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9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

12
 13 IN RE APPLE INC. SECURITIES
 14 LITIGATION

Case No. C-06-5208-JF

CLASS ACTION

**LEAD PLAINTIFFS' REPLY IN
 SUPPORT OF MOTION FOR FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT AND PLAN OF
 ALLOCATION AND APPLICATION
 FOR ATTORNEYS' FEES AND
 REIMBURSEMENT OF EXPENSES**

Date: February 25, 2011
 Time: 9:00 a.m.
 Courtroom: 3, 5th Floor
 Judge: Hon. Jeremy Fogel

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1 459 (9th Cir. 2000) (approving settlement where one objection was received from a class of 5,400
 2 members); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977), *overruled on*
 3 *other grounds* (approving settlement where one percent of the class objected).

4
 5 **B. The Distribution Of Any Settlement Funds Remaining After Repeated**
 6 **Distribution To Shareholders To Designated Educational Institutions Is**
 7 **Appropriate**

8 Objector Pezzati raises a “contingent” objection to final approval of the settlement. His
 9 objection is “contingent” because it is raised *if and only if* there are unclaimed funds after all
 10 efforts to distribute the settlement funds are unsuccessful (i.e., there are *cy pres* distributions to
 11 corporate governance programs). *See* Pezzati Objection, Dkt. No. 148 at 2 (“if...the \$16.5
 12 million settlement fund will be exhausted, [Pezzati] has no objection to the settlement or the fee
 13 request.”). Pezzati’s objection to the potential for *cy pres* distributions of unclaimed settlement
 14 funds, if any, is without merit.¹

15 The Settlement provides that distribution will be made to corporate governance programs
 16 at designated academic institutions *only if* any funds remain o the now increased \$16.5 million
 17 settlement fund *after distribution and redistribution* to the Class, specifically:

18 Distributions will be made to Authorized Claimants after all claims have been
 19 processed and after the Court has finally approved the Settlement. If any funds
 20 remain in the Net Settlement Fund by reason of un-cashed checks or otherwise,
 21 then, after the Claims Administrator has made reasonable and diligent efforts to
 22 have Class Members who are entitled to participate in the distribution of the Net
 23 Settlement Fund cash their distributions, any balance remaining in the Net
 24 Settlement Fund one (1) year after the initial distribution of any unpaid costs or
 25 fees incurred in administering the Net Settlement Fund for such re-distribution, up
 26 to a maximum distribution of \$1.70 per share (the difference between the closing
 27 price of Apple common stock on June 29, 2006 (\$58.97) and June 30, 2006
 28 (\$57.27)). If after six months after such re-distribution any funds shall remain in
 the Net Settlement Fund, then such balance shall be contributed in nine equal
 payments to the following nine corporate governance programs ...

Notice of Proposed Settlement, Settlement Fairness Hearing, and Motion for Attorneys’ Fees and
 Expenses (the “Notice”), ¶ 49, attached as Exhibit A-1 to the Amended Stipulation and
 Agreement of Settlement.

¹ The Court rejected similar objections raised by Pezzati to preliminary approval of the
 settlement. *See* Dkt. Nos. 137-39.

1 Pezzati asserts that there is not “a single case” that addresses his argument that *cy pres*
2 payments of residual funds to non-class members are impermissible. *See* Pezzati Objection, Dkt.
3 No. 148, at 2. Pezzati is wrong. Quite the contrary, the Ninth Circuit has specifically approved
4 use of *cy pres* distributions of unclaimed settlement funds. *Six Mexican Workers v. Ariz. Citrus*
5 *Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990). Other Circuits and district courts have as well.
6 *See, e.g., In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 34 (1st Cir. 2009)
7 (“courts have allowed parties to establish *cy pres* funds when money remained from the
8 defendant’s payout after money for damages had been distributed to class members”); *Powell v.*
9 *Georgia-Pacific Corp.*, No. 96-3531, 119 F.3d 703, 705-706 (8th Cir. 1997) (refusing, after
10 money in a settlement fund remained, to distribute the remainder to class members because
11 “neither party ha[d] a legal right” to the unclaimed amount); *Hunt v. Imperial Merch. Servs.*, No.
12 C-05-04993 DMR, 2010 U.S. Dist. LEXIS 111243 (N.D. Cal. Oct. 7, 2010); *see also* 3 Newberg
13 on Class Actions § 10:17 (4th ed.) (“The [commonly used] *cy pres* approach...puts the unclaimed
14 fund[s] to [their] next best compensation use, e.g., for the aggregate, indirect, prospective benefit
15 of the class...”); *see also id.* (citing further cases recognizing the propriety of distributing funds
16 that were unclaimed by class members to charitable and other public interest organizations for the
17 indirect benefit of the class).

18 Pezzati further asserts that there is no authority for *cy pres* distributions in shareholder
19 class actions (as distinguished from consumer class actions) where class members include current
20 shareholders. *See* Pezzati Objection, Dkt. No. 148, at 6-7 (asserting that *cy pres* distributions in
21 shareholder class actions “is a question of first impression”). This assertion is also meritless. *See*
22 *In re Rambus, Inc. Sec. Litig.*, No. 06-4346-JF, slip op. (N.D. Cal. April 30, 2010) (approving
23 backdating settlement that included contingent *cy pres* distribution provision to non-profit
24 organization for funds remaining after two distributions to class members).

25 Pezzati also claims that “[d]istribution of any leftover funds is not appropriate under the
26 [American Law Institute, *Principles of the Law of Aggregate Litigation* (the “ALI Principles”).”
27 Pezzati Objection, Dkt. No. 148, at 4-5. Once again, Pezzati is wrong. The Settlement fully
28 complies with the ALI Principles, which are not binding on this Court in any event. *See In re*

1 *Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d at 35 (holding the issue “is not whether
2 the settlement complies with the ALI draft, but whether the district court abused its discretion in
3 approving the *cy pres* part of the settlement.”). Sections 3.07(b) and (c) of the ALI Principles
4 recognize that if “specific reasons exist that would make...further distributions impossible or
5 unfair,” a *cy pres* distribution to “a recipient whose interests reasonably approximate those being
6 pursued by the class” may be appropriate. The Settlement here is perfectly consistent with the
7 ALI guidelines. *Cy pres* distributions will only occur, if at all, after the Claims Administrator has
8 made two separate distributions over an 18-month period of time. If and only if “leftover” funds
9 remain after these two distributions, they will be distributed to organizations that focus on
10 corporate governance issues. These organizations clearly have interests that “reasonably
11 approximate” the interests of Class Members, especially given the corporate governance failures
12 alleged in the complaint.

13 Finally, Pezzati complains that while the complaint in this action alleged that Apple’s
14 share price dropped approximately \$10 per share, the Settlement caps damages per share at \$1.70,
15 and that the limitations placed on recoverable damages are not fully explained in the Notice. *See*
16 Pezzati Objection, Dkt. No. 148, at 4-6. Once again, Mr. Pezatti is wrong.

