

COPY

ORIGINAL  
FILED

AUG 31 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Richard M. Heimann (State Bar No. 063607)  
Elizabeth J. Cabraser (State Bar No. 083151)  
2 Joy A. Kruse (State Bar No. 142799)  
Bruce W. Leppla (State Bar No. 071642)  
3 Peter E. Leckman (State Bar No. 235721)  
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
4 Embarcadero Center West  
275 Battery Street, 30th Floor  
5 San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
6 Facsimile: (415) 956-1008  
rheimann@lchb.com  
7 ecabraser@lchb.com  
jakruse@lchb.com  
8 bleppla@lchb.com  
pleckman@lchb.com  
9

10 Richard D. Greenfield, Esq.  
GREENFIELD & GOODMAN, LLC  
7426 Tour Drive  
11 Easton, MD 21601  
Telephone: (410) 745-4149  
12 rdgsec1@earthlink.net

E-Filing

13 Attorneys for Plaintiff  
ALFRED RONCONI

JW

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

RS

C 06 5389

18 ALFRED RONCONI, Derivatively on  
19 behalf of APPLE COMPUTER, INC.,

Case No. \_\_\_\_\_

20 Plaintiff,

COMPLAINT

21 v.

DEMAND FOR JURY TRIAL

22 STEVEN P. JOBS, PETER  
OPPENHEIMER, AVADIS TEVANIAN,  
23 JR., TIMOTHY D. COOK, RONALD B.  
JOHNSON, JONATHAN RUBINSTEIN,  
24 MITCHELL MANDICH, JAMES J.  
BUCKLEY, DANIEL L. EILERS, G.  
25 FREDERICK FORSYTH, FRED D.  
ANDERSON, ARTHUR D. LEVINSON,  
26 JEROME B. YORK, WILLIAM V.  
CAMPBELL, MILLARD S. DREXLER,  
and LAWRENCE J. ELLISON,

27 Defendants,

28 and

1 APPLE COMPUTER, INC., a California  
2 corporation,

3 Nominal Defendant.

4 Plaintiff, by his attorneys, submits this verified Complaint against the defendants  
5 named herein.

6 **I. NATURE OF THE ACTION**

7 1. This is a shareholder derivative action brought by a shareholder of Apple  
8 Computer, Inc. ("Apple" or the "Company"), on behalf of the Company against certain of its  
9 officers and directors seeking to remedy defendants' violations of federal and state law, including  
10 breaches of fiduciary duties, unjust enrichment, violations of the Securities Exchange Act of 1934  
11 and of the California Corporations Code that have caused substantial losses to Apple and other  
12 damages, such as to its reputation and goodwill.

13 2. From at least 1994, defendants have caused or allowed Apple insiders to  
14 manipulate their stock option grant dates so as to maximize their stock profits. Certain Apple  
15 insiders changed their respective stock option grant dates to take advantage of lower exercise  
16 prices than the price on the actual grant date. The price of Apple shares on the reported option  
17 grant date therefore was lower than the share price on the actual date options were issued. This  
18 provided the insiders with more favorably priced options than they were entitled to. Defendants'  
19 backdating practices yielded stock option grants to the Company's insiders which contributed to  
20 defendants' ability to sell over \$764 million worth of their Apple stock.

21 3. Further, the backdating of these stock options brought an instant paper gain  
22 to these insiders because the options were priced below the stock's fair market value when they  
23 were actually awarded. Under the Generally Accepted Accounting Principles ("GAAP"), this  
24 instant paper gain was equivalent to paying extra compensation and was thus an expense to  
25 Apple. These expenses were not properly recorded. In turn, since these expenses were not  
26 properly recorded, Apple's profits were overstated.

1           4.       On May 19, 2006, the *Wall Street Journal* published an analysis of stock  
2 options granted to chief executive officers of half a dozen companies in an article titled, "U.S.  
3 Intensifies Stock-Options Probe: Subpoenas by Prosecutors in Manhattan Office Signal Major  
4 Step-up in scrutiny." The subject matter of this article, and numerous others in the subsequent  
5 days and months, was the illegal backdating of stock option grants to senior executives at the  
6 expense of the Company and its shareholders.

7           5.       On May 23, 2006, SEC Chairman Christopher Cox was widely quoted as  
8 saying that possible stock option backdating is "a matter of ongoing interest to our enforcement  
9 division."

10          6.       One month later, on June 22, 2006, Cox stated that stock option backdating  
11 may be even more widespread than initially thought, and may have continued even after the  
12 Sarbanes-Oxley corporate governance law took effect in 2002.

13          7.       On June 29, 2006, Apple publicly disclosed that the Company had  
14 discovered "irregularities related to the issuance of certain stock option grants made between  
15 1997 and 2001." One of the largest discovered grants was a grant of 7.5 million shares to Chief  
16 Executive Officer ("CEO") Steven P. Jobs ("Jobs") on January 12, 2000. Although, Jobs later  
17 cancelled these options in March 2003, the Company compensated him with 10 million restricted  
18 shares,<sup>1</sup>

19          8.       A statistical analysis released on July 15, 2006 indicated that more than  
20 2,000 U.S. companies may have manipulated the timing of stock-option grants to executives  
21 between 1996 and 2005. On July 17, 2006, the *New York Times* purchased an analysis of the  
22 study released by Professors Erik Lie of the Tipple College of Business at the University of Iowa  
23 and Randall A. Heron of the Kelley School of Business at Indiana University in an article titled,  
24 "Study Finds Backdating Of Options Widespread." Lie and Heron examined 39,888 stock option  
25 grants to top executives at 7,774 companies dated from January 1, 1996 to December 1, 2005.  
26 The study estimated that 29.2% of the companies examined had manipulated stock option grants

27 \_\_\_\_\_  
28 <sup>1</sup> This amount is adjusted for stock splits.

1 at some point during the period. Lie stated, “[T]his is not random chance. It’s something that’s  
2 manipulated, clearly.”

3 9. On August 3, 2006, Apple announced that it will delay filing quarterly  
4 results and will likely restate past financial results after discovering more “irregularities” as part  
5 of its internal probe of stock option grants.

6 10. Defendants’ misrepresentations and wrongful course of conduct violated  
7 the Securities Exchange Act of 1934 (the “Exchange Act”), as well as California law and  
8 common law. By authorizing and/or acquiescing in the stock option backdating scheme,  
9 defendants: (i) caused Apple to issue false statements; and (ii) diverted hundreds of millions of  
10 dollars of corporate assets to senior Apple executives.

11 11. The practice of backdating options has caused the Company to suffer  
12 additional adverse consequences, including (i) the drop in its stock price attributable to the  
13 market’s loss of confidence in the Company’s management, thus increasing the Company’s cost  
14 of borrowing, and otherwise harming its operations, (ii) exposure to the cost of defending against  
15 and potential liability for regulatory actions and private securities class actions, and (iii) a loss of  
16 reputation and stature in the marketplace, including possible de-listing of the Company by  
17 NASDAQ.

## 18 **II. INTRADISTRICT ASSIGNMENT**

19 12. A substantial part of the events or omissions which give rise to the claims  
20 in this action occurred in the county of Santa Clara and as such this action is properly assigned to  
21 the San Jose Division of this Court.

## 22 **III. JURISDICTION AND VENUE**

23 13. The claims asserted herein arise under §§ 10(b), 14(a) and 20(a) of the  
24 Exchange Act, 15 U.S.C. §§ 78j(b), 78n(a) and 78t(a), and under California law and common law  
25 for breach of fiduciary duty, unjust enrichment, and violations of the California Corporations  
26 Code. In connection with the acts, conduct and other wrongs complained of herein, Defendants,  
27 directly or indirectly, used the means and instrumentalities of interstate commerce, the United  
28 States mail, and the facilities of a national securities market.

1           14. This Court has subject matter jurisdiction pursuant to § 27 of the Exchange  
2 Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. §§ 1331 and 1337.

3           15. This Court also has supplemental jurisdiction over the state and common  
4 law claims asserted herein pursuant to 28 U.S.C. § 1367. This action is not a collusive one to  
5 confer jurisdiction on a court of the United States which it would not otherwise have.

