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Lead Counsel for Lead Plaintiff

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 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) DATE: September 17, 2024 TIME: 2:00 p.m. CTRM: 1, 4th Floor JUDGE: Honorable Yvonne Gonzalez Rogers

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I, SHAWN A. WILLIAMS, declare as follows:

1. I am a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), Court-appointed Class Counsel for Lead Plaintiff and Class Representative Norfolk County Council as Administering Authority of the Norfolk Pension Fund ("Norfolk" or "Lead Plaintiff") in this action. I was actively involved in the prosecution of this action (hereinafter, the "Litigation"), am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my supervision of, and participation in, all material aspects of the Litigation.[1]

2. I submit this declaration in support of Lead Plaintiff's application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the Stipulation for a cash settlement of $490 million on behalf of the Class (the "Settlement Amount"); (b) the proposed Plan of Allocation; (c) the application for attorneys' fees and expenses; and (d) an award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4).

3. The Class, previously certified by the Court in its Order granting Lead Plaintiff's motion and supplemental motion for class certification, is defined as:

> [A]ll Persons that purchased or 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 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.[2]

I. PRELIMINARY STATEMENT

4. This action was brought against Apple Inc. ("Apple" or the "Company"), Timothy D. Cook ("Cook"), and Luca Maestri ("Maestri," and collectively, "Defendants"), on behalf of the

[1] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Amended Stipulation of Settlement dated May 21, 2024 (ECF 433-2) (the "Stipulation").

[2] The Settlement Class is "materially identical" to the class previously approved by the Court. *See* ECF 435 at 4.

Class, for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

5. Lead Plaintiff alleged, among other things, that on November 1, 2018, Defendants made a false and misleading statement, and omitted material information, concerning the true state of the Company's financial condition, including demand for the iPhone in Greater China, its largest growth market. Specifically, Lead Plaintiff alleged Cook falsely assured investors that despite declining economic conditions in Greater China, and ongoing trade tensions between the United States and China, the region was not among the emerging markets where Apple was experiencing pressure that was negatively affecting sales and demand for Apple products, particularly iPhones. ECF 114, ¶56.

6. Lead Plaintiff alleged the November 1, 2018 statement was materially false and misleading when made because Defendants knew or deliberately disregarded and failed to disclose the following true facts:

(a) that the U.S.-China trade tensions and economic conditions in China were negatively impacting sales and demand for Apple products, particularly iPhones;

(b) the Company had already begun to see declining traffic in Apple's retail stores and those of its channel partner stores in Greater China, and reports of an overall contraction of the smartphone industry; and

(c) the Company had already, or was preparing to, cut iPhone XR production at multiple manufacturers and reduce orders from its largest suppliers of iPhone components for the current quarter and holiday season. ECF 114, ¶66.

7. Lead Plaintiff's allegations were supported by evidence the Lead Plaintiff obtained in discovery and which would be presented at trial to prove that Defendants' statement and omissions were materially false and misleading and made with the requisite scienter.

8. Lead Plaintiff alleged that the alleged misrepresentation and omissions distorted the prices of Apple publicly traded securities, thereby causing economic harm to Class members

when the true condition of the Company which had been concealed was disclosed to the public in a series of partial disclosures. On November 5 and 12, 2018, the financial press reported that Apple was drastically reducing iPhone XR manufacturing at its Chinese assemblers; then on January 2, 2019, the Company preannounced its 1Q19 financial results, reporting just $84 billion in revenue – a massive miss of its projected range of $89 to $93 billion in revenue. Cook attributed this miss to economic deceleration in emerging markets and poor iPhone sales, primarily in Greater China. The price of Apple common stock declined in response to each of these disclosures.

9. Defendants deny Lead Plaintiff's allegations. They contend that they did not make any false or misleading statements and that they disclosed all information required to be disclosed by the federal securities laws. Defendants also contend that any decline in Apple's stock price was due to reasons other than the disclosures related to the alleged false or misleading statements, and that they have other valid defenses to Lead Plaintiff's claims.

10. This Litigation was vigorously contested for over four years from commencement to resolution with strong advocacy from both sides at every stage, including the filing of multiple detailed amended complaints; multiple motions to dismiss and related reconsideration motions; vigorously-contested class certification motions for both common stock and options classes; extensive fact and expert discovery; retention of numerous experts; summary judgment; *Daubert* motions; trial preparation, including the preparation of trial exhibits and stipulations; and participation in extensive settlement negotiations.

