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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN JOSE DIVISION**

21 In re APPLE INC.
22 DERIVATIVE LITIGATION

Master File No. C-06-04128-JF

**STIPULATION OF AGREEMENT OF
SETTLEMENT**

23 This Documents Relates to:

24 **ALL ACTIONS.**
25

STIPULATION OF AGREEMENT OF SETTLEMENT

This Stipulation of Agreement of Settlement dated as of August 29, 2008 (the “Stipulation”) is made and entered into by and among the following Settling Parties¹ to settle the pending derivative litigation: (i) Federal Plaintiffs, on behalf of themselves and derivatively on behalf of Apple, by and through their counsel of record in the Federal Action; (ii) State Plaintiffs on behalf of themselves and derivatively on behalf of Apple, by and through their counsel of record in the State Action; (iii) Defendants, by and through their counsel of record in the Actions; and (iv) Apple, by and through its counsel of record in the Actions. The Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

I. BACKGROUND

A. Initial Disclosures of Irregularities

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.”

B. The Derivative Complaints

1. The Federal Consolidated 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*

¹ Capitalized terms are defined in Sections V.1.1 through V.1.33 below.

1 *Allowance Plan for Employees Represented by Local 85 of the Amalgamated Transit Union v.*
2 *Jobs, et al.*, Case No. C-06-04510-PJH (filed July 25, 2006), *Alecci v. Anderson, et al.*, Case No.
3 C-06-04659-JF (filed July 31, 2006), *Priebe v. Jobs, et al.*, Case No. C-06-04703-JF (filed
4 August 2, 2006), *AFSCME Employees' Pension Plan v. Jobs, et al.*, Case No. C-06-05007-JF
5 (filed August 18, 2006), *Jones v. Anderson, et al.*, Case No. 06-05035-JF (filed August 22, 2006),
6 *Lui v. Jobs, et al.*, Case No. C-06-05246-JF (filed August 25, 2006), *Bergman v. Anderson, et al.*,
7 Case No. C-06-05374-JF (filed August 31, 2006), *Ronconi v. Jobs, et al.*, Case No. C-06-05389-
8 JF (filed August 31, 2006), *Gottlieb v. Jobs et al.*, Case No. 06-05418-RMW (filed September 1,
9 2006), *Gulsrud v. Anderson, et al.*, Case No. C-06-05427-RS (filed September 1, 2006), *Aki, et al.*
10 *v. Anderson, et al.*, Case No. C-06-06209-MJJ (filed October 2, 2006), and *Grigsby v. Anderson,*
11 *et al.*, Case No. C-06-06505-RS (filed October 18, 2006). On October 13, 2006, the Federal
12 Court consolidated all pending actions under the caption *In re Apple Computer, Inc. Derivative*
13 *Litigation*, Master File No. C-06-04128-JF. On November 2, 2006, the Federal Court appointed
14 Cotchett, Pitre & McCarthy, Keller Rohrback LLP, Coughlin Stoia Geller Rudman & Robbins
15 LLP and Schiffrin Barroway Topaz & Kessler, LLP as Federal Plaintiffs' counsel and members
16 of the management committee, with Cotchett, Pitre & McCarthy as chair of the management
17 committee and liaison counsel.

18 On December 18, 2006, Federal Plaintiffs filed a consolidated derivative complaint. On
19 January 18, 2007, Federal Plaintiffs moved to amend the consolidated complaint. The Court
20 granted the request on February 26, 2007, and the First Amended Shareholder Derivative
21 Complaint ("FAC") was filed on March 6, 2007. On April 20, 2007, the individual defendants
22 moved to dismiss the FAC for failure to state a claim, and Apple moved to dismiss the FAC on
23 grounds of demand futility. On November 19, 2007, the Court dismissed the FAC with leave to
24 amend. Federal Plaintiffs filed the Second Amended Shareholder Derivative Complaint ("SAC")
25 on December 19, 2007.

26 The SAC alleged violations of Section 10(b), breach of fiduciary duty, corporate waste,
27 unjust enrichment and violations of California Corporations Code § 25402. On January 25, 2008,
28 the individual defendants and Apple again moved to dismiss, which the Federal Plaintiffs

1 opposed. On March 21, 2008, the day those motions were scheduled to be heard, the parties to
2 the Federal Action informed the Federal Court that they had reached an agreement in principle to
3 resolve the pending derivative litigation. The motions to dismiss were subsequently taken off the
4 calendar.

5 2. **The State Consolidated Action**

6 Shareholder derivative complaints captioned *Plumbers & Pipefitters Local No. 572*
7 *Pension Fund v. Jobs, et al.*, Case No. 06CV066692 (filed July 5, 2006), *Curtin v. Jobs, et al.*,
8 Case No. 06CV066716 (filed July 5, 2006), *Port Authority of Allegheny County Retirement and*
9 *Disability Allowance Plan v. Jobs, et al.*, Case No. 06CV067760 (filed on July 21, 2006), *Cullen*
10 *v. Jobs, et al.*, Case No. 06CV068756 (filed on August 7, 2006), and *AFSCME Employees’*
11 *Pension Plan v. Jobs, et al.*, Case No. 06CV069660 (filed August 18, 2006) were also filed on
12 behalf of Apple in State Court. These actions were consolidated by the State Court on September
13 1, 2006, under the caption *In re Apple Computer, Inc. Derivative Litigation*, Lead Case No.
14 1:06CV066692 (the “State Action”). The State Court appointed Robbins Umeda & Fink LLP,
15 Branstetter Stranch & Jennings, PLLC and Barrack Rodos & Bacine as co-lead counsel for State
16 Plaintiffs.

17 The State Action alleged breach of fiduciary duty, violation of California Corporations
18 Code § 25402, violation of California Corporations Code § 25403, deceit, abuse of control, gross
19 mismanagement, corporate waste and unjust enrichment. On December 7, 2006, the Santa Clara
20 County Superior Court stayed the State Action in favor of the pending federal lawsuit.

21 C. ***Special Committee Investigation and Determinations***

22 Apple disclosed a summary of the special committee’s (“Special Committee”) findings on
23 October 4, 2006 and provided additional details in its 2006 Form 10-K, filed on December 29,
24 2006. The investigation concluded that, while no member of current management had engaged in
25 misconduct, grant dates for certain grants made before 2003 had been selected to secure favorable
26 exercise prices. As a result, the Special Committee recommended Apple’s financial statements be
27 restated to reflect an additional non-cash compensation expense. Accordingly, Apple’s fiscal
28 2006 10-K restatement included a stock-based, non-cash compensation expense of \$84 million

1 after taxes arising from the misdating of certain option grants made between 1997 and 2002.
2 Following its own eight-month investigation, the SEC announced on April 24, 2007, that it would
3 not bring any enforcement action against Apple in connection with its prior stock option practices
4 “based in part on its swift, extensive and extraordinary cooperation in the Commission’s
5 investigation . . . consist[ing] of, among other things, prompt self-reporting, an independent
6 internal investigation, the sharing of results of that investigation with the government and the
7 implementation of new controls designed to prevent the recurrence of fraudulent conduct.”

8 **D. *Mediation and Settlement Negotiations***

9 Counsel for the Settling Parties have engaged in substantial arm’s-length negotiations in
10 an effort to resolve the Actions, including several mediation sessions with the Honorable Edward
11 A. Infante (Ret.) of JAMS, Inc. and numerous in-person meetings and teleconferences.

12 **II. PLAINTIFFS’ APPROVAL OF THE SETTLEMENT**

13 Plaintiffs believe that this Settlement provides an excellent monetary recovery for Apple
14 based on the claims asserted, the evidence developed and the damages that might be proven in
15 litigation. Plaintiffs further believe that the corporate governance provisions required by the
16 Settlement will provide important benefits to Apple.

17 Plaintiffs assert that the claims alleged in the Actions have merit. Nevertheless, Plaintiffs
18 recognize and acknowledge the significant expense and length of continued proceedings
19 necessary to prosecute the Actions against the Defendants through trial and, potentially, through
20 appeals. Plaintiffs have also taken into account the uncertain outcome and the risk of any
21 litigation, especially in complex actions such as the Actions, as well as the difficulties and delays
22 inherent in such litigation. Plaintiffs are also mindful of the inherent problems of proof and
23 possible defenses to the claims asserted in the Actions. Plaintiffs have further considered the
24 uncertainty as to what they may be entitled to recover on behalf of Apple even if they were to
25 prevail on some or all of their claims. Based on their evaluation, and the evaluation of Plaintiffs’
26 Counsel, Plaintiffs have determined that it is desirable to settle the Actions on the terms set forth
27 in this Stipulation and that the terms of the Settlement are in the best interests of Apple and its
28 shareholders.

1 **III. DEFENDANTS' AGREEMENT TO THE SETTLEMENT AND DENIALS OF**
2 **WRONGDOING AND LIABILITY**

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

11 **IV. APPLE'S APPROVAL OF THE SETTLEMENT**

12 Apple believes it to be in its best interests for the Actions to be settled and dismissed
13 because this Settlement will provide substantial benefits to Apple and its shareholders, and avoid
14 the substantial expense, disruption and risks posed by continued litigation of the Actions.

15 **V. TERMS OF STIPULATION OF SETTLEMENT**

16 NOW, THEREFORE, in consideration of the promises and agreements, covenants,
17 representations, and warranties set forth herein, intending to be legally bound;

18 IT IS HEREBY STIPULATED AND AGREED, by and between the Settling Parties, that
19 the Actions and all Released Claims are settled and compromised and that the Actions shall be
20 dismissed with prejudice, subject to approval of the Court, on the following terms and conditions:

21 1. **Definitions.** As used in this Stipulation, the following capitalized terms have the
22 following meanings.

23 1.1 "Actions" means both the State Action and the Federal Action, as defined herein.

24 1.2 "Apple" means Apple Inc. (formerly known as "Apple Computer, Inc.") and its
25 past, present, and future parents, subsidiaries, predecessors, successors, agents, affiliates and
26 assigns.

27 1.3 "Apple's Counsel" means the law firm of O'Melveny & Myers LLP.

28 1.4 "Attorneys' Fees and Expenses" means such funds as may be awarded to

1 Plaintiffs' Counsel to compensate them for their fees and expenses incurred in connection with
2 the litigation of the Actions.

3 1.5 "Defendants" means Fred D. Anderson, William V. Campbell, Timothy D. Cook,
4 Millard S. Drexler, Nancy Heinen, Steven P. Jobs, Ronald B. Johnson, Arthur D. Levinson,
5 Mitchell Mandich, Peter Oppenheimer, Jonathan Rubinstein, Avadis Tevanian, Jr., and Jerome B.
6 York.

7 1.6 "Defendants' Counsel" means the law firms of Farella Braun & Martel LLP,
8 Howard Rice Nemerovski Canady Falk & Rabkin PC, and Munger, Tolles & Olson LLP.

9 1.7 "Federal Action" means the lawsuit titled *In re Apple Inc. Derivative Litigation*,
10 Master File No. C-06-04128-JF, currently pending in the United States District Court for the
11 Northern District of California, San Jose Division.

12 1.8 "Federal Court" means the United States District Court for the Northern District of
13 California.

14 1.9 "Federal Plaintiffs" means the named plaintiffs in the complaints and amended
15 complaints filed in the Federal Action including Jeffrey Alecci, Kelley Bergman, Marjorie
16 Grigsby, Douglas Holbert, Phyllis Jones, Nicholas Karant, Alfred Ronconi, Pirelli Armstrong
17 Tire Corporation Retiree Medical Benefits Trust, and Alecta pensionsforsäkring, ömsesidigt.

18 1.10 "Federal Plaintiffs' Counsel" means the law firms of Cotchett, Pitre & McCarthy,
19 Keller Rohrback LLP, Coughlin Stoia Geller Rudman & Robbins LLP and Schiffrin Barroway
20 Topaz & Kessler, LLP.

21 1.11 "Final" means the time when a judgment that has not been reversed, vacated, or
22 modified in any way is no longer subject to appellate review, either because of disposition on
23 appeal and conclusion of the appellate process or because of the passage, without action, of the
24 time for seeking appellate review. More specifically, it is that situation when: (1) either no appeal
25 has been filed and the time has passed for any notice of appeal to be timely filed in the Actions;
26 or (2) an appeal has been filed and a judgment has been affirmed on appeal, and is no longer
27 subject to review upon appeal or review by writ of certiorari, or the appeal has been dismissed
28 and the time for any reconsideration or further appellate review has passed.

1 1.12 "Judgment" means an order and judgment substantially in the form attached as
2 Exhibit 1.

3 1.13 "Notice" means the notice substantially in the form attached hereto as Exhibit 2.

4 1.14 "Plaintiffs" means both Federal Plaintiffs and State Plaintiffs, as defined herein.

5 1.15 "Plaintiffs' Counsel" means both Federal Plaintiffs' Counsel, as defined above,
6 and State Plaintiffs' Counsel, as defined below.

7 1.16 "Preliminary Approval Order" means an order substantially in the form attached
8 hereto as Exhibit 3.

9 1.17 "Release" means the release set forth in Section 4 of this Stipulation.