6           16. Venue is proper in this district pursuant to § 27 of the Exchange Act,  
7 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391(b). Many of the acts charged herein, including the  
8 preparation and dissemination of materially false and misleading information, occurred in  
9 substantial part in this District. Apple is located and conducts its business in this District.  
10 Further, Defendants conduct business in this District, and certain of the Defendants are citizens of  
11 California and reside in this District.

12 **IV. THE PARTIES**

13 **A. Plaintiff**

14           17. Plaintiff Alfred Ronconi is a resident of the state of Pennsylvania, and was  
15 at times relevant hereto, an owner and holder of Apple common stock.

16           18. As a current holder of Apple common stock, and as a holder prior to the  
17 disclosure of the Company's wrongdoing, Plaintiff Ronconi has standing to assert these claims on  
18 behalf of Apple and will fairly and adequately protect the interests of Apple and its other  
19 stockholders.

20 **B. Defendants**

21           19. Nominal defendant Apple is a corporation organized and existing under the  
22 laws of the state of California with its headquarters located at 1 Infinite Loop, Cupertino,  
23 California. Apple engages in the design, manufacture, and marketing of personal computers and  
24 related software, services, peripherals, and networking solutions worldwide. It also offers a line  
25 of portable digital music players, accessories, and services.

26           20. Defendant Steven P. Jobs is CEO and director of Apple and has been since  
27 2000. Jobs served as interim CEO from 1997 until 2000. Jobs received as least 20,000,000  
28 options that were dated at or very close to the lowest stock price for the month during which

1 options were granted or before significant share price increases. Accordingly, on information and  
2 belief, plaintiff alleges that Jobs backdated these stock options and received illegal compensation  
3 from Apple that was not disclosed to the Company's shareholders. Defendant Jobs sold  
4 4,573,553 of his personally held shares for \$295,725,936.98 in proceeds while in possession of  
5 material, non-public information concerning the illegally undisclosed backdating stock option  
6 grant practices.

7           21. Defendant Peter Oppenheimer ("Oppenheimer") is Apple's Senior Vice  
8 President and Chief Financial Officer ("CFO"). Oppenheimer was Apple's Controller for the  
9 Americas in 1996 and in 1997 was promoted to Vice President and Worldwide Sales Controller  
10 and then to Corporate Controller. Defendant Oppenheimer sold 1,355,750 of his personally held  
11 shares for \$82,000.887.55 in proceeds while in possession of material, non-public information  
12 concerning the illegally undisclosed backdating stock option grant practices.

13           22. Defendant Avadis Tevanian, Jr. ("Tevanian") was Apple's Senior Vice  
14 President, Chief Software Technology Officer from 1997 until July 2003. Tevanian received as  
15 least 2,200,000 options that were dated at or very close to the lowest stock price for the month  
16 during which options were granted or before significant share price increases. Accordingly, on  
17 information and belief, plaintiff alleges that Tevanian backdated these stock options and received  
18 illegal compensation from Apple that was not disclosed to the Company's shareholders.  
19 Defendant Tevanian sold 3,941,500 of his personally held shares for \$233,248,927.25 in proceeds  
20 while in possession of material, non-public information concerning the illegally undisclosed  
21 backdating stock option grant practices.

22           23. Defendant Timothy D. Cook ("Cook") is Apple's Chief Operating Officer.  
23 Cook joined the Company in February 1998. Cook also served with the Company as Executive  
24 Vice President, Worldwide Sales and Operations from 2002 to 2005. From 1998 to 2002, Cook  
25 served in the position of Senior Vice President, Worldwide Operations, Sales, Service and  
26 Support. Cook received as least 1,700,000 options that were dated at or very close to the lowest  
27 stock price for the month during which options were granted or before significant share price  
28 increases. Accordingly, an information and belief, plaintiff alleges that Cook backdated these

1 stock options and received illegal compensation from Apple that was not disclosed to the  
2 Company's shareholders. Defendant Cook sold 300,000 of his personally held shares for  
3 \$17,974.803 in proceeds while in possession of material non-public information concerning the  
4 illegally undisclosed backdating stock option grant practices.

5           24. Defendant Ronald B. Johnson ("Johnson") is Apple's Senior Vice  
6 President, Retail and has been since January 2000. Johnson received as least 2,200,000 options  
7 that were dated at or very close to the lowest stock price for the month during which options were  
8 granted or before significant share price increases. Accordingly, on information and belief,  
9 plaintiff alleges that Johnson backdated these stock options and received illegal compensation  
10 from Apple that was not disclosed to the Company's shareholders. Defendant Johnson sold  
11 1,512,707 of his personally held shares for \$80,913,934.01 in proceeds while in possession of  
12 material, non-public information concerning the illegally undisclosed backdating stock option  
13 grant practices.

14           25. Defendant Jonathan Rubinstein("Rubinstein") is Apple's Senior Vice  
15 President, iPod Division. Rubinstein has been with the Company since February 1997.  
16 Rubinstein has also held the position of Senior Vice President, Hardware Engineering.  
17 Rubinstein received as least 1,300,000 options that were dated at or very close to the lowest stock  
18 price for the month during which options were granted or before significant share price increases.  
19 Accordingly, on information and belief, plaintiff alleges that Rubinstein backdated these stock  
20 options and received illegal compensation from Apple that was not disclosed to the Company's  
21 shareholders.

22           26. Defendant Mitchell Mandich ("Mandich") was Apple's Senior Vice  
23 President, Worldwide sales until October 9, 2000. Mandich received as least 2,445,000 options  
24 that were dated at, or very close to the lowest stock price for the month during which options  
25 were granted or before significant share price increases. Accordingly, on information and belief,  
26 plaintiff alleges that Mandich backdated these stock options and received illegal compensation  
27 from Apple that was not disclosed to the Company's shareholders.  
28

1           27. Defendant James J. Buckley ("Buckley") was Apple's Senior Vice  
2 President and President, Apple Americas until approximately 1996. Buckley received as least  
3 200,000 options that were dated at or very close to the lowest stock price for the month during  
4 which option's were granted or before significant share price increases. Accordingly, on  
5 information and belief, plaintiff alleges that Buckley backdated these stock options and received  
6 illegal compensation from Apple that was not disclosed to the Company's shareholders.

7           28. Defendant Daniel L. Eilers ("Eilers") was Apple's Senior Vice President,  
8 Worldwide Marketing and Consumer Solutions from 1995 until December 1995. Eilers received  
9 as least 260,000 options that were dated at or very close to the lowest stock price for the month  
10 during which options were granted or before significant share price increases. Accordingly, on  
11 information and belief, plaintiff alleges that Buckley backdated these stock options and received  
12 illegal compensation from Apple that was not disclosed to the Company's shareholders.

13           29. Defendant G. Frederick Forsyth ("Forsyth") was Apple's Senior Vice  
14 President from June 1989 until December 1997. Forsyth received as least 40,000 options that  
15 were dated at or very close to the lowest stock price for the month during which options were  
16 granted or before significant share price increases. Accordingly, on information and belief,  
17 plaintiff alleges that Forsyth backdated these stock options and received illegal compensation  
18 from Apple that was not disclosed to the Company's shareholders.

19           30. Defendant Fred D. Anderson ("Anderson") is a director of Apple and has  
20 been since 2004. Anderson was Apple's Executive Vice President and CFO from April 1996 to  
21 Jane 2004. Anderson received as least 1,250,000 options that were dated at or very close to the  
22 lowest stock price for the month during which options were granted or before significant share  
23 price increases. Accordingly, on information and belief, plaintiff alleges that Anderson backdated  
24 these stock options and received illegal compensation from Apple that was not disclosed to the  
25 Company's shareholders.

26           31. Defendant Arthur D. Levinson ("Levinson") is a director of Apple and has  
27 been since 2000. Levinson has also served as a member of the Audit Committee since fiscal 2000  
28 and as a member of the Compensation Committee August 2001 to fiscal 2003. Defendant

1 Levinson sold 70,000 of his personally held shares for \$4,855,883.60 in proceeds while in  
2 possession of material, non-public information concerning the illegally undisclosed backdating  
3 stock option grant practices.

