revisions to its most recent quarterly (ending July 1, 006) results
27 compared to the previous June 25, 2005. On this news the Company's shares continued to drop to
28

1 close at \$63.65 on August 11, 2006. The drop on August 11, 2006, was a 6.1% drop from the price
2 Apple stock closed at on August 3, 2006.

3 JURISDICTION AND VENUE

4 9. Jurisdiction is conferred by Section 27 of the Securities Exchange Act of 1934 (the
5 "Exchange Act") [15 U.S.C. § 78aa] and 28 U.S.C. §§ 1331, 1337. The claims asserted herein arise
6 under and pursuant to Sections 10(b), 14(a) and 20(a) of the Exchange Act [15 U.S.C. §§ 78n(a),
7 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange
8 Commission ("SEC"), 17 C.F.R. § 240.10b-5.

9 10. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15
10 U.S.C. § 78aa and 28 U.S.C. § 1391(b) and (c). Venue is proper in this District because the
11 Company has its headquarters in this district and many of the acts and practices complained of
12 herein occurred in substantial part in this District.

13 11. In connection with the acts, transactions and conduct alleged herein, defendants used
14 the means and instrumentalities of interstate commerce, including the United States mails, interstate
15 telephone communications and the facilities of the national securities exchanges and markets.

16 PARTIES

17 12. Plaintiff [REDACTED] purchased shares of Apple and engaged in transactions of
18 Apple securities during the Class Period, as set forth in the certification attached hereto, and
19 suffered damages thereby.

20 13. Plaintiff [REDACTED] purchased shares of Apple and engaged in transactions of
21 Apple securities during the Class Period, as set forth in the certification attached hereto, and
22 suffered damages thereby.

23 14. Defendant Jobs has served as the Company's Chief Executive Officer ("CEO") and a
24 director since 2000. He also served as interim CEO from 1997 until 2000.

25 a. In light of defendant Jobs' positions, access to internal corporate documents,
26 conversations and connections with other corporate officers and employees, attendance at
27 management and Board meetings and committees thereof, and via reports and other information
28 provided to him in connection therewith, he knew or should have known that Apple executives,

1 including himself and certain other defendants named herein, were receiving improperly backdated
2 stock option grants which maximized their personal profits at the expense of Apple shareholders,
3 and that the defendants concealed this practice in public filings during the Class Period.

4 b. Moreover, Jobs received at least 20,000,000 options which were suspiciously
5 dated at or very close to the lowest stock price for the month of the purported grant date and/or
6 immediately before significant share price increases. On information and belief, plaintiffs allege
7 that defendants backdated these stock options so that defendants Jobs would receive illegal
8 compensation from Apple that was not disclosed to the Company's shareholders.

9 c. In addition, on or about March 19, 2006, defendant Jobs sold 4,573,553
10 shares of his personally held Apple stock for proceeds of \$295,725,936.68. At the time of this sale
11 defendant Jobs was in possession of material, non-public information concerning the illegally
12 undisclosed backdating stock option grant practices.

13 d. Defendant Jobs signed the 2005 Form 10-K filed with the SEC on December
14 1, 2001, attached his Certification (as defined *infra*) attesting to its accuracy, and solicited
15 shareholders through the 2006 Proxy Statement.

16 15. Defendant Peter Oppenheimer ("Oppenheimer") is Apple's Senior Vice President
17 and Chief Financial Officer ("CFO"). Oppenheimer was Apple's Controller for the Americas in
18 1996. In 1997 defendant Oppenheimer was promoted to Vice President and Worldwide Sales
19 Controller and then to Corporate Controller.

20 a. In light of defendant Oppenheimer's positions, access to internal corporate
21 documents, conversations and connections with other corporate officers and employees, attendance
22 at management meetings and committees thereof, and via reports and other information provided to
23 him in connection therewith, he knew or should have known that Apple executives, including
24 himself and certain other defendants named herein, were receiving improperly backdated stock
25 option grants which maximized their personal profits at the expense of Apple shareholders, and that
26 the defendants concealed this practice in public filings during the Class Period.

