

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re APPLE INC.  
DERIVATIVE LITIGATION

This Documents Relates to:  
ALL ACTIONS.

Master File No. C-06-04128-JF

**NOTICE OF PROPOSED SETTLEMENT OF  
SHAREHOLDER DERIVATIVE ACTION AND  
HEARING**

**TO: ANY PERSON WHO OWNED APPLE INC. COMMON STOCK AS OF SEPTEMBER 8, 2008  
("CURRENT APPLE SHAREHOLDER").  
PLEASE READ THIS NOTICE CAREFULLY**

THIS NOTICE RELATES TO THE PENDENCY AND PROPOSED SETTLEMENT OF THIS  
SHAREHOLDER DERIVATIVE LITIGATION

YOU ARE HEREBY NOTIFIED, pursuant to Federal Rule of Civil Procedure 23.1 and an Order of the United States District Court for the Northern District of California, San Jose Division (the "Court"), that a proposed settlement (the "Settlement") has been reached between the plaintiffs, on behalf of nominal defendant Apple Inc. ("Apple" or the "Company"), the defendants and Apple in the above-captioned derivative litigation (the "Federal Derivative Action") and a related action pending in the Superior Court of California, County of Santa Clara, entitled *In re Apple Computer, Inc. Derivative Litigation*, Lead Case No. 06CV066692 (the "State Derivative Action," and collectively, the "Actions"), on the terms and conditions summarized in this Notice and set forth in the Stipulation of Agreement of Settlement (the "Stipulation"). The settling defendants are Fred D. Anderson, William V. Campbell, Timothy D. Cook, Millard S. Drexler, Nancy Heinen, Steven P. Jobs, Ronald B. Johnson, Arthur D. Levinson, Mitchell Mandich, Peter Oppenheimer, Jonathan Rubinstein, Avadis Tevanian, Jr., and Jerome B. York (collectively, "Defendants"). The Actions have been brought derivatively on Apple's behalf to remedy the harm allegedly caused to Apple by Defendants' alleged violations of federal and state law and breaches of fiduciary duties.

The benefits to Apple of the Settlement, which is subject to Court approval, include Apple's adoption of certain corporate governance measures, as discussed below. In addition, \$14,000,000 in cash will be paid by Apple's directors' and officers' liability insurers to Apple.

A Final Settlement Hearing will be held on October 31, 2008, at 11:00 a.m. before the Honorable Jeremy Fogel, United States District Court for the Northern District of California, Courtroom 3, 5th Floor, 280 South 1st Street, San Jose, California 95113, to consider the fairness, reasonableness and adequacy of the Settlement, and the request for payment of attorneys' fees and expenses to plaintiffs' counsel.

Defendants have denied, and continue to deny, and have contested and continue to contest each and every allegation of liability and wrongdoing on their part, and assert that they have strong factual and legal defenses to all claims alleged against them in the Actions and that such claims are without merit. Defendants also deny that Apple or its shareholders have suffered damages as a result of conduct alleged in the Actions. Without admitting any wrongdoing or liability on their part whatsoever, Apple and Defendants nevertheless are willing to enter into the Settlement in order fully and finally to settle and dispose of all claims that have been or could have been asserted against them in the Actions and to avoid the continuing burden, expense, inconvenience and distraction of this protracted litigation.

**THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF ANY CLAIMS OR ANY DEFENSES ASSERTED BY ANY PARTY IN THE ACTION OR OF THE FAIRNESS, REASONABLENESS, OR ADEQUACY OF THE PROPOSED SETTLEMENT.**

**I. BACKGROUND**

**A. Special Committee Investigation**

In spring 2006, the financial press began publishing reports about possible backdating of stock options at various companies. Following these reports, Apple's management commenced a voluntary internal review of its stock option practices. On June 29, 2006, Apple issued a press release stating that the internal review had "discovered irregularities related to the issuance of certain stock option grants made between 1997 and 2001. A special committee of Apple's outside directors has hired independent counsel to perform an investigation and the company has informed the SEC."