10 1.18 "Released Claims" means any and all known and unknown claims for damages,
11 injunctive relief, or any other remedies (1) against Released Plaintiffs based upon, arising from,
12 or related to the subject matter of the Actions, including all known and unknown claims arising
13 out of, relating to, or in connection with the institution, prosecution, assertion, settlement or
14 resolution of the Actions or the Released Claims, and (2) against Released Defendants based
15 upon, arising from or related to the subject matter of the Actions that involve acts, omissions,
16 transactions or events which took place before December 19, 2007, and which have been or could
17 have been asserted derivatively on behalf of Apple in state or federal court or in arbitration or
18 similar proceedings. For the avoidance of doubt, "Released Claims" does not include claims for
19 indemnification and advancement rights, and defenses thereto, under Apple's bylaws, Apple's
20 articles of incorporation, employment agreements, California law and any other applicable
21 authority.

22 1.19 "Released Defendants" means (1) Defendants, (2) Apple, (3) James J. Buckley,
23 Robert Calderoni, Gareth C.C. Chang, Therese Crane, Guerrino De Luca, Ian Diery, John B.
24 Douglas, Daniel L. Eilers, Lawrence J. Ellison, John Floisand, G. Frederick Forsyth, Albert A.
25 Gore, Jr., Katherine M. Hudson, Delano E. Lewis, David Manovich, Jim McCluney, Bertrand
26 Serlet, Michael H. Spindler, Sina Tamaddon, and Edgar Woolard, Jr., and (4) their respective
27 predecessors, successors, parents, subsidiaries, affiliates and agents (including, without limitation,
28 any investment bankers, accountants, insurers, reinsurers or attorneys and any past, present or

1 future officers, directors and employees of Apple, and their predecessors, successors, parents,
2 subsidiaries, affiliates, and agents).

3 1.20 “Released Parties” means Released Plaintiffs and Released Defendants.

4 1.21 “Released Plaintiffs” means Plaintiffs and their attorneys, and their respective
5 predecessors, successors, parents, subsidiaries, affiliates and agents.

6 1.22 “Settlement” means the Settlement of the Actions as contemplated by this
7 Stipulation.

8 1.23 “Settlement Effective Date” means the later of the date upon which (a) the Federal
9 Court has entered the Judgment, or (b) the State Court has entered an order dismissing the State
10 Action with prejudice.

11 1.24 “Settlement Hearing” means the hearing at which the parties will present this
12 Settlement for final approval by the Federal Court.

13 1.25 “Settling Parties” means Plaintiffs, Defendants and Apple, as defined above, each
14 of which may also be referred to herein as a “Settling Party.”

15 1.26 “Shareholder” means any holder of Apple common stock on the date the
16 Preliminary Approval Order is entered.

17 1.27 “State Action” means the action captioned *In re Apple Computer, Inc. Derivative*
18 *Litigation*, Lead Case No. 1:06CV066692, currently pending in the Superior Court of California,
19 County of Santa Clara.

20 1.28 “State Court” means the Superior Court of California, County of Santa Clara.

21 1.29 “State Plaintiffs” means plaintiffs in the State Action including Plumbers &
22 Pipefitters Local No. 572 Pension Fund, Dave Curtin, Port Authority of Allegheny County
23 Retirement and Disability Allowance Plan for Employees Represented by Local 85 of the
24 Amalgamated Transit Union, Gary Cullen and AFSCME Employees’ Pension Plan.

25 1.30 “State Plaintiffs’ Counsel” means the law firms of Robbins Umeda & Fink LLP,
26 Branstetter Stranch & Jennings, PLLC, and Barrack Rodos & Bacine.

27 1.31 “Stipulation” means this Stipulation of Agreement of Settlement.

28 1.32 “Stipulation of Dismissal With Prejudice” means the stipulation of dismissal with

1 prejudice substantially in the form attached hereto as Exhibit 4.

2 1.33 "Summary Notice" means the summary notice substantially in the form attached
3 hereto as Exhibit 5.

4 2. Settlement Consideration

5 2.1 In full and complete settlement of the Released Claims, the Settling Parties agree
6 to the following:

7 2.1.1. As an essential condition to this Settlement, Apple's directors and officers'
8 liability insurers shall pay to Apple the sum of \$14 million within 30 days following the
9 Settlement Effective Date, or sooner should they so elect; this sum is in settlement of all issues
10 among the Plaintiffs, Defendants and Apple's directors and officers' liability insurers in relation
11 to the Actions and the Released Claims, including for all purportedly related legal fees and costs.

12 2.1.2. Apple acknowledges that the Actions were a material factor in obtaining
13 the \$14 million payment from Apple's liability insurers.

14 2.1.3. Within 30 business days following the Settlement Effective Date, or sooner
15 should it so elect, Apple's Board of Directors shall: (a) adopt the Equity Award Grant Practices
16 Policy in the form set forth in Exhibit 6; (b) appoint a Trading Compliance Committee with the
17 purposes, composition, authority and duties set forth in Exhibit 7; (c) adopt the amendments to
18 the charter of the Compensation Committee of the Board of Directors set forth in Exhibit 8 and
19 (d) amend Apple's Corporate Governance Guidelines to provide that at least one member of the
20 Compensation Committee of the Board of Directors will not simultaneously serve on the Audit
21 and Finance Committee of the Board of Directors.

22 2.1.4. Within 30 business days following the Settlement Effective Date, or sooner
23 should it so elect, Apple shall: (a) adopt the Corporate Minutes Procedure in the form set forth in
24 Exhibit 9; (b) adopt the Actions by Unanimous Written Consent Procedure in the form set forth in
25 Exhibit 10; and (c) undertake to perform the training set forth in Exhibit 11.

26 2.1.5. Apple agrees that the corporate governance provisions detailed in Exhibits
27 6, 7, 9, 10 and 11, the modifications to Apple's Compensation Committee charter detailed in
28 Exhibit 8 (the "Compensation Committee Charter Modifications") and the modifications to

1 Apple's Corporate Governance Guidelines detailed in Paragraph 2.1.3(d) above (the "Corporate
2 Governance Guideline Modifications") shall remain in effect until at least May 1, 2011. To the
3 extent that any of the terms set forth in Exhibits 6, 7 and 11, the Compensation Committee
4 Charter Modifications and Corporate Governance Guideline Modifications may in the future
5 come into conflict with any applicable state or federal statutes, rules, regulations or controlling
6 case law, then such applicable statutes, rules, regulations or case law will control, and Apple may
7 modify such terms as necessary to comply with such applicable law(s). Such determination shall
8 be made by a majority of the independent members of the Board, and shall be disclosed to
9 shareholders in a Form 8-K no less than ten (10) business days before the effective date of such
10 modification. With respect to Exhibits 9 and 10, the parties acknowledge and agree that Apple
11 must have the flexibility to review and modify such policies and procedures in response to,
12 among other things and without limitation, technological advancements, changes in governance
13 practices and business needs and changes in accounting, legal, regulatory and other applicable
14 rules, regulations and guidelines. Any determination to modify such policies and procedures shall
15 be made by a majority of the independent members of the Board, shall be documented in the
16 minutes of meetings of the Board, and shall be communicated in detail to the Honorable Judge
17 Edward A. Infante (Ret.) of JAMS, Inc. and to Cotchett, Pitre & McCarthy, as Plaintiffs' Liaison
18 Counsel, at least ten (10) business days prior to the implementation of such modifications.

19 2.1.6. Apple acknowledges that the filing and prosecution of the Actions were
20 material factors in the adoption of the various modifications made to Apple's policies listed in
21 Exhibits 6-11 attached hereto which constitute a substantial benefit to Apple.

22 3. **Attorneys' Fees and Litigation Expenses**

23 3.1 After negotiating the Settlement, the Settling Parties, with the assistance of Judge
24 Infante, negotiated the amount of the Attorneys' Fees and Expenses to be paid to Plaintiffs'
25 Counsel. Apple has agreed that Plaintiffs' Counsel shall be paid such Attorneys' Fees and
26 Expenses, subject to Court approval. More specifically, Apple shall pay to Federal Plaintiffs'
27 Counsel \$7.3 million in fees and \$300,000 for expenses, and to State Plaintiffs' Counsel \$1.2
28 million for fees and \$50,000 for expenses.

1 3.2 The Attorneys' Fees and Expenses for Federal Plaintiffs' Counsel shall be paid to
2 an interest-bearing escrow account administered by Cotchett Pitre & McCarthy as receiving
3 agents, within five (5) days of the entry of the Judgment. The Attorneys' Fees and Expenses for
4 Federal Plaintiffs' Counsel shall be released from the escrow account after the Settlement has
5 become Final. Cotchett Pitre & McCarthy shall thereafter distribute, as soon as is reasonably
6 practicable, such Fees and Expenses among respective Plaintiffs' counsel in a manner agreed to
7 by Federal Plaintiffs' Counsel. Any dispute pertaining to the allocation of such Attorneys' Fees
8 and Expenses shall be submitted to Judge Infante of JAMS for resolution.

9 3.3 The Attorneys' Fees and Expenses for State Plaintiffs' Counsel shall be paid to an
10 interest-bearing escrow account administered by Branstetter Stranch & Jennings, PLLC as
11 receiving agents, within five (5) days of the entry of the Stipulation of Dismissal With Prejudice.
12 The Attorneys' Fees and Expenses for State Plaintiffs' Counsel shall be released from the escrow
13 account after the Settlement has become Final. Branstetter Stranch & Jennings, PLLC shall
14 thereafter distribute, as soon as is reasonably practicable, such Fees and Expenses among
15 respective Plaintiffs' counsel in a manner agreed to by State Plaintiffs' Counsel. Any dispute
16 pertaining to the allocation of such Attorneys' Fees and Expenses shall be submitted to Judge
17 Infante of JAMS for resolution.

18 3.4 Except as expressly provided herein, Plaintiffs and Plaintiffs' Counsel shall bear
19 their own fees, costs and expenses and no Defendant shall assert claims for expenses, costs and
20 fees against Plaintiffs or Plaintiffs' Counsel.

21 4. **Release, Waiver and Covenant Not to Sue**

22 4.1 Upon the entry of the Judgment, Plaintiffs, on behalf of themselves and Apple,
23 Defendants and Apple hereby release and discharge each and every Released Claim and shall not
24 now or hereinafter institute, participate in or maintain a proceeding involving a Released Claim
25 either directly or indirectly, derivatively, on their own behalf or on behalf of any other person or
26 entity.

27 4.2 By expressly releasing and forever discharging all Released Claims, Plaintiffs,
28 Defendants and Apple expressly waive any and all provisions, rights and benefits conferred by

1 Section 1542 of the California Civil Code which provides:

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

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

25 4.3 Nothing in this Release shall preclude: (a) any action to enforce the terms of this
26 Settlement; or (b) any motion to enforce the terms of this Settlement pursuant to California Code
27 of Civil Procedure § 664.6.

28 4.4 Plaintiffs, Defendants and Apple hereby agree and acknowledge that the
provisions of preceding Sections 2 and 4 constitute essential terms of the Settlement.

1 5. **Submission of the Settlement to the Federal Court for Approval**

2 5.1 As soon as practicable after execution of this Stipulation, the Settling Parties shall
3 apply for entry of the Preliminary Approval Order.

4 5.2 On or before the dates set forth in the Preliminary Approval Order and consistent
5 with Federal Rule of Civil Procedure 23.1: (i) the Notice describing this settlement and advising
6 Apple shareholders of the scheduling of the Settlement Hearing, shall be provided to Apple
7 shareholders in the manner provided for in the Preliminary Approval Order; and (ii) the Summary
8 Notice shall be disseminated in the manner provided for in the Preliminary Approval Order.
9 Apple shall bear all costs and expenses related to disseminating the Notice and Summary Notice.

10 5.3 As part of the Settlement Hearing and upon approval by the Federal Court of the
11 Settlement, the Settling Parties shall seek and obtain from the Federal Court the Judgment
12 substantially in the form attached as Exhibit 1, that shall, among other things:

13 5.3.1. Approve the Settlement as fair, reasonable and adequate, consistent and in
14 compliance with all applicable requirements of California and Federal law, the California and
15 United States Constitutions (including the due process clause), the Federal Rules of Civil
16 Procedure, and any other applicable law and as being in the best interests of Apple and its
17 shareholders;

18 5.3.2. Find that Plaintiffs' Counsel adequately represented the interests of Apple
19 and its shareholders for the purposes of the Actions;

20 5.3.3. Find that, during the course of the litigation, the Settling Parties and their
21 counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11 and all
22 other similar laws or statutes, including California Code of Civil Procedure Section 128.7;

23 5.3.4. Direct the Settling Parties and their counsel to implement and consummate
24 this Settlement according to its terms and provisions;

25 5.3.5. Declare this Settlement to be binding on the Settling Parties, and, as to the
26 Released Claims, to have res judicata, collateral estoppel, and other preclusive effect in all
27 pending and future lawsuits or other proceedings maintained by or on behalf of the Settling
28 Parties, as well as their respective predecessors, successors, parents, subsidiaries, affiliates and

1 agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers or
2 attorneys and any past, present or future officers, directors and employees of Apple, and their
3 predecessors, successors, parents, subsidiaries, affiliates and agents);

4 5.3.6. Dismiss the Federal Action with prejudice, without fees or costs to any
5 party except as provided in this Settlement;

6 5.3.7. Incorporate the Release set forth above in Section 4, make the Release
7 effective as of the date of the Judgment and forever discharge the Released Parties from any
8 claims or liabilities arising from or related to the matters covered by the Release;

9 5.3.8. Without affecting the finality of the Judgment for purposes of appeal,
10 retain jurisdiction as to all matters relating to the administration, consummation, enforcement and
11 interpretation of this Settlement and the Judgment.

