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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**CERTIFIED
TRANSCRIPT**

SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,)

vs.) No. C-07-2214 (JF)

NANCY R. HEINEN,)
Defendant.)

VIDEOTAPED DEPOSITION OF STEVEN P. JOBS
TUESDAY, MARCH 18, 2008

[b7c]

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Videotaped Deposition of STEVEN P. JOBS,
taken on behalf of Plaintiff, at One Infinite
Loop, Cupertino, California, commencing at
9:22 a.m., Tuesday, March 18, 2008, before
Cynthia Manning, CSR No. 7645.

1 APPEARANCES OF COUNSEL:

[=b7C]

2

3

FOR THE PLAINTIFF:

4

SECURITIES AND EXCHANGE COMMISSION

5

BY: []

6

7

44 Montgomery Street, Suite 2600

8

San Francisco, California 94104

9

415.705.2500

10

11

12

13

14

FOR THE DEFENDANT:

15

RAMSEY & EHRLICH LLP

16

BY: []

17

18

803 Hearst Avenue

19

Berkeley, California 94710

20

510.548.3600

21

22

23

24

25

1 APPEARANCES OF COUNSEL (Continued):

[b7C]

2
3 FOR THE DEFENDANT:

4 ARGUEDAS, CASSMAN & HEADLEY, LLP

5 BY: []

6 803 Hearst Avenue

7 Berkeley, California 94710

8 510.845.3000

9 []

10
11
12 FOR STEVEN P. JOBS:

13 PAUL WEISS RIFKIND, WHARTON & GARRISON LLP

14 BY: []

15 []
16 1285 Avenue of the Americas

17 New York, New York 10019-6064

18 212.373.3000

19 []
20
21

1 APPEARANCES OF COUNSEL (Continued):

[b7c]

2

3 FOR APPLE, INC.:

4 O'MELVENY & MYERS LLP

5 BY: []

6 Embarcadero Center West

7 275 Battery Street

8 San Francisco, California 94111-3305

9 415.984.8701

10

[]

11

12

13 ALSO PRESENT:

14

15 WHITNEY BROOKS, VIDEOGRAPHER

16

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[b7C]

1 CUPERTINO, CALIFORNIA;

2 TUESDAY, MARCH 18, 2008; 9:22 A.M.

3

4 THE VIDEOGRAPHER: Good morning.

5 We are on the record at 9:22 a.m. Today's 09:21:59

6 date is March 18th, 2008. This is the video

7 deposition of Steve P. Jobs. We are located at

8 Apple, Incorporated, 1 Infinite Loop, Cupertino,

9 California, on behalf of the plaintiffs.

10 [] Good morning. [] of 09:22:23

11 the U.S. Securities and Exchange Commission.

12 THE WITNESS: Hi.

13 [] [] also on behalf
14 of the SEC.

15 MR. EHRLICH: Good morning. Miles Ehrlich 09:22:30

16 on behalf of the defendant, Nancy Heinen.

17 MS. GROSS: Good morning. Felicia Gross

18 for Nancy Heinen.

19 MS. CHANDLER: Kristy Chandler, Arguedas,

20 Cassman & Headley, for Nancy Heinen. 09:22:33

21 [] [] for Apple

22 Computer.

23 [] [] from Paul Weiss

24 for Steve Jobs.

25 [] And [] from 09:22:45

[b7c]

1 Paul Weiss representing Mr. Jobs. 09:22:47

2 THE VIDEOGRAPHER: Thank you, ladies and
3 gentlemen.

4 And the Case No. is C-07-2214.

5 My name is Whitney Brooks. I represent 09:22:56

6 Veritext Deposition Services. The phone number is

7 866-299-5127.

8 Would the court reporter please administer
9 the oath and we may begin.

10 09:23:11

11 STEVEN P. JOBS,

12 having first been duly sworn, testified as

13 follows:

14

15 EXAMINATION 09:23:18

16 BY []

17 Q. Good morning, Mr. Jobs. Again, my name is

18 [] and I'm here on behalf of the

19 Securities and Exchange Commission.

20 Just a couple of preliminary matters. 09:23:27

21 A. Sure.

22 Q. First of all, your deposition is being

23 taken today as part of the lawsuit entitled

24 Securities and Exchange Commission versus Nancy

25 Heinen. And just to make sure you understand, if 09:23:37

7

1 there is ever a trial in this matter, we may call 09:23:40
2 you as a live witness or, in the alternative, we may
3 play portions of your testimony here today as part
4 of a trial in front of a jury of Ms. Heinen's peers,
5 and I just want to make sure that you understand 09:23:52
6 that.

7 A. Yeah.

8 Q. Have you ever had your deposition taken
9 before?

10 A. Oh, yes. 09:24:00

11 Q. Approximately how many times?

12 A. I don't know. Maybe a single-digit number
13 of times.

14 Q. Well, in that case, there is just a few
15 ground rules I want to go over. I'm sure you're 09:24:10
16 already familiar with them, but it helps to remind
17 me, as much as it will help to remind you.

18 The first of which is, as I mentioned, this
19 deposition may be played in front of a jury. So
20 it's important that you do your best to testify as 09:24:22
21 accurately and as completely as possible.

22 Do you understand that?

23 A. Yeah.

24 Q. And, in addition, you are being videotaped
25 and your testimony is being transcribed, and so 09:24:33

1 there is a couple of things; the first of which is, 09:24:36
2 it's very natural sometimes to assume you know what
3 the rest of my question is going to be and then jump
4 in before I finish a question. And if that happens,
5 the record gets a little garbled and difficult to 09:24:49
6 follow.

7 Do you understand that?

8 A. Mm-hmm.

9 Q. And, likewise, I sometimes have a bad habit
10 of jumping in before an answer is complete. So I 09:24:57
11 will do my best to refrain as well.

12 A. Great.

13 Q. In addition, because we are being
14 transcribed, it is important that you do your best
15 to give audible answers like "yes" and "no." Again, 09:25:06
16 although we have a videotape, things like "uh-huh"
17 and "huh-uh" are a little difficult to sometimes
18 decipher six, eight months down the road.

19 Do you understand that?

20 A. Yes. 09:25:20

21 Q. Now, before we began today, your counsel
22 mentioned, and I believe you mentioned, that you're
23 not feeling well this morning. So I just want to
24 make sure that you're comfortable with proceeding
25 with your deposition. 09:25:33

1 A. I'm not aware of any reason, no. 09:26:31

2 Q. All right. Then we'll just start with a
3 couple of background questions.

4 First of all, could you describe for us
5 your educational background since high school? 09:26:39

6 A. I attended Reed College for six months in
7 Portland, Oregon and then I dropped out, but I was a
8 drop-in for approximately another 18 months.

9 Q. And when you say you were "a drop-in," does
10 that mean you went back to Reed at some point in 09:26:59
11 time?

12 A. That means I was a student that couldn't
13 afford to pay, so I was sleeping on floors and in
14 friends' dorm rooms and stuff.

15 Q. Did you ultimately obtain a degree from 09:27:13
16 Reed or any other college?

17 A. No.

18 Q. Other than your tenure at Reed then that
19 you have described, do you have any formal education
20 post high school? 09:27:22

21 A. No.

22 Q. During your tenure at Reed, did you ever
23 happen to take any classes on business or
24 accounting?

25 A. No. 09:27:31

1 Q. And what years -- or what timeframe was it 09:27:36
2 that you attended Reed?

3 A. '72 and -3.

4 Q. All right. Again, I know there is a lot
5 here, so we'll just talk generally about your 09:27:49
6 employment history then.

7 Can we just sort of briefly go over your
8 employment history, I guess after 1973.

9 A. I was employed by Atari, maker of video
10 games. 09:28:04

11 Q. What timeframe?

12 A. I don't know. Early '70s.

13 Q. Okay.

14 A. And then my partner, Steve Wozniak, and I
15 started Apple about 1975 or -6. And then I was 09:28:19
16 basically fired from Apple about ten years after
17 that.

18 Q. Let me just stop you there then. In other
19 words, it sounds like what you're saying is you
20 started Apple in approximately 1975 or 1976; is that 09:28:37
21 correct?

22 A. Yeah.

23 Q. And for ten years you were with Apple?

24 A. Yes.

25 Q. And although I assume your responsibilities 09:28:45

[b7c]

1 evolved over time, could you generally describe what 09:28:48
2 your duties or responsibilities were over that
3 ten-year period?

4 A. Mostly the product side of things, worrying
5 about the products. I was not the CEO during that 09:28:58
6 time period.

7 Q. And when you say worry about products,
8 would that be product development --

9 A. Yes.

10 Q. -- creation? 09:29:07

11 A. Yes. And -- yes.

12 Q. Who was the CEO during that timeframe?

13 A. Originally, it was a man named []
14]

15 And -- well, actually -- I actually think 09:29:22

16 it was a man named [] -- I don't think [] was

17 the CEO initially. I think it was -- it might have

18 been [] yeah, and then [] and

19 then [] again and then []

20 Q. Do you recall approximately when Apple 09:29:46
21 became a public company?

22 A. If I had to guess, it would be November of
23 1980, seems to come to mind. All this is, of
24 course, public, so...

25 Q. So I believe you mentioned that you left 09:30:05

1 Apple in about 1985; is that right? 09:30:08

2 A. Yes.

3 Q. And did you have a particular title in that

4 1985 timeframe right before you left?

5 A. Chairman of the Board. 09:30:17

6 Q. How long had you been on the board of

7 Apple?

8 A. I think since the beginning.

9 Q. Okay.

10 A. But I'm not -- I don't fully recollect, but 09:30:26

11 I think since the beginning.

12 Q. All right. And how long had you been

13 Chairman of the Board?

14 A. I don't remember.

15 Q. What did you do after you left Apple in 09:30:39

16 1985?

17 A. Workwise?

18 Q. Yes.

19 A. I started two companies. One was called

20 NeXT, and that was started with a group of folks. 09:30:51

21 And then another was called Pixar, which was started

22 by buying the computer graphics division of Lucas

23 Film, and we christened it Pixar.

24 Q. Focusing on NeXT for a few minutes then --

25 A. Yes. 09:31:18

14

1 Q. -- first of all, what kind of business -- 09:31:19

2 what did NeXT do?

3 A. NeXT had two parts to its business; one was
4 to create some really good hardware and the other
5 was to really pioneer object-oriented programming. 09:31:28

6 Q. And for people like me who are a little
7 ignorant on that, can you just tell me a little bit
8 about what object-oriented programming means?

9 A. It's a way of writing software that can be
10 far more flexible and, therefore, more efficient 09:31:46
11 than traditional ways of writing software.

12 Q. Did you -- what was your -- well, first of
13 all, did you have a title at NeXT?

14 A. I was the CEO.

15 Q. And so when was it -- did you find NeXT 09:32:10
16 right in 1985?

17 A. I don't know. '85 or '86. I don't really
18 know.

19 Q. And what eventually happened to NeXT?

20 A. Apple purchased it. 09:32:27

21 Q. Okay. When?

22 A. I believe 1997.

23 Q. And were you still with NeXT when Apple
24 purchased it?

25 A. Yes. 09:32:39

15

[b7C]

1 Q. I believe you also mentioned that you were 09:32:39
2 involved in the founding of Pixar; is that right?

3 A. Correct.

4 Q. And that that was a -- if I understand
5 correctly, you -- and by "you" I mean Pixar here -- 09:32:46
6 had purchased some sort of a graphics division from
7 Lucas Film?

8 A. I purchased it myself.

9 Q. Personally?

10 A. And then [] the leader of that 09:32:59
11 division, and myself co-founded Pixar.

12 Q. Do you recall what year you co-founded
13 Pixar?

14 A. I don't recall exactly. I think it was
15 either '85 or '86. 09:33:10

16 Q. Did you have a title with Pixar?

17 A. CEO.

18 Q. And correct me if I am wrong, but Pixar is
19 still in existence today?

20 A. Pixar was acquired by Disney in -- a little 09:33:28
21 over two years ago. It's now part of the Walt
22 Disney Company.

23 Q. So would that have been in 2005 that Walt
24 Disney acquired Pixar?

25 A. I think so. Again, that's all public 09:33:47

1 knowledge, so... 09:33:49

2 Q. Do you still have job responsibilities with
3 Pixar?

4 A. Not with Pixar per se, but I'm on the Board
5 of Directors of the Walt Disney Company. 09:34:03

6 Q. And have you been on the board since
7 Disney's acquisition of Pixar?

8 A. That's when I went on the board of Walt
9 Disney Company, was on Pixar's acquisition --
10 Disney's acquisition of Pixar. 09:34:27

11 Q. Now, when Apple acquired NeXT then, did
12 you, in essence, come back to Apple and work for or
13 with Apple?

14 A. No.

15 Q. Okay. 09:34:40

16 A. I was -- I believe I was a consultant to
17 the then CEO of Apple.

18 Q. And who was the CEO at that time?

19 A. [] I believe []

20 Q. How long did you serve as a consultant? 09:35:00

21 A. Well, I didn't really serve as a
22 consultant. It was just a title.

23 Q. Okay. How long did you have that title?

24 A. Oh, I don't really know. I mean, I don't
25 even know if it was official. I don't know. 09:35:18

1 Q. What is your current title or role here at 09:35:24
2 Apple?

3 A. I'm the CEO.

4 Q. How long have you been the CEO?

5 A. Since 1997. 09:35:34

6 Q. And I guess, just to go back in time then,
7 I want to just try to understand a little bit the
8 transition from having the title consultant to
9 becoming CEO. Could you just describe that

10 transition for me? 09:35:49

11 A. Well, when Apple bought NeXT, Apple was
12 pretty messed up. It was pretty easy to see. And I
13 was trying to help in my arm's length role. I was
14 trying to help Apple by getting some of the NeXT
15 people into some jobs where they could help Apple, 09:36:10
16 and that's pretty much all I was doing.

