

1 **UNITED STATES DISTRICT COURT**
2 **NORTHERN DISTRICT OF CALIFORNIA**

3
4 **IN RE APPLE INC. SECURITIES LITIGATION**

CASE NO. 4:19-CV-02033-YGR

**ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT AND SETTING
DEADLINES FOR NOTICE, OBJECTION,
EXCLUSION, AND FINAL FAIRNESS
HEARING**

Dkt. No. 421

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9 On May 7, the Court held a hearing on the motion of plaintiffs' unopposed motion for
10 preliminary approval of proposed settlement for preliminary approval of the parties' proposed
11 settlement; approval of the Class Notice Packet; appointing the proposed Settlement
12 Administrator; and setting a date for the hearing on final approval of the settlement. (Dkt. No.
13 421.) Shawn Williams appeared for plaintiff; and Dan Kramer appeared for defendants.

14 Having considered the motion briefing, the arguments of counsel, the relevant law, the
15 terms of the settlement agreement and the class notice, plaintiffs' supplemental brief, as well as
16 the record in this case, and based on the reasons and terms set forth herein, the Court **GRANTS** the
17 parties' motion for preliminary approval of class action settlement.

18 **I. BACKGROUND**

19 Plaintiffs filed the putative class action complaint on April 16, 2019 against defendants
20 Apple Inc., Timothy Cook, and Luca Maestri alleging defendants made materially false and
21 misleading statements and omissions about demand for the newly released iPhone and Apple's
22 business in China. (Dkt. No. 1.) On June 19, 2020, the Court issued an order appointing Norfolk
23 County Council as Administering Authority of the Norfolk Pension Fund as lead plaintiff ("Lead
24 Plaintiff") and Robbins Geller Rudman & Dowd LLP as lead counsel ("Lead Counsel"). (Dkt. No.
25 113.) On June 23, 2020, plaintiffs filed the operative complaint, a revised consolidated class action
26 complaint, alleging claims for violations of §§10(b) and 20(a) of the Securities Exchange Act of
27 1934. (Dkt. No. 114.)
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1 On February 4, 2022, the Court issued an order certifying a class of purchasers of acquirers
2 of Apple common stock and denying without prejudice the motion with respect to a proposed class
3 of options investors. (Dkt. No. 224.) On March 28, 2023, the Court issued an order modifying
4 class, granting plaintiff's motion to certify call option buyers and put option sellers as part of the
5 class. (Dkt. No. 352.)

6 After more motion practice, the parties eventually reached a settlement by accepting a
7 mediator's proposal to resolve all claims in the operative complaint, with the assistance of an
8 experienced mediator, Hon. Layn R. Phillips (Ret.) of Phillips ADR ("Judge Phillips"). (Dkt. No.
9 421 at 3.)

10 **B. Terms of the Settlement Agreement**

11 Under the terms of the Settlement Agreement, defendants will pay \$490 million into a
12 common settlement fund, without admitting liability. (*Id.* at 16.) This amount includes attorneys'
13 fees and costs, the cost of class notice and settlement administration, and the class representative's
14 service award. (*Id.* at 7.)

15 **1. Attorneys' Fees and Costs**

16 Under the Settlement Agreement, plaintiff's counsel agreed to seek up to 25% of the
17 Settlement Amount (\$122,500,000) in attorneys' fees and no more than \$3 million in litigation costs,
18 plus interest on its fees and expenses generated during the time in which the amounts are held in
19 escrow during the settlement process. (*Id.* at 16; Dkt. No. 433 at 6.) The common settlement fund
20 also includes a provision for \$3.6 million in settlement administration costs; and up to \$73,000 to be
21 paid to Lead Plaintiff, former lead plaintiff the Employees' Retirement System of the State of Rhode
22 Island, and City of Roseville Employees' Retirement System as an incentive award in exchange for a
23 general release of all claims against defendants. (Dkt. No. 421 at 16.)

