

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

GREENLIGHT CAPITAL, LP,  
GREENLIGHT CAPITAL QUALIFIED, LP,  
GREENLIGHT CAPITAL (GOLD), LP,  
GREENLIGHT CAPITAL OFFSHORE  
PARTNERS, and GREENLIGHT CAPITAL  
OFFSHORE MASTER (GOLD), LTD.,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

**13 CIV 900**

Civil Action No. \_\_\_\_\_

**DECLARATION OF DAVID EINHORN IN SUPPORT OF THE  
GREENLIGHT ENTITIES' MOTION FOR PRELIMINARY INJUNCTION**

STATE OF NEW YORK                     )  
  ) ss:  
COUNTY OF WESTCHESTER         )

I, David Einhorn, declare as follows:

1. I am the co-founder of Greenlight Capital, Inc. and the portfolio manager of the Plaintiffs Greenlight Capital, LP, Greenlight Capital Qualified, LP, Greenlight Capital (Gold), LP, Greenlight Capital Offshore Partners, and Greenlight Capital Offshore Master (Gold), Ltd. (collectively, the "Greenlight Entities"). I make this declaration based on my own personal knowledge, information and belief. I submit this declaration in support of the Greenlight Entities' Motion for Preliminary Injunction.

2. The Greenlight Entities and their affiliates collectively held more than 1.3 million common shares of Apple as of January 2, 2013, the record date for Apple's upcoming general shareholder meeting.

3. Under Apple's articles of incorporation, Apple's board of directors currently has the power to issue preferred stock. In May 2012, the Greenlight Entities made a proposal to Apple to issue perpetual preferred shares directly to Apple shareholders. As proposed by the Greenlight Entities, the shares would have a cumulative dividend with preferential tax treatment. These shares would be a tax-efficient way of returning value to shareholders. The Greenlight Entities believed that issuing such shares would benefit all of Apple's shareholders and increase the value of their shares. Apple declined the Greenlight Entities' suggestion in September 2012.

4. Apple has scheduled an annual shareholder meeting for February 27, 2013. Apple filed a definitive proxy statement on January 7, 2013 in which it solicited shareholder support for a number of management proposals. A copy of the definitive proxy statement is attached as Exhibit A to the Complaint in this matter, and as Exhibit A to the February 7, 2013 Declaration of Mitchell P. Hurley accompanying Greenlight's Motion for a Preliminary Injunction.

5. Proposal No. 2 in the definitive proxy bundles together three separate, discrete amendments for a single up or down vote. First, the proposal would modify the articles of incorporation to facilitate "majority voting" for directors under California law. Second, the proposal would establish a par value for Apple's common stock. And third, the proposal would eliminate Apple's power to issue preferred stock.

6. The proxy requires shareholders to vote either "yes" or "no" to these proposed amendments as a group.

7. The Greenlight Entities support the first two proposed changes to Apple's articles of incorporation.

8. The Greenlight Entities oppose, however, the proposed elimination of Apple's power to issue preferred shares, and believe that the proposed change is not in the best interests

of Apple's shareholders. The power to issue preferred stock gives the board important flexibility in managing Apple's capital, and the Greenlight Entities believe this flexibility can be used to enhance shareholder value.

9. Because the three proposed modifications to the Articles are bundled together, the Greenlight Entities, like other shareholders who support some but not all of the modifications, will be forced to either vote in favor of one or more modifications they oppose, or to vote against one or more modifications they support.


10. On February 1, 2013, on behalf of the Greenlight Entities, I spoke on the phone with representatives of Apple and urged Apple to withdraw from consideration by the shareholders the amendment eliminating Apple's ability to issue preferred shares. Apple declined to do so.

11. On February 5, 2013, I emailed Apple to once again ask it to withdraw the amendment, or at a minimum, to unbundle the three proposed amendments to the articles of incorporation, as the Commission's unbundling rules require.

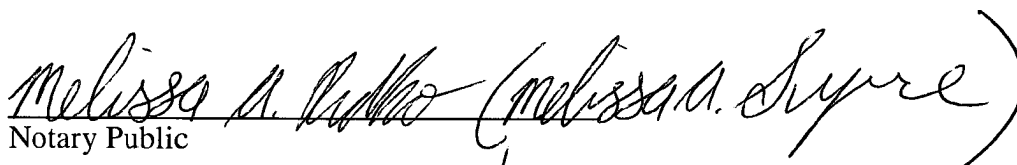
12. In a telephone call on February 6, 2012, Apple indicated that it would not comply with the Greenlight Entities' request, although it stated that it will reconsider the Greenlight Entities' May 2012 proposal and offered to schedule a meeting.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 6, 2013  
New York, New York

  
David Einhorn

Sworn to before me this  
6th day of February 2013

  
Notary Public

My Commission Expires: 5/24/2014

**MELISSA ANNE RUDKO**  
Notary Public, State of New York  
No. 01RU6218106  
Qualified in New York County  
Commission Expires May 24, 2014