11. The Settlement was not achieved until Lead Plaintiff, *inter alia*: (a) moved for the appointment of lead plaintiff and identified the most appropriate claims likely to succeed; (b) successfully opposed Defendants' Motion to Dismiss (ECF 91) a Consolidated Complaint (ECFs 85, 98) with respect to the allegations concerning iPhone demand in China at the center of the Litigation (ECF 101); (c) successfully opposed Defendants' Motion to Dismiss the operative Revised Consolidated Complaint (ECFs 120, 123); (d) obtained certification of a class of purchasers of both Apple common stock and options; (e) engaged in over three years of highly adversarial fact discovery, including reviewing and analyzing more than 874,000 pages of

documentary evidence produced by Apple and more than 20 non-parties, as well as taking 12 depositions of Apple witnesses; (f) filed more than a half dozen discovery motions, including motions which resulted in orders compelling production of hundreds of documents withheld on grounds of privilege; (g) retained four experts, including experts in the fields of the Chinese economy, market efficiency of Apple common stock and options, loss causation and damages, and the impact of industry analysts on the investment community; (h) completed expert discovery, including defending depositions of Lead Plaintiff's four experts; (i) filed *Daubert* motions to exclude the proffered testimony of Defendants' six expert witnesses, which resulted in orders excluding three of those experts in part; (j) successfully opposed Defendants' motions to exclude Lead Plaintiff's experts; (k) defeated Defendants' motion for summary judgment; (l) prepared this Litigation for trial, including exchanging pre-trial deliverables with Defendants, and mobilizing a trial team of attorneys and staff who were prepared to convene in Oakland, California, for final trial preparation; and (m) engaged in lengthy settlement negotiations with a nationally recognized mediator.

12. The settlement of this Litigation was negotiated under the oversight of the Honorable Layn R. Phillips (Ret.), a former federal judge and well-respected mediator with significant experience in mediating claims arising under the federal securities laws. The Parties participated in multiple mediation sessions with Judge Phillips, specifically on January 31, 2022 (via Zoom Video Conference); May 25, 2022; and January 10, 2024. In advance of these mediations, Lead Plaintiff and Defendants prepared comprehensive mediation briefs, supported by evidentiary materials, and thereafter vigorously advanced and defended their positions at the respective mediation sessions. The Parties did not reach a settlement during these sessions; however, Judge Phillips was kept apprised of developments in the case and facilitated further negotiations between the Parties for approximately two years leading up to the Settlement. After careful and detailed consideration of the Parties' positions, Judge Phillips made a mediator's proposal to settle this action for a cash payment of $490 million. Both sides accepted Judge Phillips' proposal, and agreed to the material terms of the Settlement on March 1, 2024.

13. The proposed Settlement is the result of hard-fought and contentious litigation characterized by zealous advocacy on both sides and takes into consideration the significant risks specific to the case. It was negotiated by experienced counsel for Lead Plaintiff and Defendants with a thorough understanding of both the strengths and weaknesses of their respective positions informed by years of litigation.

14. Lead Counsel and Lead Plaintiff believe that this Settlement represents an excellent result for the Class. Based upon the extensive factual discovery, investigation, research, analysis, motion practice, and trial preparation conducted, Lead Plaintiff believes that its case had significant merit. Lead Plaintiff's perseverance through more than four years of litigation resulted in the discovery of substantial evidence in support of the alleged claims. Lead Plaintiff also believes that discovery revealed evidence sufficient to sustain a jury verdict in plaintiffs' favor, including significant undisclosed cuts to Apple's iPhone manufacturing and large reductions to Apple's internal revenue forecasts for China. This evidence, Lead Plaintiff believes, would demonstrate that, contrary to Cook's representation, on November 1, 2018, Apple's iPhone business in China was currently being negatively affected by weakening demand.

15. Despite the strength of the evidence developed in discovery, there were substantial risks to Lead Plaintiff's ability to obtain, protect, and recover damages on a favorable judgment at trial. Defendants vigorously contested liability and planned to marshal evidence at trial they hoped would convince the jury that the alleged misrepresentation was in fact a truthful statement concerning Apple's historical performance in Greater China or the impact of currency fluctuations on Apple's performance. Defendants were also expected to argue that the adverse market conditions in China had all been disclosed and were known to investors. And, regardless of the truth or falsity of Cook's statement, they would argue that he did not act with the requisite intent to defraud investors, as evidenced by the Company's issuance of disappointing guidance which purportedly incorporated its negative outlook for Greater China.

16. Even if plaintiffs prevailed on liability, there were also significant risks to proving damages. Defense experts were expected to testify that some or all of the stock price declines on

which Lead Plaintiff premised its damages claims were unrelated to the alleged false and misleading statement and omissions. For example, Defendants were expected to argue that the November 5 and 12, 2018 stock price declines resulted from disclosures concerning cuts to "buffer" supplies of iPhones that were unrelated to poor demand for the iPhone in China. And Defendants were expected to present evidence that the end-of-Class Period stock price decline accompanying the January 2, 2019 pre-announcement of a revenue miss for 1Q19 resulted from poor iPhone sales occurring after the November 1, 2018 alleged statement, and not from the revelation of conditions in place at the time of the alleged misrepresentation. While Lead Plaintiff believes it had strong responses to each of these arguments, were the jury to credit any or all of them, Lead Plaintiff's proof of loss causation would have been undermined or the damages recoverable at trial could have been significantly reduced or eliminated altogether.