17 The Notice clearly explains that the \$1.70 cap on damages is the product of the difference
18 between the closing price of Apple common stock on June 29, 2006 (\$58.97), when the Company
19 disclosed certain “irregularities” regarding in the accounting for stock options, and the next day,
20 June 30, 2006 (\$57.27). Notice ¶ 49. The significant decline in the stock price alleged in the
21 Amended Consolidated Complaint, and referenced by Mr. Pezatti (Pezatti Objection, Dkt. No.
22 148, at 6), took place over a two week period following the disclosure at issue. *See* Dkt No. 105,
23 ¶¶ 458-63. Although there are significant arguments that a court may consider the impact on a
24 company’s stock price in an extended period following an alleged “corrective disclosure”, there is
25 myriad caselaw standing for the proposition that a single day “even window” is appropriate for
26 purposes of establishing loss causation in a claim under Section 10(b) of the Exchange Act. *See*,
27 *e.g.*, *In re Countrywide Fin. Corp. Sec. Litig.*, --- F.R.D. ---, 2009 WL 7322254, at *28 (C.D.
28 Cal. Dec. 9, 2009) (“Same-day correlation is consistent with market efficiency.”); *see also In re*

1 *TheMart.com, Inc. Sec. Litig.*, 114 F. Supp. 2d 955, 963-64 (C.D. Cal. 2000) (same). For
 2 example, in *In re American International Group, Inc. Sec. Litig.*, 265 F.R.D. 157, 182 S.D.N.Y.
 3 (2010), the court succinctly explained how the absence of a same-day stock price drop can have
 4 the effect of vastly limiting damages in a class action under the federal securities laws:

5
 6 [I]f the market on which AIG stock traded was indeed efficient – an assumption
 7 and requirement of the fraud-on-the-market presumption – then the absence of a
 8 price decline on the day a fraud was disclosed will strongly indicate that there was
 9 also no price increase on the day the fraud occurred [i.e., no artificial inflation
 10 attributable to the false statements]. Thus, to the extent a Defendant can show that
 11 there was no price decrease in AIG stock on the date a misrepresentation was
 12 disclosed [i.e., the corrective disclosure date(s)], the Court views this showing as
 13 strong evidence that there was no price change on the date of the
 14 misrepresentation, thus rebutting the fraud-on-the-market presumption.

15 *Id.* The fact that there is significant authority limiting the ability of shareholders to prove “loss
 16 causation” through an impact on the price of a company’s stock following several days (let alone
 17 two weeks) after a corrective disclosure was a substantial factor in Lead Plaintiffs’ agreement to
 18 settle the case. If Mr. Pezzati or his counsel has complaints about the limitations imposed on a
 19 shareholder’s ability to demonstrate economic loss by the PSLRA² and by judicial application of
 20 the Supreme Court’s decision in *Dura Pharm. Inc. v. Broudo*, 544 U.S. 336, 346 (2005), those
 21 arguments should be addressed to Congress.

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² See 15 U.S.C. § 78u-4(b)(4) (“In any private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages.”).

1 shares of Apple stock during the Class Period.³ Nonetheless, his objection is without merit in any
2 event.

3
4 Option holders were not a part of the Class, and therefore cannot properly be included in
5 the Settlement.⁴ With regard to his complaint that the exclusion of purchasers of Apple shares
6 who sold their shares on or before June 29, 2006 “defies logic,” (Fekrat Obj. at ¶ 3), Mr. Fekrat
7 may be right, but such exclusion is also mandated by statute and by the Supreme Court. *See*
8 *Dura Pharm. Inc.*, 544 U.S. at 342-46 (prohibiting the recovery of damages for shares sold before
9 the “relevant truth” is disclosed about the fraud); *see also* 15 U.S.C. §78u-4(e) (“the award of
10 damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or
11 received, as appropriate, by the plaintiff for the subject security and the mean trading price of that
12 security during the 90-day period beginning on the date on which the information correcting the
13 misstatement or omission that is the basis for the action is disseminated to the market.”).

14 **II. THE OBJECTIONS TO THE MOTION FOR ATTORNEYS’ FEES AND** 15 **EXPENSES SHOULD BE OVERRULED**

16 **A. Notice Of The Settlement And Lead Plaintiffs’ Fee Application Were Timely**

17 Dr. Sibley argues that the Fee Motion violates procedural due process because it was not
18 filed before the deadline for filing objections. He is factually incorrect. Lead Plaintiff filed the
19 Settlement Motion, the Fee Motion, and all supporting documents — including six detailed
20 declarations — *before* the January 21, 2011 objection deadline. Unlike the situation addressed by
21 the Court in *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010), the Fee

22
23 ³ The Notice requires that individuals wishing to object must “identify the date(s), price(s), and
24 number of shares of all purchases and sales of Apple common stock you made during the Class
25 Period.” Notice ¶ 36. The Orloff Objectors failed to include this information, and Fekrat has not
26 provided this information with respect to his option transactions.

27 ⁴ *See* Dkt. No. 105 at 1 (“Plaintiffs bring this securities fraud class action ... on behalf of itself
28 and all other persons or entities who acquired securities *issued by Apple*, between and including
August 24, 2001 and June 29, 2006 ...”). Options of Apple that may be purchased on various
exchanges such as the Chicago Board Options Exchange are not “issued by Apple,” but are
individual contracts between private investors. *See also* Dkt. No. 105 at ¶ 484 (“Had Lead
Plaintiff and the other members of the Section 10(b) Class known the truth, they would not have
purchased Apple’s stock or would not have purchased stock at the inflated prices that were
paid.”).

1 Motion here was electronically filed with the Court on January 7, 2011, and posted on the
2 www.AppleSecuritiesSettlement.com website on January 10, 2011. Contrary to Mr. Sibley's
3 argument, therefore, the Fee Motion was thus available not only before the objection deadline, but
4 six weeks before the Final Approval Hearing.

5 Moreover, Notice was mailed out on December 8, 2010. Objections were due 44 days
6 later on January 21, 2011. Courts have repeatedly found such time periods to constitute sufficient
7 notice. *See, e.g., Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-1375 (9th Cir. 1993)
8 (initial notice sent 31 days before the opt-out deadline held to be adequate); *Marshall*, 550 F.2d at
9 1178 (1977) (approving notice mailed 26 days before opt-out deadline); *In re BankAmerica Corp.*
10 *Sec. Litig.*, 210 F.R.D. 694, 707-08 (E.D. Mo. 2002) (timing of notice comports with due process
11 when "[t]here were three to four weeks between the mailing of class notice and the last date to
12 object") (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 120-21 (8th Cir. 1975)
13 (nineteen days notice was enough time to object, particularly when case had been ongoing for two
14 years)); *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 429-30 (5th Cir. 1977) (in securities
15 fraud class action, a period of "almost four weeks between the mailing of the notices and the
16 settlement hearing" was adequate time, particularly when only one class member objected to the
17 timing and where such class member was a part of the case since its inception). *See also DeJulius*
18 *v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 940 (10th Cir. 2005) (initial
19 notice to nominees mailed 32 days before the opt-out deadline held to be adequate); *In re AOL*
20 *Time Warner S'holder Derivative Litig.*, No. 02 civ. 6302 (SWT), 2006 WL 2572114 (S.D.N.Y.
21 Sept. 6, 2006) (publication of notice 34 days before the deadline for objections held to be
22 adequate).