24 **2. Class Relief**

25 After deductions from the common fund for fees, costs, and service incentive awards, the
26 remaining amount will remain to be distributed among the participating class members. Class
27 members will be paid according to the following plan: Lead Counsel, along with plaintiffs' damages
28 expert, calculated the potential amount of estimated alleged artificial inflation (or deflation, in the

1 case of Apple put options) in Apple publicly traded securities proximately caused by defendants’
 2 alleged false and misleading statements and material omissions. Based on the formula in the plan, a
 3 “Recognized Loss Amount” will be calculated for each transaction in Apple publicly traded
 4 securities. (*Id.* at 17-18.) The net settlement fund will be distributed to authorized claimants on a
 5 pro rata basis based on the type of security transacted and the relative size of their claims. (*Id.* at
 6 18.) The amount of the payment will depend on, among other factors, how many class members file
 7 valid claims and the aggregate value of the claims represented by valid and acceptable proofs of
 8 claim. (*Id.*) Once notice and administration expenses, taxes, tax expenses, and Court-approved
 9 attorneys’ fees and expenses have been paid from the settlement fund, the remaining amount will be
 10 distributed pursuant to the Court-approved plan of allocation to claimants who are entitled to a
 11 distribution of at least \$10.00. (*Id.* at 7, 18.) The Settlement Agreement provides that no amount
 12 will revert to defendants.

13 3. Reallocation and *Cy Pres/Remainder*

14 If there is any balance remaining in the settlement fund after at least six months from the
 15 initial date of distribution, Lead Counsel will reallocate the balance among claimants who negotiated
 16 the checks sent to them in the initial distribution and who would receive at least \$10.00. These
 17 reallocations shall be repeated until the balance remaining in the settlement fund is *de minimis* and
 18 such remaining balance shall then be donated to the Investor Protection Trust.¹

19 II. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

20 A. Legal Standard

21 A court may approve a proposed class action settlement of a certified class only “after a
 22 hearing and on finding that it is fair, reasonable, and adequate,” and that it meets the requirements
 23 for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need
 24 not address whether the settlement is ideal or the best outcome, but only whether the settlement is
 25 fair, free of collusion, and consistent with plaintiff’s fiduciary obligations to the class. *See Hanlon v.*
 26 *Chrysler Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to
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28 ¹ The Investor Protection Trust serves as an independent source of noncommercial investor education. *See* www.investorprotection.org.

1 assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense,
 2 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
 3 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
 4 the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a
 5 government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at
 6 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
 7 2004).

8 Settlements that occur before formal class certification also “require a higher standard of
 9 fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such
 10 settlements, in addition to considering the above factors, a court also must ensure that “the
 11 settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset*
 12 *Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

13 **B. Class Definition and Basis for Conditional Certification**

14 On May 5, 2021, plaintiff moved to certify a class, which the Court certified by Order issued
 15 February 4, 2022. (Dkt. No. 224.) Following certification of the Class, the parties agreed to
 16 mediation before Hon. Layn R. Phillips (Ret.) of Phillips ADR (“Judge Phillips”), which ultimately
 17 led to the instant settlement. The Settlement Agreement, attached hereto as **Exhibit A**, defines the
 18 class as:

19 all Persons that purchased or otherwise acquired the publicly traded securities of Apple Inc.,
 20 including purchasers of Apple Inc. call options and sellers of Apple Inc. put options, during
 21 the period from November 2, 2018, through January 2, 2019, inclusive, and who suffered
 22 damages by Defendants’ alleged violations of §§10(b) and 20(a) of the Exchange Act.
 Excluded from the Class are: (i) Apple and the Individual Defendants; (ii) members of the
 families of each Individual Defendant; (iii) officers and directors of Apple; and (iv) the legal
 representatives, heirs, successors, or assigns of any such excluded party. Also excluded from
 the Class is any Person who timely and validly seeks exclusion from the Class.

23 (“the Class”). (Dkt. No. 421-2 at 5.) The Court previously approved a class definition materially
 24 identical to the definition provided above.²

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 26 ² The Court approved the following class: “All persons and entities who purchased or
 27 otherwise acquired the publicly traded securities of Apple Inc., including purchasers of Apple Inc.
 28 call options and sellers of Apple Inc. put options, during the period from November 2, 2018
 through January 2, 2019, inclusive, and who suffered damages by defendants’ alleged violations
 of Sections 10(b) and 20(a) of the Exchange Act. Excluded from the class are (i) Apple and the
 individual defendants; (ii) members of the families of each individual defendant; (iii) officers and

1 **C. Settlement Agreement Appears Fair and Reasonable**

2 The settlement agreement, a copy of which is attached hereto as Exhibit A (“Settlement
3 Agreement”), is granted preliminary approval pursuant to Rule 23(e)(2). Based upon the
4 information before the Court, the Settlement Agreement falls within the range of possible approval
5 as fair, adequate and reasonable, and there is a sufficient basis for notifying the Class and for
6 setting a Fairness and Final Approval Hearing.