17 And I got a call one day from one of
18 Apple's board members named [] and [] asked
19 me what I thought of [] in the time that I
20 had spent with him. 09:36:35

21 []
22 []
23 []
24 []
25 [] 09:36:52
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09:36:56

09:37:14

I did not hear from him again for over three months, and then he called me again on -- I forget what day of the week it was, but he said they were going to fire [] I think it was the following Monday, and would I come back and run Apple.

Q. And by "him" you mean [] is contacting you?

09:37:26

A. Yes. He, of course, was, you know -- he represented that he was speaking for the entire board.

Q. Okay. Did the board, in fact, fire [] the following week?

09:37:39

A. Yes.

Q. And did you take on the role then as CEO?

A. Well, no, I did not. I was very concerned that Pixar was a newly public company with shareholders, employees, and I felt that -- to my knowledge there had never been a CEO of two public companies before. So I felt if I took the job, the Pixar shareholders and employees would think I was abandoning them.

09:37:58

Q. Mm-hmm.

09:38:22
19

1 A. And I decided I just -- that I couldn't do 09:38:22
2 that. So I took the title of interim CEO and agreed
3 to come back for 90 days to help recruit a full-time
4 CEO.

5 Q. How did that recruitment effort go? 09:38:38

6 A. I failed.

7 Q. And when you say you failed, is it that you
8 didn't find anyone that you thought would be
9 suitable to take on the role?

10 A. Yes. Apple was not in good shape and 09:38:51
11 everybody knew it and the kind of candidates that we
12 were being offered up by the headhunters were not
13 very talented.

14 Q. Okay. In other words, not the sort of
15 people who could turn Apple around? 09:39:04

16 A. Yes.

17 Q. Okay. So after that 90 days, what happened
18 next?

19 A. Well, it just kind of slid into the fact
20 that I stayed. I kept the interim CEO title for 09:39:17
21 quite sometime, a number of years.

22 Q. And when did you drop the interim title and
23 just become Apple's CEO?

24 A. I don't recall exactly, but it was a few
25 years down the road; I think maybe three years. I 09:39:38

1 felt I had demonstrated to both companies that I 09:39:42
2 could be the CEO of both companies and successfully
3 manage that.

4 Q. All right. You mentioned that when Disney
5 acquired Pixar you went onto Disney's board. I 09:39:59
6 guess I'll just ask you to lay them out. Are you on
7 the board of any other public companies?

8 A. No. Apple and Disney are the only ones.

9 Q. What are your current duties as a member of
10 Apple's Board of Directors? 09:40:33

11 A. Well, as the CEO, I give a report to the
12 board at every meeting on the status of upcoming
13 products and developments and the status of our
14 research and development, strategic issues, things
15 where we're screwing up, personnel -- key personnel 09:41:03
16 issues. Those kinds of things. That's my primary
17 role.

18 Q. And if I understand correctly, that sounds
19 like the role you're describing is as the CEO who
20 presents information to the board? 09:41:21

21 A. Correct.

22 Q. Is that fair to say?

23 A. Yes.

24 Q. All right. And then putting on your other
25 hat, though, as a member of Apple Board of 09:41:26

1 Directors, do you have different duties or 09:41:28
2 responsibilities?

3 A. Not really, no. No, I don't think of it
4 that way. I really do think of myself as the CEO in
5 those meetings. Really, my job is to tell the 09:41:41
6 board, you know, the state of the company and the
7 state of our development projects and things like
8 that that I mentioned, and to get their feedback
9 and, you know, we have some good discussions.
10 That's my primary role. 09:41:55

11 Q. Does Apple's Board of Directors ever
12 delegate any of its work to committees that consist
13 of fewer members than the full board itself?

14 A. Yes.

15 Q. And have you ever been a member of any of 09:42:07
16 those committees?

17 A. No. Not to my knowledge. I don't think
18 so.

19 Q. There may be too many of them to enumerate,
20 but can you give us a sense of what some of those 09:42:22
21 committees are?

22 A. Well, I think the business ones are the
23 Audit Committee, the Comp Committee and we have a
24 Governance Committee.

25 Q. And if I understand you correctly then, 09:42:39
22

1 you've actually never served as a member of the 09:42:41
2 Audit Committee, correct?

3 A. Correct.

4 Q. And the same would be true for the
5 Compensation Committee? 09:42:48

6 A. Correct.

7 Q. And the same would be true for the
8 Governance Committee?

9 A. Best of my recollection, that's true.

10 Again, this is all public information, so... 09:42:54

11 Q. All right. We'll get into the specifics a
12 little bit, but just as a general matter, do you
13 recall that in early 2001 Apple's Board of Directors
14 approved an option grant of around 4.8 million
15 shares to several members of what Apple referred to 09:43:13
16 as its executive team?

17 A. Yes.

18 Q. And --

19 A. Sorry, what date did you put?

20 Q. I haven't gotten to the specific date yet. 09:43:21
21 I'm just talking generally.

22 A. Oh, okay. Got it.

23 Q. And, first of all, could you -- I'm going
24 to use the term "executive team," but what do you
25 understand that term to mean? 09:43:32

23

[b7C]

1 A. Well, the executive team consists of the 09:43:35
2 senior -- most senior managers at Apple who all work
3 for me. Generally, a group ranging in size from
4 seven to ten people.

5 Q. And this term "executive team," was that 09:43:54
6 generally the same thing back in 2001?

7 A. It didn't have the same members, but it had
8 the same concept, yes, same function.

9 Q. And, again, focusing more on generalities,
10 and we'll get more specific as we go, what was the 09:44:13
11 impetus or the origins of this grant of about 4.8
12 million shares to the executive team?

13 A. Well, as you know, many companies have
14 converted to using RSU grants, restricted stock unit
15 grants, to their senior employees in the present 09:44:42
16 day, but back then option grants were the norm. And
17 Apple was in a precarious situation in that we'd,
18 you know, had the internet bubble bursting, and I
19 thought that Apple's executive team and the
20 stability of Apple's executive team was one of its 09:45:12
21 core strengths. And I was very concerned because
22 Michael Dell, one of our chief competitors, had
23 flown Fred Anderson, our CFO, down to Austin, I
24 guess, him and his wife, I think, to try to recruit
25 him. And I was also concerned that [] 09:45:34

24

1 and [] two very strong technical 09:45:45
2 leaders, were also very vulnerable.

3 So I was very concerned that Apple could
4 really suffer some big losses on its executive team
5 with the business environment we were in and the 09:46:00
6 competitors coming after our people.

7 Q. I know this is a long time ago, so I'm not
8 trying to hold you to --

9 A. Sure.

10 Q. -- mathematical precision, but do you 09:46:13
11 recall approximately when it was that Mr. Anderson
12 was flown to Austin as part of this recruitment
13 effort?

14 A. I don't know.

15 Q. Presumably it was before January 2001, 09:46:24
16 would that be fair to say?

17 A. I think so, yes.

18 Q. Do you know whether it was six months
19 before or longer?

20 A. I don't. 09:46:34

21 Q. You also mentioned that you had concerns

22 about -- was it [] and []

23 A. []

24 Q. Did I pronounce his name right?

25 A. Yes. 09:46:42

1 Q. And were those concerns based on a similar 09:46:44
2 phenomenon; for example, they had been flown
3 somewhere and recruited?

4 A. No, but I had heard rumors that one or two
5 companies was talking to them. It's a small valley. 09:46:49

6 Q. It was back then, certainly.

7 A. Yeah.

8 Q. All right. And so -- again, I don't want
9 to put words in your mouth, but it sounds like what
10 you're saying is that the concept of options would 09:47:08
11 be a potential mechanism to retain members of the
12 executive team?

13 A. Of course.

14 Q. Okay.

15 A. Yeah. 09:47:21

16 Q. So, again, going back to your memory, you
17 had this concern about retention, so how did you go
18 about moving this concept of an option grant
19 forward?

20 A. Well, I talked with the board almost every 09:47:42
21 meeting about, you know, key personnel, because I
22 think that's the key asset Apple has, is its talent.
23 And I don't recall the exact dates, but I started
24 talking to them about this, you know, in the later
25 part of -- I guess it would be 2000, the later part 09:48:04

1 of 2000. And, you know, there were some -- yeah, 09:48:10
2 well, anyway, later part of 2000.

3 Q. I believe you mentioned then that you
4 started -- or that you were talking about this issue
5 of retention at board meetings. Just as an aside, 09:48:24
6 how often in the 2000 and 2001 timeframe did Apple's
7 board of directors meet?

8 A. Four times.

9 Q. Four times?

10 A. Maybe five, four or five. 09:48:35

11 Q. And when you would discuss this retention
12 issue with the board, was that in the context of a
13 formal meeting or were these just conversations with
14 individual board members?

15 A. Both. Both, yeah. It wasn't just 09:48:48
16 retention; I was talking to them about a big grant
17 to the executive team.

18 Q. Fair enough. And I didn't mean to imply a
19 smaller meaning. In other words -- so let me
20 backtrack a little bit though, then, to make sure I 09:49:02
21 understand.

22 In other words, the idea then was for an
23 option grant of a fairly -- of a sufficiently large
24 size to make staying at Apple an appealing option
25 for members of the executive team. Would that be 09:49:17

1 fair to say? 09:49:20

2 A. Correct.

3 Q. And "large" is one of those words that's a
4 little vague. So what did you understand a "large"
5 grant to mean, again back in the 2000-2001 09:49:26
6 timeframe?

7 A. You know, something -- as you said,
8 something that would be worth them staying at Apple
9 for.

10 Q. Did you have -- let's say in the later part 09:49:37
11 of 2000, did you have a sense of how many shares
12 "large" would be?

13 A. Excuse me.

14 Well, I did, because I recommended, you
15 know, to the board what we do. I don't recall any 09:50:00
16 particulars. One of the things that I felt was that
17 rather than giving them shares once a year, as is
18 common in some companies, I would rather give them
19 four years' worth of stock upfront.

20 Q. Okay. And to make sure I understand 09:50:39
21 then --

22 [] I'm not sure he had
23 finished --

24 [] Oh, I'm sorry.

25 [] -- his answer. 09:50:45
28

1 THE WITNESS: Yeah. So, in other words, 09:50:46
2 rather than giving a member of the executive team a
3 hundred shares a year for four years, my approach
4 was to give them 400 -- options on 400 shares right
5 upfront. It cost the shareholders no greater 09:51:05
6 dilution, and yet gave the employees more upside,
7 which meant we could actually give them less shares
8 and cause less dilution.

9 And this came to be known as a "mega
10 grant." I think [] coined that phrase. 09:51:23
11 BY []

12 Q. And I think I understand the distinction
13 you make between, say, granting someone a hundred
14 shares, you know, one time per year over four years
15 versus 400 shares at the beginning, but just to make 09:51:41
16 sure I understand, then, this concept of a 400-share
17 grant -- and, again, I know we're talking
18 hypothetically here, would that grant have some sort
19 of a vesting schedule or --

20 A. Yes. 09:51:53

21 Q. -- would it be just that they --

22 A. It would be 25 percent a year.

23 Q. Okay.

24 A. But see, the key thing is if the stock goes
25 up, which we always hope it does, then the golden 09:52:04

1 handcuffs are dramatically increased, which is what 09:52:11
2 I was hoping would happen.

3 Q. And, again, I'm not trying to hold you to
4 any kind of mathematical precision, but when is it
5 that you think you first started discussing the 09:52:29
6 concept of a large grant with members of Apple's
7 board?

8 A. I don't really recall. I think it was in
9 the fall of 2000.

10 Q. And approximately how many members did 09:52:45
11 Apple's board have in the 2000-2001 timeframe?

12 A. I don't remember.

13 Q. Going back then to at some point in time
14 when you first started broaching this concept of the
15 large grant with Apple board members, what was 09:53:05
16 the -- if there was a general reaction of Apple's
17 board, what was it?

18 A. Well, I think it was favorable. The one
19 ongoing discussion that [] and I had, it was more
20 of a philosophical discussion because -- was whether 09:53:20
21 mega grants were better than grants every year.

22 [] also wanted me to install a cash bonus
23 program at the end of each fiscal year based on the
24 performance of the company.

25 Q. Okay. And [] is? 09:53:38

1 A. [] 09:53:40

2 Q. And he was a member of Apple's board; is
3 that correct?

4 A. Yes, he was.

5 Q. And when you say that you and [] 09:53:46
6 had a philosophical discussion or a discussion --

7 A. Mm-hmm.

8 Q. -- could you just give me a little more
9 detail as to what the nature of that discussion was?

10 A. Well, at his company he gave grants once a 09:53:56
11 year and it worked really well for him. I expressed
12 to him that in the companies I worked with we did it
13 the other way and it had worked really well.

14 And so [] was willing to, you know,
15 support me in doing this. But I think for a while 09:54:16
16 he was trying to convince me that his way -- the way
17 that he did it at [] was a better way to do
18 it.

19 But I think in the end -- well, in the end
20 I was not persuaded. And I think in the end maybe 09:54:32
21 he was persuaded that I was right on that one.

22 Q. Okay. And then you mentioned that []
23] had an opinion about something to do with
24 cash bonuses; is that right?

25 A. He wanted us to add a cash bonus. He 09:54:46

1 wanted me to put a bonus program in place, a cash 09:54:51
2 bonus program in place, annually for the executive
3 team.