23 Notice of a proposed class action settlement may satisfy the requirements of due process
24 without guaranteeing personal notification to every individual class member. *See Brannon v.*
25 *Household Int'l Inc.*, 236 F. Appx. 285, 287-88, & n.1 (9th Cir. 2007) (determining that class
26 notice was adequate and rejecting the proposition that actual notice had to be given to each and
27 every class member). *See also Buxbaum v. Deutsche Bank AG*, 216 F.R.D 72, 80 (S.D.N.Y. 2003)
28 ("It is 'widely recognized that for the due process standard to be met it is not necessary that every

1 class member receive actual notice, so long as class counsel acted reasonably in selecting means
2 likely to inform persons affected”). Indeed, as the Ninth Circuit has held:

3 [T]he notice in this case was constitutionally sufficient. The Administrator
4 published notices in, among others [national] newspapers, maintained an internet
5 website detailing the settlement and opt out procedures, and mailed a follow-up
6 notice. In addition, the district court noted that quality control procedures were put
7 in place by the Administrator. Given the large size of the class and its geographical
8 distribution, the aforementioned procedures constitute “the best practicable notice”
9 reasonably aimed at reaching the class.

10 *Brannon*, 271 F. Appx. at 287-88 (citing *Silber v. Mabon*, 18 F.3d 1449, 1453-54 (9th Cir.
11 1994)).

12 As set forth in the Supplemental Oseas Declaration, of the total 1,211,562 Notice Packets
13 that were mailed to potential Class members, 31,866 were mailed by the December 8, 2010,
14 mailing deadline set by the Court in the Scheduling Order. For reasons discussed in the
15 Supplemental Oseas Declaration, as of January 14, 2011, over 1.1 million Notice Packets were
16 mailed to potential settlement class members. Supp. Oseas Decl. ¶ 9. In addition, a copy of the
17 Notice was published in *The Investor’s Business Daily* and transmitted over *Business Wire* on
18 December 8, 2010. *Id.* ¶ 18. The Class as a whole indisputably had adequate notice. These
19 objections are also without merit.

20 Notably, certain of the objectors received notice later than others because they held their
21 shares in “street name” – *i.e.*, in the name of a nominee/brokerage house. Pursuant to the
22 Scheduling Order, the Claims Administrator used “reasonable efforts to give notice to nominee
23 purchasers such as brokerage firms and other persons and entities who purchased Apple common
24 stock during the Class Period as record owners but not as beneficial owners.” Scheduling Order
25 ¶ 9. *See* Supp. Oseas Decl. ¶ 7. In addition, the Scheduling Order provides that “[s]uch nominee
26 purchasers are directed within fourteen (14) days of their receipt of the Notice, to either forward
27 copies of the Notice and Proof of Claim to their beneficial owners, or to provide the Claims
28 Administrator with lists of the names and addresses of the beneficial owners.” Scheduling Order
¶ 9.

1 That certain brokers were slower than others in forwarding copies of the notice to
 2 beneficial owners cannot be blamed on Lead Counsel or any party to this litigation. That such
 3 delays may occur is a byproduct of an individual shareholder's decision to hold securities in
 4 "street name". See *Enstar Corp. v. Senouf*, 535 A.2d 1351, 1354-55 (Del. 1987) (noting that the
 5 "attendant risks" of owning stock registered in street name, including the risk that the shareholder
 6 may not receive notice of corporate proceedings, are borne by the stockholder). Moreover,
 7 "notice provided to the class members' nominees – i.e., the brokerage house – has been deemed
 8 sufficient even if brokerage houses failed to timely forward the notice to the beneficial owners."
 9 *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (citing *DeJulius*, 429 F.3d at 936 (finding
 10 notice sufficient where two beneficial owners received notice of class settlement two weeks after
 11 deadline for filing objections and on the same day as the final fairness hearing)); *Torrissi*, 8 F.3d at
 12 1374-75 (concluding notice was sufficient where notice was mailed to some beneficial owners
 13 after deadline for filing objections had passed); *Silber*, 18 F.3d at 1453-54 (finding notice
 14 adequate where, due to late response of brokerage house, 1000 beneficial owners received notice
 15 after the opt-out deadline)).⁵

16
 17 **1. The "Contingent" And Other Objections To The Requested Attorneys'
 18 Fees And Expenses Are Without Merit**

19 Pezzati raises yet another "contingent" objection to the request for attorneys' fees and
 20 expenses based on the potential for *cy pres* distributions and asserts that before approving the fee
 21 request the Court must wait until the Claims Administration process is complete, determine the
 22 amount, if any, of *cy pres* distributions and then reduce the requested fee based on the amount of
 23 such distributions. Pezzati Objection, Dkt. No. 148 at 7. This argument is without merit for three
 24 reasons.

25 First, courts routinely grant approval to attorneys' fee requests prior to knowing whether
 26 there will be funds leftover for *cy pres* distributions. See, e.g., *In re Rambus*, No. 06-4346-JF,

27 ⁵ Nevertheless, to address any possible concern Court might have on Notice, to the extent
 28 substantive objections are received prior to the Fairness Hearing, counsel will address them at that
 time.

1 slip op. (N.D. Cal. May 14, 2008) (approving award of attorneys' fees and expenses prior to
 2 knowing whether there might be "leftover" *cy pres* funds to be distributed). Pezzati raises
 3 nothing that requires a different result here. Second, the objection is based on Pezzati's erroneous
 4 view of the Settlement. Pezzati apparently believes the \$16.5 million settlement fund will be
 5 reduced by the fees awarded to Plaintiffs' Counsel, and that the settlement fund will thus amount
 6 to only \$14,138,234. *See* Pezzati Objection, Dkt. No. 148, at 8-10. This is wrong; Apple will pay
 7 Plaintiffs' Counsel's fees and expenses separate and apart from the \$16.5 million settlement fund.
 8 There will be no reduction in the Settlement Fund. *See* Notice ¶ 29. Third, Pezzati does not raise
 9 any objection to the reasonableness of the requested attorneys' fees or expenses nor could he.

10 Objectors Gouzoules, the Orloffs and Kyriazos, however, do object to the fee, but without
 11 even mentioning, let alone presenting an analysis of the factors courts consider in evaluating fee
 12 awards.⁶ Ninth Circuit jurisprudence, however, is clear: A district court must review several
 13 case-specific factors in determining the reasonableness of the fee award for class counsel. *See In*
 14 *re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291 (9th Cir. 1994). And, as
 15 explained in the Fee Brief (at 10-22), Class Counsel has satisfied each of these elements.
 16 Accordingly, these baseless objections should be rejected out of hand and the requested fees and
 17 expenses should be approved for the reasons stated in Plaintiffs' Opening Brief. *See In re*
 18 *Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002) (rejecting broad,
 19 unsupported objections because "[they] are of little aid to the Court").