12 6. **Dismissal of the State Action With Prejudice**

13 6.1 Within three (3) days after entry of the Judgment in the Federal Action, the
14 Settling Parties shall execute and file the Stipulation of Dismissal with Prejudice in the State
15 Action and request an order dismissing the State Action. State Plaintiffs shall file and serve
16 notice of any dismissal order within three (3) days of entry by the State Court.

17 7. **Effect of Disapproval, Cancellation or Termination**

18 7.1 Subject to Section 7.2, this Settlement will terminate at the sole option and
19 discretion of Federal Plaintiffs, Apple, or Defendants if (i) the Federal Court, or any appellate
20 court(s), rejects, modifies or denies any portion of the Settlement that the terminating party in its
21 (or their) sole judgment and discretion reasonably determine(s) is material, including, without
22 limitation, the terms of relief, the findings of the Federal Court, or the terms of the Release, or (ii)
23 the Federal Court, or any appellate court(s), does not enter or completely affirm, or alters or
24 expands, any portion of the Judgment, that the terminating party in its (or their) sole judgment
25 and discretion reasonably believe(s) to be material, or (iii) the State Court, or any appellate state
26 court, does not enter or completely affirm, the Stipulation of Dismissal With Prejudice in the
27 State Action. The terminating party must exercise the option to withdraw from and terminate this
28 Settlement, as provided in this subsection, no later than twenty (20) business days after receiving

1 notice of the event giving rise to the grounds for termination.

2 7.2 Disallowance of any Attorneys' Fees and Expenses requested by or awarded to
3 Plaintiffs' Counsel, any appeal from any order relating thereto, and any modification or reversal
4 on appeal of any such order, shall not operate to terminate or cancel the Settlement or affect its
5 terms, including the releases, be deemed a material change to this Settlement under Section 7.1,
6 or affect or delay the finality of the Judgment approving the Settlement; provided, however, that
7 Defendants and Apple, in their sole discretion, may elect to terminate this Settlement if the
8 amount of Attorneys' Fees and Expenses awarded, in the first instance or on appeal, exceeds the
9 amount agreed upon by the Settling Parties as set forth in Section 3 above.

10 7.3 If an option to withdraw from and terminate this Settlement arises under Section
11 7.1 neither Federal Plaintiffs, Defendants nor Apple will be required for any reason or under any
12 circumstance to exercise that option.

13 7.4 If this Settlement is terminated in accordance with its terms, then:

14 7.4.1. This Settlement, all of its provisions, and all negotiations, statements and
15 proceedings and orders relating to it shall be without prejudice to the rights of Plaintiffs,
16 Defendants and Apple, all of whom shall be restored to their respective positions existing
17 immediately before the execution of this Settlement, including, without limitation, the return of
18 all sums paid in connection with this Settlement; however, under no circumstances shall Plaintiffs
19 be responsible to pay or reimburse any other party for any Notice or Summary Notice expenses
20 paid or incurred;

21 7.4.2. Plaintiffs, Defendants, Apple and their respective predecessors, successors,
22 parents, subsidiaries, affiliates and agents (including, without limitation, any investment bankers,
23 accountants, insurers, reinsurers or attorneys and any past, present or future officers, directors and
24 employees of Apple, and their predecessors, successors, parents, subsidiaries, affiliates and
25 agents) expressly and affirmatively reserve all defenses, arguments and motions as to all claims
26 that have been or might later be asserted in the Actions; and

27 7.4.3. Neither this Settlement, nor the fact of its having been made, shall be
28 admissible or entered into evidence for any purpose whatsoever.

1 8. **General Matters and Reservations**

2 8.1 Neither this Settlement nor any of its terms (nor any agreement, negotiations, or
3 order relating thereto), nor any payment or consideration provided for herein, is or shall be
4 construed as an admission by Defendants or Apple of any fault, wrongdoing, or liability
5 whatsoever, nor as an admission by any of the Plaintiffs of any lack of merit of their claims
6 against Defendants or Apple. Neither this Settlement nor any of its terms (nor any agreement,
7 negotiations, or order relating thereto), nor any payment or consideration provided for herein,
8 shall be deemed or offered or received in evidence in any judicial, administrative, regulatory, or
9 other proceeding or utilized in any manner whatsoever, including as a presumption, concession,
10 or admission of any fault, wrongdoing or liability whatsoever on the part of Defendants or Apple;
11 provided, however, that nothing contained in this subsection shall prevent the Settlement (or any
12 agreement or order relating thereto) from being used, offered or received in evidence in any
13 proceeding to approve, enforce or otherwise effectuate the Settlement (or any agreement or order
14 relating thereto) or the Judgment, or in any proceeding in which the reasonableness, fairness, or
15 good faith of the Settling Parties in participating in the Settlement (or any agreement or order
16 relating thereto) is at issue, or to enforce or effectuate provisions of this Settlement as to the
17 Settling Parties.

18 8.2 By execution of this Settlement, neither Defendants nor Apple release any claim
19 against any insurer for any cost or expense hereunder, including attorneys' fees and costs.

20 8.3 All counsel who execute this Settlement represent and warrant that they have
21 authority to do so on behalf of their respective clients.

22 8.4 The Settling Parties acknowledge that their designated representatives have
23 reviewed this Settlement and acknowledge that they are accepting the benefits of this Settlement
24 after consulting with counsel.

25 8.5 Apple hereby represents and warrants to each other party hereto that the execution,
26 delivery and performance of this Settlement is within its power and authority, has been duly
27 authorized by all necessary action and does not and will not: (a) require any authorization which
28 has not been obtained; or (b) contravene the charter documents of Apple, any applicable laws or

1 other legal requirements, or any agreement or restriction binding on or affecting Apple or its
2 property. This Settlement, when executed by its designated representative and delivered, will
3 constitute the legal, valid and binding obligation of Apple.

4 8.6 Each Plaintiff hereby represents and warrants to each other party hereto that the
5 execution, delivery and performance of this Settlement is within his, her or its power and
6 authority, has been duly authorized by all necessary action and does not and will not: (a) require
7 any authorization which has not been obtained; or (b) contravene any applicable laws or other
8 legal requirements, or any agreement or restriction binding on or affecting it or its property. This
9 Settlement, when executed by its designated representative and delivered, will constitute the
10 legal, valid and binding obligation of each Plaintiff.

11 8.7 This Settlement (including exhibits hereto, agreements referenced herein and
12 documents executed pursuant to the foregoing) contains the entire agreement among the Settling
13 Parties with respect to the subject matter hereof and supersedes any prior written or oral
14 agreements, representations, warranties or statements. The Settling Parties agree that this
15 Settlement was drafted at arm's-length, and that no parol or other evidence may be offered to
16 explain, construe, or clarify its terms, the intent of the parties or their counsel or the
17 circumstances under which the Settlement was made or executed; provided, that there shall be no
18 presumption for or against any party that drafted all or any portion of the Settlement.

19 8.8 No representation, warranty or inducement has been made to any party concerning
20 this Settlement other than the representations, warranties and covenants contained herein.

21 8.9 Plaintiffs and Plaintiffs' Counsel expressly warrant that, in entering into this
22 Settlement, they relied solely upon their own knowledge and investigation and not upon any
23 promise, representation, warranty or other statement by Defendants or Apple not expressly
24 contained herein.

25 8.10 Whenever this Settlement requires or contemplates that one party shall or may
26 give notice to another, notice shall be provided by facsimile and/or next-day (excluding weekends
27 and court holidays) express delivery service as follows:
28

1 If to Defendants or Apple, then to:

2 George A. Riley, Esq.
3 O'MELVENY & MYERS LLP
4 Two Embarcadero Center, 28th Floor
5 San Francisco, CA 94111

6 If to Federal Plaintiffs, then to:

7 Mark C. Molumphy, Esq.
8 COTCHETT, PITRE & McCARTHY
9 840 Malcolm Road, Suite 200
10 Burlingame, CA 94010

11 If to State Plaintiffs, then to:

12 J. Gerard Stranch, IV
13 BRANSTETTER STRANCH & JENNINGS, PLLC
14 227 Second Avenue, N. 4th Floor
15 Nashville, TN 37201-1631

16 8.11 The failure of any Settling Party to enforce at any time any provision of this
17 Settlement shall not be construed to be a waiver of such provision, nor in any way to affect the
18 validity of this Settlement or any part hereof or the right of any Settling Party thereafter to enforce
19 each and every such provision. No waiver of any breach of this Settlement shall be held to
20 constitute a waiver of any other breach.

21 8.12 The Settling Parties, their successors and assigns and their attorneys agree to
22 cooperate fully with one another in seeking Court approval of this Settlement and to use their best
23 efforts to effect the prompt consummation of this Settlement. Without limitation of any other
24 remedies available by law, the Settling Parties agree that any party to this Settlement may compel
25 specific performance of its terms.

26 8.13 This Settlement shall be governed by, and construed in accordance with, the laws
27 of the State of California, including its choice of law principles.

28 8.14 Nothing in this Settlement or the negotiations or proceedings relating to the
foregoing is intended to be or shall be deemed to constitute a waiver of any applicable privilege
or immunity, including without limitation, the accountants' privilege, the attorney-client
privilege, the joint-defense privilege or work-product immunity.

8.15 This Settlement may be executed in one or more counterparts, all of which shall be

1 considered the same as if a single document shall have been executed, and shall become effective
2 when such counterparts have been executed by all signatories and delivered to Plaintiffs'
3 Counsel, Defendants' Counsel and Apple's Counsel. Execution by facsimile or Pdf counterparts
4 shall be fully and legally binding on any Settling Party so executing.

5 8.16 If any provision of this Settlement is held to be illegal, invalid, or unenforceable:
6 (a) such provision will be fully severable; (b) this Settlement will be construed and enforced as if
7 such illegal, invalid or unenforceable provision had never comprised a part of this Settlement; and
8 (c) the remaining provisions of this Settlement, subject to the termination provisions in Section
9 7.1, will remain in full force and effect and will not be affected by the illegal, invalid or
10 unenforceable provision or by its severance from this Settlement.

11 8.17 This Settlement may not be modified except pursuant to a written instrument
12 signed by all the parties hereto.

13 8.18 All Released Parties who are not individually, or through counsel, signatories to
14 this Settlement are intended third-party beneficiaries entitled to enforce the terms of the Release
15 set forth herein so long as they agree to be bound by the entirety of this Stipulation of Agreement
16 of Settlement.

17 8.19 The terms of this Settlement shall be governed by California Law. Any dispute
18 concerning the terms of this Settlement, including the implementation of the corporate
19 governance provisions, and payment and/or allocation of fees and expenses, shall first be
20 submitted to Hon. Edward A. Infante (Ret.) of JAMS, Inc. for resolution, subject to Court review
21 and approval.

22 8.20 The Settling Parties agree that the Federal Court shall retain jurisdiction as to all
23 matters relating to the administration, consummation, enforcement, and interpretation of this
24 Settlement and the Judgment.

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Dated: August __, 2008

FARELLA BRAUN & MARTEL LLP
DOUGLAS R. YOUNG (State Bar No. 73248)

By: _____
Douglas R. Young

Attorneys for Defendants WILLIAM V. CAMPBELL, TIMOTHY D. COOK, MILLARD S. DREXLER, STEVEN P. JOBS, RONALD B. JOHNSON, ARTHUR D. LEVINSON, MITCHELL MANDICH, PETER OPPENHEIMER, JONATHAN RUBINSTEIN, AVADIS TEVANIAN, JR., and JEROME B. YORK

Dated: August __, 2008

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Sarah A. Good

Attorneys for Defendant NANCY HEINEN

Dated: August __, 2008

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Jerome C. Roth

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Dated: August 29, 2008

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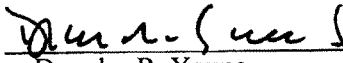
By:  _____
George A. Riley

Attorneys for Nominal Defendant APPLE INC.