4 32. Defendant Jerome B. York ("York") is a director of Apple and has been  
5 since 1997. York has also served as a member of the Audit Committee since August 1997 and as  
6 a member of the Compensation Committee, August 2001, to in or about fiscal 2002. Defendant  
7 York sold 90,000 of his personally held shares for \$4,282,429.82 in proceeds while in possession  
8 of material, non-public information concerning the illegally undisclosed backdating stock option  
9 grant practices.

10 33. Defendant William V. Campbell ("Campbell") is a director of Apple and  
11 has been since 1997. Campbell has also served as a member of the Audit and Finance Committee  
12 since 1999 and as a member of the Compensation Committee since August 2001.

13 34. Defendant Millard S. Drexler ("Drexler") is a director of Apple and has  
14 been since 1999. Drexler has also served as a member of the Compensation Committee since  
15 fiscal 2002.

16 35. Defendant Lawrence J. Ellison ("Ellison") was a director of Apple from  
17 1997 until April 2002.

18 36. The defendants identified in ¶¶ 18, 28-34 are referred to herein as the  
19 "Director Defendants." The defendants identified in ¶¶ 18 -27 are referred to herein as the  
20 "Officer Defendants." The defendants identified in ¶¶ 18 -22, 29, & 30 are referred to herein as  
21 the "Insider Selling Defendants." Collectively, the Director Defendants and the Officer  
22 Defendants are referred to herein as the "Individual Defendants."

23 **V. DUTIES OF THE INDIVIDUAL DEFENDANTS**

24 37. By reason of their positions as officers, directors and/or fiduciaries of  
25 Apple and because of their ability to control the business and corporate affairs of Apple, the  
26 Individual Defendants owed Apple and its shareholders fiduciary obligations of trust, loyalty,  
27 good faith and due care, and were and are required to use their utmost ability to control and  
28 manage Apple in a fair, just, honest and equitable manner. The Individual Defendants were and

1 are required to act to further the best interests of Apple and its shareholders so as to benefit all  
2 shareholders equally and not to further their personal interest.

3 38. Each director and officer of the Company owes to Apple and its  
4 shareholders the fiduciary duty to exercise good faith and diligence in the administration of the  
5 affairs of the Company and in the use and preservation of its property and assets, and the highest  
6 obligations of fair dealing. In addition, as officers and/or directors of a publicly held company,  
7 the Individual Defendants had a duty to promptly disseminate accurate and truthful information  
8 with regard to the compensation paid to its executives and employees. These disclosures  
9 necessarily include the value of stock options granted to the Company's executives.

10 39. The Individual Defendants, because of their positions of control and  
11 authority as directors and/or officers of Apple, were able to and did, directly and/or indirectly,  
12 exercise control over the wrongful acts complained of herein, as the Company's disclosures of its  
13 financial results including expenses related to stock option grants. Because of their advisory,  
14 executive, managerial and directorial positions with Apple, each of the Individual Defendants had  
15 access to adverse, nonpublic information about the financial condition and improper  
16 representations of Apple.

17 40. At all times relevant hereto, each of the Individual Defendants was the  
18 agent of each of the other Individual Defendants and of Apple and was at all times acting within  
19 the course and scope of such agency.

20 41. To discharge their duties, the officers and directors of Apple were required  
21 to exercise reasonable and prudent supervision over the management, policies, practices and  
22 controls of the financial affairs of the Company. By virtue of such duties, the officers and  
23 directors of Apple were required to, among other things:

24 (a) ensure that the Company complied with its legal obligations and  
25 requirements, including acting only within the scope of its legal authority and disseminating  
26 truthful and accurate statements to the SEC and the investing public;

1 (b) conduct the affairs of the Company in an efficient, business-like  
2 manner so as to make it possible to provide accurate disclosures of the Company's financials and  
3 to avoid wasting the Company's assets;

4 (c) properly and accurately guide investors and analysts as to the true  
5 financial condition of the Company at any given time, including making accurate statements  
6 about the Company's financial results, and ensuring that the Company maintained an adequate  
7 system of internal controls such that the Company's financial reporting would be true and  
8 accurate at all times;

9 (d) remain informed as Apple's internal controls, and, upon receipt of  
10 notice or information of imprudent or unsound conditions or practices, to make reasonable  
11 inquiry in connection therewith, and to take steps to correct such conditions or practices and make  
12 such disclosures as necessary to comply with federal and state securities laws;

13 (e) ensure that Apple's internal controls are sufficient to prevent  
14 backdating or other manipulations of stock options granted to Apple executives; and

15 (f) ensure that the Company was operated in a diligent, honest and  
16 prudent manner in compliance with all applicable federal, state and local laws, rules and  
17 regulations.

18 42. Each Individual Defendant, by virtue of his or her position as a director  
19 and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good  
20 faith and the exercise of due care and diligence in the management and administration of the  
21 affairs of the Company, as well as in the use and preservation of its property and assets. The  
22 conduct of the Individual Defendants complained of herein involves a knowing and culpable  
23 violation of their obligations as directors and officers of Apple, the absence of good faith on their  
24 part, and a reckless disregard for their duties to the Company and its shareholders that the  
25 Individual Defendants were aware or should have been aware posed a risk of serious injury to the  
26 Company. The conduct of the Individual Defendants who were also officers and/or directors of  
27 the Company has been ratified by the remaining Individual Defendants who collectively comprise  
28 all of Apple's Board.

1           43.     The Individual Defendants breached their duties of loyalty and good faith  
2 by allowing defendants, to cause or by themselves causing the Company to misrepresent its  
3 financial results, as detailed herein *infra*, and by failing to prevent to Individual Defendants from  
4 taking such improper actions. In addition, as a result of defendants' improprieties, Apple shall  
5 expend significant sums of money, which include, but are not limited to:

6                   (a)     Costs incurred to carry out internal investigations, including legal  
7 fees paid to outside counsel, accounting firms and consultants;

8                   (b)     Costs incurred-from responding to subpoenas and requests for  
9 information from government agencies including the SEC;

10                  (c)     Costs incurred from potential fines in connection with  
11 governmental investigations;

12                  (d)     Costs incurred from increased D&O Insurance premiums as a result  
13 of the illegally manipulated stock option grants;

14                  (e)     Costs incurred from directing manpower to correct Apple's  
15 defective internal controls; and

16                  (f)     Costs incurred from directing manpower to potentially restate  
17 Apple's prior financial results to correct for the improperly dated stock option grants.

18 **VI.    BACKGROUND**

19           44.     Apple engages in the design, manufacture, and marketing of personal  
20 computers and related software, services, peripherals, and networking solutions worldwide. It  
21 also offers a line of portable digital music players, accessories, and services.

22           45.     A stock option grant to an employee of a corporation allows the employee  
23 to purchase company stock at a specified price—referred to as the “exercise price”—for a  
24 specified period of time. When an employee exercises an option, he or she purchases the stock  
25 from the company at the exercise price, regardless of the stock's price at the time the option is  
26 exercised. Option pricing is based on the price of the Company stock on the day of the grant. If  
27 an option is back-dating to a day on which a market price is lower than the price on the day the  
28 option is granted, then the employee pays less and the company gets less money for the stock

1 when the option is exercised. Furthermore, the purchaser of the option gets greater compensation  
2 than that to which he or she is entitled.

3 46. Pursuant to the terms of the Company's shareholder-approved stock option  
4 plans, before fiscal 1998, the exercise price of the options must be no less than the closing price  
5 of Apple stock on the business day immediately preceding the date grant. After fiscal 1998, the  
6 exercise price of options must be no less than the closing price of Apple stock on the date of  
7 grant. At all times relevant hereto, Apple's Compensation Committee determined the salaries,  
8 incentive compensation, and stock option awards for executive officers of Apple and  
9 administered the Company's stock option plans.

