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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re APPLE INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Case No. 4:19-cv-02033-YGR CLASS ACTION LEAD PLAINTIFF'S NOTICE OF MOTION, MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF DATE: September 17, 2024 TIME: 2:00 p.m. CTRM: 1, 4th Floor JUDGE: Honorable Yvonne Gonzalez Rogers

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NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE at 2:00 p.m. on September 17, 2024, in the Courtroom of the Honorable Yvonne Gonzalez Rogers, at the United States District Court, Northern District of California, Ronald V. Dellums Federal Building and United States Courthouse, Courtroom 1 – 4th Floor, 1301 Clay Street, Oakland, CA 94612, Lead Plaintiff and Class Representative Norfolk County Council as Administering Authority of the Norfolk Pension Fund ("Lead Plaintiff" or "Norfolk") will and hereby does respectfully move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for entry of a judgment granting final approval of the proposed Settlement and entry of an order granting approval of the proposed Plan of Allocation.

This Motion is based on the following Memorandum of Points and Authorities, as well as the accompanying Declaration of Shawn A. Williams in Support of Final Approval of Class Action Settlement; Approval of Plan of Allocation; and an Award of Attorneys' Fees and Expenses and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Williams Declaration" or "Williams Decl."), with attached exhibits, all prior pleadings and papers in this Action, the arguments of counsel, and such additional information or argument as may be required by the Court.

A proposed Final Judgment and Order of Dismissal with Prejudice and proposed Order granting approval of the proposed Plan of Allocation will be submitted with Lead Plaintiff's reply submission on September 3, 2024, after the August 18, 2024 deadline for Class Members to object to the Settlement or Plan of Allocation has passed.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should grant final approval of the Settlement.

2. Whether the Court should approve the Plan of Allocation.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The $490 million all-cash Settlement, which was achieved after over four years of hard-fought litigation, represents a tremendous result for the Class.[1] The Settlement is the third largest recovery in a securities class action ever obtained in this District, and many multiples above the median recovery for recent securities class action settlements. It is more than a fair, reasonable, and adequate result, and should be approved by the Court.

The Settlement was reached only after the proceedings had reached a stage where a careful evaluation of the Action and the propriety of Settlement could be (and was) made. For example, Lead Plaintiff had, among other things: (i) successfully opposed Defendants' motion to dismiss concerning allegations of weak iPhone demand in China prior to being appointed Lead Plaintiff; (ii) upon being appointed Lead Plaintiff, filed a detailed Revised Consolidated Class Action Complaint (the "Complaint"), streamlining the facts and re-alleging the statements found actionable by the Court; (iii) successfully overcame in part Defendants' second motion to dismiss the Complaint; (iv) filed and fully briefed class certification on two separate occasions, supported by four expert reports, ultimately resulting in the certification of the case on behalf of investors in both Apple common stock and options; (v) engaged in extensive written discovery, resulting in the production of over 874,000 pages of documents by Defendants and third parties; (vi) took or defended 21 depositions; (vii) litigated over a dozen discovery disputes; (viii) engaged experts to provide three opinion reports; (ix) defeated Defendants' motion for summary judgment; (x) successfully moved to exclude Defendants' expert testimony in part; (xi) successfully opposed in their entirety Defendants' motions to exclude Lead Plaintiff's experts; (xii) negotiated pre-trial documents with Defendants; (xiii) reviewed and designated Lead Plaintiff's trial exhibits and drafted objections to Defendants' designated trial exhibits; (xiv) designated deposition testimony

[1] The terms of the Settlement are set forth in the Amended Stipulation of Settlement, dated May 21, 2024 (ECF 433-2) (the "Stipulation"). All capitalized terms not defined herein shall have the same meaning set forth in the Stipulation and in Lead Plaintiff's Notice of Unopposed Motion and Unopposed Motion for Preliminary Approval of Proposed Settlement, and Memorandum of Points and Authorities in Support Thereof (ECF 421).

for use at trial; (xv) prepared and exchanged motions *in limine*; (xvi) conducted other trial preparation; and (xvii) participated in a lengthy mediation process with the Honorable Layn R. Phillips (ret.), which extended over more than two years, culminating in a mediator's proposal that both sides accepted. *See* Williams Decl., ¶¶11-12. There is no question that as a result of these extensive efforts, Lead Plaintiff and Lead Counsel had a thorough understanding of the relative strengths and weaknesses of the Class's claims and the propriety of settlement.