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Jerome C. Roth

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Dated: August __, 2008

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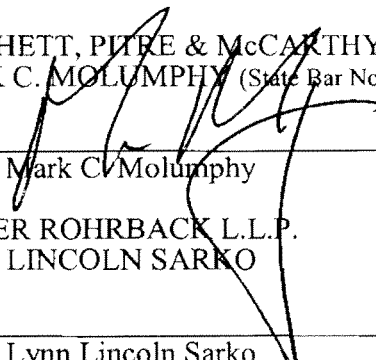
By: _____
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Dated: August 26, 2008

COTCHETT, PITRE & MCCARTHY
MARK C. MOLUMPHY (State Bar No. 168009)

By: 
Mark C. Molumphy

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KELLER ROHRBACK L.L.P.
LYNN LINCOLN SARKO

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Dated: August __, 2008

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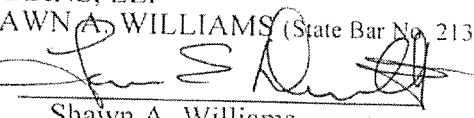
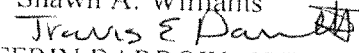
Dated: August __, 2008

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Dated: August ~~28~~, 2008

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Travis E. Dant

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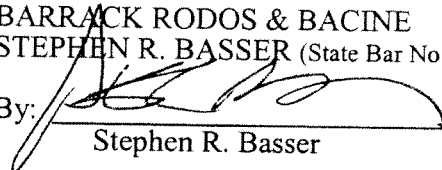
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1 Dated: August 26, 2008

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2
3 By: 
Stephen R. Bassar

4 Dated: August __, 2008

BRANSTETTER STRANCH & JENNINGS,
5 PLLC
JAMES G. STRANCH, III
6 J. GERARD STRANCH, IV

7 By: _____
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9 MARC M. UMEDA (State Bar No. 197847)
STEVEN J. SIMERLEIN (State Bar No. 156979)

10 By: _____
11 Marc M. Umeda

12 STATE PLAINTIFFS' COUNSEL
13 On behalf of the STATE PLAINTIFFS and
14 derivatively on behalf of APPLE INC.

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BARRACK RODOS & BACINE
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Stephen R. Basser

Dated: August ____, 2008

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J. GERARD STRANCH, IV

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Dated: August ____, 2008

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On behalf of the STATE PLAINTIFFS and
derivatively on behalf of APPLE INC.

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Dated: August ____, 2008

BARRACK RODOS & BACINE
STEPHEN R. BASSER (State Bar No. 121590)

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Stephen R. Basser

Dated: August ____, 2008

BRANSTETTER STRANCH & JENNINGS,
PLLC
JAMES G. STRANCH, III
J. GERARD STRANCH, IV

By: _____
J. Gerard Stranch, IV

Dated: ^{September} ~~August~~ ____, 2008

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Marc M. Umeda

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EXHIBIT 1

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 8 Attorneys for Plaintiffs and Derivatively on Behalf of APPLE INC.

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 13 San Francisco, California 94111-3828
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 17 Attorneys for Nominal Defendant APPLE INC.

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

In re APPLE INC.
 DERIVATIVE LITIGATION

Master File No. C-06-04128-JF

**[PROPOSED] FINAL JUDGMENT AND
 ORDER OF DISMISSAL WITH
 PREJUDICE**

This Documents Relates to:
 ALL ACTIONS.

1 This matter came before the Court for hearing pursuant to an Order of this Court, dated
2 _____, 2008, on the application of the Settling Parties for approval of the
3 settlement set forth in the Stipulation of Agreement of Settlement dated as of August 29, 2008
4 (the "Stipulation"). Due and adequate notice having been given of the Settlement as required in
5 said Order, and the Court having considered all papers filed and proceedings held herein and
6 otherwise being fully informed and good cause appearing therefore, IT IS HEREBY ORDERED,
7 ADJUDGED AND DECREED that:

8 1. This Judgment incorporates by reference the definitions in the Stipulation, and all
9 terms used herein shall have the same meanings set forth in the Stipulation.

10 2. This Court has jurisdiction over the subject matter of the Federal Action and over
11 all Settling Parties.

12 3. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, this Court hereby
13 approves the Settlement set forth in the Stipulation and finds that the Settlement is in all respects
14 fair, reasonable and adequate to, and in the best interests of, Apple and its shareholders. The
15 Court finds that the Settlement is consistent and in compliance with all applicable requirements of
16 California and Federal law, the California and United States Constitutions (including the due
17 process clause), the Federal Rules of Civil Procedure, and any other applicable law. The Court
18 further finds the Settlement is the result of arm's-length negotiations between experienced
19 counsel representing the interests of the Settling Parties, and that Plaintiffs' Counsel adequately
20 represented the interests of Apple and its shareholders for the purposes of the Actions.
21 Accordingly, the Settlement is hereby approved in all respects and shall be consummated in
22 accordance with its terms. The Settlement shall be deemed to be, and by operation of the
23 Judgment shall be, binding on the Settling Parties, and the Settling Parties are hereby directed to
24 perform the terms of the Stipulation.

25 4. Plaintiffs, on behalf of themselves and Apple, Defendants, and Apple shall be
26 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released
27 and discharged each and every Released Claim, and shall not now or hereinafter institute,
28 participate in or maintain a proceeding involving a Released Claim either directly or indirectly,

1 derivatively, on their own behalf or on behalf of any other person or entity.

2 5. The Released Claims shall have res judicata, collateral estoppel, and other
3 preclusive effect in all pending and future lawsuits or other proceedings maintained by or on
4 behalf of the Settling Parties, as well as their respective predecessors, successors, parents,
5 subsidiaries, affiliates and agents (including, without limitation, any investment bankers,
6 accountants, insurers, reinsurers or attorneys and any past, present or future officers, directors and
7 employees of Apple, and their predecessors, successors, parents, subsidiaries, affiliates and
8 agents).

9 6. As provided for in the Order Preliminarily Approving Settlement, the content,
10 distribution and publication of the Notice of Proposed Settlement of Shareholder Derivative
11 Action and Hearing and the Summary Notice constituted the best notice practicable under the
12 circumstances to all persons entitled to such notice. These notices fully satisfied the requirements
13 of Federal Rule of Civil Procedure 23.1, the requirements of due process, and any other
14 applicable law.

15 7. Neither the Stipulation nor the Settlement (nor the Exhibits thereto, including but
16 not limited to the corporate governance policies attached as Exhibits 6, 7, 9, 10 and 11, the
17 modifications to Apple's Compensation Committee charter detailed in Exhibit 8, and the
18 modifications to Apple's Corporate Governance Guidelines), nor any act performed or document
19 executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or shall be
20 construed as an admission by Defendants or Apple of any fault, wrongdoing, or liability
21 whatsoever; or (b) shall be deemed or offered or received in evidence in any judicial,
22 administrative, regulatory, or other proceeding or utilized in any manner whatsoever, including as
23 a presumption, concession, or admission of any fault, wrongdoing or liability whatsoever on the
24 part of Defendants or Apple. The Stipulation and/or Judgment may be used, offered or received
25 in evidence in any proceeding to approve, enforce or otherwise effectuate any provision of the
26 Settlement (or any agreement or order relating thereto) or this Judgment, or in any proceeding in
27 which the reasonableness, fairness, or good faith of the Settling Parties in participating in the
28 Settlement (or any agreement or order relating thereto) is at issue, or to enforce or effectuate

1 provisions of this Settlement as to the Settling Parties.

2 8. Plaintiffs' Counsel's Attorneys' Fees and Expenses requests are granted.

3 9. The Court finds that during the course of the litigation, the Settling Parties and
4 their respective counsel at all times complied with the requirements of Federal Rule of Civil
5 Procedure 11 and all other similar laws or statutes, including California Code of Civil Procedure
6 Section 128.7.

7 10. Without affecting the finality of this Final Judgment and Order of Dismissal With
8 Prejudice in any way, this Court hereby retains jurisdiction as to all matters relating to the
9 administration, consummation, enforcement and interpretation of this Settlement and this
10 Judgment.

11 11. The above-entitled case is hereby dismissed with prejudice and without costs in
12 accordance with the Stipulation.

13 **IT IS SO ORDERED.**

14
15 DATED: _____

16 HONORABLE JEREMY FOGEL
17 UNITED STATES DISTRICT JUDGE
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EXHIBIT 2

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

In re APPLE INC.
DERIVATIVE LITIGATION

Master File No. C-06-04128-JF

This Documents Relates to:

ALL ACTIONS.

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

**TO: ANY PERSON WHO OWNED APPLE INC. COMMON STOCK AS OF _____ (“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 _____, 2008, at _____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 pensionsforsäkring, ömsesidigt. Jeffrey Alecci, Kelley Bergman, Marjorie Grigsby, Douglas Holbert, Phyllis Jones, Nicholas Karant, Alfred Ronconi, Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust, and Alecta pensionsforsäkring, ömsesidigt.

On November 2, 2006, the Court appointed Cotchett, Pitre & McCarthy, Keller Rohrback LLP, Coughlin Stoia 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 on July 21, 2006), *Cullen v. Jobs, et al.*, Case No. 06CV068756 (filed on 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 _____, 2008, at _____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 _____, 2008 (thirty-five (35) days after the date of the order preliminarily approving the Settlement):

(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 _____, 2008 (thirty-five (35) days after the date of the order preliminarily approving the Settlement):

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Telephone: (650) 697-6000
Facsimile: (650) 697-0577
E-Mail: mmolumphy@cpmlegal.com
Attorneys for Federal Plaintiffs and derivatively on behalf of Apple Inc.

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Attorneys for Nominal Defendant Apple Inc.

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Facsimile: (415) 954-4480
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Attorneys for Defendants William V. Campbell, Timothy D. Cook, Millard S. Drexler, Steven P. Jobs, Ronald B. Johnson, Arthur D. Levinson, Mitchell Mandich, Peter Oppenheimer, Jonathan Rubinstein, Avadis Tevanian, Jr., and Jerome B. York

Jerome C. Roth
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Attorneys for Defendant Fred D. Anderson

Sarah A. Good
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San Francisco, CA 94111
Telephone: (415) 434-1600
Facsimile: (415) 217-5910
E-Mail: sgood@howardrice.com
Attorneys for Defendant Nancy Heinen

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 _____, 2008 (forty-five (45) days after the date of the order preliminarily approving the Settlement). 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 _____, 2008 (forty-five (45) days after the date of the order preliminarily approving the Settlement).

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: _____

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

EXHIBIT 3

1 MARK C. MOLUMPY (State Bar No. 168009)
2 COTCHETT, PITRE & McCARTHY
3 840 Malcolm Road, Suite 200
4 Burlingame, California 94010
5 Telephone: (650) 697-6000
6 Facsimile: (650) 697-0577
7 E-Mail: mmolumphy@cpmlegal.com
8 Attorneys for Plaintiffs and Derivatively on Behalf of APPLE INC.

9 GEORGE A. RILEY (State Bar No. 118304)
10 O'MELVENY & MYERS LLP
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12 28th Floor
13 San Francisco, California 94111-3828
14 Telephone: (415) 984-8700
15 Facsimile: (415) 984-8701
16 E-Mail: griley@omm.com
17 Attorneys for Nominal Defendant APPLE INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re APPLE INC.
DERIVATIVE LITIGATION

Master File No. C-06-04128-JF

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT**

This Documents Relates to:

ALL ACTIONS.

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ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Settling Parties have made application, pursuant to Federal Rule of Civil Procedure 23.1, for an order preliminarily approving the settlement (the “Settlement”) of this Federal Action, in accordance with the Stipulation of Agreement of Settlement dated as of August 29, 2008 (the “Stipulation”);

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein):

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve, subject to further consideration at the Final Settlement Hearing described below, the Stipulation and the Settlement set forth therein.

2. A hearing (the “Final Settlement Hearing”) shall be held before this Court on _____, 2008, at _____m. (at least fifty (50) days from the date of this Order) at the United States Courthouse, 280 South 1st Street, Courtroom 3, 5th Floor, San Jose, California 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 or modify any of the dates set forth herein without further notice to Shareholders.

3. The Court approves, as to form and content, the Notice of Proposed Settlement of Shareholder Derivative Action and Hearing (“Notice”) attached as Exhibit 2 to the Stipulation and the Summary Notice of Proposed Settlement of Derivative Action (“Summary Notice”) attached as Exhibit 5 to the Stipulation. The Court finds that the content, distribution and publication of the Notice and Summary Notice, substantially in the manner and form set forth in this Order, constitute the best notice practicable under the circumstances to all persons entitled to such notice. These notices fully satisfy the requirements of Federal Rule of Civil Procedure 23.1, the requirements of due process, and any other applicable law.

4. The firms of Broadridge Investor Communication Services, Inc., Computershare Limited, and Georgeson Inc. are hereby appointed to supervise and administer the notice

1 procedure as more fully set forth below:

2 (a) Not later than _____, 2008 (five (5) business days from the date
3 of this Order), Apple shall cause the proposed Notice to be provided to all Apple shareholders as
4 of the date of this Order who can be identified with reasonable effort and in the same manner in
5 which Apple provides notice of its annual meetings and proxy solicitations;

6 (b) Not later than _____, 2008 (ten (10) days from the date of this
7 Order), Apple shall cause the Summary Notice to be published once in Investor's Business Daily;
8 and

9 (c) By _____, 2008 (forty (40) days from the date of this Order),
10 Apple's Counsel shall serve on Plaintiffs' Counsel and file with the Court proof, by affidavit or
11 declaration, of such mailing and publishing.