10 47. From at least 1994, defendants have caused or allowed Apple insiders to  
11 manipulate their stock option grant dates so as to maximize their stock profits. Certain Apple  
12 insiders changed their respective stock option grant dates to take advantage of lower exercise  
13 prices than the price on the actual grant date. The price of Apple shares on the reported option  
14 grant date therefore was lower than the share price on the actual date options were issued. This  
15 provided the insiders with more favorably priced options than they were entitled to. Defendants'  
16 backdating practices yielded stock option grants to the Company's insiders which contributed to  
17 defendants' ability to sell over \$764 million worth of their Apple stock.

18 48. Further, the backdating of these stock options brought an instant paper gain  
19 to these insiders because the options were priced below the stock's fair market value when they  
20 were actually awarded. Under the Generally Accepted Accounting Principles ("GAAP"), this  
21 instant paper gain was equivalent to paying extra compensation and was thus a cost to Apple.  
22 Pursuant to APB 25, the applicable GAAP provision at the time of the foregoing stock option  
23 grants, if the market price on the date of grant exceeds the exercise price of the options, the  
24 company must recognize the difference as an expense. These expenses were not properly  
25 recorded. In turn, since these expenses were not properly recorded, Apple's profits were  
26 overstated.

1           49.     Since 1994, the Individual Defendants have caused or allowed Apple to  
2 report improper financial results which materially understated its compensation expenses and thus  
3 overstated its earnings as follows:

<u>FISCAL YEAR</u>	<u>REPORTED EARNINGS (IN MILLIONS)</u>	<u>REPORTED DILUTED EPS</u>
1994	\$310	\$2.61
1995	\$424	\$3.45
1996	(\$816)	(\$6.59)
1997	(\$1,045)	(\$8.29)
1998	\$309	\$2.10
1999	\$601	\$3.61
2000	\$786	\$2.18
2001	(\$25)	(\$0.07)
2002	\$65	\$0.18
2003	\$69	\$0.19
2004	\$276	\$0.71
2005	\$1,335	\$1.56

12           50.     Backdating options also has tax implications for Apple. Pursuant to  
13 Section 162(m) of the Tax Code, 26 U.S.C. § 162(m), compensation in excess of \$1 million per  
14 year, including gains on stock options, paid to a corporation's five most highly-compensated  
15 officers is tax deductible only if: (i) the compensation is payable solely on account of the  
16 attainment of one or more performance goals; (ii) the performance goals are determined by a  
17 compensation committee comprised solely of two or more outside directors, (iii) the material  
18 terms under which the compensation is to be paid, including the performance goals, are disclosed  
19 to shareholders and approved by a majority of the vote in a separate shareholder vote before the  
20 payment of the compensation, and (iv) before any payment of such compensation, the  
21 compensation committee certifies that the performance goals and any other material terms were in  
22 fact satisfied. As a result of the backdating alleged herein, Apple took tax deductions on stock  
23 option grants that were not payable solely on account of the attainment of one or more  
24 performance goals and violated the terms of the Company's shareholder-approved stock option  
25 plans.

26           51.     On March 18, 2006, *The Wall Street Journal* published an article entitled  
27 "The Perfect Payday." The article provided in pertinent part:

28           On a summer day in 2002, shares of Affiliated Computer Services

1 Inc. sank to their lowest level in a year. Oddly, that was good news  
2 for Chief Executive Jeffrey Rich.

3 His annual grant of stock options was dated that day,  
4 entitling him to buy stock at that price for years. Had they been  
5 dated a week later, when the stock was 27% higher, they'd have  
6 been far less rewarding. It was the same through much of  
7 Mr. Rich's tenure: In a striking pattern, all six of his stock-option  
8 grants from 1995 to 2002 were dated just before a rise in the stock  
9 price, often at the bottom of a steep drop.

10 Just lucky? A Wall Street Journal analysis suggests the  
11 odds of this happening by chance are extraordinarily remote --  
12 around one in 300 billion. The odds of winning the multistate  
13 Powerball lottery with a \$1 ticket are one in 146 million.

14 Suspecting such patterns aren't due to chance, the Securities  
15 and Exchange Commission is examining whether some option  
16 grants carry favorable grant dates for a different reason: They were  
17 backdated. The SEC is understood to be looking at about a dozen  
18 companies' option grants with this in mind.

19 The Journal's analysis of grant dates and stock movements  
20 suggests the problem may be broader. It identified several  
21 companies with wildly improbable option-grant patterns. While  
22 this doesn't prove chicanery, it shows something very odd: Year  
23 after year, some companies' top executives received options on  
24 unusually propitious dates.

25 The analysis bolsters recent academic work suggesting that  
26 backdating was widespread, particularly from the start of the tech-  
27 stock boom in the 1990s through the Sarbanes-Oxley corporate  
28 reform act of 2002. If so, it was another way some executives  
enriched themselves during the boom at shareholders' expense.  
And because options grants are long-lived, some executives holding  
backdated grants from the late 1990s could still profit from them  
today.

\* \* \*

21 Stock options give recipients a right to buy company stock  
22 at a set price, called the exercise price or strike price. The right  
23 usually doesn't vest for a year or more, but then it continues for  
24 several years. The exercise price is usually the stock's 4 p.m. price  
25 on the date of the grant, an average off the day's high and low, or  
26 the 4 p.m. price the day before. Naturally, the lower it is, the more  
27 money the recipient can potentially make someday by exercising  
28 the options.

29 Which day's price the options carry makes a big difference,  
30 Suppose an executive gets 100,000 options on a day when the stock  
31 is at \$30. Exercising them after it has reached \$50 would bring a  
32 profit of \$20 times 100,000, or \$2 million. But if the grant date was  
33 a month earlier and the stock then was at, say, \$20, the options  
34 would bring in an extra \$1 million.

1           52.     The Individual Defendants, as fiduciaries of the Company, knew or should  
2 have known that these illegal stock option backdating practices were ongoing since at least 1994.  
3 The Individual Defendants, however, failed to take action to correct these practices even in the  
4 face of public scrutiny of stock option granting policies in the wake of the March 18, 2006 *Wall*  
5 *Street Journal* article.

6           53.     On June 29, 2006, Apple disclosed that the Company had discovered  
7 irregularities related to the issuance of certain stock option grants. Specifically, the Company  
8 stated: "Apple today announced that an internal investigation has discovered irregularities related  
9 to the issuance of certain stock option grants made between 1997 and 2001. One of the grants in  
10 questions was to CEO Steve Jobs, but it was subsequently cancelled and resulted in no financial  
11 gain to the CEO. A special committee of Apple's outside directors has hired independent counsel  
12 to perform an investigation and the company has informed the SEC."

13           54.     On August 3, 2006, Apple announced that it will delay filing quarterly  
14 results and will likely restate past financial results after discovering more "irregularities" as part  
15 of its internal probe of stock option grants.

16           55.     On August 9, 2006, *The Recorder* reported that Apple was part of the U.S.  
17 Attorney's office investigation into backdating stock option grants to maximize executive  
18 payouts. It was also reported that an Apple board committee had hired Quinn, Emanuel,  
19 Urquhart, Oliver & Hedges, LLP to conduct an internal investigation of the alleged backdating of  
20 options at the company.

## 21 **VII. MANIPULATED STOCK OPTION GRANTS**

22           56.     During 1994 to 2001, stock option grants were made to the Individual  
23 Defendants on the following dates: January 26, 1994, October 3, 1994, April 27, 1995, April 1,  
24 1996, July 11, 1997, August 5, 1997, December 19, 1997, December 29, 1997, February 2, 1998,  
25 March 2, 1999, December 14, 1999, January 12, 2000, January 17, 2001, and October 19, 2001.  
26 As shown by illustrative examples provided below, in a pattern that could not have been the result  
27 of chance, the stock grants were dated just after a sharp drop and just before a substantial rise in  
28 Apple's stock price.

1           **B.     1995 Option Grants**

2           57.     During fiscal year 1995, defendants dated over 200,000 options to  
3 defendant Eilers, at the lowest share price of the month in which the options were granted.  
4 Specifically, defendants dated 200,000 options to defendant Eilers on September 30, 2004 at  
5 \$33.69 per share - the lower, stock price for the month of September and very near to the lowest  
6 stock price for October. During these months, Apple's stock price traded as high as \$43.25 per  
7 share.