While Lead Plaintiff believes the Class's claims have significant merit, from the outset and throughout the Action, Defendants adamantly denied liability and asserted they possessed absolute defenses to the Class's claims. For example, Defendants "dispute that defendant Cook's alleged false statement conveyed information about the current state of Apple's business in China, as opposed to historical information, and that the information negated an inference of scienter." *See In re Apple Inc. Sec. Litig.*, 2024 WL 3297079, at *3 (N.D. Cal. June 3, 2024) ("Preliminary Approval Order"). Defendants and their experts also "argued that the price declines in Apple stock were not caused by revelations concerning previously undisclosed conditions in China, but by the fact that Apple missed its Q1'19 revenue guidance." *Id.* During lengthy settlement negotiations, Lead Counsel made it clear that while it was prepared to fairly assess the strengths and weaknesses of this case, it would continue to litigate rather than settle for less than fair value. Lead Plaintiff and Lead Counsel persisted for nearly two years following the initial mediation until Judge Phillips issued a "mediator's proposal" on February 14, 2024, which was accepted by the Parties. The Settlement is an exceptional result and is in the Class's best interest.

Moreover, Lead Plaintiff – the type of institutional investor Congress envisioned serving in that role when passing the Private Securities Litigation Reform Act of 1995 ("PSLRA") – fully supports the Settlement. *See* Declaration of Alexander Younger ("Younger Decl."), attached as Exhibit A to the Williams Declaration. The Class's reaction to date similarly reflects approval of the Settlement. Notice was provided to potential Class Members pursuant to the Preliminary Approval Order, commencing June 26, 2024. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶¶5-8, attached as Ex. B to the Williams Declaration. While the August 18, 2024, deadline

to object to the Settlement and Plan of Allocation has not yet passed, to date no objections have been received.[2]

Lead Plaintiff also requests that the Court approve the proposed Plan of Allocation, which was detailed in the Class Action Settlement Notice ("Notice") made available to Class Members. The Plan of Allocation governs how claims will be calculated and how Settlement proceeds will be distributed among Authorized Claimants. The Plan of Allocation was developed with assistance from Lead Plaintiff's damages expert and subjects all Class Members to the same formulas for calculating damages.

In short, the $490 million Settlement and the Plan of Allocation are fair and reasonable. The Settlement is an exceptional result for the Class, and should be approved.

II. PROCEDURAL AND FACTUAL BACKGROUND[3]

On April 16, 2019, Lead Counsel filed the first complaint in this Action in the United States District Court for the Northern District of California under the caption *City of Roseville Emps.' Ret. Sys. v. Apple Inc.*, No. 19-cv-02033, alleging violations of the Securities Exchange Act of 1934 ("Exchange Act") with a class period spanning November 2, 2018, through January 2, 2019. ECF 1. On May 24, 2019, Steamfitters Local 449 Pension Plan filed a complaint against the Defendants that encompassed a class period of August 1, 2017, through January 2, 2019. *Steamfitters Loc. 449 Pension Plan v. Apple, Inc.*, No. 19-cv-02891, Complaint for Violation of the Federal Securities Laws (N.D. Cal. May 24, 2019).

On June 17, 2019, Norfolk filed a motion for the appointment as lead plaintiff and approval of its selection of lead counsel to prosecute the claims asserted in the *City of Roseville* complaint. ECF 36. On the same day, Employees' Retirement System for the State of Rhode Island ("Rhode Island")

[2] Lead Counsel will address any timely objections in its reply brief, which is due on September 3, 2024.

[3] The full procedural history of the Action is set out in the accompanying Williams Declaration. What follows is a summary overview of the major case highlights.

sought appointment as lead plaintiff and lead counsel based on the class period alleged in the *Steamfitters*' complaint. ECF 26.[4]

On August 14, 2019, the Court issued an Order appointing Rhode Island as lead plaintiff and approving its choice of lead counsel, and set a briefing schedule for Apple's motion to dismiss, which provided that Norfolk could "request to file a brief supplementing the arguments made in [the appointed] Lead Plaintiff's [motion to dismiss] opposition," limited to five pages. ECF 72 at ¶10.

On October 15, 2019, Rhode Island filed a Consolidated and Amended Class Action Complaint for Violation of the Federal Securities Laws with the class period alleged in the *Steamfitters*' complaint. ECF 85. On December 16, 2019, Defendants moved to dismiss that complaint. ECF 91.

On February 7, 2020, with the Court's permission, Norfolk filed its Request to Submit Additional Briefing in Connection with Defendant Apple's Motion to Dismiss the Corrected Consolidated Complaint and Lead Plaintiff's Opposition Thereto, which opposed Defendants' motion to dismiss with respect to two alleged false and misleading statements made on November 1, 2018. ECF 101. Plaintiff argued, among other things, that allegations of the temporal proximity of Defendants' November 1 misrepresentations, the subsequent November 5 and 12, 2018 disclosures of production cancellations, and the Company's January 2, 2019 disclosures of admitted knowledge of business and traffic declines during the quarter satisfied the PSLRA pleading requirements. *Id.*

On June 2, 2020, the Court issued an Order upholding only the fraud alleged from November 1, 2018, to January 2, 2019, and ordering the transition of lead plaintiff from Rhode Island to Norfolk. ECF 110. On June 19, 2020, the Court issued an Order appointing Norfolk as lead plaintiff and Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as lead counsel. ECF 113.