1 b. Moreover, during the Class Period, while in possession of material, non-
2 public information concerning the undisclosed backdating stock option grant practices, defendant
3 Oppenheimer sold 407,500 of his personally held shares for \$29,871,125 in proceeds. Specifically:

4 i. On January 3, 2006, Oppenheimer exercised his option to buy
5 200,000 Apple shares for a reduced price of \$2,762,500 and, on that same day, sold said 200,000
6 Apple shares at the artificially inflated market price(s) for proceeds of \$14,535,000;

7 ii. On January 4, 2006, Oppenheimer exercised his option to buy:

8 (1) 70,210 Apple shares for a reduced price of \$969,775 and, on that
9 same day, sold said 70,210 Apple shares at the artificially inflated
10 market price(s) for proceeds of \$5,284,000;

11 (2) 47,690 Apple shares for a reduced price of \$658,718 and, on that
12 same day, sold said 47,690 Apple shares at the artificially inflated
13 market price(s) for proceeds of \$3,577,000;

14 (3) 25,700 Apple shares for a reduced price of \$354,981 and on that same
15 day sold said 25,700 Apple shares at the artificially inflated market
16 price(s) for proceeds of \$1,921,000;

17 (4) 38,900 Apple shares for a reduced price for proceeds of approximately
18 \$466,800 and on that same day sold said 38,900 Apple shares at the
19 artificially inflated market price(s) for proceeds of \$2,922,000;

20 iii. On or about February 14, 2006, Oppenheimer sold 25,000 shares of
21 Apple for proceeds of \$1,632,125.

22 c. Defendant Oppenheimer signed the 2005 Form 10-K and attached his
23 Certification (as defined *infra*) attesting to its accuracy .

24 16. Defendant Fred D. Anderson (“Anderson”) is a director of Apple and has been since
25 2004. Anderson was Apple’s Executive Vice President and CFO from April 1996 to June 2004.

26 a. In light of defendant Anderson’s positions, access to internal corporate
27 documents, conversations and connections with other corporate officers and employees, attendance
28 at management meetings and committees thereof, and via reports and other information provided to

1 him in connection therewith, he knew or should have known that Apple executives, including
2 himself and other defendants named herein, were receiving improperly backdated stock option
3 grants which maximized their personal profits at the expense of Apple shareholders, and that the
4 defendants concealed this practice in public filings during the Class Period.

5 b. On October 24, 2005, just prior to the Class Period herein, while in
6 possession of material, non-public information concerning the undisclosed backdating stock option
7 grant practices, defendant Anderson exercised an option to purchase 20,000 shares of Apple stock
8 for the sum of \$298,100 and, on the same day sold, said 20,000 shares of Apple stock for proceeds
9 of \$1,126,928.

10 c. Defendant Anderson Defendant signed the 2005 Form 10-K and solicited
11 shareholders through the 2006 Proxy Statement.

12 17. Defendant Arthur D. Levinson ("Levinson") is a director of Apple and has been since
13 2000. During the Fiscal Year 2005, which ran from September 25, 2004 to September 24, 2005,
14 and during the Fiscal Year 2006, which runs from September 25, 2005 to September 24, 2006,
15 defendant Levinson was and is a member of both the Audit Committee and the Corporate
16 Governance Committee of the Company.

17 a. In light of defendant Levinson's position as a director and member of said
18 committees, access to internal corporate documents, conversations and connections with other
19 corporate officers and employees, attendance at Board meetings and committees thereof, and via
20 reports and other information provided to him in connection therewith, he knew or should have
21 known that Apple executives, including defendants named herein, were receiving improperly
22 backdated stock option grants which maximized their personal profits at the expense of Apple
23 shareholders, and that the defendants concealed this practice in public filings during the Class
24 Period.

25 b. During the Class Period, while in possession of material, non-public
26 information concerning the undisclosed backdating stock option grant practices, defendant Levinson
27 sold 7,385 shares of Apple and 70,000 shares of Apple for \$4,855,883.60 in proceeds.
28

1 c. Defendant Levinson signed the 2005 Form 10-K and solicited shareholders
2 through the 2006 Proxy Statement.

3 18. Defendant Jerome B. York ("York") is a director of Apple and has been since 1997.

4 a. In light of defendant York's position as a director, access to internal corporate
5 documents, conversations and connections with other corporate officers and employees, attendance
6 at Board meetings and committees thereof, and via reports and other information provided to him in
7 connection therewith, he knew or should have known that Apple executives, including defendants
8 named herein, were receiving improperly backdated stock option grants which maximized their
9 personal profits at the expense of Apple shareholders, and that the defendants concealed this
10 practice in public filings during the Class Period.

11 b. During times relevant herein, while in possession of material, non-public
12 information concerning the undisclosed backdating stock option grant practices, defendant York
13 sold 90,000 of Apple shares for \$4,282,429.82 in proceeds.