Apple disclosed a summary of the special committee's ("Special Committee") findings on October 4, 2006 and provided additional details in its 2006 Form 10-K, filed on December 29, 2006. The Special Committee's investigation concluded that, while no member of current management had engaged in misconduct, grant dates for certain grants made before 2003 had been selected to secure favorable exercise prices. As a result, the Special Committee recommended Apple's financial statements be restated to reflect an additional non-cash compensation expense. Accordingly, Apple's fiscal 2006 10-K restatement included a non-cash compensation expense of \$84 million after taxes arising from the misdating of certain option grants made between 1997 and 2002. Following its own eight-month investigation, the SEC announced on April 24, 2007, that it would not bring any enforcement action against Apple in connection with its prior stock option practices "based in part on its swift, extensive and extraordinary cooperation in the Commission's investigation . . . consist[ing] of, among other things, prompt self-reporting, an independent internal investigation, the sharing of results of that investigation with the government and the implementation of new controls designed to prevent the recurrence of fraudulent conduct."

**B. The Derivative Complaints**

**1. The Federal Derivative Action**

Following Apple's June 29, 2006 announcement of its independent investigation, 16 purported derivative suits were filed on behalf of Apple in the United States District Court for the Northern District of California, captioned *Karant v. Jobs, et al.*, Case No. C-06-04128-JF (filed June 30, 2006), *Holbert v. Anderson, et al.*, Case No. C-06-04454-JF (filed July 20, 2006), *Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust v. Anderson, et al.*, Case No. C-06-04493-JF (filed July 24, 2006), *Port Authority of Allegheny County Retirement and Disability Allowance Plan for Employees Represented by Local 85 of the Amalgamated Transit Union v. Jobs, et al.*, Case No. C-06-04510-PJH (filed July 25, 2006), *Alecci v. Anderson, et al.*, Case No. C-06-04659-JF (filed July 31, 2006), *Priebe v. Jobs, et al.*, Case No. C-06-04703-JF (filed August 2, 2006), *AFSCME Employees' Pension Plan v. Jobs, et al.*, Case No. C-06-05007-JF (filed August 18, 2006), *Jones v. Anderson, et al.*, Case No. C-06-05035-JF (filed August 22, 2006), *Lui v. Jobs, et al.*, Case No. C-06-05246-JF (filed August 25, 2006), *Bergman v. Anderson, et al.*, Case No. C-06-05374-JF (filed August 31, 2006), *Ronconi v. Jobs, et al.*, Case No. C-06-05389-JF (filed August 31, 2006), *Gottlieb v. Jobs et al.*, Case No. 06-05418-RMW (filed September 1, 2006), *Gulsrud v. Anderson, et al.*, Case No. C-06-05427-RS (filed September 1, 2006), *Aki, et al. v. Anderson, et al.*, Case No. C-06-06209-MJJ (filed October 2, 2006), *Saratoga Advantage Trust Large Capitalization Growth Portfolio, et al. v. Anderson, et al.*, Case No. C-06-06502 (filed October 17, 2006), and *Grigsby v. Anderson, et al.*, Case No. C-06-06505-RS (filed October 18, 2006). On October 13, 2006, the Court consolidated all pending actions under the caption *In re Apple Computer, Inc. Derivative Litigation*, Master File No. C-06-04128-JF. The named plaintiffs in the complaints and amended complaints filed in the Federal Derivative Action ("Federal Plaintiffs") include Jeffrey Alecci, Kelley Bergman, Marjorie Grigsby, Douglas Holbert, Phyllis Jones, Nicholas Karant, Alfred Ronconi, Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust, and Alecta pensionsforsaäkring, ömsesidigt.

On November 2, 2006, the Court appointed Cotchett, Pitre & McCarthy, Keller Rohrback LLP, Coughlin Stoya Geller Rudman & Robbins LLP and Schiffrin Barroway Topaz & Kessler, LLP Federal Plaintiffs' counsel and members of the management committee, with Cotchett, Pitre & McCarthy as chair of the management committee and liaison counsel ("Federal Plaintiffs' Counsel"). On December 18, 2006, Federal Plaintiffs filed a consolidated derivative complaint. On January 18, 2007, Federal Plaintiffs moved to amend the consolidated complaint. The Court granted the request on February 26, 2007, and the First Amended Shareholder Derivative Complaint ("FAC") was filed on March 6, 2007. On April 20, 2007, Apple and the Defendants moved to dismiss the FAC. On November 19, 2007, the Court dismissed the FAC with leave to amend. Federal Plaintiffs filed the Second Amended Shareholder Derivative Complaint ("SAC") on December 19, 2007.