[4] Several other investors filed motions for appointment of lead plaintiff which were later withdrawn. *See, e.g.*, ECFs 50, 63.

On June 23, 2020, as directed by the Court, Norfolk filed the Complaint, which alleged misrepresentations and omissions consistent with the Court's June 2, 2020 Order. Specifically, the Complaint alleged that on November 1, 2018, Defendants made materially false and misleading statements and omissions about demand for the newly-released iPhones and Apple's business conditions in China, in violation of §§10(b) and 20(a) of the Exchange Act. The Complaint further alleged that the false and misleading statements and omissions caused Apple's securities to trade at artificially inflated prices, and that when the true facts were disclosed, Apple's stock price plummeted.

On July 13, 2020, Defendants moved again to dismiss the Complaint. ECF 118. Norfolk opposed the motion on July 27, 2020. ECF 120. On November 4, 2020, the Court issued an Order granting in part and denying in part Defendants' motion to dismiss, leaving only a single statement in the action concerning the Company's performance in Greater China. ECF 123.

On May 5, 2021, Norfolk filed its motion for class certification, supported by expert opinion. ECF 165. Defendants took related discovery from all plaintiffs and opposed the motion. ECF 196. On February 4, 2022, the Court issued an Order granting the motion in part, certifying a Class of purchasers or acquirers of Apple common stock, and denying (without prejudice) the motion with respect to the proposed certification of Apple options investors. ECF 224. The Court appointed Norfolk as the Class Representative, and Robbins Geller as Class Counsel.

On April 15, 2022, Norfolk filed a supplemental motion, supported by additional expert opinion, seeking certification of a class of Apple options investors. ECF 239. After further discovery, Defendants opposed the motion (ECF 247), and on March 28, 2023, the Court issued its Order Modifying Class, which granted Norfolk's motion to certify call option buyers and put option sellers as part of the Class. ECF 352.

On July 5, 2022, Lead Plaintiff filed a motion for leave to modify the scheduling order and file the [Proposed] Second Amended Class Action Complaint for Violation of the Federal Securities Laws ("PSAC"), which alleged that a previously-dismissed statement was false and misleading, as supported by evidence obtained in discovery. ECFs 249, 250. On July 26, 2022, Defendants opposed the motion, arguing that it was untimely and would be prejudicial. ECFs 266,

267. On August 5, 2022, Lead Plaintiff filed a reply. ECFs 278, 279. On September 19, 2022, the Court denied the motion, concluding Lead Plaintiff had not met its burden to show good cause under Fed. R. Civ. P. 16 to amend the scheduling order to allow the filing of the PSAC. ECF 310.

On September 9, 2022, Defendants filed a Motion for Summary Judgment and Motion to Exclude Expert Testimony. ECFs 292, 293. Also on September 9, 2022, Lead Plaintiff filed an Omnibus Motion to Exclude Opinion Testimony of Defendants' Proposed Experts. ECF 301. Lead Plaintiff filed its opposition to the Motion for Summary Judgment on October 20, 2022. ECFs 322-324. On June 26, 2023, the Court issued an Order Denying Summary Judgment. ECF 369. On July 17, 2023, the Court issued an Order denying Defendants' Motion to Exclude and granting in part and denying in part Lead Plaintiff's Motion to Exclude with respect to portions of three of Defendants' experts. ECF 384.

On November 2, 2023, the Court set a trial date of May 6, 2024, along with related pre-trial deadlines. ECF 414 ("Trial Scheduling Order"). In compliance with the Trial Scheduling Order, the Parties exchanged preliminary exhibit and witness lists, deposition designations, related objections and counter-designations, and draft motions *in limine*. On February 27, 2024, the Court issued an Amended Pretrial Scheduling Order setting new deadlines for the Parties to exchange and submit witness lists, motions *in limine*, proposed jury instructions, and other pre-trial materials, as well as setting a trial date of September 9, 2024. ECF 420.

During the course of the Action, the Settling Parties engaged a neutral third-party mediator, the Honorable Layn R. Phillips (Ret.) of Phillips ADR. Judge Phillips held direct settlement discussions with the Parties on multiple occasions starting in January 2022, and convened various teleconferences and meetings regarding a potential resolution of the Action. On February 14, 2024, Judge Phillips issued a "mediator's proposal," which the Parties accepted on March 1, 2024.

On March 15, 2024, Lead Plaintiff moved for preliminary approval of the Settlement. ECF 421. The Court heard oral argument on May 7, 2024, and following the submission of supplemental materials, the Court granted Lead Plaintiff's motion for preliminary approval of the Settlement on June 3, 2024. ECF 435. Notice was sent to the Class beginning on June 26, 2024. *See* Murray Decl.