4 Q. Now, when you say that the board appeared
5 generally supportive of this concept, in the fall 09:55:05
6 2000 timeframe, had you at that point discussed any
7 details about what the grant would look like in
8 terms of the number of shares or anything like that
9 or was it a more conceptual --

10 A. I think I was discussing rough numbers. 09:55:21

11 Q. Okay.

12 A. Yeah.

13 Q. Do you remember when it was that the
14 numbers went from being rough to more finalized in
15 your mind? 09:55:45

16 A. Well, again, what I tended to do was to try
17 to give people -- how I do explain this? There were
18 maybe -- I looked at the executive team as maybe
19 having three groups. One group, which was the ultra
20 key people, another was the very important key 09:56:10
21 people, and the third was the key people. And so I
22 in each of those groups wanted them to have the same
23 amount within the group.

24 Q. Okay.

25 A. And I wanted the uber important people to 09:56:26

1 get a million shares. 09:56:30

2 Q. Okay.

3 A. And so I was pretty clear and was clear
4 with the board the rough magnitude of this, you
5 know, pretty early on. 09:56:43

6 Q. And --

7 A. And there were a lot of side conversations,
8 too.

9 Q. Sure.

10 A. Our board, we talk a lot, you know, in 09:56:52
11 between meetings and stuff.

12 Q. Fair enough.

13 And so just to make sure I understand,
14 again, would it be fair, then, to characterize this
15 as sort of an ongoing dialogue or discussion, part 09:57:01
16 of which happened in formal board meetings, but part
17 of which happened sort of in a one-on-one basis with
18 board members as you had the opportunity?

19 A. Yeah. Yes. Sure.

20 Q. And, again, not to hold you too much to 09:57:14
21 terms, but when you talk about ultra key or uber key
22 people, I think you mentioned the idea of a million
23 shares --

24 A. Yes.

25 Q. -- being the magnitude that you were 09:57:24

33

1 thinking of for that category? 09:57:27

2 A. Yes.

3 Q. All right. And who did you consider to be
4 these ultra key people?

5 A. [] who at the time I think was our 09:57:38

6 Executive Vice President of Operations, maybe sales
7 and operations, actually. Fred Anderson, our CFO.

8 [] head of hardware. []
9 head of software.

10 Who am I forgetting? I think those were 09:58:02
11 the four key ones.

12 Q. In these discussions in the fall of 2000
13 then that you're having sort of in the formal
14 context and on a one-on-one basis, do you think it
15 was during that timeframe that you had discussed the 09:58:19
16 possibility then of granting in the area of a
17 million shares to these ultra key people?

18 A. Yeah.

19 Q. Okay. And did you discuss with the board
20 or with individual board members who the specific 09:58:31
21 people were that you considered to be ultra key
22 people?

23 A. I don't recall, but I can't imagine that I
24 didn't. I was always talking about our key people
25 with them, so... 09:58:46

1 Q. You mentioned there was sort of another 09:58:48
2 category of the very important people.

3 A. (Witness nods head.)

4 Q. Who in the 2000-2001 timeframe would fall
5 in that category? 09:58:58

6 A. [] who runs our applications
7 division. Actually, maybe there were only two
8 categories. Nancy Heinen, who was our then general
9 counsel. Maybe that was it. Maybe that was it.

10 Yeah. 09:59:15

11 Q. And in these general discussions you had,
12 again either in the context of a formal board
13 meeting or in one-on-one conversations, had you had
14 discussions with board members about the number of
15 options you would want to grant to this sort of very 09:59:31
16 important category?

17 A. I don't recall.

18 Q. Do you recall when it was that you started
19 talking more specifically about the numbers of
20 grants -- or numbers of options for the grants to 09:59:48
21 these very important people?

22 A. Again, I think it was in the fall of 2000,
23 best of my recollection. This was many years.

24 Q. Believe me, I understand that it is hard to
25 remember the stuff, particularly in general terms. 10:00:18

1 So what we'll do is, we'll try to move to 10:00:20
2 some more specific documents in the hopes that that
3 will help.

4 So I'm going to hand to you, Mr. Jobs, a -
5 document that was previously marked in these 10:00:32
6 proceedings as Exhibit 6.

7 A. Thanks.

8 [] Again, I apologize to everyone
9 for having less than an adequate number of copies.

10 For the record, Exhibit 6 is a document 10:00:49
11 that bears a Bates range of 150AAPL08980 (sic)
12 through 8963.

13 Q. If you could just take a few moments to
14 review the document.

15 A. Yeah, this is kind of what I thought. 10:01:08

16 Q. And when you say "this is kind of what I
17 thought," could you just --

18 A. I'm sorry, I was looking at the number of
19 shares that each one got.

20 Q. Okay. And if you could, Mr. Jobs, there is 10:01:20
21 a Bates number at the bottom of the page you're
22 looking at.

23 A. Yeah.

24 Q. Could you just let me know what page we're
25 looking at? 10:01:27

1 A. Is that this number here (indicating)? 10:01:28

2 Q. Yes. If you want to just go with the last
3 four digits.

4 A. 8961.

5 Q. So it sounds like page 8961 has refreshed 10:01:34
6 your memory about something?

7 A. Well, it was -- it confirms my recollection
8 that it was a million shares a piece for the really
9 key ones and I guess it was 400,000 shares a piece

10 for Nancy and [] 10:01:55

11 Q. All right. If you could -- again, take all
12 the time you need to review the document just to
13 familiarize yourself with it, and then I'll go to
14 specific questions.

15 A. (Witness reviewing document.) 10:02:09

16 Yeah.

17 Q. Going to the first page, then, of Exhibit 1
18 {sic}, it appears to be dated February 1st, 2001.

19 Do you see that?

20 A. Mm-hmm. 10:02:20

21 Q. And then there -- this appears to be
22 a memorandum -- or it's a document addressed to
23 several people.

24 Do you see that there?

25 A. I do. 10:02:28

1 Q. Who are the individuals listed there in the 10:02:28
2 to line?

3 A. I think they're Apple's board members.

4 Q. And it appears that the document is from
5 Nancy Heinen and [] is that right? 10:02:39

6 A. That's what it says.

7 Q. Okay. And who was Ms. Heinen?

8 A. Apple's general counsel.

9 Q. Do you know when she came on as Apple's
10 general counsel? 10:02:53

11 A. I don't recall. I think it was fairly
12 early, a year or two after I joined Apple --
13 rejoined Apple.

14 Q. As CEO of Apple, did you have frequent
15 opportunities to interact with Ms. Heinen? 10:03:13

16 A. Well, she was part of our executive team,
17 so every Monday morning I would have an executive
18 team meeting.

19 Q. And who is []

20 A. Well, I know she worked here, but I -- I 10:03:28
21 don't even know if I ever met her.

22 Q. Okay.

23 A. I don't really know what her job title was.

24 Q. What do you understand the purpose of this
25 document, Exhibit 6, to be? 10:03:42

1 A. Well, it says it's a unanimous written 10:03:45
2 consent of the board of directors to document the
3 granting of these options.

4 Q. All right. And if you take a look at the
5 first page then again, the one with the Bates number 10:04:00
6 of 8980, on the subject line it says: "Proposed
7 Written Consent of the Board of Directors."

8 Do you see that?

9 A. Mm-hmm.

10 Q. Okay. And what do you understand the term 10:04:11
11 "proposed" to mean?

12 A. I haven't got the faintest idea.

13 Q. All right. If you look at the first
14 paragraph then of this first page, it says:

15 "Enclosed is a proposed written consent of 10:04:33
16 the Board of Directors for option grants
17 under the 1998 Executive Officer Stock Plan
18 to members of the Executive Team totaling
19 4.8 million shares."

20 Do you see that? 10:04:48

21 A. Yes.

22 Q. Just going by memory alone, do you remember
23 when it was that the determination to grant 4.8
24 million shares was made by Apple's Board of
25 Directors? 10:05:01

1 MR. EHRLICH: Excuse me. Objection; vague 10:05:04
2 and calls for a legal conclusion.

3 BY []

4 Q. You can answer the question.

5 A. To the best of my knowledge and 10:05:10
6 recollection, I had approval from Apple's Board of
7 Directors to go forward with this before the end of
8 2000 and -- yeah, that's the answer.

9 Q. And when you say approval of "this," just
10 to make sure we're clear -- 10:05:28

11 A. 4.- -- the grants to the ET.

12 Q. Okay. So, again, my purpose is not to put
13 words in your mouth but to make sure I'm
14 understanding you. It sounds like what you're
15 saying is that you believe the board of directors 10:05:41
16 had approved in 2000, or towards the end of 2000, a
17 grant of 4.8 million shares. Am I correct?

18 A. I think they had approved a grant of this
19 magnitude. I don't know that every last person --
20 as an example, I'm not sure I had decided on 400,000 10:06:10
21 shares for [] and Nancy at that time. But the big
22 ones of a million, yeah, we talked about that a lot.

23 Q. And I think you have anticipated the crux
24 of my question. In other words, I'm trying to
25 understand exactly what it is, kind of as we move 10:06:27

1 through time -- 10:06:30

2 A. Yeah.

3 Q. -- what it is you think the board approved.

4 A. I understand. I'm answering as best as I
5 can remember. 10:06:36

6 Q. Okay.

7 A. My goal, just so you know, was to kick off
8 the new year with these grants for the ET members,
9 to just start the new year strong.

10 Q. Okay. And this -- 10:06:47

11 Actually, could I ask you to read back the
12 previous question and answer?

13 (Whereupon the reporter read the record as
14 follows:

15 "Question: So, again, my purpose is not to 10:05:33

16 put words in your mouth, but to make sure
17 I'm understanding you. It sounds like what
18 you're saying is that you believe the board
19 of directors had approved in 2000, or

20 towards the end of 2000, a grant of 4.8 10:05:47
21 million shares. Am I correct?

22 "Answer: I think they had approved a grant
23 of this magnitude. I don't know that every
24 last person -- as an example, I'm not sure

25 I had decided on 400,000 shares for [] 10:06:13

1 and Nancy at that time. But the big ones 10:06:18
2 of a million, yeah, we talked about that a
3 lot.")

4 BY []

5 Q. Okay. So following up then, it sounds like 10:07:38
6 what you're saying is, at least at the end of 2000,
7 you're not certain that you had board approval for
8 the 400,000 grants to [] {sic} or Ms. Heinen;
9 is that fair to say?

10 THE WITNESS: No. 10:07:56

11 MR. EHRLICH: Objection; misstates the
12 testimony.

13 THE WITNESS: No, that's not what I am
14 saying.

15 BY [] 10:08:00

16 Q. Okay.

17 A. What I'm saying -- see, the board --
18 that's -- the way we worked was, if I outlined in,
19 you know, not -- well, how do I say this?

20 I don't know what I might have said to 10:08:25
21 them; I don't recall. But I might have said, you
22 know, up to 5 million shares or something. But it's
23 my recollection that I had approval from the board
24 to do this before the end of 2000.

25 Q. Okay. And, again, then, to do "this" 10:08:46

1 being -- 10:08:51

2 A. To make these grants.

3 Q. Okay.

4 A. There had been a lot of discussion around

5 it both in board meetings and individually with 10:08:57

6 people, board members: []

7 And so that's my recollection.

8 Q. Okay. At the end of 2000 then, do you

9 recall having approval from the board as to the date

10 on which the options would be granted? 10:09:20

11 A. No. I mean, that is mechanics. That -- I

12 don't think we would have talked about that. I

13 don't recall anything that we talked about that.

14 Q. And, likewise, then, do you recall, again

15 focusing on the end of 2000, whether you had 10:09:39

16 approval from the board as to the strike price --

17 First of all, do you understand the term

18 "strike price"?

19 A. Yeah. The exercise price.

20 Q. The exercise price for the grant. 10:09:50

21 A. I understand that.

22 Q. And did you have approval from the board as

23 to an exercise price at the end of 2000?

24 A. Again, we never would have talked about

25 that. That just would have been in the mechanics of 10:10:00

1 things happening. 10:10:03

2 Q. And what is your -- what was your
3 understanding of those mechanics; in other words,
4 you have these discussions with the board about
5 the -- well, we've called it a "mega grant" or 10:10:13
6 "executive team grant." Again, going back now to a
7 more general level, what would the mechanics of that
8 be?

9 A. Well, the mechanics of it would be when I
10 decided to do it at that point, I would tell Nancy 10:10:29
11 Heinen to execute those grants; in other words, this
12 is what I want to do. I probably sent her an
13 e-mail.

14 Q. Okay. And in the context of this executive
15 team grant that we've been discussing, do you have a 10:10:44
16 general sense of when it is that you -- well, first
17 of all, do you think you asked Ms. Heinen with
18 regards to this executive team grant to execute the
19 documents?

20 A. Again, I wanted to do these grants. My 10:10:56
21 recollection is that I wanted to do these grants
22 very early in 2001. And I have reviewed some of
23 the, you know, memos and stuff here and it seems
24 like there was a problem with that because Nancy
25 didn't want the appearance of any impropriety 10:11:24

1 because Macworld was on the horizon. 10:11:29

2 I mean, I don't know this to be true, but I

3 think I saw an e-mail to that effect. And so I

4 don't really know what happened, but my intention

5 was to get these out early in the year. 10:11:47

6 Q. And focusing on what you said about your

7 sort of recalling an e-mail where Ms. Heinen --

8 well, it sounds like what you're saying is there was

9 some issue of an appearance of impropriety being

10 related to Macworld? 10:12:10

11 A. Yeah.

12 Q. Okay. What was the concern that Ms. Heinen

13 had?

14 A. I think she might have felt that -- we

15 should ask her, but I think she might have felt if 10:12:18

16 we introduced some new products at Macworld and the

17 executive team had received some stock option grants

18 just prior that, that some people might question

19 that.