14 c. Defendant York signed the 2005 Form 10-K and solicited shareholders
15 through the 2006 Proxy Statement

16 19. Defendant Albert A. Gore, Jr. ("Gore") is a director of Apple and has been since
17 2003. During the Fiscal Year 2005, which ran from September 25, 2004 to September 24, 2005,
18 and during the Fiscal Year 2006, which runs from September 25, 2005 to September 24, 2006,
19 defendant Gore was a member of both the Compensation Committee and the Corporate Governance
20 Committee of the Company.

21 a. In light of defendant Gore's position as a director and member of said
22 committees, access to internal corporate documents, conversations and connections with other
23 corporate officers and employees, attendance at Board meetings and committees thereof, and via
24 reports and other information provided to him in connection therewith, he knew or should have
25 known that Apple executives, including defendants named herein, were receiving improperly
26 backdated stock option grants which maximized their personal profits at the expense of Apple
27 shareholders, and that the defendants concealed this practice in public filings during the Class
28 Period.

1 b. Defendant Gore signed the 2005 Form 10-K and solicited shareholders
2 through the 2006 Proxy Statement.

3 20. Defendant William V. Campbell ("Campbell") is a director of Apple and has been
4 since 1997. During the Fiscal Year 2005, which ran from September 25, 2004 to September 24,
5 2005, and during the Fiscal Year 2006, which runs from September 25, 2005 to September 24,
6 2006, defendant Campbell was a member of both the Compensation Committee and the Audit
7 Committee of the Company.

8 a. In light of defendant Campbell's position as a director and member of said
9 committees, access to internal corporate documents, conversations and connections with other
10 corporate officers and employees, attendance at Board meetings and committees thereof, and via
11 reports and other information provided to him in connection therewith, he knew or should have
12 known that Apple executives, including defendants named herein, were receiving improperly
13 backdated stock option grants which maximized their personal profits at the expense of Apple
14 shareholders, and that the defendants concealed this practice in public filings during the Class
15 Period.

16 b. Defendant Campbell signed the 2005 Form 10-K and solicited shareholders
17 through the 2006 Proxy Statement.

18 21. Defendant Millard S. Drexler ("Drexler") is a director of Apple and has been since
19 1999. During the Fiscal Year 2005, which ran from September 25, 2004 to September 24, 2005,
20 and during the Fiscal Year 2006, which runs from September 25, 2005 to September 24, 2006,
21 defendant Drexler was a member of both the Compensation Committee and the Corporate
22 Governance Committee of the Company.

23 a. In light of defendant Drexler's position as a director and member of said
24 committees, access to internal corporate documents, conversations and connections with other
25 corporate officers and employees, attendance at Board meetings and committees thereof, and via
26 reports and other information provided to him in connection therewith, he knew or should have
27 known that Apple executives, including defendants named herein, were receiving improperly
28 backdated stock option grants which maximized their personal profits at the expense of Apple

1 shareholders, and that the defendants concealed this practice in public filings during the Class
2 Period.

3 b. Defendant Drexler signed the 2005 Form 10-K and solicited shareholders
4 through the 2006 Proxy Statement.

5 22. Collectively, defendants Jobs, Oppenheimer, Anderson, Campbell, Drexler, Gore,
6 Levinson and York are collectively referred to herein as the "Individual Defendants."

7 23. Defendants Campbell, York and Levinson are collectively referred to herein as the
8 "Audit Committee Directors."

9 24. Defendants Campbell, Drexler and Gore are collectively referred to herein as the
10 "Compensation Committee Directors."

11 25. Defendants Anderson and Jobs, together with non-parties Jonathan Rubenstein,
12 Timothy Cook, Ronald B. Johnson and Avidis Tevanian, who are and/or at relevant times herein
13 were all officers of Apple, are referred to herein as the "Backdated Option Recipients."

14 CLASS ALLEGATIONS

15 26. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b)(3) of the
16 Federal Rules of Civil Procedure on behalf of the Class, consisting of all those who purchased
17 and/or sold put options in the securities of Apple between December 1, 2005 and August 11, 2006
18 inclusive and who were damaged thereby. Excluded from the Class are defendants, the officers and
19 directors of the Company, at all relevant times, members of their immediate families and their legal
20 representatives, heirs, successors or assigns and any entity in which defendants have or had a
21 controlling interest.

