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

20 MARTIN VOGEL and KENNETH  
MAHONEY, on Behalf of Themselves and All  
21 Others Similarly Situated,  
22 Plaintiffs,  
23 v.  
24 APPLE, INC., STEVEN P. JOBS, FRED  
ANDERSON, NANCY HEINEN, WILLIAM V.  
25 CAMPBELL, MILLARD S. DREXLER,  
ARTHUR D. LEVINSON, and JEROME P.  
26 YORK,  
27 Defendants.

CASE NO.: C08-03123-JF

**CLASS ACTION**

**STIPULATION AND [PROPOSED]  
ORDER STAYING ACTION**

**Judge: Hon. Jeremy Fogel  
Department: Ctrm. 3, 5th Floor**

1 Plaintiffs Martin Vogel and Kenneth Mahoney (“Plaintiffs”) and Defendants Apple  
2 Inc. (“Apple”), Fred D. Anderson, Nancy R. Heinen, Steven P. Jobs, William V. Campbell,  
3 Millard S. Drexler, Arthur D. Levinson, and Jerome B. York (collectively, the  
4 “Defendants”) hereby stipulate as follows:

5 WHEREAS, on August 24, 2006, Plaintiffs filed a class action complaint before this  
6 Court alleging that certain defendants violated the Securities Exchange Act of 1934 (the  
7 “Exchange Act”), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action was  
8 entitled *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-05208-JF  
9 (N.D. Cal.) (the “Apple Backdating Action No. 1”), and concerning alleged practice of issuing  
10 backdating stock options;

11 WHEREAS, on October 24, 2006, New York City Employees' Retirement System  
12 (“NYCERS”) moved for their appointment as Lead Plaintiff of the Apple Backdating Action No.  
13 1 pursuant to 15 U.S.C. § 78u-4;

14 WHEREAS, on January 19, 2007, this Court appointed NYCERS as Lead Plaintiff of that  
15 litigation;

16 WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, its Consolidated  
17 Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and the common  
18 law duty of disclosure. The Consolidated Complaint did not assert any claims for Defendants’  
19 alleged violations of §10(b) of the Exchange Act;

20 WHEREAS, on November 14, 2007, this Court granted Defendants’ motion to dismiss  
21 the Consolidated Complaint on the ground, *inter alia*, that NYCERS failed to plead standing to  
22 bring a direct claim (“Dismissal Order”);

23 WHEREAS, this Court granted NYCERS leave to amend its complaint but held that  
24 NYCERS could only amend for the purpose of attempting to plead a derivative claim, not a  
25 direct class action claim;

26 WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First  
27 Amended Consolidated Class Action Complaint that contained direct class action claims for  
28 alleged violations of § 10(b) of the Exchange Act;

1 WHEREAS, on May 14, 2008, this Court denied NYCERS's motion for leave to file an  
2 amended complaint ("Denial Order ");

3 WHEREAS, on June 12, 2008, this Court entered Judgment for defendants ("Judgment ");

4 WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal  
5 Order, the Denial Order and subsequent Judgment ("NYCERS's Appeal ");

6 WHEREAS, Plaintiffs filed this action ("Apple Backdating Action No. 2 ") on June 27,  
7 2008, alleging that Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder  
8 and § 20(a) of the Exchange Act by, *inter alia*, issuing backdated stock options to themselves  
9 and other Apple employees;

10 WHEREAS, Plaintiffs and Defendants agree that if this litigation were to go forward  
11 prior to resolution of NYCERS's appeal(s) of the Apple Backdating Action No. 1, there is a risk  
12 of duplicative litigation regarding Defendants' alleged backdating and alleged violations of the  
13 Exchange Act, and that this risk could result in a waste of judicial resources.

14 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

15 1. This action shall be stayed pending the resolution of NYCERS's Appeal (the  
16 "Resolution ");

17 2. "Resolution" means the date upon which NYCERS's Appeal is finally resolved  
18 meaning either the Judgment has become final and is no longer subject to appeal, or the  
19 case has been remanded to this Court and the remand order has become final and is no  
20 longer subject to appeal;

21 3. As part of this stay, all of Plaintiffs' remaining obligations under the Private  
22 Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4, will also be stayed  
23 pending the Resolution of NYCERS's Appeal;

24 4. All applicable time periods and deadlines from date of the entry of this Order to the  
25 time when the stay is lifted will toll.

26 5. By agreeing to this stipulation, Defendants expressly reserve and do not waive any  
27 defenses, arguments and motions as to all claims alleged in Apple Backdating Action No. 2.

28 IT IS SO STIPULATED.

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Dated: July 17, 2008

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Attorneys for Plaintiffs

I, Patrice L. Bishop, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Staying Action. In compliance with General Order 45, X.B., I hereby attest that the signatory below has concurred in this filing.

1 Dated: July 17, 2008

George A. Riley  
Luann L. Simmons  
Robert D. Tronnes  
O'MELVENY & MYERS LLP

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9 Dated: July 17, 2008

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20 Dated: July 17, 2008

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Attorneys for Defendant Fred D. Anderson

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Dated: July 17, 2008

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Attorneys for Defendant Nancy R. Heinen

1 **[PROPOSED] ORDER**

2 Pursuant to the stipulation of the parties, and for good cause shown, IT IS  
3 HEREBY ORDERED THAT:

4 1. This action shall be stayed pending the resolution of NYCERS's Appeal  
5 ("NYCERS's Appeal ") of the Dismissal Order, the Denial Order and subsequent Judgment  
6 evidenced by the Notice of Appeal filed on June 17, 2008;

7 2. "Resolution" means the date upon which NYCERS's Appeal is finally resolved  
8 meaning either the Judgment has become final and is no longer subject to appeal, or the  
9 case has been remanded to this Court and the remand order has become final and is no  
10 longer subject to appeal;

11 3. As part of this stay, all of Plaintiffs' remaining obligations under the Private  
12 Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4, will also be stayed  
13 pending the Resolution of NYCERS's Appeal;

14 4. All applicable time periods and deadlines from date of the entry of this Order to  
15 the time when the stay is lifted will toll.

16  
17 Dated: 7/22/08

  
Honorable Jeremy Fogel  
United States District Court Judge