20 Q. Okay. And do you think that Ms. Heinen 10:12:32

21 communicated that concern to you?

22 A. I don't recall.

23 Q. Do you recall -- did you share that

24 concern?

25 A. Share that concern? 10:12:43

45

1 Q. Well, in other words -- well, let me ask it 10:12:44
2 this way: Did you ever, in your own mind, have a
3 concern about doing a grant before Macworld?
4 A. No. My concern was with keeping our
5 executive team working at Apple. 10:13:08
6 Q. All right. Going back to Exhibit 6 then.
7 It's the --
8 A. Excuse me, that's this one?
9 Q. Yes, sir.
10 A. Okay. 10:13:23
11 Q. It's the last sentence there in the first
12 paragraph, where it says, "If approved, the options
13 will vest annually over four years."
14 Do you see that?
15 A. I'm sorry -- 10:13:33
16 Q. It's the second-to-the-last sentence. I
17 misspoke.
18 A. Of the first paragraph?
19 Q. Yeah.
20 A. I see it. 10:13:41
21 Q. What do you understand that sentence to
22 mean? "If approved, the options will vest annually
23 over four years."
24 A. I don't really understand the question.
25 Q. Well, I'm just -- 10:13:56

1 A. Sorry. 10:13:57

2 Q. I guess I'm asking you to tell me what it

3 is you understand that sentence to mean.

4 A. That these options will vest over four

5 years annually. 10:14:06

6 Q. All right. And then the "if approved"

7 part?

8 A. Well, I don't know. I suppose it is a nice

9 way of -- I mean, you know, this is sent around for

10 the directors to memorialize this grant. So I 10:14:24

11 suppose if they didn't memorialize this grant, then

12 the options, you know, wouldn't be granted.

13 Q. All right. Do you have any understanding

14 as to what role, if any, [] would have in

15 the mechanics of an option grant? 10:14:51

16 A. I -- no.

17 Q. Okay. In other words, do you know why it

18 is that this memo is from her as well as Ms. Heinen?

19 A. I honestly don't even know who []

20 is. 10:15:04

21 Q. And then I would just like to focus briefly

22 on the last sentence of this first page where it

23 says, "If approved, please sign and return the

24 consent to me by facsimile," and then there is a fax

25 number. 10:15:21

1 Do you see that? 10:15:22

2 A. Mm-hmm.

3 Q. So do you have a sense of whether or not --

4 first of all, do you know whether or not you signed

5 this document? 10:15:27

6 A. I assume I did.

7 Q. Okay. And, actually, I will turn your

8 attention, if you would, to -- the last four digits

9 of the page would be 8958.

10 A. Yeah, I did. 10:15:38

11 Q. And is that your signatures, sir?

12 A. It is.

13 Q. And do you know whether or not you signed

14 this document on or about February 1st, 2001?

15 A. I have no idea. 10:15:49

16 Q. Given that the document is dated February

17 1st, 2001, do you have any reason to believe you

18 would have signed this document before February 1st?

19 A. No.

20 Q. Okay. 10:16:01

21 A. But I don't recall.

22 Q. All right. If we could turn to the second

23 page of the document, and that's the one with the

24 Bates No. of 8952. At the top it says, "Action By

25 Unanimous Written Consent Of The Board Of Directors 10:16:20

48

1 Of Apple Computer, Inc." 10:16:23

2 Do you see that?

3 A. Mm-hmm.

4 Q. And what do you understand -- what do you
5 understand "unanimous written consent" to be? 10:16:31

6 A. The board approving something without
7 having a meeting.

8 Q. Okay. And then, you see the date there of
9 January 17th, 2001? Do you see that?

10 A. Mm-hmm. 10:16:47

11 Q. And do you know why it is that this
12 document is dated January 17th, 2001?

13 A. I don't.

14 Q. All right. If you'll go into the text a
15 little bit on this page that we're still on, 8952, 10:17:14
16 you'll see there is a section that -- there is a
17 heading that says "Section 16(b) Officer Grants."
18 Do you see that?

19 A. Yes.

20 Q. And then you'll notice there is a paragraph 10:17:25
21 that begins with capitalized letters "Resolved, that
22 each person listed on Exhibit A is hereby granted an
23 option..."

24 Do you see that?

25 A. I do, yeah. 10:17:36

1 Q. And if you keep going there -- well, 10:17:37

2 actually, let me read the whole paragraph:

3 "Resolved, that each person listed on
4 Exhibit A is hereby granted an option under
5 the 1998 Plan to acquire the number of 10:17:47
6 shares of Common Stock listed opposite his
7 or her name at an exercise price equal to
8 the closing price for the Corporation's
9 Common Stock on the date of grant."

10 Do you see that? 10:18:02

11 A. Mm-hmm.

12 Q. And what do you understand that paragraph
13 to mean?

14 A. That the exercise price will be set at the
15 closing price on the date of the grant. 10:18:10

16 Q. And based on this document, what do you
17 understand the date of the grant to be?

18 A. January 17th --

19 Q. Okay.

20 A. -- would be my guess. 10:18:22

21 [] When you come to an
22 appropriate breaking point, maybe this will be a
23 good time.

24 [] This is an appropriate time.

25 So we'll take a break. 10:18:39

[b7c]

1 [] Great. 10:18:42
2 THE WITNESS: Thanks.
3 THE VIDEOGRAPHER: Off the record at 10:18
4 a.m.
5 (Recess taken) 10:18:46
6 THE VIDEOGRAPHER: On the record at 10:42
7 a.m. Please begin.
8 BY []
9 Q. Mr. Jobs, just first off, again, we do
10 appreciate you're taking the time to do this today. 10:42:37
11 And so again, if at any point you need to take a
12 break, I lose track of time, so just tell me to
13 stop --
14 A. Thanks. No --
15 Q. -- and I'll afford you that opportunity. 10:42:46
16 A. -- I appreciate that.
17 Q. And also, I do want to clear up during the
18 break the reporter had noted that once or twice I
19 referred to this document that we're looking at as
20 Exhibit 1. It is, in fact, Exhibit 6, and it has 10:42:57
21 been my intention to discuss Exhibit 6 throughout.
22 Since it's the only document dealt with today, it
23 makes it easier, but I will try to avoid that
24 mistake in the future.
25 All right. So getting back to Exhibit 6, 10:43:08

1 then, if I could ask you, please, to turn your 10:43:10
2 attention to the page that ends in the Bates No.
3 8961.

4 A. Okay.

5 Q. All right. And that's something that we 10:43:32
6 looked at a little while ago, but I'd just like to
7 focus on it again then.

8 So it looks like in terms of this document
9 that purports to -- or in the context of this
10 unanimous written consent, it looks like one of the 10:43:46
11 grantees is Fred Anderson; is that correct?

12 A. Correct.

13 Q. And who is Mr. Anderson?

14 A. Our Chief Financial Officer.

15 Q. And if I understand correctly from your 10:43:57
16 testimony earlier, it looks like he was to get one
17 million shares under this grant; is that right?

18 A. Yeah.

19 Q. And the next one is [] Do you see
20 that? 10:44:08

21 A. I do.

22 Q. And who is []

23 A. [] ran all of operations. That
24 includes manufacturing, logistics, as well as all of
25 sales. 10:44:18

1 Q. All right. Next we have [] 10:44:19

2 Do you see that?

3 A. Yeah.

4 Q. And sorry to go back. [] also got a
5 million shares; is that right? 10:44:27

6 A. Correct.

7 Q. And [] who is he?

8 A. He was our Senior Vice President of
9 Hardware Engineering. And he got a million shares.

10 Q. Okay. And next is [] 10:44:36

11 A. Yes. [] was our Senior Vice President of
12 Software and he also got a million shares.

13 Q. Next is Ms. Heinen.

14 A. Nancy Heinen was our general counsel.

15 Q. And she got 400,000 shares; is that right? 10:44:50

16 A. Correct.

17 Q. And finally [] --

18 A. []

19 Q. [] okay.

20 And who was she? 10:44:58

21 A. It's a guy.

22 Q. Oh, sorry.

23 A. [] ran our applications division.

24 Q. And looks like he got 400,000?

25 A. Mm-hmm. 10:45:11

1 Q. And, again, I need to make you say "yes" or 10:45:12
2 "no." Sorry.

3 A. Yes. Yes.

4 Q. All right. And, again, we talked about the
5 concept that in late 2000 you had agreement from the 10:45:18
6 board, and I believe we talked about it in the
7 context of the recipients of a million shares.

8 Do you recall that from earlier?

9 A. Yes.

10 Q. Do you recall when it is, approximately, 10:45:32
11 you had agreement from the board that Ms. Heinen
12 would receive 400,000 shares?

13 A. I don't. Sorry.

14 Q. Do you recall when you would have gotten
15 agreement from the board that Mr. -- is it [] 10:45:41
16 again?

17 A. Mm-hmm.

18 Q. -- would have received \$400,000 -- or
19 400,000 shares?

20 A. Shares. I just don't remember. 10:45:49

21 Q. Do you know --

22 A. Again, I don't think the board was -- well,
23 I think we talked about mega grants a lot.

24 Q. Mm-hmm.

25 A. So, clearly, the board knew about the 10:46:09

1 one-million-share grants. They might have been 10:46:14
2 under the impression that I was going to give Nancy
3 and [] a million shares, too; I don't really
4 recall. But, again, those were -- that was a minor
5 thing. The big thing was just the magnitude of the 10:46:29
6 million-share grants.

7 Q. And I hear what you're saying about the
8 number of shares being a minor thing. To the
9 extent --

10 A. Well, for [] and Nancy. I mean, 10:46:46
11 that's...

12 Q. Fair enough.

13 With regards to Ms. Heinen and []
14 then, do you know -- can you estimate for me
15 approximately when it was that you had agreement or 10:46:55
16 you thought there was agreement on the board that
17 Ms. Heinen would get the 400,000 shares?

18 A. I don't remember. The only thing I would
19 say is, again, as I said before, it was my
20 understanding that I had approval from the board to 10:47:08
21 go execute these grants by the end of 2000.

22 Q. Do you know when it was that the board
23 agreed that January 17th would be the -- January
24 17th, 2001 would be the grant date?

25 A. I don't. 10:47:34

1 Q. All right. I'm going to ask you to keep 10:47:49
2 that document sort of near you because I may go back
3 and forth to it a couple of times.

4 A. Okay.

5 [] But in the meantime, I'm going 10:47:57
6 to also mark another document as Exhibit 57.

7 (Deposition Exhibit No. 57 was marked for
8 identification)

9 THE WITNESS: Thanks.

10 BY [] 10:48:16

11 Q. If you could just take a moment to review
12 Exhibit 57, please.

13 A. Sure.

14 (Witness reviewing document.)

15 Mm-hmm. 10:48:40

16 Q. All right. For the record, Exhibit 57 is a
17 one-page document that has a Bates number of
18 150AAPL008944. And this appears to be an e-mail of
19 December 8th, 2000 from Fred Anderson. I'm assuming
20 that's to you. There is an e-mail of 10:49:04
21

22 A. That is my e-mail address.

23 Q. And do you recall whether or not you
24 received this e-mail on or about December 8th of

25 2000? 10:49:16

1 A. I don't. 10:49:16

2 Q. Do you have any reason to believe you did
3 not receive this e-mail?

4 A. No. No, I don't.

5 Q. And the note -- or the e-mail says: 10:49:21
6 "Steve, here are the current salaries and unvested
7 stock options for the executive staff."

8 Do you see that?

9 A. I do.

10 Q. Do you know why it is that Mr. Anderson 10:49:30
11 would -- let me ask it this way: Had you asked Mr.
12 Anderson to research something for you?

13 A. It is my habit to -- whenever I'm thinking
14 about doing compensation adjustments, to ask for a
15 simple summary like this. 10:49:49

16 Q. Okay.

17 A. So, yes, I would guess that I asked him for
18 it.

19 Q. And do you know, was this in the context of
20 the executive grant that we've been discussing? 10:49:59

21 A. It sure looks like it.

22 Q. Okay. And just to make sure I have a clear
23 record, why is it that you think that's the case?

24 A. Because it's the executive team. I likely
25 asked Fred for -- or, you know, the current 10:50:12

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1 compensation status, maybe the salary, as well if we 10:50:16
2 were considering a cash bonus. I don't really
3 remember, but, you know, I think it was in that
4 context, yes.

5 Q. All right. And I think some of these 10:50:27
6 names -- if you could -- on Exhibit 6, I just want
7 to just check something out. If you would also
8 bring Exhibit 6.

9 A. Yeah, they are the same people.

10 Q. Okay. But I do have one question, 10:50:39
11 nonetheless, if you wouldn't mind --

12 A. Sure.

13 Q. -- looking at page 8961 of Exhibit 6.

14 A. Okay. Okay. Yep.

15 Q. There is just one name that appears to be 10:50:49
16 different and that's what I wanted to ask about.

17 A. Okay.

18 Q. And, I'm sorry, to do this, but on Exhibit
19 57 --

20 A. Yeah. 10:50:56

21 Q. -- below Ms. Heinen there is the name

22 []

23 Do you see that?

24 [] On the e-mail.

25 THE WITNESS: You mean on this 10:51:03

[=b7C

1 (indicating)? 10:51:04

2 BY []

3 Q. On that list.

4 A. Yes.

5 Q. Who is the -- 10:51:05

6 A. [] I had just recruited [

7] during the last year to -- I think it was

8 the last year, to join -- the prior year, to join

9 Apple. And [] was heading up our naissant retail

10 efforts, to open retail stores. And [] had 10:51:23

11 received a stock grant recently, so he was not

12 included in this.