17. Lead Plaintiff also anticipated a battle of the experts on numerous disputed issues at trial. Each side retained experts who were expected to offer opposing testimony about the state of China's economy and its impact on Apple's iPhone business and the market's understanding (as conveyed by industry analysts) of that business, and loss causation and damages. Even having retained experts who are among the most respected in these fields, there could be no guarantee that a jury would find Lead Plaintiff's expert testimony more convincing than the countervailing testimony offered by Defendants' retained formidable experts.

18. In addition to these factual disputes, other risks existed at the time of the Settlement, including Defendants' motions *in limine* seeking to exclude key evidence supporting Lead Plaintiff's claims, including evidence concerning the market's reaction to both the false and misleading statement alleged at the start of the Class Period and to the subsequent corrective disclosures alleged to have caused the Class' economic losses.

19. Even if plaintiffs prevailed at trial, there was also significant risk of delay in providing Class members with compensation for the harm caused by Defendants' fraud. Post-trial proceedings, including proceedings attendant to the determination of damages, threatened to delay the Class' recovery on any favorable judgment obtained at trial. In all likelihood, Defendants

would appeal any verdict achieved in plaintiffs' favor and the appeals process could span years, during which time the Class would receive no recovery. Any appeal would also create the risk of reversal, in which case the Class would receive nothing after having prevailed on the claims at trial.

20. All these factors, together with the other factors discussed herein, were considered by Lead Plaintiff and Lead Counsel in concluding on balance that the mediator's proposal to settle the Litigation for $490 million was fair, reasonable, adequate, and in the best interests of the Class.

21. It is therefore respectfully submitted that the Settlement confers a substantial benefit on the Class and eliminates the significant risks inherent in trial and post-trial proceedings.

22. Lead Counsel has, as described below, vigorously prosecuted this Litigation on a wholly contingent basis for more than four years and advanced or incurred significant litigation expenses. Lead Counsel has long borne the risk of an unfavorable result. It has not received any compensation for its substantial effort; nor has it been paid for its expenses. The Settlement should be approved as fair, reasonable, and adequate; Lead Counsel should be awarded attorneys' fees of 25% of the Settlement Amount and its expenses of $2,343,472.76, plus accrued interest on such fees and expenses; the Plan of Allocation should be approved; and Lead Plaintiff should be awarded $29,946.40 for its time and expenses in representing the Class.

23. The fee application for one-fourth of the Settlement Fund is fair both to the Class and Lead Counsel, has been approved by Lead Plaintiff, and warrants this Court's approval. This fee request is within the range of fees frequently awarded in these types of actions and is justified in light of the outstanding recovery on behalf of the Class, the risks undertaken, the quality of representation, and the nature and extent of legal services performed.

24. Lead Counsel should also be awarded its expenses plus interest earned thereupon in the aggregate of $2,343,472.76, all of which were reasonably and necessarily incurred in prosecuting the Litigation. As described in detail below, and in the 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 ("Robbins Geller Declaration"), these expenses were

reasonably and necessarily incurred to plead Lead Plaintiff's claims with particularity, certify the Class, complete discovery, respond to summary judgment and other pretrial motions, prepare this case for trial, and obtain a settlement on the terms proposed.

II. THE LITIGATION

A. Lead Plaintiff Motions, the Consolidated Complaint, and Defendants' First Motion to Dismiss

25. On April 16, 2019, City of Roseville Employees' Retirement System ("City of Roseville"), represented by Robbins Geller, initiated this action by filing a complaint against Defendants in this District that alleged a class period from November 2, 2018, to January 2, 2019. ECF 1.

26. On May 24, 2019, Steamfitters Local 449 Pension Plan filed a complaint against the Defendants with a class period from August 1, 2017, to January 2, 2019. *Steamfitters Local 449 Pension Plan v. Apple, Inc.*, No. 19-cv-02891, Complaint for Violation of the Federal Securities Laws (N.D. Cal. May 24, 2019). The *Steamfitters*' complaint, like the operative Complaint, included allegations that the November 1, 2018 statements concerning demand for iPhones in China were false and misleading, but also appended two years of additional allegations about Apple's iPhone business and alleged "throttling" of iPhone batteries (also known as "Batterygate").

27. On June 17, 2019, Norfolk filed a motion for appointment as lead plaintiff and its 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") sought appointment as lead plaintiff and lead counsel based on the class period alleged in the *Steamfitters*' complaint. ECF 26.[3]

28. On August 14, 2019, the Court issued an Order appointing Rhode Island as lead plaintiff and its choice of counsel as lead counsel, and set a briefing schedule for Apple's motion to dismiss which permitted Norfolk to "request to file a brief supplementing the arguments made

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

in [the appointed] Lead Plaintiff's [motion to dismiss] opposition," limited to five pages. ECF 72 at 4.