8           58.     Further, on April 26, 1995, defendants dated over 300,000 options to  
9 defendants Buckley, Eilers and Forsyth before a significant increase in the Company's stock  
10 price. Specifically, Apple's stock price increased to over \$40 per share a week later.

11           **C.     1997 Option Grants**

12           59.     During fiscal year 1997, defendants granted stock options purportedly on  
13 the following dates: July 11, 1997; August 5, 1997; December 19, 1997; and December 29, 1997.  
14 If on examines the stock price ten trading days before the grant and ten trading days after the  
15 grant, the percentage rise is 21.9 percent; 23.7 percent, 38.4 percent, and 48.6 percent.

16           60.     The Individual Defendants who received these grants are as follows:  
17 Anderson, Rubinstein, and Mandich. Anderson received 500,000 on July 11, 1997; 250,000 on  
18 August 5, 1997; and 250,000 on December 19, 1997. Rubinstein received 200,000 on July 11,  
19 1997; 300,000 on August 5, 1997; and 300,000 on December 19, 1997. Mandich received  
20 224,250 on December 19, 1997 and 200,000 on December 29, 1997.

21           **D.     1998 Option Grants**

22           61.     During fiscal year 1998, defendants dated 224,500, 250,000 and 300,000  
23 stock options to defendants Mandich, Anderson and Rubinstein, respectively, on December 19,  
24 1997 at \$13.69 per share. Defendants also dated 200,000 stock options to defendant Mandich on  
25 December 29 1997 at \$13.13 per share. These stock grants both occurred before a significant  
26 increase in Apple's share price. Specifically, Apple's share price increased from \$13.13 per share  
27 on December 29, 1997 to \$18.94 per share by January 6, 1998.

1           62. Further, defendants dated 700,000 stock options to defendant Cook on  
2 February 2, 1998 at an exercise price of \$17.69 -the lowest share price for the month of February.  
3 During this month Apple's shares traded as high as \$23.62 per share.

4           **E. 2000 Option Grants**

5           63. During fiscal year 2000, Defendants dated 1,200,000 options to defendant  
6 Johnson on December 14, 1999 at an exercise price of \$94.87 per share. This share price was the  
7 lowest share price for the month of December. During this month, Apple's shares traded as high  
8 as \$114 per share.

9           64. In January 2000, defendants, dated 20,000,000 stock options to defendant  
10 Jobs on January 12, 2000 at an exercise price of \$87.19 per share. This share price was the  
11 lowest share price for the month of January. During this month, Apple's shares traded as high as  
12 \$113.50 per share.

13           **F. 2001 Option Grants**

14           65. During fiscal year 2001, defendants Anderson, Cook, Rubinstein, and  
15 Tevanian each received 1,000,000 stock options on January 17, 2001 at the exercise price of  
16 \$16.81 per share. These stock grants occurred before a significant increase in Apple's share  
17 price. Specifically, Apple's share price increased from \$16.81 per share to over \$20-50 per share  
18 by January 23, 2001.

19           66. The reason for the pattern set forth above is that the purported grant dates  
20 were not the actual dates on which the stock option grants were made. Rather, the Defendants  
21 improperly backdated the stock option grants to make it appear as though the grants were made  
22 on dates when the market prices of Apple stock was lower than the market price on the actual  
23 grant dates. This improper backdating, which violated the terms of the Company's shareholder-  
24 approved stock option plans, resulted in option grants with lower exercise prices, which  
25 improperly increased the value of the options to the defendants and improperly reduced the  
26 amounts the defendant had to pay the Company upon exercise of the options.

1 **VIII. IMPROPER FINANCIAL REPORTING**

2 **A. 1994 Form 10-K**

3 67. On December 13, 1994, the Individual Defendants caused or allowed the  
4 Company to file its 1994 Form 10-K with the SEC. The 1994 Form 10-K was simultaneously  
5 distributed to shareholders and the public. The 1994 Form 10-K included Apple's 1994 financial  
6 statements which were improperly presented in violation of GAAP, due to improper accounting  
7 for the backdated stock options. As a result, Apple's compensation expense was understated and  
8 its net earnings were overstated.

9 **B. 1995 Form 10-K**

10 68. On December 19, 1995, the Individual Defendants caused or allowed the  
11 Company to file its 1995 Form 10-K with the SEC. The 1995 Form 10-K was simultaneously  
12 distributed to shareholders and the public. The 1995 Form 10-K included Apple's 1995 financial  
13 statements which were improperly presented in violation of GAAP, due to improper accounting  
14 for the backdated stock options. As a result, Apple's compensation expense was understated and  
15 its net earnings were overstated.

16 **C. 1996 Form 10-K**

17 69. On December 19, 1996, the Individual Defendants caused or allowed the  
18 Company to file its 1996 Form 10-K with the SEC. 1996 Form 10-K was simultaneously  
19 distributed to shareholders and the public. The 1996 Form 10-K included Apple's 1996 financial  
20 statements which were improperly presented in violation of GAAP, due to improper accounting  
21 for the backdated stock options. As a result, Apple's compensation expense was understated and  
22 its net earnings were overstated.

23 **D. 1997 Form 10-K**

24 70. On December 5, 1997, the Individual Defendants caused or allowed the  
25 Company to file its 1997 Form 10-K with the SEC. The 1997 Form 10-K was simultaneously  
26 distributed to shareholders and the public. The 1997 Form 10-K included Apple's 1997 financial  
27 statements which were improperly presented in violation of GAAP, due to improper accounting  
28

1 for the backdated stock options. As a result, Apple's compensation expense was understated and  
2 its net earnings were overstated.

3 **E. 1998 Form 10-K**

4 71. On December 23, 1998, the Individual Defendants caused or allowed the  
5 Company to file its 1998 Form 10-K with the SEC. The 1998 Form 10-K was simultaneously  
6 distributed to shareholders and the public. The 1998 Form 10-K included Apple's 1998 financial  
7 statements which were improperly presented in violation of GAAP, due to improper accounting  
8 for the backdated stock options. As a result, Apple's compensation expense was understated and  
9 its net earnings were overstated.

10 **F. 1999 Form 10-K**

11 72. On December 22, 1999, the Individual Defendants caused or allowed the  
12 Company to file its 1999 Form 10-K with the SEC. The 1999 Form 10-K was simultaneously  
13 distributed to shareholders and the public. The 1999 Form 10-K included Apple's 1999 financial  
14 statements which were improperly presented in violation of GAAP, due to improper accounting  
15 for the backdated stock options. As a result, Apple's compensation expense was understated and  
16 its net earnings were overstated.

17 **G. 2000 Form 10-K**

18 73. On December 14, 2000, the Individual Defendants caused or allowed the  
19 Company to file its 2000 Form 10-K with the SEC. The 2000 Form 10-K was simultaneously  
20 distributed to shareholders and the public. The 2000 Form 10-K included Apple's 2000 financial  
21 statements which were improperly presented in violation of GAAP, due to improper accounting  
22 for the backdated stock options. As a result, Apple's compensation expense was understated and  
23 its net earnings were overstated.

24 **H. 2001 Form 10-K**

25 74. On December 21, 2001, the Individual Defendants caused or allowed the  
26 Company to file its 2001 Form 10-K with the SEC. The 2001 Form 10-K was simultaneously  
27 distributed to shareholders and the public. The 2001 Form 10-K included Apple's 2001 financial  
28 statements which were improperly presented in violation of GAAP, due to improper accounting

1 for the backdated stock options- As a result, Apple's compensation expense was understated and  
2 its net earnings were overstated.

3 **I. 2002 Form 10-K**

4 75. On December 19, 2002, the Individual Defendants caused or allowed the  
5 Company to file its 2002 Form 10-K with the SEC. The 2002 Form 10-K was simultaneously  
6 distributed to shareholders and the public. The 2002 Form 10-K included Apple's 2002 financial  
7 statements which were improperly presented in violation of GAAP, due to improper accounting  
8 for the backdated stock options. As a result, Apple's compensation expense was understated and  
9 its net earnings were overstated.