III. STANDARDS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

A. The Settlement Warrants Final Approval

The Ninth Circuit recognizes a "'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'" *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020).[5] *See also In re Google Location Hist. Litig.*, 2024 WL 1975462, at *5 (N.D. Cal. May 3, 2024) ("Considering Plaintiffs' evidentiary burden and the intricacies of class actions of this magnitude, the Court finds that the judicial policy favoring compromise and settlement of class action suits is applicable here."). "Deciding whether a settlement is fair is . . . best left to the district judge." *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018). Courts, however, should not convert settlement approval into an inquiry into the merits, as "'the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.'" *Kastler v. Oh My Green, Inc.*, 2022 WL 1157491, at *3 (N.D. Cal. Apr. 19, 2022) (quoting *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). Likewise, "[i]n reviewing the proposed settlement, a court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class." *Morrison v. Ross Stores*, 2022 WL 17592437, at *3 (N.D. Cal. Feb. 16, 2022) (Gonzalez Rogers, J.).

Federal Rule of Civil Procedure 23(e) requires judicial approval for the settlement of class action claims and provides "the court may approve [a proposed settlement] only after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). To determine whether a settlement is "fair, reasonable, and adequate," the Court must

> consider[] whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay

[5] Citations are omitted and emphasis is added throughout unless otherwise indicated.

> of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Id.

In addition to the Rule 23(e)(2) considerations, courts in the Ninth Circuit consider the following factors when examining whether a proposed settlement is fair, reasonable, and adequate:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.[6]

Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004).

The Court's Preliminary Approval Order considered each of the Rule 23(e)(2) and Ninth Circuit factors when assessing the Settlement and found that it was fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing. *See* ECF 435 at 6. The Court's conclusion on preliminary approval is equally true now, as nothing has changed between June 3, 2024, and the present. *See In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2019 WL 2554232, at *2 (N.D. Cal. May 3, 2019) ("Those conclusions [drawn at preliminary approval] stand and counsel equally in favor of final approval now.").

B. The Proposed Settlement Satisfies the Requirements of Rule 23(e)(2)

1. Rule 23(e)(2)(A): Lead Plaintiff and Lead Counsel Have Adequately Represented the Class

Lead Plaintiff and Lead Counsel have more than adequately represented the Class as required by Rule 23(e)(2)(A). Lead Counsel is highly qualified and experienced in securities litigation, *see* accompanying Declaration of Shawn A. Williams Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Exhibit H, relentlessly pursued the claims of Apple investors in this Court, zealously advocated

[6] "Because there is no governmental entity involved in this litigation, this [seventh] factor is inapplicable." *Mendoza v. Hyundai Motor Co.*, 2017 WL 342059, at *7 (N.D. Cal. Jan. 23, 2017).

for the Class's best interests throughout the litigation, and was fully prepared to try this case to a jury. *See generally* Williams Decl.; *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *5 (C.D. Cal. Oct. 10, 2019) (finding this factor satisfied where lead counsel "has significant experience in securities class action lawsuits"). The Settlement is the result of Lead Counsel's diligent prosecution of this Action for over four years, through trial preparation, and included the filing of a critical supplemental submission at the pleading stage even prior to selection as Lead Counsel. *See, e.g.*, *Cheng Jiangchen*, 2019 WL 5173771, at *5 (finding this factor satisfied where lead counsel vigorously pursued plaintiff's claims through multiple rounds of motions to dismiss and amended complaints); ECF 101.

In addition, Lead Plaintiff and Lead Counsel have no interests antagonistic to those of other Class Members; rather, Lead Plaintiff's claims "arise from the same alleged conduct: the purchase of [Apple securities] at inflated prices based on Defendants' alleged . . . misstatements." *Cheng Jiangchen*, 2019 WL 5173771, at *5. Accordingly, Lead Plaintiff shares the common interest in obtaining the largest possible recovery for Lead Plaintiff and the Class. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 566 (9th Cir. 2019) ("To determine legal adequacy, we resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'"). This factor weighs in favor of final approval.

2. Rule 23(e)(2)(B): The Proposed Settlement Was Negotiated at Arm's Length After Mediation with an Experienced Mediator

Rule 23(e)(2)(B) asks whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). "[The Ninth Circuit] put[s] a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *accord Cmty. Res. for Indep. Living v. Mobility Works of Cal., LLC*, 533 F. Supp. 3d 881, 889 (N.D. Cal. 2020). There is no question that this proposed Settlement satisfies Rule 23(e)(2)(B). The Settlement follows extensive litigation over the course of more than four years. *See generally* Williams Decl.; *see also Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *4 (S.D. Cal. Dec. 6, 2018) ("The agreement comes in the wake of over four years of extensive