12 5. Pending final determination of whether the Settlement should be approved, no
13 Shareholder, either directly, representatively, or in any other capacity, shall commence or
14 prosecute against any of the Released Parties, any action or proceeding in any court or tribunal
15 asserting any of the Released Claims.

16 6. Any Shareholder may object to the Settlement if such Shareholder completes the
17 following not later than _____, 2008 (thirty-five (35) days from the date of this Order):

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

23 (b) simultaneously serving copies of such proof, statement and documentation, together
24 with copies of any other papers or briefs such shareholder files with the Court, in person
25 or by mail, upon counsel listed below, provided that if service is made by mail, then
26 service by electronic mail or facsimile also shall be made on counsel listed below, no later
27 than _____, 2008 (thirty-five (35) days from the date of this Order):

28 Mark C. Molumphy
COTCHETT, PITRE & McCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
E-Mail: mmolumphy@cpmlegal.com
Attorneys for Federal Plaintiffs and derivatively on behalf of Apple Inc.

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J. Gerard Stranch, IV
BRANSTETTER STRANCH & JENNINGS, PLLC
227 Second Avenue, N. 4th Floor
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Telephone: (615) 254-8801
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Attorneys for Defendants William V. Campbell, Timothy D. Cook, Millard S. Drexler, Steven P. Jobs, Ronald B. Johnson, Arthur D. Levinson, Mitchell Mandich, Peter Oppenheimer, Jonathan Rubinstein, Avadis Tevanian, Jr., and Jerome B. York

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Attorneys for Defendant Fred D. Anderson

Sarah A. Good
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San Francisco, CA 94111
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Facsimile: (415) 217-5910
E-Mail: sgood@howardrice.com
Attorneys for Defendant Nancy Heinen

7. Any Shareholder who does not make his, her or its objection or opposition in the manner set forth above 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

1 adequacy of the Settlement.

2 8. Any Shareholder who timely files and serves a written objection in accordance
3 with paragraph 6 above and intends to appear at the Final Settlement Hearing must effect service
4 of a notice of intention to appear on counsel listed above (at the addresses set out above) and file
5 such notice of intention to appear with the Court by no later than _____, 2008 (forty-
6 five (45) days from the date of this Order). Filing and service may be effected on the Court and
7 counsel by mail, provided that service by electronic mail or facsimile also is made on counsel
8 listed above no later than _____, 2008 (forty-five (45) days from the date of this Order).

9 9. Any Shareholder who does not timely file and serve a notice of intention to appear
10 in accordance with this paragraph shall not be permitted to be heard at the Final Settlement
11 Hearing, except upon a showing of good cause and excusable neglect.

12 10. All papers in support of the Settlement and the applications for Attorneys' Fees
13 and Expenses and all papers responding to any Shareholder opposition or objection filed pursuant
14 to paragraph 6 above shall be filed no later than _____, 2008 (forty-five (45) days
15 from the date of this Order).

16 11. If the Settlement receives final approval by the Court, the Court shall enter final
17 judgment in the form submitted by the parties, or in any other form of order deemed appropriate
18 by the Court. The Judgment shall be fully binding with respect to all parties in accordance with
19 the terms of the Stipulation.

20 12. The Court adjudges that, if and when the Judgment is entered, the Released Claims
21 shall be deemed to have, and by operation of the Judgment shall have, res judicata, collateral
22 estoppel, and other preclusive effect in all pending and future lawsuits or other proceedings
23 maintained by or on behalf of the Settling Parties, as well as their respective predecessors,
24 successors, parents, subsidiaries, affiliates and agents (including, without limitation, any
25 investment bankers, accountants, insurers, reinsurers or attorneys and any past, present or future
26 officers, directors and employees of Apple, and their predecessors, successors, parents,
27 subsidiaries, affiliates and agents).

28 13. All proceedings and all further activity regarding or directed toward the Federal

1 Action, including but not limited to all discovery activities, shall be stayed and suspended until
2 further order of this Court, except as to such actions as may be necessary to implement the
3 Settlement or this Order.

4 14. Neither the Settlement nor any of its terms (nor any agreement, negotiations, or
5 order relating thereto), nor any payment or consideration provided for in the Stipulation, is or
6 shall be construed as an admission by Defendants or Apple of any fault, wrongdoing, or liability
7 whatsoever, nor as an admission by any of the Plaintiffs of any lack of merit of their claims
8 against Defendants or Apple. Neither the Settlement nor any of its terms (nor any agreement,
9 negotiations, or order relating thereto), nor any payment or consideration provided for therein,
10 shall be deemed or offered or received in evidence in any judicial, administrative, regulatory, or
11 other proceeding or utilized in any manner whatsoever, including as a presumption, concession,
12 or admission of any fault, wrongdoing or liability whatsoever on the part of Defendants or Apple;
13 provided, however, that the Settlement (or any agreement or order relating thereto) may be used,
14 offered or received in evidence in any proceeding to approve, enforce or otherwise effectuate the
15 Settlement (or any agreement or order relating thereto) or the Judgment, or in any proceeding in
16 which the reasonableness, fairness, or good faith of the Settling Parties in participating in the
17 Settlement (or any agreement or order relating thereto) is at issue, or to enforce or effectuate
18 provisions of the Settlement as to the Settling Parties.

19 15. The Court may approve the Settlement, with such modifications as may be agreed
20 to by the Settling Parties, if appropriate, without further notice to the Shareholders.

21 **IT IS SO ORDERED.**

22
23 DATED: _____

24 HONORABLE JEREMY FOGEL
25 UNITED STATES DISTRICT JUDGE
26
27
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EXHIBIT 4

1 JAMES G. STRANCH, III
 J. GERARD STRANCH, IV
 2 BRANSTETTER STRANCH & JENNINGS, PLLC
 227 Second Avenue, N. 4th Floor
 3 Nashville, TN 37201-1631
 Telephone: (615) 254-8801
 4 Facsimile: (615) 255-5419
 E-Mail: jims@branstetterlaw.com
 5 gerards@branstetterlaw.com

6 BRIAN J. ROBBINS (S.B. #190264)
 MARC M. UMEDA (S.B. #197847)
 7 ROBBINS, UMEDA & FINK LLP
 610 West Ash Street, Suite 1800
 8 San Diego, CA 92101
 Telephone: (619) 525-3990
 9 Facsimile: (619) 525-3991
 E-Mail: brobbins@ruflaw.com
 10 mumeda@ruflaw.com

11 STEPHEN R. BASSER (S.B. #121590)
 JOHN L. HAEUSSLER (S.B. #215044)
 12 BARRACK, RODOS & BACINE
 One America Plaza
 13 600 West Broadway, Suite 900
 San Diego, CA 92101
 14 Telephone: (619) 230-0800
 Facsimile: (619) 230-1874
 15 E-Mail: sbasser@barrack.com
 jhaeussler@barrack.com

16 Co-Lead Counsel for Plaintiffs and derivatively on behalf of Apple Inc.
 17 (formerly Apple Computer, Inc.)

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **COUNTY OF SANTA CLARA**

20 In re APPLE COMPUTER, INC.
 21 DERIVATIVE LITIGATION

Lead Case No. 1:06CV066692

(Consolidated with
 Case No. 1:06CV066716;
 Case No. 1:06CV067760;
 Case No. 1:06CV068756; and
 Case No. 1:06CV069660)

22 This Document Relates to:

23 ALL ACTIONS

(Derivative Action)

24 **STIPULATION AND [PROPOSED] ORDER**
 25 **OF DISMISSAL WITH PREJUDICE**

26 Judge: The Honorable James Emerson
 Date First Action Filed: July 5, 2006
 27 Trial Date: None Set

28 [Caption continued on next page.]

1 PLUMBERS & PIPEFITTERS LOCAL
2 NO. 572 PENSION FUND, DAVE CURTIN,
3 PORT AUTHORITY OF ALLEGHENY
4 COUNTY RETIREMENT AND
5 DISABILITY ALLOWANCE PLAN
6 FOR EMPLOYEES REPRESENTED BY
7 LOCAL 85 OF THE AMALGAMATED
8 TRANSIT UNION, GARY CULLEN, and
9 AFSCME EMPLOYEES' PENSION PLAN,
10 Derivatively on Behalf of APPLE
11 COMPUTER, INC.,

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Plaintiffs,

v.

STEVEN P. JOBS,
PETER OPPENHEIMER,
AVADIS TEVANIAN, JR.,
TIMOTHY D. COOK,
RONALD B. JOHNSON,
JONATHAN RUBINSTEIN,
NANCY R. HEINEN,
SINA TAMADDON,
BERTRAND SERLET,
FRED D. ANDERSON,
ARTHUR D. LEVINSON,
JEROME B. YORK,
WILLIAM V. CAMPBELL,
MILLARD S. DREXLER,
LAWRENCE J. ELLISON,
MICHAEL H. SPINDLER,
ROBERT CALDERONI,
JIM MCCLUNEY,
MITCHELL MANDICH,
JAMES J. BUCKLEY,
DANIEL L. EILERS,
G. FREDERICK FORSYTH,
IAN DIERY,
GUERRINO DE LUCA,
JOHN B. DOUGLAS,
THERESE CRANE,
DAVID MANOVICH,
JOHN FLOISAND, and
DOES 1-25 inclusive

Defendants,

- and -

APPLE COMPUTER, INC.,
a California corporation,

Nominal Defendant.

1 The undersigned parties by and through their respective counsel of record, hereby
2 stipulate and agree as follows:

3 WHEREAS, following Apple's June 29, 2006 announcement of its independent
4 investigation of its stock option practices, 16 purported derivative suits ("Related Federal
5 Derivative Action") were filed on behalf of Apple in the United States District Court for the
6 Northern District of California ("Federal Court");

7 WHEREAS, shareholder derivative complaints captioned *Plumbers & Pipefitters Local*
8 *No. 572 Pension Fund v. Jobs, et al.*, Case No. 06CV066692 (filed July 5, 2006), *Curtin v. Jobs,*
9 *et al.*, Case No. 06CV066716 (filed July 5, 2006), *Port Authority of Allegheny County Retirement*
10 *and Disability Allowance Plan v. Jobs, et al.*, Case No. 06CV067760 (filed July 21, 2006), *Cullen*
11 *v. Jobs, et al.*, Case No. 06CV068756 (filed August 7, 2006), and *AFSCME Employees' Pension*
12 *Plan v. Jobs, et al.*, Case No. 06CV069660 (filed August 18, 2006) were also filed on behalf of
13 Apple in this Court;

14 WHEREAS, on September 1, 2006, this Court consolidated the state derivative actions
15 under the caption *In re Apple Computer, Inc. Derivative Litigation*, Lead Case No. 06CV066692
16 (the "State Derivative Action," and collectively with the Related Federal Derivative Action, the
17 "Actions"), and Robbins, Umeda & Fink LLP, Branstetter Stranch & Jennings, PLLC and
18 Barrack, Rodos & Bacine were appointed as co-lead counsel for state plaintiffs. On September
19 30, 2006, the state plaintiffs filed a consolidated shareholder derivative complaint, alleging breach
20 of fiduciary duty, violation of California Corporations Code § 25402, violation of California
21 Corporations Code § 25403, deceit, abuse of control, gross mismanagement, corporate waste and
22 unjust enrichment;

23 WHEREAS, on December 7, 2006, this Court stayed the State Derivative Action in favor
24 of the pending Related Federal Derivative Action;

25 WHEREAS, the parties to the Related Federal Derivative Action and the State Derivative
26 Action have engaged in substantial arm's-length negotiations in an effort to resolve the derivative
27 actions, including several mediation sessions with the Honorable Edward A. Infante (Ret.) of
28 JAMS, Inc. and numerous in-person meetings and teleconferences;

1 WHEREAS, on March 21, 2008, the parties to the Related Federal Derivative Action
2 informed the Federal Court that they had reached an agreement in principle to resolve the pending
3 derivative litigation;

4 WHEREAS, on July 8, 2008, the parties to the State Derivative Action appeared before
5 this Court for a Case Management Conference and informed the Court that they had reached an
6 agreement in principle to resolve the pending derivative litigation;

7 WHEREAS, the parties entered into a Stipulation of Agreement of Settlement (the
8 “Settlement Stipulation”) dated as of August 29, 2008, to settle the Related Federal Derivative
9 Action and resolve the State Derivative Action;

10 WHEREAS, the parties moved for preliminary approval of the settlement by the Federal
11 Court on September 4, 2008, and submitted the Settlement Stipulation and supporting papers for
12 the Federal Court’s review. The Federal Court granted preliminary approval of the settlement on
13 _____, 2008;

14 WHEREAS, the Federal Court directed Apple to distribute the court-approved form of
15 settlement notice to its shareholders and to publish a summary version of it in *Investor’s Business*
16 *Daily* and set a _____, 2008 hearing to determine whether the proposed settlement
17 should receive final approval;

18 WHEREAS, the Federal Court held a final settlement hearing on _____, 2008,
19 and approved the settlement and the requested attorneys’ fees award and issued its Final
20 Judgment and Order of Dismissal With Prejudice on _____, 2008 (a true and correct
21 copy of the Final Judgment and Order of Dismissal in the Related Federal Action is attached
22 hereto as Exhibit ____ (“Final Judgment”));