20 21 **2. Objector Pezzati's Purported Reservation Of Rights To Request** **Attorneys' Fees Should Be Rejected**

22 Pezzati purports to "reserve[]" the right to make a request for attorneys' fees capped at
 23 3.4% of the difference between the amount actually paid to the class and \$11,638,234, to be paid
 24 from the class counsel's attorney fee award," Pezzati Objection, Dkt. No. 148, at 8, and states that
 25

26 ⁶ Messrs. Gouzoules and Kyriazos's objections are, in fact, nothing more than objections to
 27 securities class actions generally. Neither Mr. Gouzoules nor Mr. Kyriazos offers any reason,
 28 explanation, or evidence to support his contention. As such, their objections are improper and
 should be overruled. *Wilson v. Airborne, Inc.*, No. 07-770-VAP, 2008 WL 3854963, at **7-8
 (C.D. Cal. Aug. 13, 2008) (rejecting objections that do not address the terms of the settlement).

1 “Pezzati will...make a formal request for attorneys’ fees upon disclosure of the amount actually
2 paid to the class, contingent upon the court’s approval of the settlement and the class being
3 actually paid at least \$11,638,234.” *Id.* at 10. This purported “right” is based on Pezzati’s claim
4 that he somehow *caused* a \$2.5 million increase in the settlement fund. *Id.* at 8-10. Objector
5 Pezzati’s assertion is without merit for three reasons.

6 First, Pezzati’s objection is not a proper motion for attorneys’ fees and, therefore,
7 Pezzati’s purported reservation of the right to seek attorneys’ fees in the future should be denied.
8 *See Hartless v. Clorox Co.*, No. 06-2705, 2011 WL 197542 at *15 (S.D. Cal. Jan. 20, 2011)
9 (overruling objection, denying objector’s request for attorneys’ fees and granting final approval to
10 settlement and class counsel’s request for attorneys’ fees; “objector Newman raises this issue [of
11 his attorneys’ fees] at the end of his objection and not as a properly brought request for attorneys’
12 fees.”).⁷ Second, even if there were a valid basis for Pezzati’s fee application either now or in the
13 future – which there is not, Pezzati’s assertion that his fees could be deducted from an award to
14 Plaintiffs’ Counsel is meritless because Plaintiffs’ Counsel’s fees will not be paid from the
15 Settlement Fund. *See Fleury v. Richemont North Am., Inc.*, No. 05-4525 EMC, 2008 WL
16 4829868 (N.D. Cal. Nov. 4, 2008) (“[Objector’s] contention that his fees could be taken from the
17 fee award to class counsel is without merit because class counsel is not being paid out of a
18 common fund.”). Third, Pezzati is not entitled to any award of attorneys’ fees because he did not
19 cause any increase to the settlement here. The increased settlement fund in the amended
20 settlement was the result of negotiations between Plaintiffs’ Counsel and the defendants in which
21 Pezzati’s counsel did not participate. Indeed, Pezzati’s objection to the *cy pres* aspect of the
22 settlement was as meritless with respect to the original settlement terms as it is now with respect
23 to the final terms. Moreover, the very authority Pezzati cites rejected a similar claim for fees by
24 an objector. *See Vizcaino v. Microsoft Corporation*, 290 F.3d 1043, 1051-52 (9th Cir. 2002)
25 (holding district court did not abuse its discretion in denying objector’s fee application; “Because
26 objectors did not increase the fund or otherwise substantially benefit the class members, they

27
28 ⁷ While Pezzati’s request for fees should be denied now, Plaintiffs reserve the right to contest any future motion for attorneys’ fees he may make.

1 were not entitled to fees.”); *see* Pezzati Objection, Dkt. No. 148, at 8 (citing *Vizcaino*); *see also In*
2 *re Leapfrog Enter., Inc. Sec. Litig.*, No. 03-05421, 2008 WL 5000208 (N.D. Cal. Nov. 21, 2008)
3 (denying objector’s motion for attorneys’ fees because objector did not confer a substantial
4 benefit on the class).

5
6 **B. The Reaction Of The Class Confirms The Reasonableness Of The Requested**
7 **Fees**

8 The reaction of the class may also be a factor in determining the fee award. *Knight v. Red*
9 *Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *7 (N.D. Cal. Feb. 2, 2009); *see also*
10 *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at
11 *13 (C.D. Cal. July 21, 2008) (holding, where three class members objecting and only twenty-
12 nine opting out “indicates that counsel achieved a favorable result for the class, which in turn
13 suggests that they are entitled to a generous fee.”). This is especially so where, as here, the
14 amount of the fee requested is, in fact, *less* than what was reported in the Notice.

15 That only two objections to the fee request were received “is powerful evidence that the
16 requested fee is fair and reasonable.” *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594
17 (S.D.N.Y. 2008) (citing *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 912 F. Supp. 97, 103
18 (S.D.N.Y. 1996) (determining that an “isolated expression of opinion” should be considered “in
19 the context of thousands of class members who have not expressed themselves similarly”)); *In re*
20 *Heritage Bond Litig.*, Nos. 02-ML-1475-DT (RCX) et al., 2005 WL 1594389, at *15 (C.D. Cal.
21 June 10, 2005) (citing *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 327 (E.D.N.Y. 1993) (lack
22 of objections to requested fee supported its reasonableness)); *Ressler v. Jacobson*, 149 F.R.D.
23 651, 656 (M.D. Fla. 1992) (“The fact that there are no objections to either the Settlement or to
24 Petitioners’ request for attorney’s fees is strong evidence of the propriety and acceptability of that
25 request.”).

26 “The absence of any meaningful objection by a Class Member is an important factor in
27 evaluating the fairness, reasonableness, and adequacy of the settlement and supports approval of
28 the settlement here.” *Bellows v. NCO Fin. Sys., Inc.*, No. 3:07-cv-01413-W-AJB, 2008 WL

1 5458986, at *8 (S.D. Cal. Dec. 10, 2008) (citations omitted). Hundreds of thousands of
2 prospective Class members were sent the Notice. Only two objections relating to the Fee
3 Application have been submitted. That is overwhelmingly convincing evidence that the request is
4 fair and reasonable. *Id.*

5
6 **CONCLUSION**

7 Based on the foregoing and the entire record herein, Lead Plaintiff respectfully requests
8 that the Court approve the Settlement and Plan of Allocation as fair, reasonable and adequate and
9 in the best interest of the Class, and approve the fee and expense application as requested, and
10 overrule the objections to the fee and expense application.

11
12 Dated: February 4, 2011

Respectfully submitted,
GRANT & EISENHOFER P.A.

13
14 /s/ Michael J. Barry
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I, Michael J. Barry, am the ECF User whose ID and password are being used to file this Stipulation and Agreement of Settlement. In compliance with General Order 45, X.B., I hereby attest that George A. Riley, Douglas R. Young, Yohance C. Edwards, and Patrice L. Bishop have concurred in this filing.

By: /s/ Michael J. Barry
Michael J. Barry

Exhibit A

1 electronically to the 365 banks, brokers and nominees for which Epiq had obtained e-mail
2 addresses.