investigation, discovery, and motion practice, after which the parties engaged in arms'-length negotiations before a mediator."). The Settlement was achieved only after multiple mediation sessions with Judge Phillips starting in January 2022, while litigation continued towards trial. As part of the settlement discussions, Lead Counsel and Defendants' Counsel prepared and presented submissions concerning their respective views on the merits of the litigation. Ultimately, the case was resolved only after all parties accepted Judge Phillips' "mediator's proposal." *See* Williams Decl., ¶120. *See In re Atmel Corp. Derivative Litig.*, 2010 WL 9525643, at *13 (N.D. Cal. Mar. 31, 2010) ("Judge Phillips' participation weighs considerably against any inference of a collusive settlement."). Given the Parties' efforts over the last four years, there can be no question that counsel "'had a sound basis for measuring the terms of the [S]ettlement.'" *Longo v. OSI Sys., Inc.*, 2022 U.S. Dist. LEXIS 158606, at *11 (C.D. Cal. Aug. 31, 2022). These facts demonstrate that the Settlement is the result of arm's-length negotiations and "not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Officers for Just.*, 688 F.2d at 625. *See also Morrison*, 2022 WL 17592437, at *5 (settlement reached after three mediation sessions "demonstrates that the settlement reached by the parties was a result of serious, informed, non-collusive, and arms-length negotiation").

3. Rule 23(e)(2)(C)(i): The Proposed Settlement Is Adequate Considering the Costs, Risk, and Delay of Trial and Appeal

In evaluating compliance with Rule 23(e)(2)(C), the Court considers "the costs, risks, and delay of trial and appeal," and the relevant overlapping Ninth Circuit factors address "the strength of the plaintiffs' case" and "the risk, expense, complexity, and likely duration of further litigation." Fed. R. Civ. P. 23(e)(2); *Churchill*, 361 F.3d at 575. While Lead Plaintiff believes its claims have merit and that the Class would prevail at trial, it nevertheless recognizes the numerous risks and uncertainties it would face at trial. Indeed, securities class actions "'are highly complex and [litigating] securities class litigation is notably difficult and notoriously uncertain.'" *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom.*, *Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020). As discussed below, the benefits conferred on Class

Members by the $490 million Settlement far outweigh the costs, risks, and delay of further litigation, and confirm the adequacy and reasonableness of the Settlement.

a. The Costs and Risks of Trial and Appeal Support Approval of the Settlement

To prove liability under §10(b) of the Exchange Act, a plaintiff must establish all elements of the claim, including that the defendants knowingly or recklessly made materially false and misleading statements and that the material misrepresentations caused investors' losses. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). Lead Plaintiff would be required to prove each of these elements to prevail, whereas Defendants needed only to succeed on one defense to defeat the entire Action. In addition, Lead Plaintiff would have to defeat ***all*** of Defendants' affirmative defenses. If Defendants prevailed on any of them, the case would end. Although Lead Plaintiff is confident in the strength of the evidence and Lead Counsel's abilities to prove its case, the risk of loss was still real. *See Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12303367, at *6 (C.D. Cal. July 9, 2013) ("Courts experienced with securities fraud litigation '"routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear.'"'); *see also* Preliminary Approval Order, 2024 WL 3297079, at *3 (same).

Defendants advanced several plausible arguments disputing both liability and damages. Lead Counsel anticipated that Defendants would have continued to make these arguments at trial. Defendants maintained that the sole alleged misstatement was a truthful statement about historical performance or foreign currency impacts, that the adverse market conditions in China had all been disclosed to investors, and that regardless of the truth or falsity of the sole remaining alleged misstatement, Cook did not act with the requisite intent to defraud investors as evidenced by the Company simultaneously issuing disappointing financial guidance. Williams Decl., ¶¶147-148. Defendants also contended that Class Members' losses were not the result of any concealed weak demand for iPhones in China but resulted from the guidance miss and/or negative events that occurred during the quarter. *Id.*, ¶149.

In addition, not only were Defendants poised to challenge the admissibility of a significant quantity of the evidence Lead Plaintiff intended to rely on at trial, but they were also prepared to

move to exclude a number of statements Defendants made about demand for iPhones, as well as any reports or statements by financial analysts that were not made within a handful of days of the challenged statement. *Id.*, ¶146. Even if this evidence survived Defendants' objections, Lead Plaintiff would have to rely on Apple employees and former employees to authenticate the majority of such evidence, and these witnesses were likely to be hostile to Lead Plaintiff. In fact, multiple Apple employees submitted declarations disputing Lead Plaintiff's allegations in support of Defendants' motion for summary judgment.

Finally, Lead Plaintiff faced the risk that the jury would not credit the testimony of its experts or would unduly credit the testimony of Defendants' six experts. The winner of such a "'battle of [the] experts'" cannot be predicted. *Davis v. Yelp, Inc.*, 2022 WL 21748777, at *4 (N.D. Cal. Aug. 1, 2022). This risk was particularly significant here as Lead Plaintiff was not successful in precluding Defendants from using an expert witness as a summary witness to present Apple's internal sales data or from having an expert testify as to how analysts interpreted certain statements by the Defendants. Settlement at this stage eliminates this risk.

b. The Proposed Settlement Eliminates the Additional Cost and Delay of Continued Litigation

Although this case was approaching trial, much work remained and even if Lead Plaintiff prevailed at trial it would have taken potentially years to resolve any resulting appeals. *See, e.g.*, *Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865, ECF 913 (C.D. Cal. Aug. 3, 2022) (granting final approval of securities class action settlement 2.5 years after a February 4, 2019 jury verdict in plaintiff's favor).