10 **J. 2003 Form 10-K**

11 76. On December 19, 2003, the Individual Defendants caused or allowed the  
12 Company to file its 2003 Form 10-K with the SEC. The 2003 Form 10-K was simultaneously  
13 distributed to shareholders and the public. The 2003 Form 10-K included Apple's 2003 financial  
14 statements which were improperly presented in violation of GAAP, due to improper accounting  
15 for the backdated stock options. As a result, Apple's compensation expense was understated and  
16 its net earnings were overstated.

17 **K. 2004 Form 10-K**

18 77. On December 3, 2004, the Individual Defendants caused or allowed the  
19 Company to file its 2004 Form 10-K with the SEC. The 2004 Form 10-K was simultaneously  
20 distributed to shareholders and the public. The 2004 Form 10-K included Apple's 2004 financial  
21 statements which were improperly presented in violation of GAAP, due to improper accounting  
22 for the backdated stock options. As a result, Apple's compensation expense was understated and  
23 its net earnings were overstated.

24 **L. 2005 Form 10-K**

25 78. On December 1, 2005, the Individual Defendants caused or allowed the  
26 Company to file its 2005 Form 10-K with the SEC. The 2005 Form 10-K was simultaneously  
27 distributed to shareholders and the public. The 2005 Form 10-K included Apple's 2005 financial  
28 statements which were improperly presented in violation of GAAP, due to improper accounting

1 for the backdated stock options. As a result, Apple's compensation expense was understated and  
2 its net earnings were overstated.

3 79. The improper Form 10-Ks described above were reviewed, prepared and/or  
4 endorsed by the Individual Defendants. The following chart details the defendants who signed the  
5 Form 10-Ks.

DATE	FILING	DEFENDANT(S) WHO SIGNED
12/19/96	10-K	Fred D. Anderson
12/05/97	10-K	Steven P. Jobs; Fred D. Anderson; William V. Campbell; Lawrence J. Ellison
01/23/98	10-K/A	Fred D. Anderson, Steven P. Jobs, William V. Campbell, Lawrence J. Ellison, Jerome B. York
12/23/98	10-K	Fred D. Anderson, William V. Campbell, Jerome B. York, Steven P. Jobs, Lawrence J. Ellison
12/22/99	10-K	Steven P. Jobs, Fred D. Anderson, William V. Campbell, Millard S. Drexler, Lawrence J. Ellison, Jerome B. York
12/14/00	10-K	Steven P. Jobs, Fred D. Anderson, William V. Campbell, Millard S. Drexler, Lawrence J. Ellison, Arthur D. Levinson, Jerome B. York
12/21/01	10-K	Steven P. Jobs, Fred D. Anderson, William V. Campbell, Millard S. Drexler, Lawrence J. Ellison, Arthur D. Levinson, Jerome B. York
12/19/02	10-K	Steven P. Jobs, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, Jerome B. York
12/19/03	10-K	Steven P. Jobs, Fred D. Anderson, Peter Oppenheimer, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, Jerome B. York
12/03/04	10-K	Steven P. Jobs, Peter Oppenheimer, Fred D. Anderson, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, Jerome B. York
12/01/05	10-K	Steven P. Jobs, Peter Oppenheimer, Fred D. Anderson, William V. Campbell, Millard S. Drexler, Arthur D. Levinson, Jerome B. York

19 **M. Proxy Statements and SEC Form 4 Filings**

20 80. In addition to the Form 10-Ks described above, from 1994 to 2005, the  
21 Company, with the knowledge, approval, and participation of each of the Individual Defendants,  
22 for the purpose and with the effect of concealing the improper option backdating:

23 (a) Disseminated to shareholders and filed with the SEC annual proxy  
24 statements<sup>2</sup> that falsely reported the dates of stock option grants to the Officer Defendants; and

25 (b) Filed with the SEC Form 4 filings that falsely reported the dates of  
26 stock option grants to the Officer Defendants.

27 <sup>2</sup> Annual proxy statements were filed on the following dates: 12/12/1994, 12/19/1995,  
28 12/27/1996, 12/5/1997, 3/16/1998, 2/9/1999, 3/6/2000, 3/12/2001, 3/21/2003, 3/24/2003,  
3/11/2004, 3/15/2005.

1 **IX. INSIDER SELLING**

2 81. While in possession of the undisclosed material adverse information, the  
3 Insider Selling Defendants sold over \$764 million worth of Apple stock they had obtained, often  
4 by cashing in, backdated stock options:

5 (a) Defendant Fred Anderson from April 2004 to October 2005 sold  
6 1,595,400 shares for proceeds of \$45,783,179.00.

7 (b) Defendant Arthur Levinson from November 2004 to February 2005  
8 sold 70,000 shares for proceeds of \$4,855,883.60.

9 (c) Defendant Jerome York in October 2004 sold 90,000 shares for  
10 proceeds of \$4,282,429.82.

11 (d) Defendant Steven P. Jobs in March 2006 sold 4,573,553 shares for  
12 proceeds of \$295,725,936.98.

13 (e) Defendant Timothy P. Cook in March 2006 sold 300,000 shares for  
14 proceeds of \$17,974,803.00.

15 (f) Defendant Peter Oppenheimer from October 2005 to October 2006  
16 sold 1,355,750 shares for proceeds of \$82,000,887.55.

17 (g) Defendant Ronald B. Johnson from October 2004 to May 2006 sold  
18 1,512,707 shares for proceeds of \$80,913,934.01.

19 (h) Defendant Avadis Tevanian from July 2004 to April 2006 sold  
20 3,941,500 shares for proceeds of \$233,248,927.25.

21 (i) The total proceeds for all defendants listed in subsection (a) to (h),  
22 *supra*, is \$764,785,981.21.

23 82. Because of the Individual Defendants' conduct, Apple will need to expend  
24 significant sums of money including the following:

25 (a) Costs incurred to carry out internal investigations, including legal  
26 fees paid to outside counsel, accounting firms and consultants;

27 (b) Costs incurred from responding to subpoenas and requests for  
28 information from government agencies including the SEC,

1 (c) Costs, incurred from potential fines in connection with  
2 governmental investigations;

3 (d) Costs incurred from increased D&O insurance premiums as a result  
4 of the illegally manipulated stock option grants;

5 (e) Costs incurred from directing manpower to correct Apple's  
6 defective internal controls; and

7 (f) Costs incurred from directing manpower to potentially restate  
8 Apple's prior financial results to correct for the improperly dated stock option grants.

9 **X. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

10 83. Plaintiff brings this action derivatively in the right and for the benefit of  
11 Apple to redress injuries suffered, and to be suffered, by Apple as a direct result of the breaches  
12 of fiduciary duty and unjust enrichment, as well as the aiding and abetting thereof, by the  
13 Individual Defendants. Apple is named as a nominal defendant solely in a derivative capacity.  
14 This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

15 84. Plaintiff will adequately and fairly represent the interests of Apple in  
16 enforcing and prosecuting its rights.

17 85. Plaintiff is and was an owner of the stock of Apple during times relevant to  
18 the Individual Defendants' wrongful course of conduct alleged herein, and remains a shareholder  
19 of the Company.

20 86. Plaintiff has not made any demand on the present Board of Apple to  
21 institute this action because such a demand would be a futile, wasteful and useless act.

22 87. The Board is responsible for approving the compensation awarded to  
23 Apple's executive officers. This compensation includes the stock options that were secretly  
24 backdated by Apple insiders. Therefore, the Board is liable for failing to fulfill its fiduciary  
25 duties to Apple in approving the option grants as dated. The Board should have properly  
26 informed itself of the circumstances surrounding the options granted to Apple's insiders before  
27 approving them. Indeed, these options were routinely approved by the Board when they were  
28 dated at the Company's lowest closing price for the respective month in which the options were

1 granted establishing that these decisions were not informed. Accordingly, there is reason to doubt  
2 that members of the Apple Board are disinterested because they face liability for their breaches of  
3 fiduciary duty to Apple. The Board's decision to approve the options was not the product of valid  
4 business judgment. Thus, demand is futile.