22 27. The members of the Class are so numerous that joinder of all members is
23 impracticable. During the Class Period, Apple had more than 852 million shares of common stock
24 outstanding, which were actively traded on the NASDAQ, under the ticker symbol "AAPL," and at
25 least tens of millions of shares of common stock were traded during the Class Period. While the
26 exact number of Class members is unknown to plaintiffs at this time and can only be ascertained
27 through appropriate discovery. Plaintiffs believe that there are hundreds or thousands of members
28 in the proposed Class. Record owners and other members of the Class may be identified from

1 records maintained by Apple or its transfer agent and brokerage firms and may be notified of the
2 pendency of this action by mail, using the form of notice similar to that customarily used in
3 securities class actions.

4 28. Plaintiffs' claims are typical of the claims of the members of the Class as all
5 members of the Class are similarly affected by defendants' wrongful conduct in violation of federal
6 law that is complained of herein.

7 29. Plaintiffs will fairly and adequately protect the interests of the members of the Class
8 and has retained counsel competent and experienced in class and securities litigation.

9 30. Common questions of law and fact exist as to all members of the Class and
10 predominate over any questions solely affecting individual members of the Class. Among the
11 questions of law and fact common to the Class are:

12 a. whether the federal securities laws were violated by defendants' acts as
13 alleged herein;

14 b. whether statements made by defendants to the investing public during the
15 Class Period misrepresented material facts about (i) how the Company awarded options to its
16 executives, and (ii) whether the Company's financial 2005 Form 10-K, certain interim financial
17 reports, including its Form 10-Q's filed with the SEC during the Class Period, Apple's press
18 releases, and the 2006 Proxy Statement, contained false and misleading statements; and

19 c. to what extent the members of the Class have sustained damages and the
20 proper measure of damages.

21 31. A class action is superior to all other available methods for the fair and efficient
22 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
23 damages suffered by individual Class members may be relatively small, the expense and burden of
24 individual litigation make it impossible for members of the Class to individually redress the wrongs
25 done to them. There will be no difficulty in the management of this action as a class action.

1 36. Pursuant to Accounting Principles Board (“APB”) Opinion No. 25 (“APB 25”),
2 “Accounting for Stock Issued to Employees,” the applicable Generally Accepted Accounting
3 Principles (“GAAP”) provision at the time of the foregoing stock option grants, if the market price
4 on the date of grant exceeds the exercise price of the options, the company must recognize the
5 difference as an expense, thereby reducing the Company’s net income. Defendants’ backdating
6 practice resulted in understated expenses on each Form 10-K because the difference between the
7 market price and option exercise price was not expensed by the Company.

8 37. As a result of the improper backdating of stock options, the Company, with the
9 knowledge, approval, and participation of each of the defendants, violated GAAP, as acknowledged
10 by defendants in their press release dated August 11, 2006 and outlined *supra*.

11 38. Moreover, during the Class Period, defendants repeatedly disseminated materially
12 false and misleading press releases regarding the Company’s financials. For example, on October
13 11, 2005, Apple issued a press release reporting its revenue and net profit for the fiscal year ended
14 September 24, 2005 and the fourth quarter then ended. The release stated in part, “...for fiscal
15 2005, the Company generated revenue of \$13.93 billion and a net profit of \$ 1.335 billion, reflecting
16 an annual growth of 68% and 384 % respectively, and representing the highest annual revenue and
17 net profit in the Company’s history.”

18 39. The 2005 Form 10-K, filed with the SEC on December 1, 2005, and
19 contemporaneously distributed to the public, including Apple’s shareholders, repeated these
20 materially false and misleading statements regarding the Company’s financial information. In
21 particular, the revenue and net profit figures disseminated in the October 11, 2005 press release
22 were repeated in the audited financial statements contained in 2005 Form 10-K report and also
23 contained comparative financial statements for the fiscal years ended 2005 and 2004. Indeed, the
24 2005 Form 10-K professes to be prepared in conformity with GAAP. Specifically, in Footnote 1-
25 Summary of Significant Accounting Policies to the comparative financial statements, the defendants
26 stated:
27
28

1 **Stock-Based Compensation**

2 The Company currently measures compensation expense for its employee stock-
3 based compensation plans using the intrinsic value method prescribed by Accounting
4 Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*.
5 The Company applies the disclosure provisions of SFAS No. 123, *Accounting for*
6 *Stock-based Compensation*, as amended by SFAS No. 148, *Accounting for Stock-*
7 *based Compensation—Transition and Disclosure* as if the fair-value-based method
8 had been applied in measuring compensation expense. Under APB Opinion No. 25,
9 when the exercise price of the Company's employee stock options equals the market
10 price of the underlying stock on the date of the grant, no compensation expense is
11 recognized.