13 Q. Had that decision been made not to include

14 him as of December 8th, 2000, do you know, or did

15 that come later in time? 10:51:40

16 A. Well, I wouldn't have considered including

17 him because he already had a big stock grant when he

18 joined. And so his golden handcuffs were already

19 taken care of. I doubt that would have been an

20 issue at all. 10:51:57

21 Q. Now, again, earlier we talked about the --

22 that one element of this executive grant being

23 retention and maintaining the stability of the

24 executive team. Do you recall when it was that you

25 communicated to the grantees of this executive team 10:52:15

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1 grant -- when did you communicate to them that they 10:52:21
2 were going to be granted shares?

3 A. I don't really remember. I think I talked
4 to [] first, but I don't really remember when
5 it was. 10:52:33

6 Q. Okay. Do you know --

7 A. Of course, I was anxious to have these guys
8 know, so...

9 Q. Right.

10 And again, then, do you know whether that 10:52:42
11 would have been before or after January 17th, 2001
12 that you told []

13 A. I would assume it was before, but I don't
14 really remember.

15 Q. And just so I understand the basis of the 10:52:56
16 assumption, why do you assume that?

17 A. Because I wanted to start off the year by
18 letting these guys know that the company was going
19 to take care of them. And you never know if
20 tomorrow somebody is going to walk into your office 10:53:14
21 and resign.

22 Q. Fair enough.

23 Likewise, with regard to Mr. Anderson, do
24 you have a sense of whether you told him before or
25 after January 17th, 2001? 10:53:23

1 A. I just don't remember. 10:53:27

2 Q. Given your testimony in regards to
3 communicating with [] do you think it more
4 likely than not that you would have told Mr.
5 Anderson before January 17th, 2001? 10:53:39

6 A. Yeah. Yes.

7 Q. Okay.

8 A. That would be my guess --

9 Q. All right.

10 A. -- but I don't recall. 10:53:46

11 Q. Fair enough.

12 And would your answer then be the same with
13 regards to the other grantees: []

14 [] Ms. Heinen and []

15 A. I just don't remember. 10:53:56

16 Q. All right. I'm going to hand you now then
17 what has been previously marked as Exhibit No. 1.

18 A. All right. Are we done with these?

19 Q. We are, sir.

20 A. (Witness reviewing document.) 10:54:34

21 Okay.

22 Q. And for the record, Exhibit No. 1 is a
23 document, one-page document, with a Bates range of
24 150AAPL008965. And it appears to be an e-mail from
25 Nancy Heinen to you dated January 30th, 2001. 10:54:58

1 Do you see that? 10:55:03

2 A. Mm-hmm. Uh-huh.

3 Q. And the e-mail says, "Steve, there are 6.68
4 million shares available for grant in the 1998
5 Executive Officer Plan." 10:55:14

6 Do you see that?

7 A. I do.

8 Q. Okay. So do you think that by January
9 30th, 2001 you had communicated to Ms. Heinen the
10 board's intention to grant 4.8 million shares? 10:55:24

11 A. Oh, yeah.

12 Q. Do you know why it is, then, that Ms.
13 Heinen would be talking about these additional two
14 million or so shares?

15 A. Well, as you know, the shareholders have to 10:55:36
16 approve the putting of shares into a pool to grant
17 to employees of the company, and I assume that this
18 is the number of shares that are left in such a pool
19 before it runs out and one would need to go to the
20 shareholders for additional approvals. 10:56:04

21 Q. Okay.

22 A. That's my assumption.

23 Q. Okay. And --

24 A. In other words, I don't think this had
25 anything to do with a grant, per se. 10:56:13

1 Q. Okay. 10:56:16

2 A. Except to say that we have enough shares in

3 the pool to --

4 Q. To cover the grant?

5 A. To cover the grant. 10:56:21

6 Q. Okay. Fair enough.

7 So the next sentence says, "To avoid any

8 perception that the board was acting inappropriately

9 for insiders prior to Macworld announcements, I

10 suggest we use January 10, the day after your 10:56:31

11 Macworld keynote, at \$16.653."

12 Do you see that?

13 A. Mm-hmm.

14 Q. Now, earlier we discussed you had some sort

15 of a discussion that Ms. Heinen had a concern about 10:56:44

16 a grant in relationship to Macworld?

17 A. Yes.

18 Q. Do you recall that testimony?

19 A. Yes.

20 Q. Is this the e-mail to which you were 10:56:53

21 referring?

22 A. Yes, I think so.

23 Q. Does this refresh your recollection as to

24 whether or not you had any discussion with

25 Ms. Heinen about her concern about the timing of the 10:56:58

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1 grant in relationship to Macworld? 10:57:01

2 A. I don't recall talking with her about it,

3 no.

4 Q. Now, focusing on the part of the sentence
5 that says "I suggest we use January 10th," do you 10:57:16

6 see that?

7 A. Uh-huh.

8 Q. And in terms of your understanding of the
9 process, was it up to Ms. Heinen then to propose a
10 grant date for option grants? 10:57:26

11 A. Well, this was the mechanics. I mean, I
12 sort of saw this process as there is a decision and
13 then there is the execution and then there is the
14 memorialization. And so I wasn't really involved in
15 the machinery to execute these things. 10:57:46

16 Q. Fair enough.

17 And again, I'm more trying to just get your
18 understanding of the process then.

19 A. Yeah.

20 Q. In other words, was Ms. Heinen in this 10:57:55
21 machinery to execute the process?

22 A. Yes, of course.

23 Q. And so was it your understanding that it
24 was her role to determine what the grant date would

25 be for an option grant? 10:58:05

1 A. Well, yes, I mean, she might -- yes. I 10:58:08
2 would have to say yes.

3 Q. And then would it be fair to say, then,
4 that as of January 30th, 2001 the date of this
5 e-mail -- 10:58:22

6 A. Mm-hmm.

7 Q. -- that the grant date for this executive
8 team grant had not been finalized?

9 MR. EHRLICH: Objection; again a legal
10 conclusion about grant date. 10:58:34

11 THE WITNESS: Well, these questions about
12 grant dates are somewhat beyond me. Again, my
13 recollection is that I had approval from the board
14 to go implement these grants and, you know, by the
15 end of 2000, and I don't recall exactly what I did, 10:58:57
16 but I probably would have either verbally or
17 communicated in an e-mail to Nancy, here's what I'd
18 like to do.

19 And so in this e-mail, she is coming back
20 saying: I'm proposing we do these on January 10th: 10:59:14
21 And I probably would have said fine.

22 BY []

23 Q. Fair enough.

24 And if I understand this e-mail correctly,
25 she is proposing the January 10th date on January 10:59:27
65

1 30th, 2001; is that correct? 10:59:30

2 A. Uh-huh. That's my understanding.

3 Q. And, I'm sorry, I just want to make sure I
4 understand. If you go further down into the e-mail
5 then, she writes "Below are the closing prices this 10:59:46
6 month."

7 A. Right.

8 Q. And there is a set of closing prices of
9 dates. It looks like at the top, January 29th,
10 2001, going back in time to January 2nd, 2001. 10:59:55

11 Do you see that?

12 A. Uh-huh.

13 Q. Do you have a sense of why it is that Ms.
14 Heinen would be providing you with historical price
15 information for the month of January? 11:00:07

16 MR. EHRLICH: Objection; calls for
17 speculation.

18 THE WITNESS: Well, I will speculate. I
19 would think it is because I wanted to get these
20 grants out early in January and Nancy was advising 11:00:20
21 that we not do them before Macworld. And so she
22 was, I assume, trying to -- to suggest a date that
23 would avoid any appearance of impropriety while
24 still getting the exercise price to the employees
25 somewhat close to what it might have been had the 11:00:50

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[b7c]

1 Macworld concern voiced by her not existed. But 11:00:54
2 that's my guess.

3 BY []

4 Q. And sort of in this framework of options
5 being, in part, a retention tool, is the idea to try 11:01:07
6 to get a lower price so that there is the potential
7 to maximize one's profits on the options?

8 A. You know, this has come up before. I have
9 to tell you, for these options to be worth anything,
10 the stock has to go up so much compared to a dollar 11:01:29
11 or two at the beginning that that's -- that the
12 strike price is only important for, you know, sort
13 of -- I don't know. The stock price has to go up a
14 lot relative to any deltas in strike price.

15 And so if these guys were going to realize 11:02:07
16 the kind of money they could make elsewhere by
17 staying at Apple, you know, they were going to have
18 to make tens of millions of dollars. These guys are
19 really senior guys. Several of them, you know,
20 could be CEOs of a few big companies and a few 11:02:22
21 medium-size companies.

22 So for them to realize that kind of a gain
23 here, it's a lot more than a small variation in a
24 strike price.

25 Q. All right. Let's move on to what's been 11:02:51

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1 marked previously as Exhibit No. 3. 11:02:54

2 A. I don't have that one, right?

3 Q. I'm going to give it to you. I'm sorry.

4 A. Oh, thanks.

5 Q. If you could take a moment to review 11:03:25

6 Exhibit 3.

7 A. I just looked at it.

8 Q. All right. And for the record, it's a
9 one-page document with a Bates No. of 150AAPL008973.

10 Do you see that? 11:03:37

11 A. I do.

12 Q. And this is -- appears to be a February 1,
13 2001 e-mail from Nancy Heinen to Fred Anderson.

14 Do you see that?

15 A. Mm-hmm. 11:03:48

16 Q. And I recognize that you're not a recipient
17 on this e-mail, but I just have one or two quick
18 questions.

19 A. Sure.

20 Q. The e-mail says, "Fred: FYI, Steve agreed 11:03:55

21 to go with January 17th at \$16.813 for ET option
22 grants. I will get the board consent out as soon as
23 I receive the grant amounts."

24 Do you see that?

25 A. Mm-hmm. 11:04:13

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1 Q. And, again, I need you to say "yes" or 11:04:13
2 "no."

3 A. Oh, sorry. Yes.

4 Q. All right. And so do you recall -- well, 11:04:20
5 first of all, do you recall how it is that the
6 January 17th grant date was ultimately selected?

7 A. I don't.

8 Q. Do you recall playing a role in the
9 selection of that date?

10 A. I don't. Well, the only thing that 11:04:34
11 happened -- might have happened would have been, you
12 know, Nancy proposing it and me writing back "okay,"
13 or something like that. But outside of that, I
14 didn't have a role in it.

15 Q. And I know I said I wasn't going to do this 11:04:49
16 to you, but -- you can look at it if you want, or
17 just from memory. When we looked at Exhibit 1,
18 Ms. Heinen had proposed a grant date of January
19 10th.

20 Do you recall that? 11:05:02

21 A. From the earlier documents, I do.

22 Q. So do you recall any back and forth after
23 Ms. Heinen had proposed the January 10th date?

24 A. Not that I was aware of.

25 Q. And earlier I believe you mentioned that 11:05:11

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1 you would generally direct Ms. Heinen to sort of 11:05:13
2 execute the mechanics of the grant.

3 Do you recall that?

4 A. Yes.

5 Q. So do you think it's possible that you 11:05:19
6 directed Ms. Heinen to execute that grant date of
7 January 17th?

8 A. My guess as to what happened is that Nancy
9 sent me a proposal and I said okay. I think that
10 was the extent of my involvement. 11:05:37

11 Q. Okay. So then, do you think at some point
12 in time Ms. Heinen would have sent you an e-mail
13 that proposed January 17th as the grant date?

14 A. I don't recall. I don't know how that was
15 settled on. 11:05:53

16 Q. All right. I'm going to hand you what's
17 been previously marked as Exhibit No. 4.

18 A. (Witness reviewing document.)

19 Okay.

20 Q. And for the record, Exhibit 4 is a one-page 11:06:38
21 document with a Bates No. of 150AAPL008977.

22 Do you see that?

23 A. Yes.

24 Q. All right. And this is an e-mail chain,
25 and I'm going to start on the bottom and work my way 11:06:50
70

[b7C]

1 up -- 11:06:53

2 A. Okay.

3 Q. -- as e-mail tends to do. And so it

4 appears that the bottom is an e-mail from you to Ms.

5 Heinen on the 1st of February, 2001. 11:07:00

6 Does that appear to be correct?

7 A. That looks like what it is.

8 Q. All right. And it looks like you wrote

9 "Please submit the following option grants, all to

10 vest at 25 percent per year over four years." And 11:07:13

11 then you identify Mr. Anderson, [

12]

13 Do you see that?

14 A. Mm-hmm.

15 Q. So when you mentioned earlier that you 11:07:27

16 would sort of communicate to Ms. Heinen to execute

17 the grant --

18 A. Yes.

19 Q. -- is this the type of communication you

20 had in mind? 11:07:35

21 A. This would be a form of it, yes.

22 Q. Okay.

23 A. I doubt if this was the first communication

24 relative to these grants.

25 Q. Do you have a sense of when the first 11:07:42

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1 communication relative to those grants would have 11:07:44
2 taken place?

3 A. I think in early January.

4 Q. Early January?

5 A. Because if the logic of the situation is 11:07:49
6 that if Nancy said we shouldn't do it before
7 Macworld, then obviously she knew about it.

8 Q. And in terms of the communication in early
9 January --

10 A. Mm-hmm. 11:08:16

11 Q. -- assuming that's when the first
12 communication happened, would it be fair to say at
13 that point, though, you would not have communicated
14 a grant date of January 17th?

15 A. No, I wasn't involved in that. 11:08:24

16 Q. Okay.

17 A. I mean, I think the only reason Nancy, you
18 know, even proposed things, that I was even in the
19 loop on that, was because these grants were to the
20 executive team. People that worked directly for me. 11:08:39

21 Q. Okay. All right.

22 Do you have a sense -- now that we've
23 looked at a few more e-mails, do you have a sense
24 when relative to this February 1st date, February
25 1st, 2001, that you might have communicated to these 11:08:59

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1 grantees that they were going to receive a grant? 11:09:03

2 A. I just don't remember.

3 [] I'm going to mark this. This

4 is a new exhibit and it will be marked as Exhibit

5 58. 11:09:18

6 (Deposition Exhibit No. 58 was marked for
7 identification)

8 THE WITNESS: Thank you.

9 (Witness reviewing document.)