23 WHEREAS, for purposes of the Final Judgment, “Released Claims” means any and all
24 known and unknown claims for damages, injunctive relief, or any other remedies (1) against
25 Released Plaintiffs based upon, arising from, or related to the subject matter of the Actions,
26 including all known and unknown claims arising out of, relating to, or in connection with the
27 institution, prosecution, assertion, settlement or resolution of the Actions or the Released Claims,
28 and (2) against Released Defendants based upon, arising from or related to the subject matter of

1 the Actions that involve acts, omissions, transactions or events which took place before December
2 19, 2007, and which have been or could have been asserted derivatively on behalf of Apple in
3 state or federal court or in arbitration or similar proceedings. For the avoidance of doubt,
4 “Released Claims” does not include claims for indemnification and advancement rights, and
5 defenses thereto, under Apple’s bylaws, Apple’s articles of incorporation, employment
6 agreements, California law and any other applicable authority;

7 WHEREAS, for purposes of the Final Judgment, “Released Defendants” means (1) Apple,
8 (2) Fred D. Anderson, William V. Campbell, Timothy D. Cook, Millard S. Drexler, Nancy
9 Heinen, Steven P. Jobs, Ronald B. Johnson, Arthur D. Levinson, Mitchell Mandich, Peter
10 Oppenheimer, Jonathan Rubinstein, Avadis Tevanian, Jr., Jerome B. York, James J. Buckley,
11 Robert Calderoni, Gareth C.C. Chang, Therese Crane, Guerrino De Luca, Ian Diery, John B.
12 Douglas, Daniel L. Eilers, Lawrence J. Ellison, John Floisand, G. Frederick Forsyth, Albert A.
13 Gore, Jr., Katherine M. Hudson, Delano E. Lewis, David Manovich, Jim McCluney, Bertrand
14 Serlet, Michael H. Spindler, Sina Tamaddon, and Edgar Woolard, Jr., and (3) their respective
15 predecessors, successors, parents, subsidiaries, affiliates and agents (including, without limitation,
16 any investment bankers, accountants, insurers, reinsurers or attorneys and any past, present or
17 future officers, directors and employees of Apple, and their predecessors, successors, parents,
18 subsidiaries, affiliates, and agents);

19 WHEREAS, for purposes of the Final Judgment, “Released Plaintiffs” means (1) the
20 named plaintiffs in the complaints and amended complaints filed in the Related Federal
21 Derivative Action including Jeffrey Alecci, Kelley Bergman, Marjorie Grigsby, Douglas Holbert,
22 Phyllis Jones, Nicholas Karant, Alfred Ronconi, Pirelli Armstrong Tire Corporation Retiree
23 Medical Benefits Trust, and Alecta pensionsförsäkring, ömsesidigt, (2) the named plaintiffs in
24 the State Derivative Action including Plumbers & Pipefitters Local No. 572 Pension Fund, Dave
25 Curtin, Port Authority of Allegheny County Retirement and Disability Allowance Plan for
26 Employees Represented by Local 85 of the Amalgamated Transit Union, Gary Cullen and
27 AFSCME Employees’ Pension Plan, (3) their attorneys, and (4) their respective predecessors,
28 successors, parents, subsidiaries, affiliates and agents;

1 WHEREAS, the Final Judgment provides that the “Released Claims shall have res
2 judicata, collateral estoppel, and other preclusive effect in all pending and future lawsuits or other
3 proceedings maintained by or on behalf of the Settling Parties, as well as their respective
4 predecessors, successors, parents, subsidiaries, affiliates and agents (including, without limitation,
5 any investment bankers, accountants, insurers, reinsurers or attorneys and any past, present or
6 future officers, directors and employees of Apple, and their predecessors, successors, parents,
7 subsidiaries, affiliates and agents)”;

8 WHEREAS, the Settlement Stipulation requires the parties to seek a dismissal with
9 prejudice of the State Derivative Action;

10 NOW, THEREFORE, the undersigned parties hereby stipulate and agree, and respectfully
11 request that the Court enter an order, as follows:

- 12 1. The consolidated shareholder derivative action captioned *In re Apple Computer,*
13 *Inc. Derivative Litigation*, Lead Case No. 06CV066692, is DISMISSED WITH PREJUDICE.

14 IT IS SO STIPULATED.

15
16 Dated: _____, 2008

JAMES G. STRANCH, III
J. GERARD STRANCH, IV
BRANSTETTER STRANCH &
JENNINGS, PLLC
227 Second Avenue, N. 4th Floor
Nashville, Tennessee 37201
Telephone: (615) 254-8801
Facsimile: (615) 255-5419

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21 By: _____
22 J. Gerard Stranch, IV

23 Co-Lead Counsel and Counsel for Plaintiff
24 PLUMBERS & PIPEFITTERS LOCAL
25 NO. 572 PENSION FUND
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27
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1 Dated: _____, 2008

BRIAN J. ROBBINS
MARC M. UMEDA
STEVEN J. SIMERLEIN
ROBBINS UMEDA & FINK, LLP
610 West Ash Street, Suite 1800
San Diego, California 92101
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By: _____
Marc M. Umeda

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Co-Lead Counsel and Counsel for Plaintiffs
PLUMBERS & PIPEFITTERS LOCAL
NO. 572 PENSION FUND, DAVID CURTIN,
and GARY CULLEN

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11

Dated: _____, 2008

STEPHEN R. BASSER
JOHN L. HAEUSSLER
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600 West Broadway, Suite 900
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By: _____
Stephen R. Basser

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DANIEL E. BACINE
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19

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Co-Lead Counsel and Counsel for Plaintiff
AFSCME EMPLOYEES' PENSION PLAN

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1 Dated: _____, 2008

GEORGE A. RILEY
O'MELVENY & MYERS LLP
Two Embarcadero Center
28th Floor
San Francisco, California 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

2
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6 By: _____
George A. Riley

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8 Attorneys for Nominal Defendant APPLE INC.
(formerly APPLE COMPUTER, INC.), and
9 Individual Defendants STEVEN P. JOBS,
PETER OPPENHEIMER, AVADIS
10 TEVANIAN, JR., TIMOTHY D. COOK,
RONALD B. JOHNSON, JONATHAN
11 RUBINSTEIN, SINA TAMADDON,
BERTRAND SERLET, ARTHUR D.
12 LEVINSON, JEROME B. YORK,
WILLIAM V. CAMPBELL, MILLARD S.
13 DREXLER, LAWRENCE J. ELLISON,
ROBERT CALDERONI, MITCHELL
14 MANDICH, JAMES J. BUCKLEY, DANIEL L.
EILERS, G. FREDERICK FORSYTH, IAN
15 DIERY, GUERRINO DE LUCA, MICHAEL
SPINDLER, JOHN FLOISAND, JIM
16 MCCLUNEY, THERESE CRANE and JOHN
B. DOUGLAS

17 Dated: _____, 2008

JEROME C. ROTH
YOHANCE C. EDWARDS
MUNGER, TOLLES & OLSON LLC
560 Mission Street, 27th Floor
San Francisco, California 94105
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

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22 By: _____
Yohance C. Edwards

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24 Attorneys for Individual Defendant
FRED D. ANDERSON

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Dated: _____, 2008

SARAH A. GOOD
JIN H. KIM
JASON M. HABERMEYER
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN PC
Three Embarcadero Center, Seventh Floor
San Francisco, California 94111
Telephone: (415) 434-600
Facsimile: (415) 217-5910

By: _____
Sarah A. Good

Attorneys for Individual Defendant
NANCY HEINEN

ORDER

Pursuant to stipulation, IT IS SO ORDERED.

Dated: _____

Honorable James Emerson
Judge of the Superior Court

EXHIBIT 5

1 MARK C. MOLUMPY (State Bar No. 168009)
2 COTCHETT, PITRE & McCARTHY
3 840 Malcolm Road, Suite 200
4 Burlingame, California 94010
5 Telephone: (650) 697-6000
6 Facsimile: (650) 697-0577
7 E-Mail: mmolumpy@cpmlegal.com
8 Attorneys for Plaintiffs and Derivatively on Behalf of APPLE INC.

9 GEORGE A. RILEY (State Bar No. 118304)
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12 28th Floor
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16 E-Mail: griley@omm.com
17 Attorneys for Nominal Defendant APPLE INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re APPLE INC.
DERIVATIVE LITIGATION

Master File No. C-06-04128-JF

**SUMMARY NOTICE OF PROPOSED
SETTLEMENT OF DERIVATIVE
ACTION**

This Documents Relates to:

ALL ACTIONS.

1 **TO: ANY PERSON WHO OWNED APPLE INC. ("APPLE") COMMON STOCK AS**
2 **OF _____ ("CURRENT APPLE SHAREHOLDER")**

3 **YOU ARE HEREBY NOTIFIED** that pursuant to an Order of the United States District
4 Court for the Northern District of California, San Jose Division, a hearing (the "Final Settlement
5 Hearing") will be held on _____, 2008, at _____ .m. before the Honorable Jeremy
6 Fogel, United States District Judge, United States Courthouse, Courtroom 3, 5th Floor, 280 South
7 1st Street, San Jose, California 95113, to consider the fairness, reasonableness and adequacy of
8 the proposed settlement ("Settlement"), and the request for payment of attorneys' fees and
9 expenses to plaintiffs' counsel. In connection with the Settlement, which is subject to Court
10 approval, Apple's Board of Directors has agreed to approve the adoption of a variety of corporate
11 governance measures. Apple's directors' and officers' liability insurers have also agreed that
12 \$14,000,000 in cash will be paid to Apple, and Apple's current and former directors and officers
13 are being released from liability to Apple. In addition, Apple has agreed, subject to Court
14 approval, to pay federal plaintiffs' counsel \$7.3 million in fees and \$300,000 for expenses, and to
15 pay state plaintiffs' counsel \$1.2 million for fees and \$50,000 for expenses.

16 **IF YOU ARE A CURRENT OWNER OF APPLE COMMON STOCK YOUR**
17 **RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE DERIVATIVE ACTIONS.**

18 A more detailed form of notice describing the Settlement may have already been mailed to you.
19 If you have not received the detailed notice, you may obtain a copy of it by identifying yourself as
20 a current owner of Apple common stock and writing to:

21 *Apple Inc. Derivative Litigation*
22 Joan Hoover
23 Apple Inc.
24 1 Infinite Loop
MS 301-4IR
Cupertino, CA 95014 USA

25 Inquiries, other than requests for the detailed form of notice, may be made to the
26 following plaintiffs' counsel:

27 Mark C. Molumphy
28 COTCHETT, PITRE & McCARTHY
840 Malcolm Road, Suite 200

1 Burlingame, CA 94010
2 Telephone: (650) 697-6000
3 Facsimile: (650) 697-0577

4 Any objection to the Settlement must be filed with the Court and *received* by the
5 following no later than _____, 2008 (thirty-five (35) days from the date of the order
6 preliminarily approving the Settlement):

7 Mark C. Molumphy
8 COTCHETT, PITRE & McCARTHY
9 840 Malcolm Road, Suite 200
10 Burlingame, CA 94010
11 Telephone: (650) 697-6000
12 Facsimile: (650) 697-0577
13 E-Mail: mmolumphy@cpmlegal.com
14 Attorneys for Federal Plaintiffs and derivatively on behalf of Apple Inc.

15 J. Gerard Stranch, IV
16 BRANSTETTER STRANCH & JENNINGS, PLLC
17 227 Second Avenue, N. 4th Floor
18 Nashville, TN 37201-1631
19 Telephone: (615) 254-8801
20 Facsimile: (615) 255-5419
21 E-Mail: gerards@branstetterlaw.com
22 Attorneys for State Plaintiffs and derivatively on behalf of Apple Inc.

23 George A. Riley
24 O'MELVENY & MYERS LLP
25 Two Embarcadero Center
26 28th Floor
27 San Francisco, California 94111-3828
28 Telephone: (415) 984-8700
29 Facsimile: (415) 984-8701
30 E-Mail: griley@omm.com
31 Attorneys for Nominal Defendant Apple Inc.

32 Douglas R. Young
33 FARELLA BRAUN & MARTEL LLP
34 Russ Building
35 235 Montgomery Street, 17th floor
36 San Francisco, CA 94104
37 Telephone: (415) 954-4400
38 Facsimile: (415) 954-4480
39 E-Mail: dyoung@fbm.com
40 Attorneys for Defendants William V. Campbell, Timothy D. Cook, Millard S.
41 Drexler, Steven P. Jobs, Ronald B. Johnson, Arthur D. Levinson, Mitchell
42 Mandich, Peter Oppenheimer, Jonathan Rubinstein, Avadis Tevanian, Jr., and
43 Jerome B. York

44 Jerome C. Roth
45 MUNGER, TOLLES & OLSON LLP
46 560 Mission Street, 27th Floor
47 San Francisco, CA 94105

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Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-Mail: Jerome.Roth@mto.com
Attorneys for Defendant Fred D. Anderson

Sarah A. Good
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN P.C.
Three Embarcadero Center, Seventh Floor
San Francisco, CA 94111
Telephone: (415) 434-1600
Facsimile: (415) 217-5910
E-Mail: sgood@howardrice.com
Attorneys for Defendant Nancy Heinen

In addition to the requirements set forth above, any objector who intends to appear at the Final Settlement Hearing must also file a notice of intention to appear. The notice of intention to appear must be filed with the Court and *received* by the counsel listed above no later than _____, 2008 (forty-five (45) days from the date of the order preliminarily approving the Settlement).