3 5. The notice package mailed to banks, brokers and other nominees included a
4 Nominee Cover Letter (attached hereto as **Attachment B**). The Nominee Cover Letter directs
5 each institution to compile a list of potential Class Members in order to provide notice by one or
6 more of the following three mechanisms: (i) send copies of the Notice and Proof of Claim to such
7 potential Class Members directly, (ii) send an electronic list of names and address to Epiq for
8 mailing, or (iii) send to Epiq pre-printed address labels with the mailing information for potential
9 Class Members, which Epiq could then use to mail a Notice and Proof of Claim. The instructions
10 also requested that the banks, brokers and nominees complete their research within 14 days, in
11 accordance with the Amended Preliminary Approval Order.

12 6. As of December 23, 2010, Epiq received 20 electronic lists from banks, brokers
13 and other nominees, comprised of 672,012 potential Class Member names and addresses. Related
14 mailings of the Notice and Proof of Claim to these potential Class Members were completed on a
15 rolling basis as files were received, with most mailings completed 7-10 business days after Epiq's
16 receipt of the data. Between December 9, 2010 and December 23, 2010, Epiq also received six
17 requests for bulk shipment of unaddressed copies of the Notice and Proof of Claim to banks,
18 brokers and other nominees. These requests totaled 25,787 Notices and Proofs of Claim, which
19 the banks, brokers and other nominees were to then forward directly to potential Class Members.
20 Epiq fulfilled all such requests on a rolling basis as they were received, with most requests being
21 fulfilled within three business days. Finally, Epiq received one batch of approximately 712 pre-
22 printed address labels prior to December 23, 2010. Epiq promptly affixed the address labels and
23 appropriate postage to these Notices and Proofs of Claim, and caused them to be mailed to
24 potential Class Members.

25 7. Since December 23, 2010, Epiq received an additional 22 electronic lists from
26 banks, brokers and other nominees, comprised of 253,997 additional potential Class Member
27 names and addresses. We have received seven additional requests for bulk shipment of a total of
28 207,668 unaddressed copies of the Notice and Proof of Claim. One such instance was on January

1 5, 2011, when Broadridge Financial Solutions, Inc. ("Broadridge") requested unaddressed copies
2 of the Notice and Proof of Claim from Epiq on behalf of Merrill Lynch and possibly other
3 institutions. On January 10 and 11, 2011, Epiq sent Broadridge the requested unaddressed copies
4 of the Notice and Proof of Claim by overnight mail. Broadridge subsequently informed Epiq that
5 it mailed the unaddressed copies of the Notice and Proof of Claim to potential Class Members, on
6 January 14, 2011.

7 8. Lastly, Epiq has received 10 additional batches of pre-printed address labels,
8 comprised of 12,240 potential Class Member names and addresses, since December 23, 2010.
9 All such mailings were completed on a rolling basis as information was received, with most
10 mailings completed within 5-7 business days.

11 9. Epiq has received correspondence from three individuals who claim to have
12 received the Notice and Proof of Claim on or shortly before January 21, 2011. The parties asked
13 Epiq to determine the circumstances regarding the mailing of the Notice and Proof of Claim to
14 these individuals. We have determined that Broadridge, on behalf of Merrill Lynch, mailed the
15 Notice and Proof of Claim to one of the individuals, George Sibley, on January 14, 2011. As
16 discussed above, on January 10 and 11, 2011, Epiq mailed Broadridge unaddressed copies of the
17 Notice and Proof of Claim in response to Broadridge's January 5, 2011 request to Epiq. Epiq
18 mailed the Notice and Proof of Claim directly to the other two individuals seven business days
19 (January 18, 2011) after their information was provided to Epiq by a nominee on January 7, 2011.

20 10. Epiq has received invoices for postage, copying, and related costs from nominees
21 that mailed the Notice and Proof of Claim directly to their clients.

22 11. As of January 14, 2011, Epiq had sent over 1.1 million copies of the Notice and
23 Proof of Claim to potential Class Members or their banks, brokers or other nominees. As of
24 February 3, 2011, a total of 1,211,562 Notices and Proofs of Claim were mailed to potential Class
25 Members or their banks, brokers or other nominees. Some copies of the Notice and Proof of
26 Claim have been returned as undeliverable. We have attempted to re-mail the Notice and Proof
27 of Claim to a different address, but approximately 42,000 records remain undeliverable.
28

OTHER CONTACT WITH BANKS, BROKERS AND NOMINEES

12. As noted above, Epiq sent a Notice, Proof of Claim and related instructions electronically on December 10, 2010 to the 365 banks, brokers and nominees for which Epiq had obtained an e-mail address. We have also undertaken other efforts to reach out to these entities and encourage them to complete their research for the notice process or to remind them of the various deadlines established by the Court. Beginning January 3, 2011, Epiq has focused on the ten entities who are historically among the largest claim filers in similar Class Actions, though we have worked with other banks, brokers and nominees by phone or e-mail, as well. We have been advised by several nominees that they intend to file claims on behalf of their clients before the March 15, 2011 Proof of Claim deadline.

TOLL FREE TELEPHONE NUMBER, EMAIL ADDRESS AND WEBSITE

13. As described more fully in my previous declaration, Epiq created and continues to maintain a toll-free information line which, in addition to providing recorded information about the Proposed Settlement, allows callers to speak with a live representative or request a Notice and Proof of Claim. As of February 3, 2011, Epiq has received 2,317 calls to the toll-free number. Of these callers, 1,076 have chosen to speak with a live representative, and 71 additional requests for a Notice and Proof of Claim were received.

14. Epiq also established an email address, questions@applesecuritiessettlement.com, for Class Members and other interested persons to contact the Claims Administrator. As of February 3, 2011, Epiq has received 349 emails.

15. As described more fully in my previous declaration, Epiq established and continues to maintain a settlement website, www.applesecuritiessettlement.com.

16. On December 8, 2010, Epiq made the following documents accessible through this website:

- Amended Stipulation and Agreement of Settlement (without exhibits)
- Lead Plaintiff's Motion for Preliminary Approval of Class Action Settlement

- 1 • Apple Inc.'s Memorandum of Points and Authorities in Support of Joint
- 2 Motion for Order Preliminarily Approving Settlement, Directing Notice of
- 3 Settlement, and Scheduling Settlement Fairness Hearing.
- 4 • Joint Submission in Support of Amended Preliminary Approval Order
- 5 • Amended Preliminary Approval Order (without exhibits)
- 6 • Notice of Proposed Settlement, Settlement Fairness Hearing, and Motion for
- 7 Attorneys' Fees and Expenses
- 8 • Proof of Claim

9 17. On January 10, 2011, Epiq made the following additional documents accessible
10 through this website:

- 11 • Lead Plaintiff's Notice of Motion and Motion for Final Approval of Class
- 12 Action Settlement; Memorandum of Points and Authorities in Support
- 13 Thereof.
- 14 • Lead Plaintiff's Notice of Motion and Motion for Attorneys' Fees and
- 15 Reimbursement of Litigation Expenses; Memorandum of Points and
- 16 Authorities in Support Thereof.
- 17 • Declaration of Michael J. Barry in Support of Motion for Final Approval of
- 18 Settlement and Plan of Allocation and Motion for an Award of Attorneys' Fees
- 19 and Reimbursement of Expenses.
- 20 • Defendants' Notice of Joinder in Lead Plaintiff's Request for Final Approval
- 21 of Class Action Settlement and Plan of Allocation.
- 22 • Apple Inc.'s Memorandum of Points and Authorities in Support of Final
- 23 Approval of Class Action Settlement and Plan of Allocation.