10 Okay. 11:09:32

11 BY []

12 Q. And, again, because e-mails sort of go --

13 well, actually, I'll start by identifying. Exhibit

14 58 is a one-page document. Unfortunately, the

15 number is cut off, but I will represent to everyone 11:10:03

16 here, and I can provide new copies later, that the

17 Bates No. is 150AAPL009006.

18 And, again, because e-mails -- I'm going to

19 kind of go from the bottom to the top.

20 A. Sure. 11:10:21

21 Q. It looks like there is an e-mail from you

22 to To your knowledge, was that

23 Mr. Anderson's e-mail address?

24 A. It was, yes.

25 Q. And it appears to be an e-mail dated 11:10:35

1 February 6, 2001. Does that seem right to you? 11:10:37

2 A. That's the date that's on the e-mail, yeah.

3 Q. And you write:

4 "Fred: As a follow-up to our conversation,

5 your new options on one million shares will 11:10:47

6 be dated January 17, priced at \$16.813 per

7 share, and vest annually over four years.

8 Steve."

9 Do you see that?

10 A. I do. 11:11:02

11 Q. Do you think, then, that this was the first

12 time that you had communicated the details of this

13 grant to Mr. Anderson?

14 A. No.

15 Q. Okay. Do -- 11:11:09

16 A. It says that here in two places.

17 Q. Right. "As a follow-up to our

18 conversation," right?

19 A. Yes. And then again up on top, where he

20 says, "Once again, I appreciate this additional 11:11:21

21 grant."

22 Q. Okay. Do you know, then, why it is that

23 you sent Mr. Anderson this e-mail on February 6th,

24 2001?

25 A. Yeah. I think just as a sort of a, you 11:11:32

1 know, memorialization of it. It's a chance for me 11:11:35
2 to put it in writing and, you know, tell them they
3 can keep this e-mail, know that they got it. I
4 would assume I sent this out to everybody on the
5 executive -- you know, one each to everybody. 11:11:56

6 Q. And you astutely pointed out that you
7 mention that it's a follow-up to a conversation.

8 A. Mm-hmm.

9 Q. Do you think that this was probably the
10 first -- or do you think that this was the first 11:12:05
11 written communication to Mr. Anderson about the
12 grant?

13 A. Oh, I have no idea.

14 Q. Other than you, is there anyone else at
15 Apple that would have written or would have had 11:12:19
16 responsibility to write to [] -- Mr. Anderson
17 or the other grantees and inform them that they had
18 received the options grant?

19 A. Well, the legal department might have, but
20 these folks work for me. So it was a good 11:12:34
21 opportunity for me to communicate to them what they
22 were getting in a formal way.

23 Q. Do you have a sense of how long after the
24 conversation you had with Mr. Anderson that you sent
25 this e-mail? 11:12:58

1 A. Well, that's just another way of asking me 11:12:58
2 when my conversation with Fred Anderson was, which I
3 told you I don't remember.

4 Q. Sometimes I am successful at jogging
5 memories, other times I'm not, and this is one of 11:13:07
6 those.

7 A. Listen, I'd tell you if I know.

8 Q. All right. Just one other document then
9 I'll show you here.

10 This is a document that's been previously 11:13:24
11 marked as Exhibit No. 7.

12 A. (Witness reviewing document.)

13 All right.

14 Q. Just briefly, I know that we've discussed
15 that Ms. Heinen was general counsel at Apple. 11:13:53

16 A. Yes.

17 Q. But if you look at Exhibit 7 -- and for the
18 record, Exhibit 7 is a document, a so-called
19 Certificate of Secretary, and it bears a Bates range
20 of 150AAPL08999 through 9001. 11:14:05

21 First of all, at the bottom there it says:
22 Nancy Heinen, Secretary.

23 Do you see that?

24 A. I do.

25 Q. What was -- well, I guess, was Ms. Heinen 11:14:20

1 the secretary of Apple in the 2000 timeframe? 11:14:26

2 A. I guess so.

3 Q. Do you have an understanding as to what her
4 responsibilities as secretary was?

5 A. I have no idea. 11:14:37

6 Q. Who at Apple would know what her
7 responsibilities as secretary were?

8 A. Well, she would.

9 Q. Okay. I guess -- you were on the Board of
10 Directors of Apple; is that right? 11:14:49

11 A. Yes.

12 Q. And did you have an expectation as to what
13 the corporate secretary's role would be vis-a-vis
14 actions of the board of directors?

15 A. Well, among -- I mean, I honestly don't 11:14:59
16 really know, but I would assume that they take
17 minutes.

18 Q. And do you have an understanding as to
19 whether or not the secretary should accurately take
20 minutes? 11:15:18

21 A. Well, I would hope that they do their best.

22 Q. Okay. I mean, I know the question seems
23 silly --

24 A. Yes.

25 Q. -- but I do have to ask it. 11:15:25

1 And why is it that you would hope that they 11:15:27
2 would do their best?

3 A. Why would I hope they would do their best.

4 Well, we produce minutes of our board meeting and-

5 one would like them to be accurate. 11:15:39

6 Q. Do you know whether or not the signature at
7 the bottom of Exhibit 7 is Ms. Heinen's signature?

8 A. I don't. Sorry.

9 Q. It looks like this document at the bottom
10 there was executed on February 6th, 2001. 11:16:12

11 Do you see that?

12 A. Yes.

13 Q. Okay. Do you know why it is if this grant
14 or if the UWC was executed by the board on January
15 17th that Ms. Heinen would wait until February 6th 11:16:30
16 to complete the secretary certificate?

17 A. I have no idea.

18 Q. All right. Handing you what's been
19 previously marked as Exhibit No. 47.

20 A. Thank you. 11:17:04

21 (Witness reviewing document.)

22 Okay.

23 Q. All right. Again, this appears to be a
24 memo or a document that's dated May 10th, 2001.

25 And, incidentally, Exhibit 47 is not a document with 11:17:44

1 a Bates number. 11:17:48

2 A. Okay.

3 Q. And it's to several individuals.

4 Again, do those individuals compose Apple's
5 Board of Directors in the May 2001 timeframe? 11:17:57

6 A. I think so.

7 Q. And, again, this is from [] and Ms.
8 Heinen.

9 Do you see that?

10 A. I do. 11:18:04

11 Q. And then it looks like it was copied to Mr.
12 Anderson?

13 A. Yes.

14 Q. Do you know why it is or do you have a
15 sense as to why it would be that Mr. Anderson would 11:18:10
16 be copied on this document?

17 A. I don't, but it involved the acquisition of
18 PowerSchool, maybe that's why; I'm not really sure.

19 Q. All right. And then there is -- in the
20 middle there is a part, it's kind of dark, it looks 11:18:46
21 like it was probably highlighted in the original.

22 A. Okay.

23 Q. And I'm going to represent to you, because
24 we've had people go through the exercise of figuring
25 out what this says, that it says, "Options granted 11:18:57

1 outside this process may result in an earnings 11:18:59
2 charge for any difference between the grant price
3 and the price as of the monthly approval date."

4 Do you recall, was there any discussion in
5 the May 2001 timeframe among Apple's board members 11:19:09
6 as to the accounting treatment for options?

7 A. None that I recall.

8 Q. Did you ever have a discussion that you can
9 recall with Ms. Heinen about the reasons for such an
10 earnings charge? 11:19:24

11 A. Not that I can recall.

12 Q. Do you recall ever discussing with anyone
13 at Apple the reasons for such an earnings charge?

14 A. Not that I can recall.

15 Q. And I would expand that not to just Apple 11:19:40
16 employees but any members of Apple's Board of
17 Directors. In other words, do you recall ever
18 discussing with them at the board level the reasons
19 for the earnings charge?

20 A. I don't. 11:19:52

21 [] Can we -- I'm assuming that
22 you're excluding conversations within the last
23 year --

24 THE WITNESS: Right.

25 [] -- and you're referring to 11:19:57
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1 conversations around May of 2001. 11:19:59

2 [] Yes. [] raises a
3 valid point, and I think this is the first time I
4 have danced close to that line.

5 Q. And it's certainly not my intention, nor is 11:20:07
6 it my desire to elicit any conversation --

7 A. Yeah, no, it's just funny.

8 Q. -- you've had with counsel.

9 A. I've had a lot of conversations about
10 options this last year. 11:20:14

11 Q. I imagine you have on many occasions. But
12 certainly the ones with your lawyers are not the
13 ones I'm talking about.

14 A. Yeah, no, I understand.

15 Q. And -- actually, that's the only question I 11:20:35
16 have about this document.

17 A. Okay.

18 Q. I'm at sort of a logical break point, but
19 we haven't been going a full hour.

20 A. Let's just keep going. 11:20:43

21 Q. Keep going? Okay.

22 I'm going to show you what's been

23 previously marked as Exhibit 44. And for the

24 record, while you're reviewing that, Mr. Jobs,

25 Exhibit 44 is a document with a Bates No. of 11:21:09

1 KPMG/APPLE/SEC046070 through 046075. 11:21:13

2 A. (Witness reviewing document.)

3 Okay.

4 Q. Just as a general matter, are you familiar
5 with this letter or one like it? 11:21:53

6 A. Is this what's called a rep letter?

7 Q. Well, that's what I was getting at. Do you
8 understand this to be what is referred to as a rep
9 letter?

10 A. Yes. 11:22:04

11 Q. And it looks like it's one dated October
12 16th, 2001; is that right?

13 A. That's the date.

14 Q. Okay. And if you'd look at the last page,
15 the one with the Bates number of 46075. 11:22:13

16 A. Mm-hmm.

17 Q. Is that your signature there, Mr. Jobs?

18 A. It is.

19 Q. Do you have an understanding -- or what was
20 your understanding in October of 2001 as to the 11:22:22
21 purpose of a letter, a rep letter?

22 A. My understanding was that this was to
23 represent to the auditors that we were fully
24 disclosing relevant information to them that was
25 required for them to carry out their job. 11:22:42

1 Q. And do you have an understanding of the 11:22:46
2 general process at Apple, in other words, what had
3 to be done at Apple in order to prepare this letter
4 and send it to the auditors?

5 A. No. 11:22:55

6 [] Okay.

7 (Whereupon the reporter read the record as
8 follows:

9 "Question: Do you have an understanding --
10 or what was your understanding in October 11:22:21
11 of 2001 as to the purpose of a letter, a
12 rep letter?

13 "Answer: My understanding was that this
14 was to represent to the auditors that we
15 were fully disclosing relevant information 11:22:38
16 to them that was required for them to carry
17 out their job.")

18 BY []

19 Q. And by "carry out their job," do you
20 understand what that means in this context? What do 11:23:26
21 you understand it to mean?

22 A. Perform their auditing functions --

23 Q. Okay.

24 A. -- would be my... .

25 Q. All right. On the first page there is a 11:23:37

1 number 1 there. 11:23:39

2 Do you see that?

3 A. Yes.

4 Q. And it says, "The financial statements

5 referred to above are fairly presented in conformity 11:23:44

6 with Generally Accepted Accounting Principles."

7 A. Mm-hmm.

8 Q. Do you see that?

9 A. I do.

10 Q. Do you have an understanding -- and, again, 11:23:51

11 I know you're not an accountant, but do you have a

12 general understanding as to what Generally Accepted

13 Accounting Principles are?

14 A. Not really.

15 Q. Okay. Do you have an understanding as to 11:24:00

16 why it is that Apple's financial statements should

17 be fairly presented in conformity with Generally

18 Accepted Accounting Principles?

19 A. Yeah. There needs to be some standards so

20 everybody follows the same standards. 11:24:15

21 Q. Fair enough.

22 And do you understand -- or do you have an

23 understanding -- let me start that again.

24 In 2001, October, did you have an

25 understanding as to what the relationship between 11:24:25

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1 this management representation letter was and any 11:24:27
2 public filings that Apple might make about its
3 finances?

4 A. Not really, no.

5 Q. All right. If you look at the next number 11:24:42
6 down, No. 2, and then there is a letter B there.

7 Do you see that?

8 A. Yeah, mm-hmm.

9 Q. And it says, "All minutes of the meetings
10 of stockholders, directors, and committees of 11:24:52
11 directors, or summaries of actions of recent
12 meetings for which minutes have not yet been
13 prepared."

14 Do you see that?

15 A. I do. 11:24:59

16 Q. Do you know why it is that that information
17 would be communicated to Apple's auditors?

18 A. Outside of the general answer I gave you a
19 minute ago, no.

20 Q. Okay. And then if you could jump forward 11:25:12
21 to page 46074.

22 A. Okay.

23 Q. And specifically at No. 27.

24 Do you see that?

25 A. Yep. 11:25:28

1 Q. It says: 11:25:29
2 "We affirm that stock options that are
3 granted through the Company's approved
4 stock option plans are granted at fair
5 value at the date of grant. The Company is 11:25:37
6 responsible for determining the assumptions
7 used in the Black-Scholes option-pricing
8 model used to determine the fair value of
9 options grants. The Company used the best
10 information available to determine those 11:25:50
11 assumptions."
12 Do you see that?
13 A. I do.
14 Q. Do you have an understanding as to why that
15 information would be communicated to Apple's 11:25:55
16 auditors?
17 A. The Black-Scholes option-pricing models?
18 Q. Well, actually, we can break it down.
19 First, the affirmation that options are granted at
20 fair value at the date of the grant. 11:26:10
21 A. I mean, I've since learned some things in
22 the last 18 months; but at this point in time, I
23 didn't understand that, no.
24 Q. Okay. And, again, just for the sake of it,
25 again excluding any conversations you've had with 11:26:30

[=b7c]

1 counsel then -- 11:26:32

2 A. Yeah.

3 Q. -- I take it, then, it's your testimony
4 that at least in October of 2001 you did not have an
5 understanding as to why you would -- Apple would
6 represent to its auditors that options were granted
7 at fair value at the date of the grant?

