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11 *Attorneys for Proposed Lead Plaintiff*
12 *The New York City Employees' Retirement System*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **MARTIN VOGEL and KENNETH**
16 **MAHONEY, on Behalf of Themselves and**
17 **All Other Similarly Situated,**

18 **Plaintiffs,**

19 **v.**

20 **STEVEN JOBS, PETER OPPENHEIMER,**
21 **FRED ANDERSON, WILLIAM V.**
22 **CAMPBELL, MILLARD S. DREXLER,**
23 **ALBERT GORE, Jr., ARTHUR D.**
24 **LEVINSON, JEROME B. YORK and**
25 **APPLE COMPUTER, INC.,**

26 **Defendants.**

) **Case No.: C06-05208-MHP**

) **THE NEW YORK CITY EMPLOYEES'**
) **RETIREMENT SYSTEM'S MOTION**
) **FOR ITS APPOINTMENT AS LEAD**
) **PLAINTIFF AND FOR APPROVAL OF**
) **ITS SELECTION OF COUNSEL**

) Judge: Honorable Marilyn H. Patel

) Date: Not applicable

) Time: Not applicable

27 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

28 **PLEASE TAKE NOTICE** that on a date and at a time to be determined by the Court,
before The Honorable Marilyn H. Patel, United States District Judge, The New York City

The New York City Employees' Retirement
System's Motion For Its Appointment As
Lead Plaintiff And For Approval Of Its
Selection Of Counsel (Case No.: C06-05208-MHP)

1 Employees' Retirement System ("NYCERS") will, and hereby does, move this Court for an
2 Order appointing NYCERS as Lead Plaintiff.

3 This motion is brought pursuant to §21D of the Securities Exchange Act of 1934 on the
4 grounds that NYCERS has timely filed this Motion and that it is the "most adequate plaintiff"
5 under the Private Securities Litigation Reform Act of 1995 ("PSLRA") and meets the
6 applicable requirements of Rule 23 of the Federal Rules of Civil Procedure for the purposes of
7 this motion in that its claims are typical of the other class members' claims and NYCERS will
8 fairly and adequately represent the class.

9 Additional support for this Motion is provided in the accompanying Memorandum of
10 Law and Declaration of Merrill Glen Emerick, Esq. in support of this Motion, pleadings and
11 other files herein, and such other written and oral argument as may be permitted by the Court.

12 Dated: October 24, 2006

13 Respectfully submitted,

14 **ANDERLINI, FINKELSTEIN, EMERICK**
15 **& SMOOT**

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25 *Attorneys for Proposed Lead Plaintiff*
26 *The New York City Employees' Retirement System*
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CERTIFICATE OF SERVICE

I, Michael J. Barry, hereby certify that I caused The New York City Employees' Retirement System's Motion for its Appointment as Lead Plaintiff and for Approval of its Selection of Counsel and Memorandum of Law in Support thereof to be served electronically on all known counsel of record.

DATED: Oct 24, 2006


Michael J. Barry