24 As of February 3, 2011, this website has been accessed by 12,406 visitors.

25 PUBLICATION NOTICE

26 18. As set forth in my earlier declaration, Epiq caused the Publication Notice to be
27 published on December 8, 2010, in *Investor's Business Daily*, and to be transmitted over *Business*
28 *Wire* on December 8, 2010.

REQUESTS FOR EXCLUSION

1
2 19. Epiq has designated a post office box address for the Settlement to receive
3 correspondence from Class Members, including Requests for Exclusion. The Notice directs that
4 all Requests for Exclusion be postmarked no later than January 21, 2011. As of February 3, 2011,
5 Epiq has received 19 Requests for Exclusion. As part of the exclusion process, Class Members
6 who wish to be excluded are directed to identify the date(s), price(s) and number of shares of all
7 purchases and sales of Apple common stock made during the Class Period. Of the 19 potential
8 Class Members who have requested exclusion, one potential Class Member has indicated that
9 they made no purchases of Apple common stock during the Class Period, and seven have not
10 included information about their purchases or sales. The remaining 11 Class Members have
11 reported purchases totaling 3,425 shares and reported sales totaling 590 shares. A list of each
12 potential Class Member requesting exclusion, as well as the number of shares reported purchased
13 and sold by each, is attached hereto as **Attachment C**.

PROOFS OF CLAIM

14
15 20. Epiq has designated a post office box address for the Settlement to receive Proofs
16 of Claim. This address appears on the Proof of Claim, Notice, website, and is available through
17 the toll-free telephone line. Class Members also have the option to submit their Proofs of Claim
18 and supporting documentation electronically at www.applesecuritiessettlement.com. As of
19 February 3, 2011, Epiq has received a total of 18,653 Proofs of Claim submitted by or on behalf
20 of Class Members that purportedly purchased over 547 million shares of Apple stock during the
21 Class Period. Of this total, 8,350 were submitted via the post office box, an additional 1,645 were
22 submitted via the website, and 8,658 were submitted electronically by banks, brokers or other
23 nominees.

24 21. Epiq has reviewed the Plan of Allocation for distribution of the Net Settlement
25 Fund, which is included in the Notice. Epiq has determined that it is able to administer the
26 Settlement based on the Plan of Allocation, and has administered numerous other securities class
27 action settlements with similar plans of allocation.

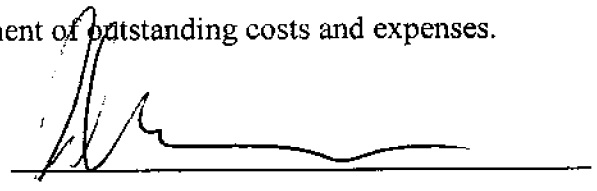
1 22. Epiq understands that the Plan of Allocation and the Court's Amended Preliminary
2 Approval Order require Class Members to submit valid Proofs of Claim and supporting
3 documentation. Such supporting documentation typically includes brokerage confirmation slips,
4 or other documentation as sufficiently reliable to establish the transactions in the relevant security
5 while preventing acceptance of fraudulent claims. If/when Epiq receives Proofs of Claim without
6 sufficient documentation, the claimant or their authorized representative will be advised of the
7 deficiency and we will attempt to work with the claimant in order for them to remedy the
8 deficiency.

9 23. As of February 2011, Epiq has begun to process Proofs of Claims and follow up
10 with Class Members regarding deficiencies.

11 24. Prior to distributing the Net Settlement Fund, pursuant to Section 6 of the
12 Amended Stipulation, I understand Lead Counsel will apply to the Court for a Class Distribution
13 Order which will, among other things, approve of Epiq's administrative determinations
14 concerning the acceptance and rejection of the Proofs of Claim submitted. Epiq will submit an
15 additional declaration at that time updating the Court on the claims administration process.
16 Pursuant to ¶ 49 of the Notice, if any funds remain in the Net Settlement Fund by reason of un-
17 cashed checks or otherwise, then, after Epiq has made reasonable and diligent efforts to have
18 Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash
19 their distributions, any balance remaining in the Net Settlement Fund one year after the initial
20 distribution of such funds shall be re-distributed to Class Members who have cashed their initial
21 distributions, after payment of any unpaid costs or fees incurred in administering the Net
22 Settlement Fund for such re-distribution, up to a maximum distribution of \$1.70 per share (the
23 difference between the closing price of Apple common stock on June 29, 2006 (\$58.97) and June
24 30, 2006 (\$57.27)). I understand that Lead Plaintiff will request that the Court approve of

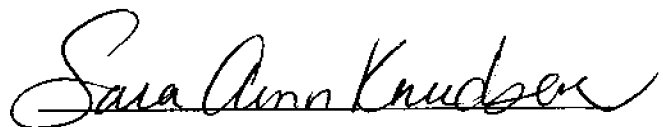
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appropriate recipients for cy pres donations of any funds remaining in the Net Settlement Fund after the second distribution following payment of outstanding costs and expenses.



Robert Oseas

Subscribed and sworn to before me this 4th of February, 2011.



NOTARY PUBLIC

My Commission Expires: 11/23/12



Attachment A

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

IN RE APPLE INC. SECURITIES
LITIGATION

Case No. C06-05208-JF

CLASS ACTION

DECLARATION OF CLAIMS ADMINISTRATOR ON NOTICE IMPLEMENTATION

I, ROBERT OSEAS, declare as follows:

1. I am a Project Manager employed by Epiq Class Action and Claims Solutions Inc., ("Epiq"), f/k/a Poorman-Douglas Corp., the Claims Administrator designated in the Amended Stipulation and Agreement of Settlement in this matter and approved by the Court in its Amended Order Preliminarily Approving Settlement, Directing Notice of Settlement, and Scheduling Settlement Fairness Hearing. *See* Doc. 134-1 at ¶1.6 and Doc. 139 at ¶8.

2. I am overseeing and am fully familiar with the notice implementation actions taken by Epiq in connection with the Settlement, as described below.

3. This Declaration is based upon my personal knowledge and information provided to me by associates and staff under my supervision and is accurate and truthful to the best of my knowledge.

4. Epiq is a firm with more than 40 years of experience in data processing. Epiq's claims administration services include: (a) coordination of all notice requirements; (b) design of direct mail notice; (c) establishment of toll free phone line and fulfillment services; (d) coordination with the U.S. Postal Service; (e) database management; (f) website hosting and

DECLARATION OF CLAIMS ADMINISTRATOR ON NOTICE IMPLEMENTATION

management; (g) claims processing; and (h) preparation of reports to courts overseeing class action settlements describing Epiq's notice and claims administration activities.