11:26:38

8 A. Yeah, I don't -- I don't understand that.
9 I don't understand why. But in any event...

10 Q. Generally, though, did you have an 11:27:04

11 understanding that it was important for Apple to
12 communicate accurate information to its auditors in
13 connection with the audit?

14 A. Yes, absolutely.

15 Q. Okay. All right. Moving on a little 11:27:15

16 farther into the year, do you recall that later on
17 in the year 2001 Apple's Board of Directors had
18 approved an options grant for you in the amount of
19 about seven and a half million shares?

20 A. I do. 11:27:44

21 Q. Okay.

22 [] Actually, you're moving
23 backward in the year.

24 [] I'm moving backward and then
25 forward.

11:27:49

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1 Q. All right. And do you recall approximately 11:27:50
2 when in 2001 it was that Apple's board approved an
3 options grant of 7.1 million shares?

4 A. This is the August grant --

5 Q. Okay. 11:28:01

6 A. -- right? Is that the one?

7 Q. Well, I'm going to avoid characterizing it.
8 I'm just trying to get your memory then.

9 A. Well, my memory, if it's the one you're
10 talking about, which I think it is, was August of 11:28:10
11 that year.

12 Q. And do you have a sense of why you think
13 that grant was in August?

14 A. Because the board approved it in August.

15 Q. Okay. And prior to the board's approval of 11:28:18
16 this grant to you, was there a negotiation process
17 that you went through with the company or members of
18 the board to work on this grant, for lack of a
19 better way to put it?

20 A. Yeah. 11:28:47

21 Q. Could you just tell me a little bit about
22 the process of how this all came to be?

23 A. Well, it was a tough situation, you know.
24 It wasn't so much about the money, because a very
25 small percentage of my net worth is from Apple. 11:29:02

1 Q. Okay. 11:29:07

2 A. But everybody likes to be recognized by

3 their peers, and the closest that I've got, or any

4 CEO has, is their Board of Directors. And as we've

5 seen in the discussions of the past hour, I spent a 11:29:28

6 lot of time trying to take care of people at Apple

7 and to, you know, surprise and delight them with

8 what a career at Apple could be -- could mean to

9 them and their families. And I felt that the board

10 wasn't really doing the same with me. 11:29:53

11 Q. Right.

12 A. So I was hurt, I suppose would be most

13 accurate word, and, you know, the board had given me

14 some options, but they were all underwater. They

15 weren't underwater necessarily because of our 11:30:15

16 performance, but, you know, the bubble had burst in

17 the dot-coms, and here I had been working, you know,

18 I don't know, four years, five years of my life and

19 not seeing my family very much and stuff, and I just

20 felt like there is nobody looking out for me here, 11:30:32

21 you know.

22 Q. Right. Okay.

23 A. So I wanted them to do something and so we

24 talked about it.

25 Q. Okay. I think I have an understanding of 11:30:45

1 what an underwater option is, but just to make sure 11:30:49
2 everyone is operating from the same playing field,
3 could you describe for me what you understand it to
4 be?

5 A. An option whose exercise price is higher 11:30:57
6 than the market price. Is that right?

7 Q. That sounds about right.

8 A. Yes.

9 Q. I just wanted to make sure I'm going with
10 what your understanding is. 11:31:11

11 All right. And so in this context of the
12 work you were doing for Apple, and you mentioned not
13 seeing your family a lot and --

14 A. I thought I was doing a pretty good job.

15 Q. Right. And so I assume you communicated 11:31:23
16 that to members of Apple's board?

17 A. Yeah.

18 Q. And I guess did that -- I mean, how did you
19 go about communicating that at first?

20 A. I don't really remember. My guess is that 11:31:35
21 I probably talked to [] about it.

22 Q. And did you -- when you first discussed
23 this with [] I mean, was it -- in other
24 words, was the discussion in the context of an
25 options grant as a way of recognizing you for your 11:31:48

1 work or did the whole concept of the grant evolve 11:31:51
2 over time?

3 A. I don't remember, but I assume it was in
4 the context of an options grant right from the
5 beginning, is my guess. 11:31:59

6 Q. And when do you think it was that you first
7 spoke with [] about this?

8 A. I don't remember.

9 Q. And using August of 2001 as the timeframe,
10 do you know if it was a matter of weeks or months or 11:32:15
11 years before that that you might have discussed this
12 first with []

13 A. Oh, gosh. I think it all occurred within
14 that year.

15 Q. Okay. 11:32:29

16 A. But I could be wrong. But I think it all
17 occurred in that year.

18 Q. And -- well, first of all, did you discuss
19 the idea of this options grant with other members of
20 Apple's board in the 2001 timeframe? 11:32:44

21 A. Probably []

22 Q. So [] and [] is that
23 correct?

24 A. Yeah.

25 Q. Anyone else? 11:32:56

1 possible.

11:34:36

2 Q. You mentioned in your answer part of a
3 process that took place before August of 2001 and
4 part of a process that took place after August 2001.

5 A. Well, again, to my -- in my mind, the board
6 of directors approved that option in August of 2001.

11:34:49

7 Q. Okay.

8 A. There was vesting-schedule discussions
9 after that, but the amount and the board approval
10 was approved in August, to the best of my
11 understanding.

11:35:09

12 Q. Fair enough.

13 And do you think that the grant date for
14 the grant had been approved in August?

15 A. Again, we didn't work that way. Nobody
16 talked about grant dates per se.

11:35:22

17 Q. All right. And I take it the same would be
18 true then for the strike price?

19 A. Correct.

20 Q. I think you had used -- I think you had
21 said something to the effect that the discussions
22 had dragged on for a while. Again, I don't want to
23 mischaracterize your testimony. Do you recall
24 saying something to that effect?

11:35:40

25 A. Yeah.

11:35:55

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1 Q. And what do you mean by the discussions 11:35:55
2 dragged on? And let me withdraw that.

3 What were the nature of the conversations
4 you were having with some board members, at least,
5 such that it came to be that you felt like this 11:36:10
6 conversation was dragging on?

7 [] This is pre-August?

8 [] Pre-August. Thank you.

9 THE WITNESS: I don't really remember. I
10 remember discussions surrounding giving back the 20 11:36:22
11 million shares and -- I don't really remember.

12 BY []

13 Q. Okay.

14 A. I mean, others, like [] or []
15] might remember more than I do, but... 11:36:32

16 Q. And then I believe you mentioned that there
17 were some discussions after August 2001 that had to
18 do with vesting?

19 A. Yeah.

20 Q. Were there -- I'm going to set vesting 11:36:44
21 aside for one second.

22 A. Mm-hmm.

23 Q. Were there any other elements of this grant
24 that you recall discussing with board members after
25 August 2001? 11:36:52

1 A. Not really, no. I mean, to be honest, I 11:36:54
2 was -- I just wanted to forget about the whole
3 thing, you know. In a way, when you have a bad
4 experience, you just kind of move on, so...

5 Q. And you've alluded to this, and if I could 11:37:12
6 just get you to sort of summarize it for me then,
7 what were the issues regarding vesting that you
8 discussed after August 2001?

9 A. I wanted some of it to be prevested.

10 Q. And what does "prevested" mean? 11:37:26

11 A. It means that there is no vesting schedule
12 on a certain percentage of it.

13 Q. Okay..

14 A. And my understanding was that the way it
15 ended up was that 25 percent was prevested. 11:37:40

16 Q. And this concept of prevesting, was that
17 something that was easy to resolve or did this
18 involve ongoing conversation or negotiation with the
19 board?

20 A. I don't really remember. I remember 11:37:52
21 discussions, a few discussions, with []
22 but I don't really remember.

23 Q. Do you remember what the nature of those
24 discussions were?

25 A. No. Prevesting, I assume. 11:38:04

1 Q. Let me ask it a different way. In terms of 11:38:09
2 what it is that you were hoping to get out of the
3 prevesting, did [] appear to be onboard
4 with you or was it sort of a back-and-forth, where
5 he pushed back and said, no, I don't like that idea, 11:38:18
6 I want something else?

7 A. Yeah, I wish I had a transcript of our
8 conversations. I just don't remember.

9 Q. Okay. Would the same be true about any
10 conversations you may have had with [] 11:38:29
11 then?

12 A. Yeah.

13 Q. You just don't remember?

14 A. Yeah.

15 Q. Okay. And I guess -- you know, the idea 11:38:32
16 isn't to get you to relive an unpleasant point, but
17 when you say that the process was painful, I guess
18 what I'm trying to get at, was also this process of
19 negotiating the grant painful, or were you referring
20 more generally to the notion that you weren't 11:38:47
21 feeling recognized by your peers?

22 A. Yeah, the latter.

23 Q. Okay.

24 A. I mean, you know, I'd wished they had come
25 to me and said, "Steve, we've got this new grant for 11:38:55

1 you," without me having to suggest anything or be 11:39:00
2 involved in anything or negotiate anything. That
3 would have been much better from the company's point
4 of view because it would have made me feel better at
5 that time. 11:39:17

6 Q. Fair enough.

7 Do you recall approximately when it is
8 that, whatever issues there were about the vesting
9 of this grant --

10 A. Yeah. 11:39:30

11 Q. -- when those were resolved or finalized to
12 your satisfaction?

13 [] If ever.

14 [] If ever. Fair enough.

15 THE WITNESS: I don't think they were 11:39:39
16 resolved to my satisfaction, but I think they were
17 resolved a few months later. I don't really
18 remember when.

19 BY []

20 Q. A few months. Then a few months after 11:39:48
21 August 2001?

22 A. Yeah.

23 Q. Do you think it was before 2002 or was it
24 still in the 2001 timeframe?

25 A. My guess is it was in 2001. 11:39:59

1 [] We are actually again at a 11:40:13
2 logical break point and we also only have five
3 minutes on our tape, so it's probably good to go off
4 record.

5 THE WITNESS: Okay. 11:40:21

6 THE VIDEOGRAPHER: This does mark the end
7 of video No. 1 in the deposition of Steve P Jobs.
8 The time is 11:40 a.m. and we are off the record.

9 (Recess taken)

10 THE VIDEOGRAPHER: We are on the record at 11:58:19
11 11:58 a.m. This marks the beginning of video No. 2
12 in the deposition of Steve P Jobs.

13 Please begin.

14 BY []

15 Q. Well, the good news, Mr. Jobs, I'm almost 11:58:32
16 at the end. The bad news is I won't promise you how
17 long it's going to take me because that's always a
18 recipe for not living up to a promise, but we're
19 getting there.

20 A. Thanks. 11:58:42

21 Q. So with that, this is Exhibit 51. This is
22 a rather lengthy document. I'm going to ask you to
23 just casually review it rather than go through all
24 the pages. And it's a document with a Bates range
25 of 150AAPL004056 through -- well, actually through 11:58:58

1 4240. 11:59:22

2 It appears, at least on my copy, there were
3 some extraneous documents attached at the end. So
4 if you guys will just take a look quickly. Anything
5 that's not Bates-numbered should not be part of that 11:59:37
6 exhibit.

7 [] This ends in 4241.

8 MR. EHRLICH: So does my copy.

9 [] 4241. Okay. Great. So the
10 extraneous copies are only part of my set. 11:59:50

11 Q. All right. If you look at the document --
12 I'll give you a moment. I'm sorry.

13 A. That's okay. I get the gist.

14 Q. And the gist, then, is -- do you have a
15 general understanding of what Exhibit 51 is? 12:00:06

16 A. I'm not really sure.

17 Q. Okay.

18 A. Is it presentations at a board meeting?

19 Q. Let me go to the first page. If you want
20 to look at the very beginning of the document. 12:00:30

21 A. Sure.

22 Q. There is something there that's stamped
23 Apple Board Book, 11/13/01.

24 A. Mm-hmm.

25 Q. Do you see that? 12:00:39

1 A. Here on this page? 12:00:40

2 Q. On the very first page, I'm sorry.

3 A. It says "Apple Board."

4 Q. Okay. 11/13/01?

5 A. Yeah. 12:00:49

6 Q. And then if you go to the second page, the

7 one that's 4057 --

8 A. Mm-hmm.

9 Q. -- it says, "Apple Computer, Inc., Board of

10 Directors Meetings, Tuesday, November 13th, 2001." 12:00:57

11 Do you see that?

12 A. Yes, I do.

13 Q. Does that help give you a better sense of

14 what this document is?

15 A. Not really because all the stuff in the 12:01:06

16 back I don't really -- it looks like an amalgamation

17 of stuff, but I don't really know.

18 Q. Do you recall whether or not the Apple's

19 Board of Directors met sometime around November

20 13th, 2001? 12:01:23

21 A. I don't remember.

22 Q. Okay. Do you know, as a general matter,

23 prior to meetings of Apple's Board of Directors,

24 whether materials are circulated for the board

25 members to review in anticipation of the meeting? 12:01:35

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1 A. Yes. 12:01:39

2 Q. Okay. And, again, focusing maybe on the

3 earlier part of this document rather than the latter

4 part, I mean, does this appear to be the type of

5 materials that would be circulated to Apple's board 12:01:48

6 members prior to a board of directors meeting?