"By contrast, the Settlement provides . . . timely and certain recovery." *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2020 WL 4212811, at *9 (N.D. Cal. July 22, 2020), *aff'd*, 2022 WL 2304236 (9th Cir. June 27, 2022); *see Luna v. Marvell Tech. Grp.*, 2018 WL 1900150, at *3 (N.D. Cal. Apr. 20, 2018) (noting the risks of proving scienter, loss causation, and damages at trial); *cf. In re Tesla, Inc. Sec. Litig.*, No. 3:18-cv-04865-EMC (N.D. Cal.) (securities class action defendants obtaining jury verdict notwithstanding district judge granting plaintiffs' motion for summary judgment on falsity element). The Settlement at this juncture results in an immediate,

substantial, and tangible recovery, without "the cost, complexity and time of fully litigating the case" – key factors in evaluating the reasonableness of a settlement. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). The Settlement is a far better option for the Class.

4. Rule 23(e)(2)(C)(ii): The Proposed Method for Distributing Relief Is Effective

Lead Plaintiff and Lead Counsel have also made substantial efforts to notify the Class about the proposed Settlement under Rule 23(e)(2)(C)(ii). Pursuant to the Preliminary Approval Order, more than 27,900 copies of the Summary Notice were mailed or emailed to potential Class Members and nominees; the Summary Notice was also published in *The Wall Street Journal* and transmitted over *Business Wire*; and the website created for this Action (www.2019AppleSecuritiesSettlement.com) contains key documents, including the Stipulation, Notice, Proof of Claim, and Preliminary Approval Order. *See generally* Murray Decl.

The claims process here is identical to those commonly and effectively used in connection with other securities class action settlements. The standard claim form requests the information necessary to calculate a claimant's claim amount pursuant to the Plan of Allocation. The Plan of Allocation, discussed further in §IV below, will govern how claims will be calculated and, ultimately, how funds will be distributed to claimants.[7]

5. Rule 23(e)(2)(C)(iii): Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). As discussed in Lead Counsel's Memorandum of Points and Authorities in Support of an Award of Attorneys' Fees and Expenses, and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Fee Memorandum"), submitted

[7] Once Notice and Administration Expenses, Taxes, Tax Expenses, and Court-approved attorneys' fees and expenses have been paid from the Settlement Fund, the remaining amount will be distributed pursuant to the Plan of Allocation. *See* Stipulation, ¶5.5. These distributions shall be repeated until the balance remaining in the Net Settlement Fund is *de minimis*. *Id.*, ¶5.12. If there are any *de minimis* residual funds that are not feasible or economical to reallocate, Lead Plaintiff proposes that such funds be donated to the Investor Protection Trust, a 501(c)(3) non-profit dedicated to investor education and protection. *See, e.g.*, *Fleming v. Impax Laby's, Inc.*, 2022 WL 2789496, at *2 (N.D. Cal. July 15, 2022) (approving Investor Protection Trust as *cy pres* recipient in securities settlement).

herewith, Lead Counsel seeks an award of attorneys' fees of 25% of the Settlement Amount and expenses of Plaintiffs' Counsel of $2,651,465.53, plus interest actually earned on both amounts since funding. This fee request was fully disclosed in the Notice (Murray Decl., Ex. B, Notice at 4), approved by Lead Plaintiff (Younger Decl., ¶7), is consistent with the benchmark for attorneys' fee awards in this Circuit (*see* Fee Memorandum, §III.B), and is reasonable under the circumstances. 15 U.S.C. §78u-4(a)(6).

6. Rule 23(e)(2)(C)(iv): Other Agreements

As noted in Lead Plaintiff's motion for preliminary approval (ECF 421 at 17), the Parties have entered into a standard supplemental agreement which provides that if Class Member opt outs of the Settlement exceed a certain threshold, Defendants shall have the option to terminate the Settlement. Stipulation, ¶7.3. Again, such agreements are common and do not undermine the propriety of the Settlement. *See, e.g., In re Lyft, Inc. Sec. Litig.*, 2022 WL 17740302, at *6 (N.D. Cal. Dec. 16, 2022) ("The existence of a termination option triggered by the number of class members who opt out of the settlement does not by itself render the settlement unfair."); *Hampton v. Aqua Metals, Inc.*, 2021 WL 4553578, at *10 (N.D. Cal. Oct. 5, 2021) (same). While the Supplemental Agreement is identified in the Stipulation (¶7.3), and the nature of the agreement is explained in the Stipulation and here, the terms are properly kept confidential.[8]

7. Rule 23(e)(2)(D): The Proposed Plan of Allocation Treats Class Members Equitably

The Plan of Allocation must "treat[] class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Assessment of the Settlement's Plan of Allocation "'is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate.'" *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008). The Plan of Allocation details how the Settlement proceeds will be distributed among Authorized Claimants and provides formulas for calculating the recognized claim of each Class

[8] *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015) (finding that settlement was not rendered unfair by the inclusion of an opt-out provision where "[o]nly the exact threshold, for practical reasons, was kept confidential").