5. Epiq has provided notification and claims administration services in numerous securities matters, including: *In re General Motors Corp. Securities and Derivative Litigation*, MDL No. 1749 (E.D. Mich.); *In re: Parmalat Securities Litigation*, MDL No. 1653 (S.D.N.Y.); *In re Marvell Technology Group Ltd. Securities Litigation*, Case No. 06-6286 (N.D. Cal.); *In re: Brocade Securities Litigation*, Case No. 05-2042 (N.D. Cal.) and the Royal Dutch Shell Non-United States Residents Securities class action settlement under the supervision of the Amsterdam Court of Appeals, Case No. 10610887.

6. As a Project Manager, I am responsible for coordination of claims administration services for class action settlements. I oversee a multitude of services, such as document mailing, phone services, voice response units, live operators, website design and maintenance, mail processing, claims processing, distribution, and related reporting.

OVERVIEW OF EPIQ'S RESPONSIBILITIES

7. Epiq has been retained in the above matter to undertake numerous activities, including:

- (a) cause the Publication Notice to be published in *Investor's Business Daily* and transmitted over *Business Wire*;
- (b) print the Court-approved Notice and Proof of Claim;
- (c) mail the Notice and Proof of Claim and, where required, re-mail the Notice and Proof of Claim, by first-class mail to Class Members and to brokers, banks and other nominees;

(d) forward copies of the Notice and Proof of Claim to potential Class Members pursuant to requests submitted by brokers, banks and other nominees;

(e) use its best efforts to obtain correct addresses and re-mail the Notice and Proof of Claim to individuals or entities whose packages were returned as undeliverable mail;

(f) develop and maintain a website to provide information regarding the proposed Settlement and to capture online Proof of Claim submissions;

(g) establish an e-mail address for Class Members and other interested persons to contact the Claims Administrator;

(h) develop, staff and maintain live operator services and a toll free number with an interactive voice response unit (IVR);

(i) designate a post office box to receive requests for exclusion, Proofs of Claim and other communications; and

(j) receive, log, and process requests for exclusion, Proofs of Claim and other communications from Class Members and other interested persons.

PUBLICATION NOTICE

8. Epiq caused the Publication Notice to be published on December 8, 2010 in *Investor's Business Daily*, page A-7. Attached as **Attachment A** is a copy of the Publication Notice as it appeared in *Investor's Business Daily* as well as an affidavit of publication.

9. Also on December 8, 2010, Epiq caused the Publication Notice to be transmitted over *Business Wire*.

MAILING OF THE NOTICE AND PROOF OF CLAIM

10. On October 8, 2010, Epiq received 33,448 records from Apple's transfer agent. Epiq imported this data file and removed exact duplicates. On December 8, 2010, Epiq mailed 31,886 copies of the Notice and Proof of Claim to these records by first-class mail. **Attachment B** is a copy of the Notice and Proof of Claim package as it was mailed.

11. Epiq maintains and updates a list of banks, brokers and other nominees. On December 9, 2010, Epiq mailed 5,804 copies of the Notice and Proof of Claim to known banks, brokers and other nominees in the United States. As a result of that mailing, banks, brokers and other nominees have sent Epiq (i) lists of potential Class Members and/or (ii) requests for quantities of unaddressed notices that the banks, brokers and other nominees forward to potential Class Members. Epiq is fulfilling both types of requests as they are received.

TOLL FREE TELEPHONE NUMBER, EMAIL ADDRESS AND WEBSITE

12. Epiq activated a dedicated toll free number for the Settlement on December 7, 2010. The toll free number provides callers with automated answers to frequently asked questions and the ability to request a copy of the Notice and Proof of Claim by mail. This automated or "IVR" system is available 24 hours a day, 7 days a week. An option is available on the toll free number for callers to speak with a live agent. Epiq has trained agents on how to respond to questions from callers seeking information about the Settlement. Agents are available Monday through Friday from 9:00 A.M. to 5:00 P.M. Pacific Time (excluding official holidays). During other hours, callers may leave a message for an agent to call them back on the next business day.

13. Epiq also established an email address, questions@applesccuritiessettlement.com, for Class Members and other interested persons to contact the Claims Administrator.

DECLARATION OF CLAIMS ADMINISTRATOR ON NOTICE IMPLEMENTATION

14. A settlement website, www.applesecuritiessettlement.com, was established by Epiq which provides general information about the Settlement, answers to frequently asked questions and access to a number of case-related documents. Specifically, visitors to the website can download documents such as the Notice, Proof of Claim, Amended Stipulation and Agreement of Settlement and Amended Preliminary Approval Order, among other documents. This website also has automated functionality for Class Members and nominees to submit Proofs of Claims online.

POST OFFICE BOX

15. A post office box address has been designated for the Settlement. This post office box address appears on the Notice and Proof of Claim, and is also available through the toll free number and the website.

16. Epiq has received, and continues to receive, mail in this post office box, which includes Proofs of Claim.

17. As of the close of business on January 4, 2011, Epiq has received no requests for exclusion from the Class. As set forth in the Notice, requests for exclusion must be sent by first-class mail postage pre-paid, postmarked no later than January 21, 2011.

18. Epiq has received, and continues to receive, Proofs of Claim. The deadline to submit valid Proofs of Claim, as set forth in the Notice, is March 15, 2011.

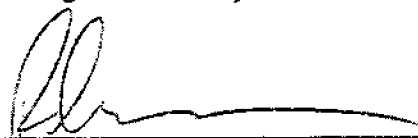
PLAN OF ALLOCATION AND CLAIMS PROCESSING

19. Epiq has reviewed the Plan of Allocation for distribution of the Net Settlement Fund, which is included in the Notice. Epiq has determined that it is able to administer the Settlement based on the Plan of Allocation, and has administered numerous other securities class action settlements with similar plans of allocation.

DECLARATION OF CLAIMS ADMINISTRATOR ON NOTICE IMPLEMENTATION

20. Epiq understands that the Plan of Allocation and the Court's Amended Preliminary Approval Order require Class Members to submit valid Proofs of Claim and supporting documentation. Such supporting documentation typically includes brokerage confirmation slips, or other documentation as sufficiently reliable to establish the transactions in the relevant security while preventing acceptance of fraudulent claims. If/when Epiq receives Proofs of Claim without sufficient documentation, the claimant or their authorized representative will be advised of the deficiency and we will attempt to work with the claimant in order for them to remedy the deficiency.

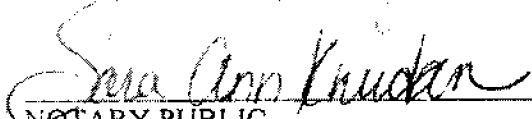
21. Prior to distributing the Net Settlement Fund, pursuant to Section 6 of the Amended Stipulation, I understand Lead Counsel will apply to the Court for a Class Distribution Order which will, among other things, approve of Epiq's administrative determinations concerning the acceptance and rejection of the Proofs of Claim submitted. Epiq will submit an additional declaration at that time updating the Court on the claims administration process. Pursuant to paragraph 49 of the Notice, I understand that Lead Plaintiff will request that the Court approve of appropriate recipients for cy pres donations of any funds remaining in the Net Settlement Fund following payment of outstanding costs and expenses.