The SAC alleges violations of Section 10(b), breach of fiduciary duty, corporate waste, unjust enrichment and violation of California Corporations Code § 25402. On January 25, 2008, Apple and the Defendants moved to dismiss the SAC, which Federal Plaintiffs opposed. On March 21, 2008, the day those motions were scheduled to be heard, the parties to the Federal Derivative Action informed the Court that they had reached an agreement in principle to resolve the litigation. The motions to dismiss were subsequently taken off calendar.

## **2. The State Derivative Action**

Shareholder derivative complaints captioned *Plumbers & Pipefitters Local No. 572 Pension Fund v. Jobs, et al.*, Case No. 06CV066692 (filed July 5, 2006), *Curtin v. Jobs, et al.*, Case No. 06CV066716 (filed July 5, 2006), *Port Authority of Allegheny County Retirement and Disability Allowance Plan v. Jobs, et al.*, Case No. 06CV067760 (filed July 21, 2006), *Cullen v. Jobs, et al.*, Case No. 06CV068756 (filed August 7, 2006), and *AFSCME Employees' Pension Plan v. Jobs, et al.*, Case No. 06CV069660 (filed August 18, 2006) were also filed on behalf of Apple in the Superior Court of California, County of Santa Clara ("State Court"). These actions were consolidated by the State Court on September 1, 2006, under the caption *In re Apple Computer, Inc. Derivative Litigation*, Lead Case No. 06CV066692. Plumbers & Pipefitters Local No. 572 Pension Fund, Dave Curtin, Port Authority of Allegheny County Retirement and Disability Allowance Plan for Employees Represented by Local 85 of the Amalgamated Transit Union, Gary Cullen and AFSCME Employees' Pension Plan are the named plaintiffs in the complaints and amended complaints filed in the State Derivative Action ("State Plaintiffs," and collectively with Federal Plaintiffs, "Plaintiffs").

On September 1, 2006, the State Court appointed Robbins, Umeda & Fink LLP, Branstetter Stranch & Jennings, PLLC and Barrack, Rodos & Bacine as co-lead counsel for State Plaintiffs ("State Plaintiffs' Counsel," and collectively with Federal Plaintiffs' Counsel, "Plaintiffs' Counsel"). On September 30, 2006, State Plaintiffs filed a consolidated shareholder derivative complaint ("State Consolidated Complaint"). The State Consolidated Complaint alleges breach of fiduciary duty, violation of California Corporations Code § 25402, violation of California Corporations Code § 25403, deceit, abuse of control, gross mismanagement, corporate waste and unjust enrichment. On December 7, 2006, the State Court stayed the State Derivative Action in favor of the Federal Derivative Action.

### **C. Mediation and Settlement Negotiations**

Plaintiffs' Counsel and counsel for Defendants and Apple have engaged in substantial arm's-length negotiations in an effort to resolve the Actions, including several mediation sessions with the Honorable Edward A. Infante (Ret.) of JAMS, Inc. and numerous in-person meetings and teleconferences.

### **D. Benefits to Apple from the Settlement**

Plaintiffs have concluded that the terms and conditions of the Settlement are fair, reasonable and adequate to Apple and its shareholders, and in their best interests. Therefore, Plaintiffs have agreed to settle the claims asserted in the Actions pursuant to the terms and provisions of the Stipulation, after considering: (i) the substantial benefits that Apple and its shareholders will receive from the settlement of the Actions; (ii) the attendant risks of continued litigation, especially in complex actions such as the Actions, as well as the difficulties and delays inherent in such litigation; and (iii) the desirability of permitting the Settlement to be

consummated, as provided by the terms of the Stipulation. Plaintiffs believe that the Settlement provides an excellent outcome for Apple based upon the claims asserted against Defendants, the evidence developed, and the recoverable damages that might be proven at trial. Apple also has acknowledged the substantial benefits conferred on it by the Settlement. First, Apple will benefit from extensive, meaningful corporate governance reforms that are highly responsive to Plaintiffs' allegations and will reinforce the confidence of shareholders and regulators in Apple. Second, the settlement provides a significant tangible financial benefit to Apple in the form of a \$14,000,000 cash payment from its directors' and officers' liability insurers.

### **E. Defendants' Denial of Wrongdoing**

Defendants deny that they have committed or attempted to commit any violations of law or breached any duty owed to Apple or its shareholders or otherwise. Defendants also deny that Apple or its shareholders have suffered damages as a result of conduct alleged in the Actions. Nonetheless, Defendants recognize that further defense of the Actions could be protracted, expensive and distracting. Defendants have also taken into account the uncertainty and risks inherent in any litigation. As a result, Defendants have determined that it is desirable that the Actions be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

## **II. Terms of the Proposed Settlement**

The full terms and conditions of the Settlement are embodied in the Stipulation, which is on file with the Court. The following is a summary of the Stipulation.