5 88. As a result of their access to and review of internal corporate documents,  
6 conversations and connections with other corporate officers, employees and directors, and  
7 attendance at management and Board meetings, each of the defendants knew the adverse, non-  
8 public information regarding the improper accounting. While in possession of this material  
9 adverse, non-public, information regarding the Company, the following current members of the  
10 Apple Board participated in the illegal, insider selling.

11 (a) Jobs sold 4,573,553 shares of Apple stock for proceeds of  
12 \$295,725,936.98 while in possession of material non-public information;

13 (b) Anderson sold 1,595,400 shares of Apple stock for proceeds of  
14 \$45,783,179 while in possession of material non-public information;

15 (c) Levinson sold 70,000 shares of Apple stock for proceeds of  
16 \$4,855,883.60 while in possession of material non-public information; and

17 (d) York sold 90,000 shares of Apple stock for proceeds of  
18 \$4,282,429.82 while in possession of material non-public information.

19 Because these defendants received a personal financial benefit from the challenged insider trading  
20 transactions, these defendants are interested. Also, these defendants face a substantial threat of  
21 liability for breach of their fiduciary duties for insider selling. Since these directors have  
22 breached their fiduciary duties and are interested, any demand upon them is futile.

23 89. Defendants Jobs and Anderson are liable to Apple for the undeserved  
24 compensation that they received as a result of the stock options that they backdated or otherwise  
25 manipulated. Accordingly, there is a reasonable doubt that defendants Jobs and Anderson are  
26 disinterested because they face liability in connection with their improperly dated Apple stock  
27 options. Thus, demand is futile as to defendants Jobs and Anderson.  
28

1           90.    The entire Apple Board and senior management participated in the wrongs  
2 complained of herein. Apple's Director Defendants are not disinterested or independent because  
3 they served on the Apple Board during the period in which Company executives were improperly  
4 backdating their stock option grants. Pursuant to their specific duties as Board members, each  
5 was charged with the management of the Company and to conduct its business affairs. Each of  
6 the above referenced defendants breached the fiduciary duties that they owed to Apple and its  
7 shareholders in that they failed to prevent and correct the improper stock option backdating  
8 practices. Thus, the Apple Board cannot exercise independent objective judgment in deciding  
9 whether to bring this action or whether to vigorously prosecute this action because its members  
10 are interested personally in the outcome as it is their actions that have subjected Apple to  
11 damages in the form of costs that the Company must expend to restate its past financials and to  
12 investigate defendants' improprieties.

13           91.    Each of the key officers and directors knew of and/or directly benefited  
14 from the wrongdoing complained of herein.

15           92.    The Director Defendants of Apple, as more fully detailed herein,  
16 participated in, approved and/or permitted the wrongs alleged herein to have occurred and  
17 participated in efforts to conceal or disguise these wrongs from Apple's stockholders or recklessly  
18 and/or negligently disregarded the wrongs complained of herein, and are therefore not  
19 disinterested parties.

20           93.    In order to bring this suit, all of the directors of Apple would be forced to  
21 sue themselves and persons with whom they have extensive business and personal entanglements,  
22 which they will not do, thereby excusing demand.

23           94.    The acts complained of constitute violations of the fiduciary duties owed  
24 by Apple's officers and directors and these acts are incapable of ratification.

25           95.    Apple has been and will continue to be exposed to significant losses due to  
26 the wrongdoing complained of herein. Yet, the Individual Defendants and current Board have not  
27 filed any lawsuits against themselves or others who were responsible for that wrongful conduct to  
28 attempt to recover for Apple any part of the damages Apple suffered and will suffer thereby.



1 the Company's officers and directors, including some of the Defendants, to receive improper  
2 option grants and make no recompense to the Company.

3 100. Defendants employed devices, schemes and artifices to defraud while in  
4 possession of material, adverse non-public information and engaged in acts, practices and a  
5 course of conduct that included the making of, or participation in the making of, untrue and/or  
6 misleading statements of material facts and/or omitting to state material facts necessary in order  
7 to make the statements made about Apple not misleading. At no time relevant to the allegations  
8 asserted herein did Defendants disclose to the Company, or to the public generally, that the  
9 backdating of option grants described in this Complaint had taken place.

10 101. Defendants, as directors and senior executive officers of the Company, are  
11 liable as direct participants in the wrongs complained of herein. Through their positions of  
12 control and authority as officers of the Company, each of the Defendants was able to and did  
13 control the conduct complained of herein and the content of the public statements disseminated  
14 by Apple.

15 102. Defendants acted with scienter throughout the relevant period, in that they  
16 either had actual knowledge of the misrepresentations and/or omissions of material facts set forth  
17 herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose  
18 the true facts, even though such facts were available to them. Defendants were among -the senior  
19 management of the Company, and were therefore directly responsible for the false and misleading  
20 statements and/or omissions disseminated to the public through press releases, news reports and  
21 filings with the SEC.

22 103. Each of the Defendants participated in a scheme to defraud with the  
23 purpose and effect of defrauding Apple.

24 104. By virtue of the foregoing, Defendants have violated § 10(b) of the  
25 Exchange Act, and Rule 10b-5 promulgated thereunder.

1 **SECOND CLAIM FOR RELIEF**

2 **Against all Defendants for Violations of § 14(a) of the Exchange Act**

3 105. Plaintiff incorporates by reference and realleges each and every allegation  
4 set forth above, as though fully set forth herein.

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

10 107. Defendants issued, caused to be issued and participated in the issuance of  
11 materially false and misleading written statements to stockholders which were contained in the  
12 Company's Proxy Statements issued on 12/12/1994, 12/19/1995, 12/27/1996, 12/5/1997,  
13 3/16/1998, 2/9/1999, 3/6/2000, 3/12/2001, 3/21/2003, 3/24/2003, 3/11/2004, and 3/15/2005,  
14 which each misrepresented or failed to disclose, *inter alia*, the facts set forth above. These Proxy  
15 Statements, which Defendants caused to be issued and disseminated, violated § 14(a) and Rule  
16 14a-9 because they omitted material facts, including the fact that certain of the Defendants were  
17 causing Apple to engage in an option backdating scheme, a fact which Defendants were aware of  
18 and participated in from at least 1994.

19 108. In the exercise of reasonable care, Defendants should have known that the  
20 Proxy Statements were materially false and misleading.

21 109. The misrepresentations and omissions in the Proxy Statements were  
22 material to plaintiff, Apple's shareholders, and the voting process generally. The Proxy  
23 Statements were an essential link in the accomplishment of the continuation of Defendants'  
24 unlawful stock option backdating scheme, as revelations of the truth would have immediately  
25 thwarted a continuation of shareholders' endorsement of the directors' positions, the executive  
26 officers' compensation and the Company's compensation policies.

27 110. The Company was damaged as a result of the material misrepresentations  
28 and omissions in the Proxy Statements.

1 **THIRD CLAIM FOR RELIEF**

2 **Against all Defendants for Violations of § 20(a) of the Exchange Act**

3 111. Plaintiff incorporates by reference and realleges each and every allegation  
4 set forth above, as though fully set forth herein.

5 112. The Defendants, by virtue of their positions with Apple and their specific  
6 acts, were, at the time of the wrongs alleged herein, controlling persons of Apple within the  
7 meaning of § 20(a) of the Exchange Act. They had the power and influence and exercised the  
8 same to cause Apple to engage in the illegal conduct and practices complained of herein.

9 **FOURTH CLAIM FOR RELIEF**

10 **Against All Defendants for Accounting**

11 113. Plaintiff incorporates by reference and realleges each and every allegation  
12 set forth above, as though fully set forth herein.

13 114. At all relevant times, Defendants, as directors and/or officers of Apple,  
14 owed the Company and its shareholders fiduciary duties of good faith, care, candor and loyalty.