Robert Oseas

Subscribed and sworn to before me this 7th day of January, 2011.





Sara Ann Knudsen
NOTARY PUBLIC

My Commission Expires: 11/23/12

DECLARATION OF CLAIMS ADMINISTRATOR ON NOTICE IMPLEMENTATION

Attachment B

In re Apple Inc. Securities Litigation
P.O. Box 6809
Portland, OR 97228-6809

Website: www.AppleSecuritiesSettlement.com
Email: questions@AppleSecuritiesSettlement.com
Phone: (888) 760-4869

December 8, 2010

NOTICE TO BROKERS, BANKS AND OTHER NOMINEES
In re Apple Inc. Securities Litigation, Case No. C-06-5208-JF (N.D. Cal.)

You may be a broker, bank or other nominee that purchased or sold Apple Inc. common stock, for the beneficial interest of a person or entity other than yourself.

The enclosed notice is regarding a proposed settlement of a class action lawsuit called *In re Apple Inc. Securities Litigation*. Beneficial owners and former owners of **Apple Inc. common stock (Q:AAPL) purchased between August 24, 2001 and June 29, 2006**, both dates inclusive, may qualify for a payment and/or act on other legal rights.

The Court has directed that
WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS NOTICE
you either:

- (a) Provide the Claims Administrator with a list of the names and last known addresses of beneficial owners of Apple Inc. common stock; or
- (b) Forward copies of the attached Notice and Proof of Claim to beneficial owners of Apple Inc. common stock.

If you are providing a list of names and addresses to the Claims Administrator:

- (a) Compile a list of names and addresses of beneficial owners of Apple Inc. common stock. It is not necessary to remove duplicate names.
- (b) Prepare the list in Microsoft Excel format following the "Electronic Name and Address File Layout" below. A preformatted spreadsheet can also be found on the "Nominees" page on the Settlement website: www.AppleSecuritiesSettlement.com.
- (c) Burn the Microsoft Excel file(s) to a CD or DVD.
- (d) Mail the CD or DVD to:

In re Apple Inc. Securities Litigation
P.O. Box 6809
Portland, OR 97228-6809

If you are providing the Notice and Proof of Claim to beneficial owners:

If you elect to mail the Notice and Proof of Claim to beneficial owners yourself, additional copies of the Notice and Proof of Claim may be requested on the "Nominees" page on the Settlement website: www.AppleSecuritiesSettlement.com.

Expense Reimbursement

Reasonable expenses are eligible for reimbursement (including postage and costs to compile names and addresses), provided an invoice is timely submitted to the Claims Administrator.

Electronic Name and Address File Layout

Column	Description	Length	Notes
A	Account #	15	Unique identifier for each record.
B	Beneficial owner's first name	25	
C	Beneficial owner's middle name	15	
D	Beneficial owner's last name	30	
E	Joint beneficial owner's first name	25	
F	Joint beneficial owner's middle name	15	
G	Joint beneficial owner's last name	30	
H	Business or record owner's name	60	Businesses, trusts, IRAs, and other types of accounts.
I	Representative or contact name	45	
J	Address 1	35	
K	Address 2	25	
L	City	25	
M	U.S. state or Canadian province	2	US and Canada addresses only. ¹
N	Zip code	10	
O	Country (other than U.S.)	15	

Master Proof of Claim

Any nominee may also submit a Master Proof of Claim on behalf of multiple clients who are beneficial owners of Apple Inc. common stock. The Master Proof of Claim and related instructions are posted on the "Nominees" page at www.AppleSecuritiesSettlement.com. Master Proofs of Claim must be completed and either submitted online at www.AppleSecuritiesSettlement.com by no later than March 15, 2011, or sent by first-class mail postage pre-paid postmarked no later than March 15, 2011.

If you have any questions, you may contact the Claims Administrator at 1-888-760-4869, or by email: questions@AppleSecuritiesSettlement.com. Thank you for your cooperation.

¹For countries other than the U.S. and Canada, place any territorial subdivision in "Address 2" field.

Attachment C

Attachment C - Requests For Exclusion

	Name	Address	City	State	Zipcode	Country	Postmark Date	Shares Purchased	Shares Sold
1	DIXIE J ALLEN	352 RAINTREE DR	ALTOONA	FL	32702	United States	1/15/2011	0	0
2	ERIC MATTHEWS	17 FRIAR GATE COURT	DERBY		DE1 1HE	United Kingdom	1/18/2011	150	0
3	HELEN C NISTER	5059 QUAIL RUN ROAD #25	RIVERSIDE	CA	92507	United States	1/18/2011	200	200
4	JULIETTE PRASSINOS	5366 SARATOGA AVE	YOUNGSTOWN	OH	44515-4075	United States	1/18/2011	100	0
5	LAURA HIRSHMAN	3416 COWELL PLACE	CINCINNATI	OH	45220-1502	United States	1/18/2011	-	-
6	SAMUEL C PICKENS	159 MECHANIC STREET PO BOX	BARRE	MA	1005	United States	1/18/2011	200	0
7	DONALD J BLAKESLEE	1188 GLEBE RD PO BOX 353	LOTTSBURG	VA	22511	United States	1/19/2011	32	0
8	JAMES MANZ	1205 NILES ST SW	MASSILLON	OH	44647	United States	1/19/2011	-	-
9	NELSON CONTI	164 FERNE COURT	PALO ALTO	CA	94306	United States	1/19/2011	3	0
10	SARA L BRUNS	9404 CROWNSPOINT CIRCLE	AUSTIN	TX	78748	United States	1/19/2011	100	100
11	GERARD P OSIKA	30 KINGSFORD CRES	KANATA	ON	K2K1T4	Canada	1/20/2011	-	-
12	NANCY K TAYLOR	PO BOX 690	CEDAR KEY	FL	32625	United States	1/20/2011	400	0
13	ROBERT C HARTUNG	9205 PARKWOOD CT	FORT MYERS	FL	33908-2829	United States	1/20/2011	325	290
14	NALINI B ZIEMAN	6904 BRANDYWINE LP NE	ALBUQUERQUE	NM	87111-1065	United States	1/21/2011	-	-
15	CHRISTOPHER J CASEBOLT	3595 ENDICOTT DR	BOULDER	CO	80305	United States	1/22/2011	200	0
16	DIANE C BARON	1573 PALISADES DRIVE	PACIFIC PALISADES	CA	90272	United States	1/22/2011	-	-
17	LAURA A JAGER	820 S QUINCY ST	HINSDALE	IL	60521	United States	1/24/2011	-	-
18	STEPHANIE LIM	1711 McCOWAN ROAD	SCARBOROUGH	ON	M1S 2Y3	Canada	1/24/2011	-	-
19	CHARLES KYRIAZOS	2816 34TH ST APT 3F	ASTORIA	NY	11103-5000	United States	1/31/2011	1,715	0