Member based on each such Person's transactions in Apple common stock and options during the Class Period. *See* Notice at 10-14. It is fair, reasonable, and adequate because all eligible Class Members (including Lead Plaintiff) will be subject to the same formulas for distribution of the Settlement and each Authorized Claimant will receive his, her, their, or its *pro rata* share of the distribution. *See, e.g.*, *Longo*, 2022 U.S. Dist. LEXIS 158606, at *18 ("Specifically, each authorized claimant's share of the net settlement amount will be based on when the claimant acquired and sold the subject securities. Accordingly, this factor also weighs in favor of final approval.").

C. The Remaining Ninth Circuit Factors Are Satisfied

1. Discovery Completed and Stage of the Proceedings

The Parties reached the Settlement at an advanced stage of the Action, after all fact and expert discovery was complete, with summary judgment resolved, and while the Parties were intensively preparing for trial. *See generally* Williams Decl. Discovery provided significant insight into the strengths and challenges of the case, and the Parties had a thorough understanding of the arguments, evidence, and potential witnesses that would inform the trial. *See id.* There can be no question that Lead Plaintiff and Lead Counsel had sufficient information to evaluate the case and the merits of the Settlement by the time it was reached. *See In re Google Location Hist.*, 2024 WL 1975462, at *8 (finding "the amount of investigation and discovery conducted shows that the Parties had adequately developed a perspective on the strengths and weaknesses of their respective cases to 'make an informed decision about settlement'"); *Foster v. Adams & Assocs., Inc.*, 2022 WL 425559, at *6 (N.D. Cal. Feb. 11, 2022) (finding "[p]laintiffs were 'armed with sufficient information about the case' to broker a fair settlement" given extensive discovery, years of litigation, and multiple settlement conferences); *Hessefort v. Super Micro Comput., Inc.*, 2023 WL 7185778, at *6 (N.D. Cal. May 5, 2023) (finding "the parties conducted sufficient discovery to make an informed decision about the adequacy of the settlement" given exchange of written discovery, deposition of the plaintiff's market efficiency expert, briefing class certification and multiple motions to dismiss, and "a full-day mediation and subsequent settlement negotiations"). Given the advanced stage of the litigation, Lead Plaintiff and Lead Counsel were in a position to

make a well-informed evaluation of the potential outcomes of the case. This factor strongly weighs in favor of final approval of the Settlement.

2. Counsel Views This Good-Faith Settlement as Fair, Reasonable, and Adequate

The Ninth Circuit recognizes that parties "'represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.'" *Rodriguez*, 563 F.3d at 967. Thus, courts accord great weight to the recommendations and opinions of experienced counsel. *See Rodriguez v. Nike Retail Servs., Inc.*, 2022 WL 254349, at *4 (N.D. Cal. Jan. 27, 2022) (noting "the experience and views of counsel . . . favors approving the settlement" and highlighting counsel's "thorough understanding of the strengths and weaknesses of th[e] case and their extensive experience litigating prior . . . class action cases").

Lead Counsel has extensive experience representing plaintiffs in securities and other complex class action litigation and has negotiated numerous substantial class action settlements across the country, including cases like this one that were quickly approaching trial. Williams Decl., ¶168. As a result of this experience, and with the assistance of sophisticated consultants and experts when appropriate, Lead Counsel possessed a firm understanding of the strengths and weaknesses of the claims by the time the Settlement was reached, and based thereon, Lead Counsel concluded that the Settlement is an outstanding result for the Class. Lead Plaintiff, which was active in the litigation, authorized Lead Counsel to settle it and supports the reasonableness of the Settlement. Younger Decl., ¶6.

3. The Positive Reaction of Class Members to the Settlement

While the deadline to object to the Settlement is August 18, 2024, to date, no objections have been received. Lead Plaintiff will address objections by Class Members, if any, in its reply papers. Nor have any Class Members opted out of the Class. The Class's overwhelmingly positive reaction to the Settlement to date supports final approval. *See Morrison*, 2022 WL 17592437, at *5 (finding the "'absence of a large number of objections to a proposed class action settlement

raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members'").