12 (Emphasis added).

13 40. The 2005 Form 10-K Report, for the year ended September 24, 2005, was signed and
14 dated on November 29, 2005, by defendants Jobs, Oppenheimer, Anderson, Campbell, Drexler,
15 Gore, Jr., Levinson and York.

16 41. The 2005 Form 10-K also contains a list of documents including the "Apple
17 Computer, Inc. 1998 Executive Officer Stock Plan (As Amended Through 6/27/00)" which defines
18 the exercise price of the options granted and follows:

19 **9. OPTION EXERCISE PRICE AND CONSIDERATION**

20 (a) EXERCISE PRICE. The per share exercise price for the Shares to be issued
21 pursuant to exercise of an Option shall be determined by the Administrator, subject
22 to the following:

23 (i) In the case of an Incentive Stock Option;

24 (A) granted to an Employee who, at the time the Incentive Stock
25 Option is granted, owns stock representing more than ten percent (10%) of the voting
26 power of all classes of stock of the Company or any Parent or Subsidiary, the per
27 Share exercise price shall be no less than 110% of the Fair Market Value per Share
28 on the date of grant; or

 (B) granted to any Employee other than an Employee described in
 paragraph (A) immediately above, the per Share exercise price shall be no less than
 100% of the Fair Market Value per Share on the date of grant;

 (ii) In the case of a Nonstatutory Stock Option, the per Share exercise price
 shall be determined by the Administrator. In the case of a Nonstatutory Stock Option
 intended to qualify as 'performance-based compensation' within the meaning of
 Section 162(m) of the Code, the per Share exercise price shall be no less than 100%
 of the Fair Market Value per Share on the date of grant; (emphasis added)

29 //

30 //

1 (iii) Notwithstanding the foregoing, Options may be granted with a per Share
2 exercise price of less than 100% of the Fair Market Value per Share on the date of
3 grant as determined by the Administrator or pursuant to a merger or other corporate
4 transaction.

5 Similar language appears in the Apple Computer, Inc. 1990 Stock Option Plan (As Amended
6 Through 11/5/97), as follows:

7 8. Exercise Price and Consideration. (a) Exercise Price. The per Share exercise price
8 for the Shares issuable pursuant to an Option shall be such price as is determined by
9 the Administrator, but shall in no event be less than 100% of the Fair Market Value
10 of Common Stock, determined as of the date of grant of the Option. In the event that
11 the Administrator shall reduce the exercise price, the exercise price shall be no less
12 than 100% of the Fair Market Value as of the date of that reduction. In no event shall
13 the per Share exercise price be less than 110% of the Fair Market Value per Share as
14 of the date of grant in the case of an Incentive Stock Option granted to an Optionee
15 who, immediately before the grant of such Option, owns Shares representing more
16 than 10% of the voting power or value of all classes of stock of the Company or any
17 Parent or Subsidiary. (b) Method of Payment. The consideration to be paid for the
18 Shares to be issued upon exercise of an Option, including the method of payment,
19 shall be determined by the Administrator (and, in the case of an Incentive Stock
20 Option, shall be determined at the time of grant) and may consist of (i) cash, (ii)
21 check, (iii) promissory note, (iv) other Shares which have a Fair Market Value on the
22 date of surrender equal to the aggregate exercise price of the Shares as to which said
23 Option shall be exercised, (v) delivery of a properly executed exercise notice together
24 with irrevocable instructions to a broker to promptly deliver to the Company the
25 amount of sale or loan proceeds required to pay the exercise price, or (vi) any
26 combination of the foregoing methods of payment and/or any other consideration or
27 method of payment as shall be permitted under applicable corporate law. (Emphasis
28 added).

39 42. In addition, defendant Jobs, in his position as Chief Executive Officer, and defendant
40 Oppenheimer, in his position as Senior Vice President and Chief Financial Officer, submitted
41 certifications to the SEC, as required pursuant to 18 U.S.C. 1350, as adopted at Section 906 of the
42 Sarbanes-Oxley Act of 2002 (the "Certification(s)").

43 43. Each Certification stated, among other things: "Based on my knowledge, this
44 report does not contain any untrue statement of a material fact or omit to state a material fact
45 necessary to make the statements made, in light of the circumstances under which such statements
46 were made, not misleading with respect to the period cover by this report."