7 As to the *Hanlon* factors, the Court finds that they indicate the settlement here is fair and
8 reasonable. Further litigation, absent settlement would likely be lengthy and would present
9 several difficulties to resolve. A “[s]ettlement [a]greement’s elimination of risk, delay, and further
10 expenses weighs in favor of approval.” *Salazar v. Midwest Servicing Grp., Inc.*, 2018 WL
11 3031503, at *6 (C.D. Cal. June 4, 2018). “Courts experienced with securities fraud litigation
12 ‘routinely recognize that securities class actions present hurdles to proving liability that are
13 difficult for plaintiffs to clear.’” *Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12129279, at *5
14 (C.D. Cal. Mar. 13, 2013). Risks of proving falsity, materiality, scienter, and recoverable damages
15 present significant obstacles to plaintiff’s success at trial. *See, e.g., In re Celera Corp. Sec. Litig.*,
16 2015 WL 1482303, at *5 (N.D. Cal. Mar. 31, 2015) (“As with any securities litigation case, it
17 would be difficult for Lead Plaintiff to prove loss causation and damages at trial. . . . Lead Plaintiff
18 would risk recovering nothing without a settlement.”); *Luna v. Marvell Tech. Grp.*, 2018 WL
19 1900150, at *3 (N.D. Cal. Apr. 20, 2018) (noting the risks of proving scienter, loss causation, and
20 damages at trial).

21 Here, defendants advanced several arguments presenting issues for plaintiffs. First,
22 defendants dispute that defendant Cook’s alleged false statement conveyed information about the
23 current state of Apple’s business in China, as opposed to historical information, and that the
24 information negated an inference of scienter. *See In re Immune Response Sec. Litig.*, 497 F. Supp.
25 2d 1166, 1172 (S.D. Cal. 2007) (“[T]he issue[] of scienter . . . [is] complex and difficult to
26 establish at trial.”) Further, defendants and their experts argued that the price declines in Apple
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directors of Apple; and (iv) the legal representatives, heirs, successors or assigns of any such
excluded party.” (Dkt. No. 252 at 4.)

1 stock were not caused by revelations concerning previously undisclosed conditions in China, but
2 by the fact that Apple missed its Q1'19 revenue guidance. *See In re Zynga Inc. Sec. Litig.*, 2015
3 WL 6471171, at *9 (N.D. Cal. Oct. 27, 2015) (“[I]n ‘any securities litigation case, it [is] difficult
4 for [plaintiff] to prove loss causation and damages at trial.’”). Further, defendants’ expert
5 witnesses testimony posed a potentially significant obstacle to plaintiff’s potential for success at
6 trial. *See, e.g., Weeks v. Kellogg Co.*, 2013 WL 6531177, at *13 (C.D. Cal. Nov. 23, 2013) (“The
7 fact that this issue, which is at the heart of plaintiffs’ case, would have been the subject of
8 competing expert testimony suggests that plaintiffs’ ability to prove liability was somewhat
9 unclear; this favors a finding that the settlement is fair.”).

10 Proceeding to trial would have been costly; recovery was not guaranteed; and there was the
11 possibility of protracted appeals. The settlement occurred only after four years extensive litigation
12 including the certification of a class, modification of a class, a motion for summary judgment,
13 extensive discovery, and the retention of expert witnesses by both sides. Here, “the case is
14 complex and likely to be expensive and lengthy to try,” and therefore “favors the settlement.”
15 *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009).

16 Counsel for both parties are highly experienced. The record does not indicate collusion or
17 self-dealing. *See In re Bluetooth*, 654 F.3d at 946-47.

18 The Settlement Agreement appears to have been the product of arm’s length and informed
19 negotiations. The relief provided for the Class appears to be adequate, taking into account:

20 (i) the costs, risks, and delay of trial and appeal;

21 (ii) the effectiveness of any proposed method of distributing relief to the class, including the
22 method of processing class-member claims;

23 (iii) the terms of any proposed award of attorney's fees, including timing of payment; and

24 (iv) any agreements required to be identified under Rule 23(e)(3), of which there are none at
25 issue here.