29. On October 15, 2019, Rhode Island filed a Consolidated Complaint asserting a class period of August 2, 2017, through January 2, 2019, inclusive, alleging a series of false and misleading statements and omissions relating to Apple's subsequently admitted practice of slowing down or throttling older iPhones to force consumers into early upgrades. ECF 85.[4]

30. On December 16, 2019, Defendants filed a motion to dismiss the Consolidated Complaint (ECF 91) ("MTD I").

31. On February 7, 2020, with the Court's permission, Norfolk filed its request to submit additional briefing in Connection with Defendants' MTD I with respect to two alleged false and misleading statements made on November 1, 2018. ECF 101. Norfolk argued, among other things, that the temporal proximity of the alleged November 1 misrepresentations, the subsequent November 5 and 12, 2018 reports of production cancellations, as well as the admissions contained within the Company's January 2, 2019 disclosure concerning business and traffic declines observed during the quarter, satisfied the PSLRA pleading requirements. *Id.*

32. On March 11, 2020, the Court held oral argument on Defendants' MTD I. Counsel for Norfolk participated in the oral argument on behalf of Norfolk and investors with claims alleged in the Consolidated Complaint related to the November 1, 2018 false and misleading statements.

B. Motion to Dismiss Denied in Part; Norfolk Appointed as Lead Plaintiff

33. On June 2, 2020, the Court issued the MTD I Order, granting Defendants' motion except as to two statements made by Cook on November 1, 2018. In denying the MTD I with respect to those two statements, the Court credited arguments advanced by Norfolk in its February 7, 2020 brief and at the March 11, 2020 hearing. *E.g.*, ECF 110 at 40-41 (relying on "close temporal proximity of defendants' optimistic and pessimistic statements" to find scienter, an

[4] A Corrected Consolidated Complaint was filed on January 15, 2020. ECF 98.

argument which had been advanced by Norfolk). The MTD I Order explained "the Court intends to reconsider the motion for lead counsel as discussed at considerable length with counsel." *Id.* at 46; *see* ECF 73 at 5-16, 19 (Transcript of Proceedings held August 13, 2019 regarding Motion to Consolidate, Motion to Appoint Lead Counsel). The Court further instructed that "[Rhode Island]'s counsel shall meet and confer with counsel for Norfolk for the orderly transition of leadership. A revised consolidated complaint consistent with this Order shall be filed within twenty-one days." ECF 110 at 46.

34. On June 17, 2020, Norfolk and Rhode Island filed a stipulation and proposed order proposing Norfolk be appointed Lead Plaintiff and Robbins Geller be appointed Lead Counsel. ECF 112.

35. On June 19, 2020, the Court issued an Order Regarding Transition of Leadership and Appointment of Lead Plaintiff and Lead Counsel, which appointed Norfolk as Lead Plaintiff. ECF 113.

C. Norfolk's Revised Consolidated Complaint and Defendants' Second Motion to Dismiss

36. On June 23, 2020, Lead Plaintiff filed the operative Revised Consolidated Complaint (ECF 114) ("Complaint") alleging a November 2, 2018 through January 2, 2019, inclusive Class Period and the same two statements that the Court found actionable in the MTD I Order. ECF 114; *see id.*, ¶3.

37. On July 13, 2020, Defendants filed their motion to dismiss the Complaint on grounds including that Lead Plaintiff failed to plead any actionably false or misleading statement, and that Lead Plaintiff failed to plead the fraud with particularity or allege facts supporting a strong inference that the alleged false statements were made with scienter, including because an absence of motive weighed against a strong inference of scienter. ECF 118 ("MTD II").

38. On July 27, 2020, Norfolk filed its opposition to MTD II arguing, *inter alia*, that Defendants were wrong about the inferences properly taken from the temporal proximity of Apple iPhone cuts to the alleged false and misleading statements, as well as from the absence of insider sales and timing of share repurchases, and that Defendants were required to meet the higher

standard governing motions for reconsideration to dismiss the Complaint in light of the Court's MTD I Order. ECF 120. On August 3, 2020, Defendants filed a reply in support of MTD II. ECF 121.

39. On November 4, 2020, the Court issued an Order granting in part and denying in part Defendants' MTD II, holding Lead Plaintiff alleged sufficient specific facts that collectively stated actionable claims under §§10(b) and 20(a) of the Exchange Act for one of the two allegedly false and misleading statements made by Cook on November 1, 2018. ECF 123. Specifically, the Court found actionable Lead Plaintiff's allegations that Cook falsely assured investors that despite declining economic conditions in Greater China and ongoing trade tensions between the United States and China, the region was not among the emerging markets where the Company was experiencing pressure that was negatively affecting demand or sales. *Id.* On the other hand, the Court found that Cook's November 1, 2018 statement regarding demand for Apple's most recently released phones, the iPhone XS, XS Max, and XR, was not actionable because it was puffery and did not address specific areas that Defendants knew to be doing poorly. ECF 123 at 11.

40. On November 18, 2020, Defendants filed an Answer to the Complaint denying nearly all of Lead Plaintiff's substantive allegations and asserting 32 separate affirmative defenses. ECF 124.