7 A. I don't know.

8 Q. Okay. Well, then, let's skip forward a

9 couple of pages to -- at the bottom of the page it

10 would be 4059. 12:02:12

11 Do you see that?

12 A. Yep.

13 Q. And at the top it says, "Board of Directors

14 Agenda."

15 A. Right. 12:02:23

16 Q. Do you see that?

17 A. I do.

18 Q. Is that -- is that similar to a document

19 you've seen before that would be circulated in

20 anticipation of a board of directors meeting? 12:02:31

21 A. It --

22 Q. Let me ask a better question. I'm sorry.

23 A. This looks like a board of directors

24 agenda.

25 Q. All right. 12:02:42

1 pages to the page that is page 4061. 12:04:09

2 A. Mm-hmm.

3 Q. Do you see that?

4 A. I do.

5 Q. And there is an entry at 12:15 p.m. and it 12:04:16

6 says: Administrative notes.

7 Do you see that?

8 A. "Administrative Items."

9 Q. Oh, excuse me. Yes. "Administrative

10 Items." 12:04:29

11 And in the next column it says, "Nancy

12 Heinen, Senior Vice President, General Counsel and

13 Secretary."

14 Do you see that?

15 A. I do. 12:04:38

16 Q. And that's under a column that says

17 "Sponsor/Presenter"; is that correct?

18 A. Yes.

19 Q. And what's your understanding as to what

20 the sponsor or presenter is? 12:04:46

21 A. I have really never seen that before or

22 noticed it. Well, I assume Nancy would bring

23 forward before the board some administrative items.

24 Q. And here it looks like, at least from --

25 A. Approval of the minutes, as you can see 12:05:00

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1 here. 12:05:02

2 Q. Okay. And that's actually what I was
3 getting to next.

4 It says, "Approved minutes August 29, 2001
5 A and F." 12:05:09

6 Do you see that?

7 A. Yes.

8 Q. Do you know what "A and F" means?

9 A. I would guess that it means Audit and
10 Finance Committee. 12:05:16

11 Q. And then the next one is August 29, 2001
12 and it says, "BOD."

13 Do you see that?

14 A. Yes.

15 Q. And is that the board of directors? 12:05:23

16 A. I would assume that's the board, yeah.

17 Q. And then you have some entries for October
18 16th, 2001, A and F again.

19 Do you see that?

20 A. Mm-hmm. 12:05:34

21 Q. And then for August 16th, 2001 it says,
22 "Comp."

23 Do you see that?

24 A. Yes.

25 Q. And what is "comp"? 12:05:40

1 A. 4223. I'll get there. I'll get there. 12:07:29
2 All righty.
3 Q. All right. And this says -- the document,
4 at least at the top, appears to be "Minutes Of A
5 Meeting Of The Board Of Directors Of Apple Computer, 12:07:45
6 Inc., August 29th, 2001."
7 Do you see that?
8 A. Uh-huh.
9 Q. All right. And do you have a general
10 recollection as to whether Apple's Board of 12:07:54
11 Directors did in fact meet on or about August 29th,
12 2001?
13 A. I don't know.
14 Q. If that's identified in minutes, would it
15 be your assumption that that's an accurate 12:08:06
16 statement?
17 A. Well, what I have since learned in the last
18 year surrounding events at this time wouldn't
19 necessarily reassure me of that.
20 Q. Okay. Let's go on to the following page 12:08:25
21 then, the page identified -- or Bates No. 4224.
22 Are you with me on that?
23 A. Yes.
24 Q. All right. And there is -- about midway
25 through the page there is a heading "Executive 12:08:38

1 Session." 12:08:40

2 Do you see where I am?

3 A. Yes.

4 Q. And it says:

5 "Mr. Jobs and management departed the 12:08:46

6 meeting so that the outside directors could

7 meet in an executive session. Subsequent

8 to this session, Ms. Heinen was advised

9 that the Board had granted Mr. Jobs a stock

10 option under the 1998 Executive Officer 12:08:56

11 Stock Plan to purchase 7.5 million shares

12 of common stock. The exercise price of the

13 option will be today's closing price for

14 the Corporation's Common Stock."

15 And then there is a resolution there. 12:09:11

16 Do you see that?

17 A. I do.

18 Q. Earlier today we talked about the board

19 having granted you -- having made a grant of about

20 seven and a half million options in August. 12:09:20

21 Do you recall that?

22 A. Yes.

23 Q. Looking at this, then, do you believe that

24 that grant -- that the board granted those options

25 to you on August 29th, 2001? 12:09:29

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1 A. That's the way it looks. 12:09:31

2 Q. Okay. And looking at that paragraph we

3 read then, is it your understanding that the

4 exercise price for that seven and a half million

5 shares would be the closing price of Apple's stock 12:09:45

6 on August 29th, 2001?

7 A. That's what it says.

8 Q. Okay. And I just want to confirm that

9 that's your understanding as well and not just what

10 the document says. 12:09:57

11 A. That was my understanding.

12 Q. Okay. And if you would -- I hate to make

13 you leaf back and forth. Sorry to make you do this.

14 A. It's okay.

15 Q. If you go back to the agenda we were 12:10:20

16 looking at at the very beginning, page 4061 --

17 A. Yep.

18 Q. -- under "Approving Minutes," it appears to

19 be that there was an August 29, 2001 BOD.

20 Do you see that? 12:10:32

21 A. Yes.

22 Q. So then, do you have an understanding as to

23 whether or not at this November board meeting the

24 minutes of the August 29th, 2001, whether those

25 minutes were approved in November? 12:10:42

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1 A. I would assume so. They're attached here. 12:10:50
2 So I would assume so.

3 Q. Then is it your understanding, going back
4 again to 4223 then, and the page after it, the
5 minutes of the August 29th 2001 meeting -- 12:11:10

6 A. Yeah, just a second here. 4223?

7 Q. Yes, 4223 and 4224.

8 A. Okay.

9 Q. Okay. Then is it your understanding that
10 these minutes accurately depict an action of the 12:11:27
11 board of directors on or about August 29th, 2001?

12 A. Yeah.

13 Q. Do you recall -- I am assuming, but correct
14 me if I am wrong, at some point the board would have
15 notified you that they had approved this 7.5 million 12:11:51
16 share grant?

17 A. Yeah.

18 Q. Do you recall when in relationship to the
19 August 29, 2001 date the board notified you of this?

20 A. I don't. My guess would have been at that 12:12:01
21 meeting, but I don't recall.

22 Q. And I noticed in these minutes it looks
23 like you were excused for part of the meeting,
24 presumably for the discussion of this grant?

25 A. I would assume so. 12:12:21

1 Q. And that's because you wouldn't vote on a 12:12:22
2 grant to yourself; is that right?

3 A. Well, you know, it also leaves the outside
4 directors to debate and things like that without
5 feeling fettered by me being in the room. 12:12:34

6 Q. Okay. If I can have one moment here.

7 (Pause in the proceedings)

8 A. We're still on this document?

9 Q. We are.

10 All right. I think I don't have anything 12:13:43
11 more on that document. So thank goodness I didn't
12 read the whole long thing to you.

13 And, again, before I get to the other
14 document then, we talked about this a little earlier
15 today though, but it was your understanding then 12:13:59
16 that the board had approved these options to you on
17 August 29th, 2001; right?

18 A. Yeah.

19 Q. Okay. But I believe you mentioned that
20 there were some discussions that went on after 12:14:10
21 August about vesting and other --

22 A. Correct.

23 Q. -- or vesting as an issue; is that right?

24 A. Yes.

25 Q. All right. Then I'm also going to hand you 12:14:18

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1 what's been marked previously as Exhibit 42. 12:14:21

2 A. Okay.

3 Q. And, for the record, Exhibit 42 is a
4 document that bears a Bates range of

5 KPMG/APPLE/SEC006153.1 through 6153.3. 12:14:45

6 A. Got it.

7 Q. All right. And this purports to be the
8 minutes of a meeting of the Board of Directors of
9 Apple Computer, Inc., on October 19th, 2001.

10 Do you see that? 12:15:09

11 A. I do.

12 Q. To your knowledge, did the Apple Board of
13 Directors actually meet on October 19th, 2001?

14 A. I don't recall such a meeting. I mean, I
15 think I know what this is. 12:15:21

16 Q. Okay. And I'd like to go down to a section
17 that's entitled "CEO Compensation." I'm still on
18 the first page of the document.

19 Do you see that?

20 A. Mm-hmm, I do. 12:15:35

21 Q. And it says:

22 [] advised the board that as
23 discussed at the August 29th, 2001 board
24 meeting, the Compensation Committee had met
25 and considered several proposals for

12:15:44
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1 Q. And can you describe for me the ways in 12:16:41
2 which that sentence does not comport with your
3 understanding of what actually happened on August
4 29th, 2001?

5 A. Well, my understanding is what happened on 12:16:50
6 August 29th, 2001 is the board granted me options
7 for seven and a half million shares on that date and
8 did not -- you know, they might have considered
9 several proposals, but they reached a conclusion and
10 granted me those options. 12:17:06

11 Q. Fair enough.

12 And if you'll turn, then, to the next page
13 of the document, and that would be 6153.2.

14 Do you see that?

15 A. Yeah. 12:17:21

16 Q. And at the very top there is a paragraph
17 that begins:

18 "Resolved, Steven P. Jobs, Chief Executive
19 Officer, is hereby granted an option under
20 the 1998 Executive Officer Stock Plan (the 12:17:30
21 1998 plan) to acquire 7,500,000 of shares
22 of Common Stock at an exercise price equal
23 to the closing price for the Corporation's
24 Common Stock on the date of the grant."

25 Do you see that? 12:17:47

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1 A. I do. 12:17:48

2 Q. Do you have an understanding that Apple's
3 Board of Directors on October 19th, 2001 resolved to
4 grant you seven and a half million shares of Apple
5 Common Stock? 12:17:57

6 A. That is not my understanding, no.

7 Q. Now, at the bottom of the document it says,
8 "Nancy R. Heinen, Secretary."

9 Do you see that?

10 A. Mm-hmm. 12:18:05

11 Q. And again, I have to ask you to say "yes"
12 or "no."

13 A. Oh. Yes. I'm sorry.

14 Q. And let me ask you this: Did you ever
15 instruct Ms. Heinen to prepare minutes for an 12:18:13
16 October 19th, 2001 Apple Board of Directors meeting
17 that never took place?

18 A. No.

19 Q. To your knowledge, did anyone on Apple's
20 Board of Directors instruct Ms. Heinen to prepare 12:18:26
21 meeting minutes for an October 19, 2001 Apple Board
22 of Directors meeting that never took place?

23 A. Not that I'm aware of.

24 Q. Have you ever spoken with Ms. Heinen about
25 this document? 12:18:38

1 A. No. No. I didn't learn about all this 12:18:41
2 stuff until just this last year, fifteen months.

3 Q. Okay. Did Ms. Heinen ever discuss with you
4 the notion of preparing minutes for an Apple Board
5 of Directors meeting that never took place? 12:19:01

6 A. No.

7 Q. As a member of Apple's Board of Directors,
8 does it concern you that there are signed minutes
9 for an Apple Board of Directors meeting that never
10 took place? 12:19:14

11 A. Of course.

12 Q. And why does that concern you?

13 A. Well, because it's not true, you know.
14 Yes, it's deeply concerning.

15 [] Mr. Jobs, I'm going to thank 12:19:36
16 you for your time. I don't have any other questions
17 of you right now.

18 MR. EHRLICH: Mr. Jobs, on behalf of --

19 (Pause in the proceedings)

20 MR. EHRLICH: I'll be very brief, Mr. Jobs. 12:20:05

21 On behalf of our client, Ms. Heinen, I just
22 want to thank you very much for your time and
23 patience and we have no additional questions to ask
24 of you today.

25 THE WITNESS: Oh, thanks. Thank you. My 12:20:16
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1 body thanks you.

12:20:17

2 [] Off the record.

3 THE VIDEOGRAPHER: This does conclude the
4 deposition of Steven P. Jobs. The master tapes of
5 today's testimony will remain in the custody of
6 Veritext Deposition Services.

12:20:33

7 The time is 12:20 p.m. and this is the end
8 of video No. 2. We are off the record.

9 (Time noted: 12:20 p.m.)

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1 STATE OF CALIFORNIA)

2 : ss

3 COUNTY OF SAN MATEO)

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5 I, CYNTHIA MANNING, CSR No. 7645, a
6 Certified Shorthand Reporter of the State of
7 California, do hereby certify:

8 That the foregoing proceedings were taken
9 before me at the time and place herein set forth;
10 that any witnesses in the foregoing proceedings,
11 prior to testifying, were placed under oath; that a
12 verbatim record of the proceedings was made by me
13 using machine shorthand which was thereafter
14 transcribed under my direction; further, that the
15 foregoing is an accurate transcription thereof.

16 I further certify that I am neither
17 financially interested in the action, nor a relative
18 or employee of any attorney of any of the parties.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.


21

22 DATED: March 25th, 2008

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24

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CYNTHIA MANNING, CSR No. 7645

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TUESDAY, MARCH 18, 2008

WITNESS

EXAMINATION

STEVEN P. JOBS

[]

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1 PLAINTIFF'S EXHIBITS

2 STEVEN P. JOBS

3	4 NUMBER	5 DESCRIPTION	6 IDENTIFIED
7	8 Exhibit 57	9 E-mail, dated December 8, 10 2000 to Mr. Jobs from Mr. 11 Anderson; Bates No. 12 150APPL008944	13 56
14	15 Exhibit 58	16 E-mail, dated February 6, 17 2001 to Mr. Jobs from Mr. 18 Anderson; Bates No. 19 150AAPL009006	20 72
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