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

DATED: _____

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

EXHIBIT 6

**RESOLUTIONS
OF
THE BOARD OF DIRECTORS
OF
APPLE INC.**

(Adopting Equity Award Grant Practices Policy)

WHEREAS, this Board of Directors considers it advisable to adopt a policy setting forth the procedures for the grant of equity awards by this Corporation under its 2003 Employee Stock Plan;

WHEREAS, management has caused there to be prepared and presented to this Board of Directors a form of Equity Award Grant Practices Policy, attached hereto as Exhibit A (the "Policy"), which sets forth such procedures; and

WHEREAS, this Board of Directors, after review of the attached Policy, has determined that it is advisable and in the best interests of this Corporation and its shareholders to adopt the Policy in the form attached hereto.

RESOLVED, that this Board of Directors hereby adopts the Policy in the form attached hereto as Exhibit A;

RESOLVED FURTHER, that each grant of an equity-based award by this Corporation under its 2003 Employee Stock Plan made after the date of this action shall be made in compliance with applicable law, the provisions of the 2003 Employee Stock Plan and the Policy, in the form attached hereto or as it may be amended by this Board of Directors from time to time in accordance with the provisions set forth therein; and

RESOLVED FURTHER, that the Chief Financial Officer, General Counsel and Vice President, Human Resources of this Corporation, and any other employees of this Corporation authorized by any of them, be, and each of them hereby is, authorized and instructed to execute and deliver any and all certificates, instruments and documents and to take all such other action as any of them may determine to be necessary or advisable to carry out the purposes of the foregoing resolution, such determination to be conclusively evidenced by the execution and delivery thereof or by the taking of such other action.

EXHIBIT A

APPLE INC.

**2003 EMPLOYEE STOCK PLAN
EQUITY AWARD GRANT PRACTICES POLICY**

The purpose of this Equity Award Grant Practices Policy (this "Policy") is to establish rules and procedures for the approval of equity-based awards to employees of Apple Inc. (the "Company") under the 2003 Employee Stock Plan (the "Plan"). The goals of this Policy are to:

- Ensure consistent practices in making award grants;
- Standardize the equity compensation process;
- Reduce the possibility of errors or irregularities in grant procedures;
- Facilitate management and timely reporting of grants;
- Ensure compliance with applicable laws, regulations, accounting and reporting requirements and the Plan; and
- Provide an additional channel for the Board of Directors (the "Board") and/or the Compensation Committee of the Board (the "Compensation Committee") to communicate and direct requirements and expectations with regard to equity compensation procedures.

1. Authority to Make Grants. Equity awards grants shall be made by the Board, the Compensation Committee or another Board committee to which such grant authority has been properly delegated. (The applicable body authorized to make the grant is referred to in this Policy as the "Administrator.") Although the Company's management may make recommendations to the Administrator regarding the granting of equity awards and carry out other ministerial duties, the authority to grant such awards or to take any other action with respect to such awards shall not be delegated to the Company's management or any other person.

2. Grant Dates. The grant date for each equity award (including a stock option) shall be the date formal action is taken by the Administrator (or such later, but not earlier, date as may be specified by the Administrator at the time of taking such action). Such formal action shall be taken at an in-person or telephonic meeting or by unanimous written consent and shall be taken in accordance with applicable law and the Company's bylaws and other governing documents (including the Plan and, if the action is taken by a committee of the Board, the Charter of that committee). If the grant is approved pursuant to an action by unanimous written consent, the formal action shall be considered to have been taken on the date the last approval is received by the Company. The grant date for an award to a newly hired employee shall be the later of the date on which the employee has commenced employment with the Company or the date on which formal action has been taken to approve the grant.

3. Records of Actions Approving Grants. The records of the formal action approving a grant (including an action by unanimous written consent) shall include the date of the meeting approving the grant (or in the case of grants approved by unanimous written consent, the dates on which the consent is executed by each director and, if different, the dates on which

the executed signature pages are received by the Company), the names of the recipients to whom awards were granted, the number and type of awards granted to each recipient, the vesting schedule of each award, any applicable purchase or exercise price (or method for determining the exercise price) for the awards, a reference to the plan or other authority under which the awards are granted, as well as the other terms and conditions on which the awards are granted (or a reference to the terms and conditions as set forth in a separate document, such as a form of option agreement presented to or previously approved by the Board or committee). In addition, the records of the formal action should indicate, in the case of grants to employees, the employee's title and job grade. Management shall not make any additions or changes to any of the foregoing information after the formal action is taken approving the grant. If grants are approved at a meeting, the Company's legal counsel shall be present at each meeting in which grants are approved and shall prepare drafts of meeting minutes promptly after the meeting date. The Company shall establish procedures for monitoring the transmission and receipt of unanimous written consents that shall facilitate the auditing of transmission, signature and receipt dates and content, segregation of responsibilities, independent process review, and records retention. The Company shall retain records of the formal action approving any grants of stock options for at least seven years after the expiration date of the option.

4. Exercise Prices of Option Grants. The exercise prices of all option grants shall be determined using the method prescribed by the Plan, provided that in all events the exercise price shall not be less than 100% of the fair market value of the Company's common stock on the grant date (or, if the grant date is not a trading day, the most recent trading day prior to the grant date). For these purposes, the fair market value shall be the closing market price (in regular trading, not after-hours trading) for the Company's common stock on the grant date (as reported in The Wall Street Journal or another widely accepted source as the Board or Compensation Committee deems reliable). The method for determining the fair market value of the Company's common stock for purposes of setting the exercise price of option grants shall be reviewed from time to time to ensure it is consistent with applicable accounting rules to avoid unintended accounting consequences.

5. Minimum Vesting Requirements for Option Grants.

(a) No option grant under the Plan shall vest more rapidly than in monthly installments over the three-year period immediately following the grant date and vesting of any vesting installment of the option grant shall occur only if the recipient is an employee or consultant of the Company or one of its subsidiaries on the date such installment is scheduled to vest.

(b) However, the Compensation Committee may accelerate or provide in the applicable option agreement for the accelerated vesting of any option grant in connection with one or more of the following:

- a change in control of the recipient's employer (or ultimate parent);
- the termination of the recipient's employment (including a termination of employment due to the recipient's death, disability or retirement, but not including a termination of employment by the recipient's employer for cause);
- or
- as consideration or partial consideration for a release by the recipient of pending or threatened claims against the Company, the recipient's employer, or any of their respective directors, officers, other employees, affiliates or

agents (regardless of whether the release is given in connection with a termination of employment by the recipient's employer for cause or other circumstances).

- (c) The Compensation Committee also may accelerate or provide in the applicable option agreement for the accelerated vesting of any option grant in circumstances not contemplated above and provide for a vesting schedule for such option grant that is shorter than the minimum schedule contemplated above, in such circumstances as the Compensation Committee may deem appropriate as long as the total number of shares subject to the portion of any such option grant and any other award under the Plan that vests earlier than the minimum vesting dates that would apply pursuant to the minimum vesting requirements above (or, as to any accelerated vesting, provides for accelerated vesting other than in the circumstances contemplated above) does not exceed five percent (5%) of the Plan's aggregate share limit.

6. Communication of Award Grants. All award grants shall be communicated to award recipients as soon as practicable after the grant date in accordance with the applicable accounting rules.

7. Internal Review and Oversight of Grant Procedures and Documentation. The Company's in-house legal, accounting and internal audit departments shall monitor and review grant procedures on an ongoing basis to ensure proper documentation and accounting for all equity award grants and compliance with applicable law, accounting guidelines, the Plan and this Policy. The Company's technical accounting department shall establish criteria and procedures to evaluate the accounting implications of recommended stock option grants. Management shall conduct an annual compliance review of option grants under the Plan and report its findings to the Board. The Company shall monitor industry and regulatory practices and periodically revise its practices as developments occur and updates are deemed advisable by the Board.

8. Amendment of Policy. The Board may, at any time, amend, modify or terminate this Policy or any provision hereof.

EXHIBIT 7

**SUMMARY OF
APPLE INC.
TRADING COMPLIANCE COMMITTEE
PURPOSES, COMPOSITION, AUTHORITY AND DUTIES**

I. PURPOSE OF THE COMMITTEE:

Develop, monitor and update a comprehensive program designed to ensure compliance with the Company's stock trading policies (the "Trading Compliance Program").

II. COMPOSITION OF THE COMMITTEE:

- General Counsel and Chief Financial Officer
- Responsible directly to the Audit and Finance Committee

III. COMMITTEE MEETINGS.

- Meet at least twice a year or more frequently as circumstances dictate.
- Report at least annually to the Audit and Finance Committee outside the presence of any other members of management.

IV. AUTHORITY AND RESOURCES

- Access to all Company trading records, policies and procedures.
- May request any officer or employee of the Company or the Company's outside counsel or independent auditor to attend a Committee meeting or to meet with any members of, or consultants to, the Committee.
- Audit and Finance Committee may communicate directly with the Committee.
- May conduct or authorize investigations into any matters within the Committee's scope of responsibilities.
- Retain advisors and experts to assist in any investigation or the performance of its functions at the Company's expense.

V. DUTIES AND RESPONSIBILITIES

- A. Develop, monitor and update a Trading Compliance Program, which may include:
- Appointment of an Insider Trading Compliance Officer
 - An insider trading policy and procedures, including policies and procedures regarding the following:
 - Covered persons
 - Trading black-out periods
 - Trading Windows
 - Trading pre-clearances and reporting
 - Rule 10b5-1 trading plan review and approval
 - A Section 16 compliance policy and procedures
 - An employee communications policy related to trading compliance
 - A trading compliance education policy

B. Collaborate with Legal, Finance, Human Resources, Compensation, Security, Technical Accounting, Information Systems & Technology, and Risk Management in developing and ensuring compliance with the above policies and procedures.

C. Monitor industry and regulatory trading compliance practices and periodically revise the Trading Compliance Program as developments occur and updates are deemed advisable by the Committee, the Audit and Finance Committee or the Board.

D. Such other duties as the Audit and Finance Committee may determine from time to time.

EXHIBIT 8

APPLE INC.
COMPENSATION COMMITTEE CHARTER
(Amend Charter Proposed May 23 _____, 2007/2008)

There shall be a Committee of the Board of Directors to be known as the Compensation Committee with purpose, composition, duties and responsibilities, as follows:

Purpose of the Committee. The Committee shall (i) establish and modify compensation and incentive plans and programs, (ii) review and approve compensation and awards under compensation and incentive plans and programs for elected officers of the Corporation, and (iii) be the administering committee for equity compensation plans as designated by the Board.

Composition. The members of the Committee shall be appointed by the Board of Directors. The Committee will be composed of not less than three Board members. Each member shall be "independent" in accordance with applicable law, including the rules and regulations of the Securities and Exchange Commission and the rules of the NASDAQ Stock Market. Committee members are prohibited from interlocking or insider participation with any member of the board or compensation committee of another company. At least two of three Committee members will qualify as "outside directors" under Section 162(m) of the Internal Revenue Code. The Chairman of the Committee shall be designated by the Board of Directors. The Chairman of the Board, any member of the Committee or the Secretary of the Corporation may call meetings of the Committee.

Members of the Committee shall serve until their successors are duly elected and qualified or their earlier resignation or removal. The Board may replace any member of the Committee.

Authority and Resources. The Committee may request any officer or employee of the Corporation or the Corporation's outside counsel to attend a Committee meeting. The Committee shall ensure that the Corporation's counsel attends each meeting at which equity award grants are to be considered or approved. The Committee has the right at any time to obtain advice, reports or opinions from internal and external counsel and expert advisors and has the authority to hire and terminate independent legal, financial and other advisors as it may deem necessary, at the Corporation's expense, without consulting with, or obtaining approval from, any officer of the Corporation in advance.

Meetings. The Committee shall meet as often as it deems appropriate, but not less than twice four times a year, to perform its duties and responsibilities under this charter. The Committee shall maintain written minutes of its meetings, which will be filed with the meeting minutes of the Board. The Committee shall ensure that draft minutes of each meeting at which equity award grants are to be considered or approved are promptly prepared following such meeting.

Duties and Responsibilities. The duties and responsibilities of the Committee shall include the following:

- Review periodically, and as appropriate approve all-compensation, incentive, and benefits policies and programs applicable to the Corporation's executive management.
- Conduct and review with the Board of Directors an annual evaluation of the performance of the Chief Executive Officer and review with the CEO and report to the Board annually on the performance of other executive officers.