D. Lead Plaintiff's Discovery Demanded from Defendants

41. The Parties engaged in fact discovery and disputes over the completeness of discovery from December 2020, all the way up to settlement on March 1, 2024. Lead Plaintiff obtained and analyzed more than 645,000 pages of documents from Defendants and a dozen depositions of Apple witnesses during the course of discovery.

42. On November 20, 2020, the Parties held their Fed. R. Civ. P. Rule 26(f) conference. Over the following weeks, the Parties negotiated, among other things, discovery and pre-trial scheduling, electronic discovery matters such as the form of production and proposed deadlines. On December 7, 2020, after spending significant time meeting and conferring to negotiate terms, the Parties submitted a Rule 26(f) discovery plan which, among other matters, set forth a summary

of the factual allegations, described the principal legal issues in dispute, detailed the Parties' competing views over the anticipated scope of discovery, as well as proposed a discovery and pretrial schedule. On December 18, 2020, both Parties served their Fed. R. Civ. P. 26(a)(1)(A) initial disclosures.

43. Lead Counsel negotiated the Stipulated Protective Order with Defendants concerning the treatment of confidential information in this Litigation. ECF 139. In addition, Lead Counsel negotiated a stipulated document production protocol to facilitate the efficient production of electronically stored information ("ESI") and hard-copy documents. ECF 200.

1. Lead Plaintiff's Fed. R. Civ. P. 34 Requests for the Production of Documents

44. On November 23, 2020, pursuant to Fed. R. Civ. P. 34, Lead Plaintiff served Lead Plaintiff's First Set of Requests for Production of Documents ("Lead Plaintiff's 1st RFPs") to Defendants, containing 34 requests regarding all aspects of its claims. For example, Lead Plaintiff sought: (i) documents and communications concerning iPhone volume production plans, forecasts, expectations, volume reductions and cancellations with any iPhone supplier, manufacturer, or assembler; (ii) documents and communications concerning anticipated or actual business and market challenges, including economic conditions in Greater China and/or emerging markets; and (iii) documents and communications concerning Cook's January 2, 2019 letter to Apple investors. On December 23, 2020, Defendants served their objections and responses to Lead Plaintiff's 1st RFPs, in which they objected to every request as irrelevant and overbroad.

45. On November 23, 2021, Lead Plaintiff served Lead Plaintiff's Second Set of Requests for Production of Documents to All Defendants ("Lead Plaintiff's 2nd RFPs"), seeking documents and communications concerning insider trading and share repurchases. On December 23, 2021, Defendants served their objections and responses to Lead Plaintiff's 2nd RFPs, objecting to the request on a number of grounds, but agreeing to search for and produce relevant documents.

46. Ultimately, after years of negotiation and multiple discovery disputes submitted to the Court, discussed *infra* §II.D.5., Defendants produced 26 volumes of electronic documents, including more than 152,476 documents totaling 645,199 pages. The size of the document

production in this Litigation required expending a tremendous quantity of time on document review and analysis in preparation for depositions, summary judgment, expert reports, trial, and mediation, as well as substantial expense related to hosting, storage, and maintaining a review platform.

2. Lead Plaintiff's Fed. R. Civ. P. 33 Interrogatories

47. On May 13, 2021, pursuant to Fed. R. Civ. P. 33, Lead Plaintiff served Lead Plaintiff's First Set of Interrogatories to All Defendants ("Lead Plaintiff's 1st Interrogatories"), containing nine interrogatories seeking, among other things, the basis for the allegedly false and misleading statements and the facts supporting Defendants' affirmative defenses, for example, the purported events or disclosures (other than the alleged false and misleading statement) to which Defendants sought to attribute the relevant declines in Apple's stock price. On June 28, 2021, Defendants served objections and responses to Lead Plaintiff's 1st Interrogatories.

48. On November 1, 2021, Lead Plaintiff served Lead Plaintiff's Second Set of Interrogatories to All Defendants ("Lead Plaintiff's 2nd Interrogatories"), containing 10 interrogatories seeking, among other things, Defendants' basis for denials asserted in their Answer to specific paragraphs of the Complaint, such as Defendants' denial that they saw declining traffic in Greater China prior to the alleged false statements, and assertion in the Answer of specific affirmative defenses.

49. On December 15, 2021, Defendants served objections and responses to Lead Plaintiff's 2nd Interrogatories. The Parties met and conferred to discuss those objections and responses, including because Defendants' responses identified subject areas, not specific documents, forming the basis for their responses. On March 15, 2022, Defendants served supplemental responses to Lead Plaintiff's 2nd Interrogatories, which included the identity by Bates Number of documents supporting their responses.