As a result of this Settlement and the prosecution of the Actions, Apple's Board of Directors (the "Board") has agreed to approve the adoption of the following corporate governance measures: (a) an Equity Award Grant Practices Policy to reduce the possibility of errors and ensure regulatory compliance; (b) a Trading Compliance Committee with access to all Company records and employees to develop and monitor a program to ensure compliance with Apple's stock trading policies; (c) amendments to the Compensation Committee's charter to strengthen oversight of equity grants, including an annual study of Apple's compensation policies by an independent consultant; (d) an amendment of Apple's Corporate Governance Guidelines to provide that at least one member of the Compensation Committee will not simultaneously serve on the Board's Audit and Finance Committee; (e) a Corporate Minutes Procedure to strengthen oversight of Board and Committee meeting minutes; (f) a procedure to create a secure electronic approval process for obtaining and recording Board member consents; and (g) training for the Board in corporate governance and principles of accounting and financial reporting.

In addition to these corporate governance measures, Apple's directors' and officers' liability insurers also have agreed that \$14,000,000 in cash will be paid to Apple in settlement of all issues among the Plaintiffs, Defendants and Apple's directors and officers' liability insurers in relation to the Actions and the Released Claims (defined below), including for all purportedly related legal fees and costs.

## **III. Releases**

The full terms of the release and discharge of claims are set forth in the Stipulation. The following is only a summary.

Upon the entry of a final judgment by the Court, Plaintiffs, on behalf of themselves and Apple, Defendants and Apple will release and discharge each and every Released Claim and shall not now or hereinafter institute, participate in or maintain a proceeding involving a Released Claim either directly or indirectly, derivatively, on their own behalf or on behalf of any other person or entity.

"Released Claims" means any and all known and unknown claims for damages, injunctive relief, or any other remedies (1) against Released Plaintiffs based upon, arising from, or related to the subject matter of the Actions, including all known and unknown claims arising out of, relating to, or in connection with the institution,

prosecution, assertion, settlement or resolution of the Actions or the Released Claims, and (2) against Released Defendants based upon, arising from or related to the subject matter of the Actions that involve acts, omissions, transactions or events which took place before December 19, 2007, and which have been or could have been asserted derivatively on behalf of Apple in state or federal court or in arbitration or similar proceedings. For the avoidance of doubt, "Released Claims" does not include claims for indemnification and advancement rights, and defenses thereto, under Apple's bylaws, Apple's articles of incorporation, employment agreements, California law and any other applicable authority.

"Released Defendants" means (1) Defendants, (2) Apple, (3) James J. Buckley, Robert Calderoni, Gareth C.C. Chang, Therese Crane, Guerrino De Luca, Ian Diery, John B. Douglas, Daniel L. Eilers, Lawrence J. Ellison, John Floisand, G. Frederick Forsyth, Albert A. Gore, Jr., Katherine M. Hudson, Delano E. Lewis, David Manovich, Jim McCluney, Bertrand Serlet, Michael H. Spindler, Sina Tamaddon, and Edgar Woolard, Jr., and (4) their respective predecessors, successors, parents, subsidiaries, affiliates and agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers or attorneys and any past, present or future officers, directors and employees of Apple, and their predecessors, successors, parents, subsidiaries, affiliates, and agents).

"Released Plaintiffs" means Plaintiffs and their attorneys, and their respective predecessors, successors, parents, subsidiaries, affiliates and agents.

By expressly releasing and forever discharging all Released Claims, Plaintiffs, Defendants and Apple expressly waive any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

For the purpose of implementing a full and complete release of the Released Claims, Plaintiffs, Defendants and Apple also expressly waive all similar federal, state or foreign laws, rights, rules or legal principles which may be applicable herein. Notwithstanding the provisions of Section 1542 and all similar federal, state or foreign laws, rights, rules or legal principles which may be applicable herein, Plaintiffs, Defendants and Apple understand and agree that this release is intended to include all Released Claims, if any, which Plaintiffs, Defendants and/or Apple may have whether or not Plaintiffs, Defendants and/or Apple know or suspect those claims exist in their favor and that this release extinguishes all such claims. Plaintiffs, Defendants and/or Apple may hereafter discover facts in addition to or different from those which they know or believe to be true with respect to the subject matter of the Released Claims. Plaintiffs, Defendants and Apple each expressly, and by operation of the Judgment shall have, fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, whether or not concealed or hidden, which now exist, or heretofore have existed, or arise hereafter upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs, Defendants and Apple acknowledge that the waiver of unknown Released Claims set forth herein was separately bargained for and a key element of the Settlement of which this release is a part.

