

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

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

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

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

I. BACKGROUND

Plaintiffs filed the putative class action complaint on April 16, 2019 against defendants Apple Inc., Timothy Cook, and Luca Maestri alleging defendants made materially false and misleading statements and omissions about demand for the newly released iPhone and Apple’s business in China. (Dkt. No. 1.) On June 19, 2020, the Court issued an order appointing Norfolk County Council as Administering Authority of the Norfolk Pension Fund as lead plaintiff (“Lead Plaintiff”) and Robbins Geller Rudman & Dowd LLP as lead counsel (“Lead Counsel”). (Dkt. No. 113.) On June 23, 2020, plaintiffs filed the operative complaint, a revised consolidated class action complaint, alleging claims for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934. (Dkt. No. 114.)

United States District Court
Northern District of California

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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

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

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.
 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
 28 of Sections 10(b) and 20(a) of the Exchange Act. Excluded from the class are (i) Apple and the

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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29 directors of Apple; and (iv) the legal representatives, heirs, successors or assigns of any such

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