3. Lead Plaintiff's Fed. R. Civ. P. 36 Requests for Admission

50. On February 23, 2021, pursuant to Fed. R. Civ. P. 36, Lead Plaintiff served Lead Plaintiff's First Set of Requests for Admission to All Defendants ("Lead Plaintiff's 1st RFAs"),

containing 33 requests seeking, for example, Defendants' admissions or confirmation that Apple had cut, or planned to cut, iPhone production prior to November 1, 2018, as alleged in the Complaint.

51. On April 8, 2021, Defendants served objections and responses to Plaintiff's 1st RFAs. Defendants declined to admit or deny a number of Lead Plaintiff's 1st RFAs and instead improperly declined to answer on the ground, *inter alia*, that the answer "calls for the discovery of information that is not relevant to any party's claim or defense."

52. The Parties met and conferred concerning Defendants' objections and responses, and Defendants agreed to supplement their responses. On May 6, 2021, Defendant Apple served its supplemental objections and responses to Lead Plaintiff's 1st RFAs. On May 14, 2021, Cook and Maestri served supplemental objections and responses to Lead Plaintiff's 1st RFAs, and Apple served its second set of supplemental objections and responses to Lead Plaintiff's 1st RFAs.

53. On November 23, 2021, Lead Plaintiff served Lead Plaintiff's Second Set of Requests for Admission to All Defendants ("Lead Plaintiff's 2nd RFAs"), including five requests seeking admissions based on facts ascertained during discovery, including an admission that prior to the Class Period, certain Apple retail partners in China had asked Apple to postpone shipments of the iPhone XR or had cancelled orders of the iPhone XR altogether due to lack of demand. On December 23, 2021, Defendants provided objections and responses to Lead Plaintiff's 2nd RFAs.

4. Lead Plaintiff's Fed. R. Civ. P. 30 Depositions of Apple Employees

54. During the course of discovery, Lead Plaintiff took 12 full-day depositions of Apple employees. Each Apple witness was represented by attorneys from Defendants' Counsel. Lead Counsel expended significant time identifying and analyzing documents to use in their examinations and preparation of questions concerning those documents.

Date	Position	Deponent
2/26/2021	Manager, e-discovery	Robin Goldberg (as Rule 30(b)(6) witness)
3/10/2021	Vice President, Finance	Kevin Parekh (as Rule 30(b)(6) witness)

3/15/2021	Vice President, Finance	Donal Conroy (as Rule 30(b)(6) witness)
6/23/2021	Treasurer	Michael Shapiro (as Rule 30(b)(6) witness)
1/28/2022	Senior Director, Supply Chain Management	Anish Patel
2/7/2022	Vice President, Operations	Priya Balasubramaniam
2/9/2022	Chief Executive Officer	Timothy D. Cook
2/21/2022	Vice President, Finance	Donal Conroy
2/25/2022	Chief Financial Officer	Luca Maestri
3/4/2022	Director, Corporate Finance	Matt Blake
3/8/2022	Vice President, Finance	Kevin Parekh
3/15/2022	Senior Vice President, Worldwide Marketing	Greg Joswiak

5. Disputes with Defendants Arising out of Lead Plaintiff's Discovery Requests

a. Disputes over Scope of Production

55. Starting in January 2021, counsel for the Parties engaged in meet-and-confers to negotiate numerous issues concerning Defendants' anticipated production pursuant to Lead Plaintiff's 1st RFPs, which were memorialized in extensive correspondence. The issues in dispute included, among others: the relevance of the documents sought; Defendants' obligations to locate certain relevant documents; the relevant time period of responsive documents; and the proper custodians.

56. On April 13, 2021, the Parties filed a joint discovery letter outlining their dispute concerning whether and when Defendants must begin a rolling production, the production of specific types of information, and the relevant custodians. ECF 156. On April 16, 2021, Magistrate Judge Spero held oral argument, ordered Defendants to search the custodial files of specific custodians he selected, and ordered the Parties to continue meeting and conferring on their remaining disputes, including setting a date for Defendants to produce specific identifiable documents that could be located without the use of search terms. ECF 158.

57. On May 28, 2021, following further meet-and-confer sessions, the Parties filed another joint discovery letter concerning custodians and compliance with Judge Spero's April 16, 2021 order. ECF 173. On June 4, 2021, Judge Spero issued an order requiring Defendants to

produce 14 specific categories of documents no later than June 25, 2021, including on topics such as "iPhone unbricking or activation reports," "[r]eports on economic conditions or consumer spending in Greater China," and organizational charts. ECF 184.

58. Defendants did not make their first substantive production of documents until June 25, 2021, more than seven months after being served with Lead Plaintiff's 1st RFPs, and substantially completed their document production on October 25, 2021.

b. Disputes Over Defendants' Claims of Attorney-Client Privilege and Work Product

59. In addition to disputes over the scope and timing of document production, the Litigation was marked by long-running disputes concerning Defendants' withholding of documents, or portions thereof, based on assertions of attorney-client privilege or the work product doctrine. Lead Plaintiff was ultimately successful in obtaining orders compelling Defendants to produce hundreds of improperly withheld documents, many of which Lead Plaintiff utilized to survive Defendants' motion for summary judgment, and which Lead Plaintiff was prepared to use at trial. The Parties' dispute over purportedly privileged documents continued up to the time of the Settlement.