26 Moreover, the Settlement Agreement appears to treat Class members equitably relative to
27 each other.

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1 At the hearing on plaintiffs’ motion for preliminary approval, the Court expressed several
2 concerns, which were largely addressed by plaintiffs’ supplemental submission in support of
3 motion for preliminary approval. (Dkt. No. 433.) Plaintiffs’ supplemental submission is sufficient
4 to justify preliminary approval. The Court will evaluate the Settlement Agreement fully at the
5 hearing for final approval.

6 **III. PLAN OF NOTICE, ALLOCATION, AND ADMINISTRATION**

7 **A. Notice Plan**

8 A court must “direct notice [of a proposed class settlement] in a reasonable manner to all
9 class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be
10 notified of a proposed settlement in a manner that does not systematically leave any group without
11 notice.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate
12 notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to
13 apprise the Class members of the proposed settlement and of their right to object or to exclude
14 themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate,
15 and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable
16 requirements of due process and any other applicable requirements under federal law. *Phillips*
17 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably
18 calculated, under all the circumstances, to apprise interested parties of the pendency of the action
19 and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr.*
20 *Co.*, 339 U.S. 306, 314 (1950).

21 The parties’ proposed notice plan appears to be constitutionally sound in that plaintiffs
22 have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated,
23 under the circumstances, to apprise the Class members of the proposed settlement and of their
24 right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable
25 and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv)
26 meet all applicable requirements of due process and any other applicable requirements under
27 federal law. The notice plan includes direct mail notice to all those who can be identified with
28 reasonable efforts, supplemented by publication of the Summary Notice in *The Wall Street Journal*

1 and over a national newswire service. In connection therewith, the Court approves the Proof of
2 Claim form, attached hereto as Exhibit D.

3 The Court approves form of the full-length Notice of Proposed Class Action Settlement
4 attached as Exhibit B to this Order. The Court also approves the form of the Summary Notice
5 attached hereto as Exhibit C. Taken together these notices are sufficient to inform class members
6 of the terms of the Settlement Agreement, their rights under the Settlement Agreement, their rights
7 to object to or comment on the Settlement Agreement, their right to receive a payment or opt out
8 of the Settlement Agreement, the process for doing so, and the date and location of the Fairness
9 and Final Approval hearing. The forms of plan of notice are therefore **APPROVED**.

10 **B. Plan of Allocation**

11 The Court preliminarily approves the proposed plan of allocation set forth in the Motion
12 and the class notices.

13 The plan of allocation includes a Proof of Claim form that requests the information
14 necessary to calculate a claimant's claim amount pursuant to the agreed-to plan of allocation. (*See*
15 *Dkt. No. 421-2 at 12.*) When developing the plan, Lead Counsel, along with Lead Plaintiff's
16 damages expert, calculated the potential amount of estimated alleged artificial inflation (or
17 deflation, in the case of Apple put options) in Apple publicly traded securities proximately caused
18 by defendants' alleged false and misleading statements and material omissions. (*Dkt. No. 421 at*
19 *19.*) Based on the formula in the plan, a "Recognized Loss Amount" will be calculated for each
20 transaction in Apple publicly traded securities. (*Id.*) The Net Settlement Fund will be distributed
21 to Authorized Claimants on a pro rata basis based on the type of security transacted and the
22 relative size of their Recognized Claims. (*Id.*)

23 **C. Settlement Administrator**

24 Gilardi & Co. LLC ("Gilardi") is appointed to act as the Settlement Administrator,
25 pursuant to the terms set forth in the Settlement Agreement.

26 The Settlement Administrator shall distribute the Class Notice according to the notice plan
27 described in the Settlement Agreement and substantially in the form approved herein, no later than
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1 June 26, 2024 (“Notice Date”). Proof of distribution of the Class Notice shall be filed by the
2 parties in conjunction with the motion for final approval.

3 Defendants shall provide, or cause to be provided, to the Settlement Administrator, at no
4 cost to Lead Plaintiff, the Settlement Fund, Lead Counsel or the Settlement Administrator, within
5 seven (7) calendar days after the Court enters this Order, documentation or data in the possession
6 of Apple or its present or former stock transfer agents sufficient to identify to the extent available
7 the record holders of Apple common stock during the Class Period and their last known addresses,
8 email addresses (if available), or other similar information.