4. The Settlement Amount

The $490 million Settlement far exceeds the median securities settlement in terms of both dollar amount and as a percentage of estimated damages. As noted previously, the Settlement represents approximately 20% of the estimate of damages recoverable at trial. This recovery, in percentage terms, is exceptional. It is ten times the 2023 median percentage recovery for cases, like this one, with estimated damages of over $1 billion (2%), and more than quadruples the median settlement as a percentage of estimated damages in the Ninth Circuit from 2014 through 2023 (4.4%). *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2023 Review and Analysis* (Cornerstone Research 2024) ("Cornerstone Report") at 6, 20. The Settlement also far exceeds the average settlement value, in absolute terms, for securities class actions of $46 million in 2023. *See* Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, at 18, Fig. 17 (NERA Jan. 23, 2024) ("NERA Report"). Both the Cornerstone Report and the NERA Report are attached as Exs. C and D, respectively, to the Williams Declaration.

5. The Risk of Maintaining Class Certification

Although the Court certified a litigation Class on February 4, 2022 (ECF 224), and later modified the Class to include buyers of call options and sellers of put options (ECF 352), Defendants may later have moved to decertify the Class or seek to shorten the Class Period. Rule 23(c)(1) provides that a class certification order may be altered or amended at any time before a decision on the merits, which is "an inescapable and weighty risk that weighs in favor of a settlement." *In re Google Location Hist.*, 2024 WL 1975462, at *6. Indeed, Defendants' loss causation and damages expert opined that the Class Period should have ended on November 5 or November 12, 2018. ECF 301-9 (Expert Report of Professor Steven Grenadier). This factor weighs in favor of approval.

* * *

In sum, Lead Plaintiff and Lead Counsel attained an excellent result for the Class. The Court should find that the Settlement is fair, reasonable, and adequate, and should grant final approval.

IV. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

In addition to seeking final approval of the Settlement, Lead Plaintiff seeks final approval of the Plan of Allocation that the Court preliminarily approved on June 3, 2024. ECF 435 at 8. The Plan of Allocation is considered separately from the fairness of the Settlement but is nevertheless governed by the same legal standards: the plan must be fair and reasonable. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *see also Vataj v. Johnson*, 2021 WL 1550478, at *10 (N.D. Cal. Apr. 20, 2021) ("'[C]ourts recognize that an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel.'") (alteration in original). As noted, the Plan of Allocation here provides an equitable basis to allocate the Net Settlement Fund among all Authorized Claimants (Class Members who submit an acceptable Proof of Claim and who have a recognized loss under the Plan of Allocation). Individual claimants' recoveries will depend on when they transacted in Apple securities during the Class Period, what security they transacted in, and whether and when they sold those securities. All Authorized Claimants will recover their proportional "*pro rata*" amount of the Net Settlement Fund as calculated for the type of Apple security transacted in. This is the traditional and reasonable approach to allocating securities settlements. *See, e.g., NuVasive*, 2018 WL 6421623, at *4 ("'A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.'"). To date there has been no objection to the Plan of Allocation. As a result, the Plan of Allocation is fair and reasonable and should be approved.

V. NOTICE TO THE CLASS SATISFIES DUE PROCESS

A district court "must direct notice in a reasonable manner to all class members who would be bound by the proposal," Fed. R. Civ. P. 23(e)(1)(B), and "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P. 23(c)(2)(B). *See also In re Aqua Metals, Inc. Sec. Litig.*, 2022 WL 612804, at *5 (N.D. Cal. Mar. 2, 2022). The notice also must

describe "'"the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard."'" *Rodriguez*, 563 F.3d at 962; *see also Morrison*, 2022 WL 17592437, at *4 (stating notice is adequate if "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'") (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *Low v. Trump Univ., LLC*, 881 F.3d 1111, 1117 (9th Cir. 2018) ("'The yardstick against which we measure the sufficiency of notices in class action proceedings is one of reasonableness.'"). The PSLRA further requires that the settlement notice include a statement explaining a plaintiff's recovery "to allow class members to evaluate a proposed settlement." *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 969 (9th Cir. 2007).

Notice here satisfied the Court-approved notice process, which the Court preliminarily found to be "constitutionally sound." ECF 435 at 7. The Claims Administrator has mailed or emailed over 27,900 copies of the Court-approved Summary Notice to potential Class Members and their nominees who could be identified with reasonable effort. *See* Murray Decl., ¶9. In addition, the Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire*. *Id.*, ¶10. The Claims Administrator also provided all information regarding the Settlement online through the Settlement website. *Id.*, ¶12. The Notice provides the necessary information for Class Members to make an informed decision regarding the proposed Settlement, as required by the PSLRA. The Notice further explains that the Net Settlement Fund will be distributed to eligible Class Members who submit valid and timely Proofs of Claim under the Plan as described in the Notice. The notice program here fairly apprises Class Members of their rights with respect to the Settlement, is the best notice practicable under the circumstances, and complies with the Court's Preliminary Approval Order, Rule 23, the PSLRA, and due process. *See, e.g.*, *Fleming*, 2022 WL 2789496, at *5-*6; *Hayes v. MagnaChip Semiconductor Corp.*, 2016 WL 6902856, at *4 (N.D. Cal. Nov. 21, 2016).

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court approve the Settlement and Plan of Allocation.

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Respectfully submitted,

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