60. Defendants produced their first privilege log on November 24, 2021, a year after the service of Lead Plaintiff's 1st RFPs. That privilege log identified more than 1,700 documents that were withheld on the basis of privilege. Lead Plaintiff asserted that the privilege log lacked required information; for example, it: failed to identify the attorney purportedly involved in the attorney-client relationship supporting withholding; relied on boilerplate descriptions; asserted privilege as to entire document families (*i.e.*, emails and their attachments) where only one document contained privileged information; and failed to include necessary information, such as sent or creation dates, filenames, or subjects.

61. Following Lead Plaintiff's identification of these and other deficiencies in Defendants' privilege log, as well as identification of specific documents that appeared to be improperly withheld, the Parties engaged in numerous meet-and-confers between December 2021 and February 14, 2022, in an attempt to resolve the privilege log dispute without Court

intervention. Ultimately, the Parties submitted a joint discovery letter regarding the privilege dispute on February 24, 2022. ECF 227.

62. Upon review of the discovery letter, Judge Spero ordered full briefing. ECF 229. Lead Plaintiff filed its motion to compel on the privilege issues discussed above on March 4, 2022 (ECF 232), Defendants filed their opposition on March 14, 2022 (ECF 233), and Lead Plaintiff filed its reply on March 18, 2022 (ECF 234).

63. On April 15, 2022, Judge Spero held oral argument on the privilege dispute. ECF 238. At the hearing, Judge Spero ordered Defendants to produce redacted versions of the documents they had improperly withheld in full, and to submit "a declaration by the attorney whose advice was sought or given establishing that the redacted material was primarily for a legal purpose." *Id.* Judge Spero also ordered the Parties to then meet and confer and submit any remaining disputes to the Court.

64. Following Judge Spero's April 15, 2022 order, the Parties continued to meet and confer about the sufficiency of Defendants' further productions, and the sufficiency of the attorney declarations provided. The Parties narrowed, but did not eliminate, their dispute. *See* ECF 246-4, ¶¶8, 13-14. Specifically, the Parties continued to dispute Defendants' application of the "primary purpose" test set forth in *In re Grand Jury*, 23 F.4th 1088, 1092 (9th Cir. 2021), and whether Defendants had properly applied this test to documents that served both a business and legal purpose. On June 22, 2022, July 5, 2022, and July 12, 2022, the Parties filed briefs covering the remaining areas of dispute. ECFs 246-3, 248, 255. On July 13, 2022, Judge Spero ordered Defendants to lodge the disputed documents with the Court. ECF 257. On July 29, 2022, Judge Spero held oral argument on the dispute. ECF 268.

65. On August 3, 2022, Judge Spero issued a 43-page order on Lead Plaintiff's motion to compel. ECF 272. Judge Spero found 18 of the 27 (67%) documents he reviewed *in camera* were improperly withheld, an error rate that supported his ordering Defendants to: (i) immediately produce the improperly withheld documents; (ii) re-review the remainder of the challenged

documents with the proper legal standard; (iii) provide new attorney declarations for documents Defendants continued to withhold; and (iv) meet and confer on remaining disputes. *Id.*

66. Defendants immediately objected to Judge Spero's August 3, 2022 order, seeking relief under Fed. R. Civ. P. 72 from the Court that resulted in further briefing submitted by the Parties. ECFs 276, 277, 285. The Court denied Defendants' request for relief. *See* ECF 302 at 3.

67. On September 13, 2022, under 28 U.S.C. §1292(b), Defendants filed a motion and sought interlocutory appeal, which Lead Plaintiff opposed, and the required certification was denied. ECFs 304, 309, 312.

68. On September 30, 2022, Apple filed a petition for writ of mandamus with the Ninth Circuit and was denied. *See* ECFs 313, 319. On October 20, 2022, Defendants were granted a stay of production pending the United States Supreme Court's review of *In re Grand Jury*. ECFs 319, 335. On January 23, 2023, the Supreme Court dismissed the writ of certiorari as improvidently granted. *In re Grand Jury*, 598 U.S. ___, 143 S. Ct. 543 (2023).

69. Even after Defendants exhausted their challenges to Judge Spero's August 3, 2022 order, Lead Plaintiff expended significant time ensuring Defendants complied with that order. Lead Plaintiff disputed whether Defendants' compliance with Judge Spero's order was complete, in part due to the fact that Defendants had not produced sufficient new privilege logs or attorney declarations. During the Parties' efforts to meet and confer, Defendants confirmed that they failed to properly apply the Ninth Circuit's controlling "primary purpose test" established by *In re Grand Jury* in their privilege review. The Parties then disputed whether Defendants were obligated to correct this error.