- Review and approve periodically the salaries, bonuses and perquisites of elected officers of the Corporation and its subsidiaries, including the Chief Executive Officer.
- At least annually, select and retain an independent consultant to conduct a comparative study of the Corporation's executive compensation policies, practices, and procedures relative to other public companies and prepare and submit to the Committee a report and recommendations.
- Act as administering committee of the Corporation's various bonus plans, stock plans and equity arrangements that may be adopted by the Corporation from time to time, with such authority and powers as are set forth in the respective plans' instruments, including but not limited to establishing performance metrics, determining bonus payouts and the granting of equity awards to employees and executive officers, in each case subject to the provisions of the Corporation's Equity Award Grant Practices Policy and all other applicable policies adopted by the Board of Directors.
- Review for approval or disapproval special hiring or termination packages for officers and director-level employees of the Corporation and its subsidiaries that go beyond the Board's adopted criteria for management authority, if it is determined by the members of the Committee that approval by the full Board is not necessary.
- To the extent it deems necessary, recommend to the Board of Directors the establishment or modification of employee stock-based plans for the Corporation and its subsidiaries, in each case subject to the provisions of the Corporation's Equity Award Grant Practices Policy.
- To the extent it deems necessary, review and advise the Board of Directors regarding other compensation plans.
- Review and comment on management's Compensation Discussion & Analysis and prepare an annual Compensation Committee Report for inclusion in the Corporation's proxy statement, including disclosure of the policy for the timing and rationale of the Corporation's option grants.
- Review the Committee charter, structure, process and membership requirements at least once a year.
- Report to the Board of Directors concerning the Committee's activities at least once a year.
- The Committee can delegate any of its responsibilities to the extent allowed under applicable law, in each case subject to the provisions of the Corporation's Equity Award Grant Practices Policy. In particular, the authority to grant equity awards or to take any other action with respect to equity awards (other than the performance of ministerial duties) may not be delegated to the Corporation's management or any other person.

Exceptions. Notwithstanding any implication to the contrary above:

- In making its determination regarding compensation and plans which it is responsible for administering, the Committee shall take into account compensation received from all sources, including plans or arrangements which it is not responsible to administer.
- The Committee should take into consideration the tax-deductibility requirements of Section 162(m) of the Internal Revenue Code when reviewing and approving compensation for executive officers and, if deemed advisable, have such compensation approved by no less than two outside Committee members. If the Committee does not have two outside directors as defined in Section 162(m) of the Internal Revenue Code, such compensation should be approved by a majority of the outside Board members.
- The Committee shall not be empowered to approve matters which applicable law, the Corporation's charter, or the Corporation's bylaws require be approved by a vote of the entire Board.

EXHIBIT 9

APPLE PROCEDURE

PROCEDURE NAME: Corporate Minutes
PROCEDURE DATE: TBD
APPROVED BY: [CFO AND GENERAL COUNSEL]

DEFINITION:

Apple maintains minutes of meetings of the Board of Directors and Board Committees in the Corporate Minute Books. The minute books are the official record of Board and Committee meetings, and they are maintained indefinitely in a secure area within fireproof cabinets. The Apple Corporate Law Group is the custodian of the Corporate Minute Books.

PROCEDURE:

Before February 2007, Board and Committee meeting minutes were drafted by the Corporate Law Group following each meeting. Drafts intended for adoption were included in the materials sent to the Board or Committee before the next scheduled meeting for comment and approval at that next meeting. If the minutes were approved by the Board or Committee at the next scheduled meeting without changes, Apple's Secretary would sign the approved minutes. If the minutes required changes in response to comments from the Board or Committee, Apple's Secretary would revise the minutes and sign the revised version without recirculation to the Board or Committee, unless the Board or Committee had specifically requested otherwise.

In February 2007 the process for drafting, approving, and finalizing Board and Committee meeting minutes was revised. Internal Audit now receives a copy of the Board and Committee meeting materials that are circulated before a scheduled meeting, which includes all Board and Committee draft meeting minutes. Internal Audit retains exclusive control of and access to its copies of the draft materials in a secure area.

If the draft minutes are approved by the Board or Committee at the next scheduled meeting without changes, Apple's Secretary signs the approved minutes. If the Board or Committee requests changes to the draft minutes, the minutes are revised and prepared for further review and approval by the Board or Committee at the next meeting. Apple's Secretary does not sign the revised minutes until they have been re-circulated and approved by the Board or Committee. If changes were made to the minutes at the request of the Board or Committee, a marked copy of the minutes showing the changes made shall be provided to Internal Audit for safekeeping.

Internal Audit compares all signed minutes with its copy of the initial draft minutes and notes any discrepancies. Internal Audit reconciles the draft and final minutes before the final minutes are placed in the Corporate Minute Books. Internal Audit periodically conducts reviews of historic minutes compared to drafts maintained by Internal Audit to ensure the proper maintenance and integrity of Corporate minutes.

SPECIFIC CONTROL ACTIVITIES:

1. **SEGREGATION OF DUTIES**
 - The Board or Committee reviews and approves draft minutes, and Apple's Secretary does not sign minutes or revised minutes until they have been circulated and approved by the Board or Committee.
 - Internal Audit receives and retains a copy of Board and Committee meeting minutes and reconciles them with executed minutes.
 - Internal Audit periodically conducts reviews of historic minutes compared to drafts maintained by Internal Audit to ensure the proper maintenance and integrity of Corporate minutes.

2. **PROPER AUTHORIZATION & APPROVAL**
 - Draft minutes are approved by the Board or Committee.
 - Revised minutes are prepared for further review and approval by the Board or Committee at the next meeting.
 - Apple's Secretary does not sign minutes or revised minutes until they have been circulated and approved by the Board or Committee.

3. **APPROPRIATE REVIEW & RECONCILIATION**
 - If changes are made to the minutes, a marked copy showing the changes made is provided to Internal Audit for safekeeping.
 - Internal Audit receives and retains a copy of Board and Committee meeting minutes and reconciles them with signed minutes.
 - Internal Audit periodically conducts reviews of historic minutes in the Corporate Minute Books compared to drafts maintained by Internal Audit to ensure the proper maintenance and integrity of Corporate minutes.

4. **PHYSICAL & LOGICAL SECURITY OF ASSETS**
 - Corporate minutes are maintained indefinitely in a secure area within fireproof cabinets.
 - The Corporate Law Group is the custodian of Corporate Minute Books.
 - Internal Audit retains and maintains exclusive control of their draft materials in a locked secure area.

OWNERSHIP AND ACCOUNTABILITY:

The Corporate Law Group, Corporate Secretary, and Apple Internal Audit are responsible for maintaining and updating this process, and ensuring the control environment is maintained and control activities are in compliance with the procedures.

EXHIBIT 10

APPLE PROCEDURE

PROCEDURE NAME: Actions by Unanimous Written Consent
PROCEDURE DATE: TBD
APPROVED BY: [CFO AND GENERAL COUNSEL]

DEFINITION:

Unanimous Written Consents Generally. As permitted by the California Corporations Code, Apple's bylaws and other governing documents, Apple's Board of Directors and Board Committees may take action either at in-person or telephonic meetings or by unanimous written consent ("UWC"). UWCs are an efficient method of taking routine actions if such actions occur on a regular basis and do not require substantial discussion among Board or Committee members. To be effective, a UWC must be signed by each member of the Board or Committee and, as a best practice, should be returned promptly following the distribution of the UWC.

Routine Option Grants by Unanimous Written Consent. The Compensation Committee of the Board, as Administrator of Apple's employee stock option plans, has historically processed monthly new hire and promotion/retention option grants through UWCs rather than at quarterly Committee meetings. Such grants are routine, made on a monthly basis according to existing Apple grant guidelines maintained by the Human Resources Department, and have been previously reviewed and recommended by management, and are therefore good candidates for UWC approval.

Consistent with FAS 123R and the 2003 Employee Stock Plan Equity Award Grant Practices Policy, the grant date for an award made pursuant to a UWC shall be considered to be the date that the last approval is received by Apple, except that the grant date for an award to a newly hired employee shall be the later of (i) the date on which the employee has commenced employment with Apple or (ii) the date the last approval is received by Apple.

PROCEDURE:

Before March 2007, requests for UWCs were sent by fax to each Committee member. The returned fax signature pages were recorded in the Corporate Minute books when they were received. For equity grants, the latest date and time stamp on the fax pages was used to establish the grant date.

Beginning with the March 2007 monthly option grant UWC, Apple implemented a secure electronic approval process. The new process is designed to enforce audit, control, and tracking procedures, and to ensure compliance with the California Corporations Code for electronic approval of documents.

Apple's Information Services and Technology Department ("IS&T") created a new Apple email account (the "UWC Approval Account"). Access to this account is protected by password, and the password for the account is available only to Internal Audit.

The Corporate Law Group sends and receives emails from the UWC Approval Account, but does not have access rights to alter any settings or delete emails. All inbound and outbound messages are automatically copied into an archival audit account accessible only to Internal Audit, and the system sends copies of all inbound and outbound messages to the heads of the Corporate Law Group and Internal Audit. Additionally, IS&T makes a regular backup and archive of the account.

Each Board member has provided a personal email address to Apple and has certified that no other person can access, send, or receive messages from the personal email address provided.

UWC requests are emailed from the UWC Approval Account to each personal Board member account. Typically, attachments to a UWC request include a cover letter, the proposed UWC, and the detailed lists of proposed grants if the UWC is for equity grants, including annotations in all cases where a proposed grant exceeds Apple's employee option grant guidelines (and confirming that recommendations for such grants have been approved by the Vice President of Human Resources). The email and all attachments are automatically copied to the archival audit account and cannot be altered or deleted.

The Board or Committee members respond to the email UWC requests with formalized approval language: "I, [BOARD/COMMITTEE MEMBER], hereby approve the unanimous written consent submitted to me on [], 200[] for approval." The approval email reply includes extended time and date information from multiple sources, including the date provided by the Board member and date and time stamps from email networks that processed the email.

Once all approval emails are received they are reviewed by the Corporate Law Group and Internal Audit to confirm appropriate responses and approvals have been received, and to determine the latest approval date for equity grants if applicable. The last date of approval is used to date grants included in UWCs. The approval email replies, including extended time and date information, are stored in the Corporate Minute Books and are periodically reconciled by Internal Audit to ensure the proper maintenance and integrity of Corporate records.

SPECIFIC CONTROL ACTIVITIES:

1. **SEGREGATION OF DUTIES**
 - The Board or Committee reviews and approves all UWCs, and Apple's Corporate Law Group records approvals when they were received.
 - Internal Audit receives and retains a copy of UWC approvals and reconciles them with Corporate records.
 - The Corporate Law Group has system access to send UWCs and monitor reply approvals, but the system is maintained by IS&T and access to the UWC Approval Account is limited to Internal Audit.

2. **PROPER AUTHORIZATION & APPROVAL**
 - UWCs are approved by the Board or Committee.

- Each Board member has certified that no other person can access, send, or receive messages from the personal email address provided.
 - Approval email reply includes extended time and date information.
 - Access to the UWC account is protected by password, and the password for the account is available only to Internal Audit.
3. **APPROPRIATE REVIEW & RECONCILIATION**
- The Corporate Law Group and Internal Audit confirm appropriate responses and approvals have been received.
 - Internal Audit receives and retains a copy of outbound UWCs and related approvals received, and periodically reconciles their copies with the copies in the Corporate Minute Books to ensure the proper maintenance and integrity of Corporate records.
4. **PHYSICAL & LOGICAL SECURITY OF ASSETS**
- All inbound and outbound messages are automatically copied into an archival audit account.
 - The system sends copies of all inbound and outbound messages to the heads of the Corporate Law Group and Internal Audit.
 - IS&T makes a regular backup and archive of the UWC approval account.

OWNERSHIP AND ACCOUNTABILITY:

The Corporate Law Group, Corporate Secretary, and Apple Internal Audit are responsible for maintaining and updating this process, and ensuring the control environment is maintained and control activities are in compliance with the procedures.

EXHIBIT 11

**APPLE INC.
SUMMARY OF DIRECTOR AND OFFICER TRAINING PROGRAM**

- The Chief Financial Officer and General Counsel of the Company will arrange for the Board of Directors to undergo professional training in corporate governance matters, typically including best practices in the following areas:
 - Compliance with applicable laws, including the Sarbanes-Oxley Act and listing standards
 - Compensation and benefits
 - Financial controls and auditing
 - Financial reporting and other disclosures
 - Ethics
 - Fiduciary duties
 - Director independence
 - Investment community relations
 - Director nomination process
- The Chief Financial Officer and General Counsel of the Company will arrange for senior management to undergo professional training to enhance awareness and understanding of standards and principles for accounting and financial reporting, particularly those relevant to stock options.
- Management will review all current policies, practices, and controls related to the granting of stock options and provide education and training to those who implement such policies and processes, as needed, including the stock administration function.
- Management shall receive training in the Apple's Principles of Business Conduct, covering at least the following modules:
 - Ethics
 - Insider trading
 - Foreign Corrupt Practices Act
 - Accuracy of Records and Reports
 - Conflicts of Interest