

\*\*E-Filed 11/2/2006\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re APPLE COMPUTER, INC., DERIVATIVE  
LITIGATION,

Case Number C 06-04128 JF (HRL)

ORDER<sup>1</sup> APPOINTING  
MANAGEMENT STRUCTURE FOR  
THE CONSOLIDATED LITIGATION

[re: docket no. 7, 12, 18, 21]

This case stems from allegations of options-backdating at Apple. Plaintiffs have brought multiple actions and competing motions for appointment of lead plaintiff and lead counsel of the Apple litigation. On October 13, 2006, the Court consolidated eleven actions under the caption of this case.<sup>2</sup> The Court heard oral argument on the motions on October 20, 2006. At the suggestion of counsel for Plaintiff Saratoga Advantage Trust, the Court indicated that it would allow the parties ten days to submit a stipulation with respect to a management structure for the

<sup>1</sup> This disposition is not designated for publication and may not be cited.

<sup>2</sup> On October 27, 2006, the Court related an additional case, C 06-06502 JW, to the consolidated case. Counsel for Saratoga Advantage Trust, the plaintiff in that case, filed an affidavit seeking appointment as lead counsel and participated in oral argument. The Court has fully considered the contents of the affidavit and counsel's comments at oral argument.

1 consolidated case. The parties now inform the Court that they have been unable to agree to a  
2 management structure for the consolidated litigation.

3 For the reasons articulated at oral argument, the Court will not appoint a lead plaintiff.  
4 The Court has considered the submissions and proposals made by the law firms that seek  
5 appointment as lead counsel. The Court is impressed with the qualifications of all of these firms.

6 The Court concludes that the litigation will proceed most effectively and efficiently with  
7 the appointment of a four-member management committee, with one member serving as chair of  
8 the management committee and liaison counsel for the litigation.<sup>3</sup> Having considered the  
9 submissions on behalf of all of the law firms involved, and good cause appearing, the Court  
10 designates the following firms as members of the management committee:

11 Cotchett, Pitre, Simon & McCarthy

12 Keller Rohrbach L.L.P.

13 Lerach Coughlin Stoia Geller Rudman & Robbins LLP

14 Schiffrin & Barroway, LLP

15 The Court designates Cotchett, Pitre, Simon & McCarthy as chair of the management committee  
16 and liaison counsel. All members of the management committee, including the chair, shall have  
17 one vote.

18 Counsel for the consolidated plaintiffs shall file and serve a consolidated complaint no  
19 later than 45 days after the entry of this order. Each defendant who has been served with the  
20 consolidated complaint shall respond to or otherwise answer the consolidated complaint no later  
21 than 45 days after service. Defendants' counsel may rely upon all agreements made with the  
22 management committee appointed by the Court, and such agreements shall be binding on all  
23 derivative plaintiffs. Service on the firm of Cotchett, Pitre, Simon & McCarthy shall be deemed  
24 service on all counsel.

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26 <sup>3</sup> The Court has received and reviewed the letter filed by counsel for Apple on November  
27 1, 2006. Notwithstanding counsel's argument with respect to demand futility, it appears that at  
28 the very least the amount of motion practice that reasonably may be expected in this case is not  
insignificant. Accordingly, the Court has decided to proceed with the instant order.

1 Counsel shall attend a case management conference on December 8, 2006, at 10.30 a.m.

2 A joint case management statement shall be filed no later than December 1, 2006.

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4 IT IS SO ORDERED.

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DATED: November 2, 2006

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JEREMY FOGEL  
United States District Judge

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1 This Order has been served upon the following persons:

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