#### **IV. Attorneys' Fees and Expenses**

Plaintiffs' Counsel have not received any payment for work in connection with the Actions, nor have they been reimbursed for out-of-pocket expenses. Plaintiffs' prosecution of the Actions and participation in the settlement negotiations were substantial factors in obtaining the payment to Apple and the corporate governance measures described above. Accordingly, Apple has agreed, subject to Court approval, to pay Federal Plaintiffs' Counsel \$7.3 million in fees and \$300,000 for expenses, and to pay State Plaintiffs' Counsel \$1.2 million for fees and \$50,000 for expenses.



## **V. Notice of Hearing on Proposed Settlement**

A Final Settlement Hearing will be held on October 31, 2008, at 11:00 a.m. before the Honorable Jeremy Fogel, United States District Court for the Northern District of California, Courtroom 3, 5th Floor, 280 South 1st Street, San Jose, California 95113. The purpose of the Final Settlement Hearing will be to: (i) determine whether the Settlement should be approved as fair, reasonable and adequate; (ii) hear Plaintiffs' applications for an award of attorneys' fees and expenses; and (iii) rule upon any other matters that come before the Court.

The Court may adjourn the Final Settlement Hearing by oral announcements at such hearing or without further notice of any kind. The Court may approve the Settlement with or without modification, enter a final judgment and order the payment of attorneys' fees and expenses without further notice of any kind.

## **VI. The Right to Be Heard at the Final Settlement Hearing**

Any current beneficial owner of shares of Apple common stock may object to the Settlement if such beneficial owner completes the following not later than October 14, 2008:

(a) files with the Clerk of the Court proof of ownership of Apple Common Stock, including the number of shares of Apple Common Stock held and the date of purchase, and provides a statement that indicates the nature of such objection, any legal support and/or evidence that such shareholder wishes to bring to the Court's attention or introduce in support of such objection, and any documentation in support of any objection; and

(b) simultaneously serves copies of such proof, statement and documentation, together with copies of any other papers or briefs such shareholder files with the Court, in person or by mail, upon counsel listed below, provided that if service is made by mail, then service by electronic mail or facsimile also shall be made on counsel listed below, no later than October 14, 2008:

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In addition to the requirements set forth above, any objecting beneficial owner who intends to appear at the Final Settlement Hearing must also effect service of a notice of intention to appear on counsel listed above (at the addresses set out above) and file such notice of intention to appear with the Court by no later than October 23, 2008. Filing and service may be effected on the Court and counsel by mail, provided that service by electronic mail or facsimile also is made on counsel listed above no later than October 23, 2008.

Any current beneficial owner of shares of Apple common stock who does not make his, her or its objection or opposition in the manner provided herein shall be deemed to have waived any and all objections and opposition, and shall be forever foreclosed from making any objection to the fairness, reasonableness and adequacy of the Settlement. Any objector who does not timely file and serve a notice of intention to appear in the manner provided herein shall not be permitted to be heard at the Final Settlement Hearing, except upon a showing of good cause and excusable neglect.

#### **VII. Notice to Banks, Brokers, or Other Nominees**

If you hold Apple common stock as a nominee for the benefit of another, you are directed to provide copies of this Notice to such beneficial owners, postmarked no later than ten (10) business days after receipt of this Notice.

#### **VIII. Further Information**

Further information regarding this Settlement and this Notice may be obtained by contacting Plaintiffs' Counsel: Mark C. Molumphy, Esq., Cotchett, Pitre & McCarthy, 840 Malcolm Road, Suite 200, Burlingame, CA 94010, (650) 697-6000.

This Notice does not purport to be a comprehensive description of the Actions, the terms of the Settlement or the scheduled Final Settlement Hearing. For more complete information concerning the Federal Derivative Action and the Settlement, you may inspect the pleadings, the Stipulation of Agreement of Settlement, and other papers and documents filed with the Court during regular office hours at the Clerk's Office of the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, California 95113.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK OF THE COURT REGARDING THIS NOTICE.**

DATED: September 8, 2008

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA

