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

HRL

C 07 2214

14 SECURITIES AND EXCHANGE COMMISSION,
15 Plaintiff,
16 vs.
17 NANCY R. HEINEN and FRED D. ANDERSON,
18 Defendants.

Case No.
COMPLAINT

20 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

21 SUMMARY OF THE ACTION

22 1. This matter involves improper stock option backdating at Apple Computer, Inc. ("Apple"
23 or the "Company"), which resulted in the Company's issuance of false financial statements that
24 concealed millions of dollars in executive compensation. On two occasions in 2001, Apple issued
25 huge option grants to top executives, but used false grant dates to avoid reporting nearly \$40 million
26 in expenses to the public. Defendant Nancy R. Heinen, Apple's then-General Counsel, caused the
27 options to be backdated and altered company records to conceal the fraud. Defendant Fred D.
28

1 Anderson, Apple's then-Chief Financial Officer, should have noticed Heinen's efforts to backdate the
2 first grant but failed to take steps to ensure that Apple's financial statements were correct. The two
3 defendants personally benefited from the backdating, receiving several million dollars in unreported
4 compensation as a result of the backdated options.

5 2. Under well-settled accounting principles in effect throughout the relevant period, Apple
6 was not required to record an expense in its financial statements for options granted at the market
7 price ("at-the-money"), but *was* required to record expenses for any options granted below the current
8 market price ("in-the-money"). In order to provide herself and other Apple executives with far more
9 lucrative in-the-money options, while avoiding having to inform shareholders of the millions of
10 dollars in compensation expenses, Heinen twice engaged in a scheme to grant in-the-money options
11 while falsifying records to make it appear that the options had been granted at-the-money. In
12 connection with a 4.8 million-share grant to Apple's Executive Team, and a 7.5 million-share grant to
13 Chief Executive Officer Steven Jobs, Heinen backdated the grants to dates on which the stock was
14 trading at significantly lower prices. In each instance, Heinen fabricated or falsified company records
15 to create the false appearance that the options had been granted at the market price on an earlier date
16 – including the creation of minutes for a non-existent Board of Directors meeting at which the Jobs
17 grant was supposedly authorized. For the Executive Team grant, Anderson should have recognized
18 the implications of the backdated grant, put a stop to it, and disclosed it to Apple's auditors, KPMG
19 LLP ("KPMG"), but failed to do so.

20 3. As a result, Heinen's and Anderson's actions caused Apple to materially understate its
21 expenses, overstate its income, and falsely represent in certain filings that Apple had incurred no
22 expense for options grants.

23 4. By engaging in the acts alleged in this Complaint, defendants Heinen and Anderson,
24 among other things, violated the antifraud provisions of the federal securities laws, made or caused to
25 be made materially false or misleading statements to Apple's auditors, falsified books and records,
26 and caused Apple to falsely report its financial results. The Commission seeks an order enjoining
27 defendants from future violations of the securities laws, requiring them to disgorge ill-gotten gains
28 with prejudgment interest and to pay civil monetary penalties, barring Heinen from serving as an