9 **D. Exclusion/Opt-Out**

10 Any Class Member shall have the right to be excluded from the Class by mailing a request
11 for exclusion to the Settlement Administrator no later than August 18, 2024. Requests for
12 exclusion must be signed and in writing and set forth (a) the name, address, and telephone number
13 of the person who wishes to be excluded (b) the number and type of Apple publicly traded
14 securities that the Person requesting exclusion purchased, otherwise acquired, and/or sold during
15 the Class Period, as well as the number of shares, dates, and prices for each such purchase, other
16 acquisition, and sale; and (c) that the Person wishes to be excluded from the Class in In re Apple
17 Inc. Securities Litigation, No. 4:19-cv-02033-YGR. No later than September 3, 2024, Class
18 Counsel shall file with the Court a list of all persons or entities who have timely requested
19 exclusion from the Class as provided in the Settlement Agreement.

20 Any Class Member who does not request exclusion from the settlement class as provided
21 above shall be bound by the terms and provisions of the Settlement Agreement upon its final
22 approval, including but not limited to the releases, waivers, and covenants described in the
23 Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement
24 and whether or not such person or entity makes a claim upon the settlement funds.

25 **E. Objections**

26 Any Class Member who has not submitted a timely request for exclusion from the
27 Settlement Agreement shall have the right to object to (1) the Settlement Agreement, (2) the plan
28 of allocation; and/or Class Counsel’s motion for attorneys’ fees and Class Representative Awards

1 by mailing to the Settlement Administrator a written objection and stating whether they intend to
2 appear at the Fairness Hearing, as set forth in the Class Notice, no later than August 18, 2024.
3 Failure to submit a timely written objection will preclude consideration of the Class Member's
4 later objection at the time of the Fairness Hearing.

5 **F. Attorneys' Fees and Class Representative Awards**

6 Plaintiffs and their counsel shall file their motion for attorneys' fees and for Class
7 Representative awards no later than July 14, 2024. Each settlement class member shall have the
8 right to object to the motion for attorneys' fees and Class Representative awards by filing a written
9 objection with the Court no later than August 18, 2024, as stated in paragraph 8 above.

10 Plaintiffs shall file a reply brief responding to any timely objection no later than September
11 3, 2024.

12 **G. Fairness and Final Approval Hearing**

13 All briefs, memoranda and papers in support of final approval of the settlement shall be
14 filed no later than July 14, 2024.

15 The Court will conduct a Fairness and Final Approval Hearing on Tuesday, September 17,
16 at 2:00 p.m., to determine whether the Settlement Agreement should be granted final approval as
17 fair, reasonable, and adequate as to the Class. The Court will hear all evidence and argument
18 necessary to evaluate the Settlement Agreement and will consider Class Counsel's motion for
19 attorneys' fees and for Class Representative awards.

20 Class members may appear, by counsel or on their own behalf, to be heard in support of or
21 opposition to the Settlement Agreement and Class Counsel's Motion for attorneys' fees and Class
22 Representative awards by filing a Notice of Intention to Appear no later than August 18, 2024.

23 The Court reserves the right to continue the date of the final approval hearing without
24 further notice to Class members.

25 The Court retains jurisdiction to consider all further applications arising out of or in
26 connection with the Settlement.

27 **H. Post-Distribution Accounting**

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United States District Court
Northern District of California

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If final approval is granted, the parties will be required to file a Post-Distribution Accounting in accordance with this District’s Procedural Guidance for Class Action Settlements and at a date set by the Court at the time of the final approval hearing. Counsel should prepare accordingly.

Summary of Key Dates	
Event	Date
Class data to be provided to Settlement Administrator	Within seven (7) calendar days after the entry of this order.
Class Notice to be sent by	June 26, 2024
Class Counsel to file their motion for fees and costs and Class Representative awards	July 14, 2024
Motion for Final Approval to be filed by	July 14, 2024
Deadline to submit objection or request for exclusion	August 18, 2024
Class counsel and settlement administrator to submit supplemental statements regarding status of notice program, objections, opt-outs	September 3, 2024
Fairness and Final Approval Hearing	September 17, 2024 NOTE: Subject to change without further notice to the Class.

IT IS SO ORDERED.

This terminates Docket No. 421.

Dated: June 3, 2024


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE