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

**IN RE APPLE INC. SECURITIES LITIGATION,**

Case No. 4:19-cv-2033-YGR

**ORDER GRANTING IN PART AND DENYING IN  
PART MOTION FOR CLASS CERTIFICATION**

Re: Dkt. Nos. 165, 206

Lead Plaintiff Norfolk County Council as Administering Authority of the Norfolk Pension Fund (“Norfolk”) brings this putative securities fraud class action against defendants Apple, Inc., Timothy Cook, and Luca Maestri for alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder. The Court initially appointed Employees’ Retirement System of the State of Rhode Island as lead plaintiff, Labaton Sucharow LLP as lead counsel, and Wagstaffe, Von Loewenfeldt, Busch & Radwick LLP as liaison counsel. (Dkt. No. 72.) Subsequently, the Court approved the transition of Norfolk as lead plaintiff and Robbins Geller Rudman & Dowd LLP as lead counsel. (Dkt. No. 113.)

Currently pending before the Court is plaintiff’s motion for (1) certification of a class defined, with exclusions, as: “[a]ll persons and entities who purchased or otherwise acquired the publicly traded securities of Apple Inc. during the period from November 2, 2018 through January 2, 2019, inclusive (the ‘Class Period’), and who suffered damages by [d]efendants’ alleged violations of [Sections] 10(b) and 20(a) of the Exchange Act”; (2) appointment of Norfolk as class representative; and (3) appointment of Robbins Geller as class counsel. (Dkt. No. 165.) Having carefully considered the briefing and the arguments submitted at the January 18, 2022 hearing, and for the reasons set forth more fully below, the Court **GRANTS IN PART** the motion except as to the inclusion of option holders in the class. In that regard, the motion is **DENIED WITHOUT PREJUDICE**.

1 **I. BACKGROUND**

2 Plaintiff alleges that in late 2018, defendants misrepresented the state of Apple’s business in  
3 Greater China, the company’s most important growth market at the time. (Revised Consolidated  
4 Class Action Complaint (“Compl.”), Dkt. No. 114, ¶¶ 8–10, 18.)<sup>1</sup> Specifically, on November 1,  
5 2018, following a press release announcing the financial results for its fourth quarter of 2018 and  
6 setting revenue expectations for the next quarter, Apple held a conference call for analysts and  
7 investors to discuss the same. (*Id.* ¶¶ 17–18.)<sup>2</sup> After analysts expressed concerns about  
8 “deceleration” in emerging markets, Cook, Apple’s chief executive officer, responded that “[t]he  
9 emerging markets that we’re seeing pressure in are markets like Turkey, India, Brazil, Russia, these  
10 are markets where currencies have weakened over the recent period.” (*Id.* ¶ 56; Shareholder/Analyst  
11 Call Transcript (“Call Tr.”), Dkt. No. 119-1 at 11.) However, he “d[id]n’t see it as some sort of  
12 issue that is common” among all emerging markets, as “each one of the emerging markets has a bit  
13 of a different story”:

14 In relation to China specifically, I would not put China in that category. Our  
15 business in China was very strong last quarter. We grew 16%, which we’re very  
16 happy with. iPhone, in particular, was very strong double-digit growth there. Our  
17 other products category was also stronger, in fact, a bit stronger than even the . . .  
18 overall company number.

(Call Tr. at 11.)

19 Notwithstanding making these statements, defendants allegedly knew facts indicating  
20 otherwise, particularly, the facts that “the U.S.-China trade tensions and economic conditions in  
21 China were negatively impacting sales and demand for Apple products, particularly iPhones”; Apple  
22 “had already begun to see declining traffic in [its] retail stores and those of its channel partner stores  
23 in Greater China, and reports of an overall contraction of the smartphone industry”; and Apple “had  
24 already, or was preparing to, cut iPhone production at multiple manufacturers and reduce orders  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Apple identifies Greater China as including Hong Kong, Taiwan, and mainland China.  
(Compl. ¶ 8 n.5.)

28 <sup>2</sup> Apple’s fiscal fourth quarter covers July, August, September. (*See* Compl. ¶ 1 n.1.)

1 from its largest suppliers of iPhone components for the current quarter and holiday season.”  
2 (Compl. ¶ 24.)

3 Days after the alleged misrepresentations, on November 5, reports emerged that Apple had  
4 instructed its top smartphone assemblers to “halt plans for additional production lines” for the  
5 recently released iPhone XR. (*Id.* ¶¶ 27–28.) Then, on November 12, Wells Fargo issued a report  
6 estimating that Apple had reduced iPhone production by “as much as . . . 30%” based on a negative  
7 earnings preannouncement by a key supplier of iPhone components disclosing that one of its largest  
8 customers (presumed to be Apple) directed it to “materially reduce shipments . . . .” (*Id.* ¶ 29.)  
9 Further, on December 4, Bloomberg reported that in October 2018, Apple shifted marketing staff  
10 and increased trade-in discounts to boost sales of its most recently released iPhones in what was  
11 described as a “fire drill” response to poor iPhone sales. (*Id.* ¶ 31.) After each of the foregoing  
12 reports, Apple’s stock price declined but “continued to trade at artificially inflated prices.” (*Id.* ¶¶  
13 28, 30, 32.)

14 Finally, on January 2, 2019, the full truth was allegedly revealed when Apple preannounced  
15 its first earnings shortfall in more than 15 years. (*Id.* ¶ 33.) In a letter to investors, Cook stated that  
16 revenue for the first quarter of 2019 was expected to be \$84 billion, contrary to Apple’s guidance  
17 range of \$89 to \$93 billion announced on November 1. (*Id.* ¶ 34.) The letter cited challenges to  
18 emerging markets:

19 While we anticipated some challenges to key emerging markets, we did not  
20 foresee the magnitude of the economic deceleration, particularly in Greater China.  
21 In fact, most of our revenue shortfall to our guidance, and over 100 percent of our  
22 year-over-year worldwide revenue decline, occurred in Greater China across  
23 iPhone, Mac and iPad.

23 China’s economy began to slow in the second half of 2018. The government-  
24 reported GDP growth during the September quarter was the second lowest in the  
25 last 25 years. We believe the economic environment in China has been further  
26 impacted by rising trade tensions with the United States.

26 (*Id.* ¶ 35.) With respect to the iPhone business in particular, the letter explained: “Lower than  
27 anticipated iPhone revenue, primarily in Greater China, accounts for all of our revenue shortfall to  
28 our guidance and for much more than our entire year-over-year revenue decline.” (*Id.* ¶ 36.)

1 Later that day, Cook appeared on CNBC for an interview, further shedding light on the  
2 company's situation in China:

3 [A]s we look at what's going on in China – it's clear that the economy begins to  
4 slow there for the second half. And what I believe to be the case is the trade  
5 tensions between the United States and China put additional pressure on their  
6 economy.

7 And so we saw, as the quarter went out, things like traffic in our retail stores,  
8 traffic in our channel partner stores, the reports of the smartphone industry  
9 contracting, particularly bad in November – I haven't seen the December number  
yet, but I would guess that would not be good either. And so that's what we've  
seen.

10 (*Id.* ¶ 36.) Apple's stock price thereafter declined from a close of \$157.92 per share on January 2 to  
11 a close of \$142.19 per share on January 3 on unusually heavy trading volume.<sup>3</sup>

12 Plaintiff now seeks certification of the following class: "All persons and entities who  
13 purchased or otherwise acquired the publicly traded securities of Apple Inc. during the period from  
14 November 2, 2018 through January 2, 2019, inclusive (the 'Class Period'), and who suffered  
15 damages by [d]efendants' alleged violations of [Sections] 10(b) and 20(a) of the Exchange Act."  
16 (Motion for Class Certification ("Mtn."), Dkt. No. 165, at 1–2.)<sup>4</sup> Plaintiff also requests appointment  
17 as class representative and appointment of Robbins Geller, its selected counsel, as class counsel.  
18 Defendants oppose certification on four grounds: (1) plaintiff is not an adequate class representative;  
19 (2) evidence rebuts the presumption of classwide reliance; (3) even if a class were to be certified, it  
20 should not include Apple option holders; and (4) the proposed damages model includes damages that  
21 did not result from the alleged wrongdoing.

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24 <sup>3</sup> In its order dated June 23, 2020, the Court granted in part and denied in part defendants'  
25 motion to dismiss the revised consolidated class action complaint, dismissing the claims predicated  
26 on Cook's statement that the then-recently released iPhone XS and XS Max "got off to a really great  
start . . . ." (Dkt. No. 123 at 10–11.)

27 <sup>4</sup> Excluded from the class are (i) Apple and the individual defendants; (ii) members of the  
28 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.

## 1 II. LEGAL FRAMEWORK

2 Rule 23, which governs class certification, contains two sets of distinct requirements  
3 plaintiffs must meet before the Court may certify the proposed class. First, “Rule 23(a) ensures that  
4 the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate.  
5 The Rule’s four requirements—numerosity, commonality, typicality, and adequate representation—  
6 effectively limit the class claims to those fairly encompassed by the named plaintiff’s claims.” *Wal-*  
7 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011) (internal quotation marks and citations  
8 omitted). “Class certification is proper only if the trial court has concluded, after a ‘rigorous  
9 analysis,’ that Rule 23(a) has been satisfied.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538,  
10 542–43 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 351). Second, “[w]here a putative class satisfies  
11 all four requirements of 23(a), it still must meet at least one of the three additional requirements  
12 outlined in 23(b).” *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv.*  
13 *Workers Int’l Union AFL-CIO, CLC v. ConocoPhillips Co.*, 597 F.3d 802, 806 (9th Cir. 2010).

14 The party seeking class certification bears the burden of demonstrating by a preponderance  
15 of the evidence that all four requirements of Rule 23(a) and at least one of the three bases for  
16 certification under Rule 23(b) are established. *See Dukes*, 564 U.S. at 350. On a motion for class  
17 certification, the Court is required to “examine the merits of the underlying claim . . . only inasmuch  
18 as it must determine whether common questions exist; not to determine whether class members  
19 could actually prevail on the merits of their claims.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,  
20 981 n.8 (9th Cir. 2011) (citations omitted). A trial court has broad discretion in deciding whether to  
21 grant or deny a class certification motion. *See Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708,  
22 712 (9th Cir. 2010).

## 23 III. ANALYSIS

### 24 A. RULE 23(A)

25 Plaintiff submits that it has satisfied each of the Rule 23(a) requirements. In particular,  
26 plaintiff asserts that (1) the class consists of thousands of members; (2) virtually all of the questions  
27 of law or fact at issue are common to all class members; (3) its claims are typical of the proposed  
28 class; and (4) for purposes of adequacy, it has no conflicts of interest, it has a substantial financial

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