15 115. In breach of their fiduciary duties owed to Apple and its shareholders, the  
16 Defendants caused Apple, among other things, to grant backdated stock options to themselves  
17 and/or certain other officers and directors of Apple and/or failed to properly investigate whether  
18 these grants had been improperly made. By this wrongdoing, the Defendants breached their  
19 fiduciary duties owed to Apple and its shareholders.

20 116. Defendants possess complete and unfettered control over the improperly  
21 issued stock option grants and the books and records of the Company concerning the details of  
22 such improperly backdated stock option grants to certain of the Defendants.

23 117. As a result of Defendants' misconduct, Apple has been substantially  
24 injured and damaged financially and is entitled to a recovery as a result thereof, including the  
25 proceeds of those improperly granted options which have been exercised and sold.

26 118. Plaintiff demands an accounting be made of all stock option grants made to  
27 any of the Defendants, including, without limitation, the dates of the grants, the amounts of the  
28 grants, the value of the grants, the recipients of the grants, the exercise date of stock options

1 granted to any of the Defendants, as well as the disposition of any proceeds received by any of the  
2 Defendants via sale or other exercise of backdated stock option grants received by those  
3 Defendants.

4 **FIFTH CLAIM FOR RELIEF**

5 **Against All Defendants for Unjust Enrichment**

6 119. Plaintiff incorporates by reference and realleges each and every allegation  
7 set forth above, as though fully set forth herein.

8 120. By their wrongful acts and omissions, defendants were unjustly enriched at  
9 the expense of and to the detriment of Apple. These wrongful acts included the approval of  
10 improperly backdated stock options by the Director Defendants as well as the receipt of  
11 underserved compensation in connection with those options by the Officer Defendants.

12 121. Plaintiff as a shareholder and representative of Apple, seeks restitution  
13 from these defendants, and each of them, and seek an order of this Court disgorging all profits,  
14 benefits and other compensation obtained by these defendants, and each of them, from their  
15 wrongful conduct and fiduciary breaches.

16 **SIXTH CLAIM FOR RELIEF**

17 **Against All Defendants for Constructive Fraud**

18 122. Plaintiff incorporates by reference and realleges each and every allegation  
19 as set forth above, as though fully set forth herein.

20 123. As corporate fiduciaries, Defendants owed to Apple and its shareholders a  
21 duty of candor and full accurate disclosure regarding the true state of Apple's business and assets  
22 and their conduct with regard thereto.

23 124. As a result of the conduct complained of, Defendants made, or aided and  
24 abetted the making of, numerous misrepresentations to and/or concealed material facts from  
25 Apple's shareholders despite their duties to, *inter alia*, disclose the true facts regarding their  
26 stewardship of Apple. Thus they have committed constructive fraud and violated their duty of  
27 candor.

28 125. By reason of the foregoing, Apple has been damaged.



1 participated in the making of, or aided and abetted the making of, misrepresentations regarding  
2 Apple.

3 134. Defendants' conduct constituted an abuse of their ability to control and  
4 influence Apple.

5 135. By reason of the foregoing, Apple has been damaged.

6 **NINTH CLAIM FOR RELIEF**

7 **Against All Defendants For Gross Mismanagement**

8 136. Plaintiff incorporates by reference and realleges each and every allegation  
9 set forth above, as though fully set forth herein.

10 137. Defendants had a duty to Apple and its shareholders to prudently supervise,  
11 manage and control the operations, business and internal financial accounting and disclosure  
12 accounts of Apple.

13 138. Defendants by their actions and by engaging in the wrongdoing described  
14 herein, abandoned and abdicated their responsibilities and duties with regard to prudently  
15 managing the businesses of Apple in a manner consistent with the duties imposed upon them by  
16 law. By committing the misconduct alleged herein, Defendants breached their duties of due care,  
17 diligence and candor in the management and administration of Apple's affairs and in the use and  
18 preservation of Apple's assets.

19 139. During the course of the discharge of their duties, Defendants knew or  
20 recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet  
21 Defendants caused Apple to engage in the scheme complained of herein which they knew had an  
22 unreasonable risk of damage to Apple, thus breaching their duties to the Company. As a result,  
23 Defendants grossly mismanaged Apple.

24 140. By reason of the foregoing, Apple has been damaged.

25 **TENTH CLAIM FOR RELIEF**

26 **Against All Defendants for Corporate Waste**

27 141. Plaintiff incorporates by reference and realleges each and every allegation  
28 set forth above, as though fully set forth herein.



1 disseminated prior to that time and a reasonable time had elapsed for the market to absorb the  
2 information.

3 **TWELFTH CLAIM FOR RELIEF**

4 **Against the Insider Selling Defendants for Breach of**  
5 **Fiduciary Duties for Insider Selling and Misappropriation of Information**

6 149. Plaintiff incorporates by reference and realleges each and every allegation  
7 set forth above, as though fully set forth herein.

8 150. At the time of the stock sales set forth herein, the Insider Selling  
9 Defendants knew the information described above, and sold Apple common stock on the basis of  
10 such information.

11 151. The information described above was proprietary non-public information  
12 concerning the Company's financial condition and future business prospects. It was a proprietary  
13 asset belonging to the Company, which the Insider Selling Defendants used for their own benefit  
14 when they sold Apple common stock.

15 152. At the time of their stock sales, the Insider Selling Defendants knew that  
16 the Company's revenues were materially overstated because of the undisclosed stock option and  
17 other related compensation expenses. The Insider Selling Defendants' sales of Apple common  
18 stock while in possession and control of this material adverse non-public information was a  
19 breach of their fiduciary duties of loyalty and good faith.

20 153. Since the use of the Company's proprietary information for their own gain  
21 constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to  
22 the imposition of a constructive trust on any profits the Insider Selling Defendants obtained  
23 thereby.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiff demands judgment as follows:

26 A. Awarding money damages against all Defendants, jointly and severally, for all  
27 losses and damages suffered as a result of the acts and transactions complained of herein, together  
28 with prejudgment interest, to ensure Defendants do not participate therein or benefit thereby;

1 B. Directing all Defendants to account for all damages caused by them and all profits  
2 and special benefits and unjust enrichment they have obtained as a result of their unlawful  
3 conduct, including all salaries, bonuses, fees, stock awards, options and common stock sale  
4 proceeds and imposing a constructive trust thereon;

5 C. Ordering the imposition of a constructive trust over Defendants' stock options and  
6 any proceeds derived therefrom;

7 D. Granting an injunction preventing future exercise of any stock option grants by  
8 any current or former Director or Officer;

9 E. Awarding punitive damages;

10 F. Awarding costs and disbursements of this action, including reasonable attorneys',  
11 accountants', and experts' fees; and

12 G. Granting such other and further relief as this Court may deem just and proper.

13 **JURY DEMAND**

14 Plaintiff demands a trial by jury.

15 Dated: August 31, 2006

Respectfully submitted,

16 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP.

17  
18 By: 

Richard M. Heimann

19 Richard M. Heimann (State Bar No. 063607)  
20 Elizabeth J. Cabraser (State Bar No. 083151)  
21 Joy A. Kruse (State Bar No. 142799)  
22 Bruce W. Leppla (State Bar No. 071642)  
23 Peter E. Leckman (State Bar No. 235721)  
24 Embarcadero Center West  
25 275 Battery Street, 30th Floor  
26 San Francisco, CA 94111-3339  
27 Telephone: (415) 956-1000  
28 Facsimile: (415) 956-1008

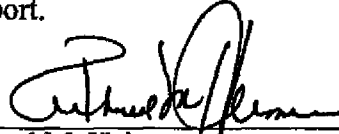
Richard D. Greenfield, Esq.  
GREENFIELD & GOODMAN, LLC  
7426 Tour Drive  
Easton, MD 21601  
Telephone: (410) 745-4149

Attorneys for Plaintiff ALFRED RONCONI

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.



Richard M. Heimann  
Counsel for Plaintiff ALFRED RONCONI

**VERIFICATION**

ALFRED RONCONI, upon information and belief based upon the investigation of counsel and his own personal knowledge, hereby states that the facts alleged in the attached Complaint are true and correct.

August 10, 2006



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28