47 44. The 2005 Form 10-K Report also contained Apple's materially false and misleading
48 comparative financial statements for the fiscal years ended September 2005 and September 2004,
49 which were not prepared in accordance with GAAP as a result of defendants' violations of APB 25,

1 as outlined *supra*. As a result of these violations, Apple's net profit and stockholder equity were
2 overstated and compensation cost attributable to the backdated options was correspondingly
3 understated. In addition, the 2005 Form 10-K was materially false and misleading because it
4 concealed and/or omitted defendants' backdating scheme and continued to falsely assert that
5 employee stock options were and had been issued at fair market value at the date of grant when, as
6 described herein, they were not.

7 45. On January 18, 2006, Apple announced financial results for its fiscal first quarter
8 ended December 31, 2005, reporting the highest revenue and earnings in the Company's history.
9 The Company's Press Release and Form 8-K filing stated: "Apple posted revenue of \$5.75 billion
10 and net quarterly profit of \$565 million..." The Press Release went on to state:

11 "We're very pleased to report year-over-year revenue growth of 65 percent and net
12 income that was nearly twice the year-ago level" said Peter Oppenheimer, Apple's
13 CFO.

14 46. Apple filed its Form 10-Q Report for its first fiscal quarter ended December 31,
15 2005, with the SEC on February 3, 2006. The Form 10-Q Report contained unaudited financial
16 statements and reported the same revenues and net income as reported in the press release dated
17 January 18, 2006. Defendant Jobs and defendant Oppenheimer submitted Certifications attached to
18 the Form 10-Q Report, which each state, in relevant part:

19 Based on my knowledge, this report does not contain any untrue statement of a
20 material fact or omit to state a material fact necessary to make the statements made,
21 in light of the circumstances under which such statements were made, not misleading
22 with respect to the period covered by this report;

23 Based on my knowledge, the financial statements, and other financial information
24 included in this report, fairly present in all material respects the financial condition,
25 results of operations and cash flows of the registrant as of, and for, the periods
26 presented in this report.

27 47. The Form 10-Q Report for the quarter ended December 31, 2005 contained Apple's
28 comparative financial statements for the fiscal first quarters of 2006 and 2005, which were
materially false and misleading and were not prepared in accordance with GAAP, due to the
improper accounting for the backdated stock option grants. See Exhibits A and B, attached hereto.
As a result, Apple's net profits and stockholder equity were overstated and compensation cost
attributable to the backdated options was correspondingly understated.

1 53. On August 4, 2006, Apple shares declined 4.02%, from a close of \$67.81 on August
2 3 to close at \$64.96 on August 4, on news that Apple would “likely need” to restate earnings and
3 would delay filing its quarterly report because of additional irregularities related to its accounting
4 for stock options granted to its executives and that its financial results issued since September 29,
5 2002 could not be relied upon.

6 54. On August 11, 2006, Apple announced that its mishandling of its employee stock
7 options grants would require “significant” revisions to its most recent quarterly results (for the
8 quarter ending July 1, 2006) compared to the June 25, 2005 quarter. On this news the Company’s
9 shares continued to drop to close at \$63.65 on August 11, 2006.

10 55. As a result of all of the foregoing, plaintiffs and members of the Class have been
11 damaged.

12 **APPLICABILITY OF THE FRAUD ON THE MARKET DOCTRINE**

13 56. At all relevant times, the market for Apple’s common stock was an efficient market
14 for the following reasons, among others:

15 a. Apple’s common stock met the requirements for listing, and was listed and
16 actively traded on the NASDAQ, a highly efficient and automated market;

17 b. As a regulated issuer, Apple filed periodic public reports with the SEC and
18 the NASDAQ;

19 c. Apple regularly communicated with public investors *via* established market
20 communication mechanisms, including through regular disseminations of press releases on the
21 national circuits of major newswire services and through other wide-ranging public disclosures,
22 such as communications with the financial press and other similar reporting services; and

23 d. Apple was followed by securities analysts, including those who were
24 employed by major brokerage firms, who wrote reports which were distributed to the sales force and
25 certain customers of their respective brokerage firms. Each of these reports was publicly available
26 and entered the public marketplace.

27 57. As a result of the foregoing, the market for Apple’s shares promptly digested current
28 information regarding Apple from all publicly available sources and reflected such information in

1 Apple's stock price. Under these circumstances, all purchasers of Apple securities during the Class
2 Period suffered similar injury through their purchase of Apple's common stock at artificially
3 inflated prices and a presumption of reliance applies

4 ADDITIONAL SCIENTER ALLEGATIONS

5 58. Certain members of Apple's management, including defendants sold material
6 amounts of artificially inflated Apple shares, while in the possession of materially adverse inside
7 knowledge regarding backdating options scheme, as described herein. Many of these shares were
8 acquired by the exercise of stock options. The insider sales of Apple for Defendants Jobs,
9 Oppenheimer, Anderson, Levinson and York are set forth in detail, *supra* at paragraphs 14 through
10 18.

11 59. In addition, members of the Compensation Committee during all or part of the Class
12 Period, which included Individual Defendants Campbell, Drexler and Gore (previously defined
13 herein as the "Compensation Committee Directors"), were aware of, or but for their reckless
14 disregard should have been aware of, the backdating options scheme. The Charter of the
15 Compensation Committee of Apple states that the purpose of the Compensation Committee is, *inter*
16 *alia*, to "(i) establish and modify compensation and incentive plans and programs (ii) review and
17 approve compensation and awards under compensation and incentive plans and programs for
18 elected officers of the Corporation, and (iii) be the administering committee for certain stock option
19 and other stock-based plans, as designated by the Board." The Committee is charged with
20 "Review[ing] periodically and approv[ing] all compensation and incentive plans and programs..."
21 The Committee is to "Act as administering committee of the Corporation's various bonus plans,
22 stock plans and equity arrangements that may be adopted by the Corporation from time to time..."
23 The Charter vests the Committee with such authority and powers as annually reviewing and
24 approving for the CEO and executive officers of the Company, the annual salary, bonuses, equity
25 compensation, incentive bonuses and any other benefits, compensation or arrangements. Therefore,
26 because of their intricate involvement in the formulation and issuance of such options, the
27 Compensation Committee Directors possessed the requisite scienter.

1 (iii) cause plaintiffs and other members of the Class to buy Apple stock at artificially inflated prices.
2 In furtherance of this unlawful scheme, plan, and course of conduct, defendants, and each of them,
3 took the actions set forth herein.

4 62. These defendants: (a) employed devices, schemes and artifices to defraud; (b) made
5 untrue statements of material fact and/or omitted to state material facts necessary to make the
6 statements not misleading; and (c) engaged in acts, practices and a course of business which
7 operated as a fraud and deceit upon the buyers of Apple's publicly traded securities in violation of
8 Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

9 63. Defendants' material misrepresentations and/or omissions were done knowingly or
10 recklessly.

11 64. As a result of the defendants' dissemination of deceptive and misleading information
12 regarding the Apple's practice of backdating options in violation of the Company's own internal
13 policies and procedures and in contradiction to statement made in the Company's filings with the
14 SEC. Furthermore, the backdating of options resulted in understating expenses and thus overstating
15 net income in the Company's financial results contained in Apple's 2005 Form 10-K filed with the
16 SEC at the beginning of the Class Period. In ignorance of the fact that the market price of Apple's
17 shares were artificially inflated, and relying upon the integrity of the market in which Apples
18 common stock trades, and/or on the absence of material information that was known to and/or
19 recklessly disregarded by defendants but not disclosed in public statements by defendants during the
20 Class Period, plaintiffs and the other members of the Class bought Apple common stock during the
21 Class Period at artificially inflated prices and were damaged thereby.

22 65. At the time of said misrepresentations and omissions, plaintiffs and the other
23 members of the Class were ignorant of the omitted material facts and believed defendants'
24 statements regarding the awarding of options and their financial statements contained in Apple's
25 2005 Form 10-K and certain fiscal 2005 and 2006 interim financial reports to be completely
26 truthful, candid and not deceptive or misleading or suffering from omissions of material facts. Had
27 plaintiffs and the other members of the Class known of the omitted material facts, plaintiffs and the
28 other members of the Class would not have bought their Apple common stock during the Class

1 Period, or, if they had bought such stock during the Class Period, they would not have done so at the
2 artificially inflated prices which they paid for their Apple common stock which they bought during
3 the Class Period.

4 66. By virtue of the foregoing, each of the defendants violated Section 10(b) of the
5 Exchange Act and Rule 10b-5 promulgated thereunder.

6 67. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and the
7 other members of the Class suffered damages in connection with their purchases of Apple common
8 stock during the Class Period.

9 **COUNT II**

10 **FOR VIOLATION OF SECTION 14(a) OF THE EXCHANGE ACT**

11 **(Against All Defendants Except Defendant Oppenheimer)**

12 68. Plaintiffs incorporate by reference the above paragraphs, except those paragraphs
13 relating to scienter, as if set forth fully herein.

14 69. Rule 14a-9, promulgated pursuant to Section 14(a) of the Exchange Act provides that
15 no proxy statement shall contain "any statement which at the time and in light of the circumstances
16 under which it is made is false and misleading with respect to any material fact, or which omits to
17 state any material fact necessary in order to make the statements therein not false and misleading."
18 17 C.F.R. Section 240.14a-9.

19 70. The Proxy Statement for annual shareholders' meeting held in 2006 violated Rule
20 14(a) and Rule 14a-9 because it omitted material facts, including the fact that defendants were
21 causing Apple to engage in an option backdating scheme which had occurred since at least 1997.

22 71. In the exercise of reasonable care, defendants should have known that the 2006
23 Proxy Statement was materially false and misleading.

24 72. The misrepresentations and omissions in the 2006 Proxy Statement were material to
25 plaintiffs in voting on the Proxy Statement. The 2006 Proxy Statement was an essential link in the
26 accomplishment and continuation of defendants' unlawful stock option backdating scheme, as
27 revelations of the truth would have immediately thwarted a continuation of shareholders'
28

1 endorsement of the directors' position, the executive officers' compensation and the Company's
2 compensation policies.

3 73. Plaintiffs and the Class were damaged as a result of the material misrepresentations
4 and omissions in the 2006 Proxy Statement.

5 **COUNT III**

6 **AGAINST THE INDIVIDUAL DEFENDANTS PURSUANT TO**
7 **SECTION 20(a) OF THE EXCHANGE ACT**

8 74. Plaintiffs repeat and reallege each and every allegation set forth above.

9 75. This claim is asserted against the Individual Defendants pursuant to Section 20(a) of
10 the Exchange Act, 15 U.S.C. §78t(a).

11 76. During the Class Period, Individual Defendants Jobs, Oppenheimer, Anderson,
12 Campbell, Drexler, Gore, Levinson and York were "controlling persons" of defendant Apple, within
13 the meaning of Section 20(a) of the Exchange Act.

14 77. The Individual Defendants were "controlling persons" of Apple because, due to the
15 officer and/or director positions they held with Apple, they had the influence and power over Apple
16 to cause, and they did cause, Apple to engage in the wrongful conduct complained of herein, and
17 because they had the power to have prevented Apple from engaging in the unlawful conduct alleged
18 herein, but they purposely, intentionally and recklessly did not use that power to do so.

19 78. As set forth above in Count I, Apple violated Section 10(b) of the Exchange Act and
20 Rule 10b-5 promulgated thereunder by its acts and omissions as alleged in this Complaint. By
21 virtue of their status as a "controlling person" of Apple, the Individual Defendants are liable, to the
22 same extent as is Apple for its violations of Section 10(b) of the Exchange Act and Rule 10b-5
23 promulgated thereunder, pursuant to Section 20(a) of the Exchange Act.

24 79. As set forth in Count II, Apples also violated Section 14(a) of the Exchange Act by
25 its acts and omissions. By virtue of their status as a "controlling person" of Apple, the Individual
26 Defendants are liable, to the same extent as is Apple for its violations of Section 14(a) of the
27 Exchange Act, pursuant to Section 20(a) of the Exchange Act.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs, on behalf of themselves and the Class, pray for judgment as
3 follows:

- 4 1. Declaring this action to be a class action properly maintained pursuant to Rule 23(a)
5 and (b)(3) of the Federal Rules of Civil Procedure;
- 6 2. Finding that the defendants violated Section 10(b) of the Exchange Act and Rule
7 10b-5 promulgated thereunder and Sections 20(a) and 14(a) by their acts and
8 omissions as alleged in this Complaint;
- 9 3. Awarding plaintiffs and the members of the Class damages, together with interest
10 thereon;
- 11 4. Awarding plaintiffs and other members of the Class their costs and expenses of this
12 litigation, including reasonable attorneys' fees and experts' fees and other costs and
13 disbursements; and
- 14 5. Awarding plaintiffs and other members of the Class such other and further relief as
15 may be just and proper under the circumstances

16 **JURY TRIAL DEMANDED**

17 Plaintiffs demand a trial by jury as to all issues so triable.

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19 Dated: August 24, 2006
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