70. On March 7, 2023, the Parties filed a joint discovery letter in which Lead Plaintiff requested that Judge Spero issue an order compelling Defendants to apply *In re Grand Jury* to the approximately 1,600 documents remaining on its privilege log and produce relevant, non-privileged documents. ECF 348. On March 8, 2023, Judge Spero denied Lead Plaintiff's request. ECF 349.

71. On March 22, 2023, Lead Plaintiff sought partial relief from Judge Spero's March 8, 2023 order on grounds including that Fed. R. Civ. P. 26(e) requires Parties to supplement incomplete discovery responses and to correct erroneous ones. ECF 351. On June 30, 2023, the Court granted Lead Plaintiff's motion, and "return[ed] this issue to Judge Spero for further consideration and guidance on how his decision intersects with defendants' Rule 26 obligations." ECF 372.

72. On July 7, 2023, the Parties filed a joint letter outlining the Parties' arguments in response to the Court's June 30, 2023 Order, and proposing a briefing schedule to address them. ECF 375. On July 18, 2023, Lead Plaintiff filed its Motion to Compel Review and Production of Non-Privileged Documents. ECF 389. On July 28, 2023, Defendants opposed the motion. ECF 395. And on August 3, 2023, Lead Plaintiff replied. ECF 397.

73. On August 18, 2023, Judge Spero held oral argument concerning the Court's June 30, 2023 Order, at which time Judge Spero ordered Defendants to submit specific documents briefed and discussed for *in camera* review, and indicated that he would require Defendants to re-review documents withheld pursuant to a non-controlling standard. ECF 400. On August 25, 2023, Judge Spero issued an order compelling Defendants to re-review documents and found some of the lodged documents were improperly withheld. ECF 403.

74. Pursuant to Judge Spero's August 25, 2023 order, Defendants conducted a re-review and produced 250 documents, as well as a revised privilege log on September 21, 2023. Following additional meet and confers between the Parties as to the sufficiency of those productions, Defendants produced a revised privilege log on December 21, 2023. At the time of the Settlement, the Parties continued to dispute Defendants' claims of privilege over more than 100 documents.

E. Lead Plaintiff's Discovery Served on Non-Parties and Related Disputes

75. Lead Counsel expended substantial time obtaining relevant evidence from over 25 non-parties, including those described below.

1. Discovery Aimed at Apple's iPhone Manufacturers

Lead Plaintiff's efforts to obtain discovery from Apple's manufacturing partners was complicated by arguments raised by these non-parties, including confidentiality agreements with Apple, which some non-parties contended precluded compliance with Lead Plaintiff's subpoenas *duces tecum*, that the subpoenaed materials were duplicative of documents Apple would produce, and that certain of the manufacturers lacked the necessary contacts with the Northern District of California or other United States jurisdictions, and thus could not be properly served.

a. Wistron

76. On December 11, 2020, Lead Plaintiff served a subpoena *duces tecum* on Wistron Corporation ("Wistron") seeking documents and communications concerning Apple iPhone volume productions plans, forecasts, expectations, reductions, or cancellations, as well as analysis, monitoring, or tracking of iPhone orders, pre-orders, sales, or upgrades. During meet and confers with Wistron, Lead Plaintiff and the non-party were able to establish that several responsive documents had been overwritten or otherwise destroyed pursuant to Wistron's regular retention policies for such materials, including all email communications. Nevertheless, Wistron identified still-extant, responsive materials, and Lead Plaintiff and Wistron were able to agree to an appropriate scope of production. On February 26, 2021, Wistron produced over 40,000 pages of documents.

b. Pegatron

77. On December 11, 2020, Lead Plaintiff served its subpoena *duces tecum* on Pegatron Corporation d/b/a Pegatron USA, Inc. ("Pegatron") seeking documents and communications concerning Apple iPhone volume productions plans, forecasts, expectations, reductions, or cancellations, as well as analysis, monitoring, or tracking of iPhone orders, pre-orders, sales, or upgrades. In its initial response to Lead Plaintiff's subpoena on December 29, 2020, and in meeting and conferring during January 2021, Pegatron disputed whether Lead Plaintiff had, or indeed could, properly serve a subpoena on Pegatron, contending that the Pegatron corporate entity relevant to the allegations in the Complaint was foreign and was beyond the jurisdictional reach of United States courts. Unable to resolve the dispute as to service, on February 1, 2021, Pegatron

and Lead Plaintiff filed a joint letter with the Court outlining the dispute. ECF 131. On March 5, 2021, Lead Plaintiff filed a motion to compel compliance with its subpoena to Pegatron, on March 10, 2021, Pegatron filed its opposition, on March 15, 2021, Lead Plaintiff replied, and on March 16, 2021, Pegatron filed a purported supplemental opposition to which Plaintiff replied. ECFs 141, 144-147. On March 26, 2021, Judge Spero held oral argument on Lead Plaintiff's motion to compel. ECF 151. On March 29, 2021, Judge Spero issued an order granting in part Lead Plaintiff's motion to compel, holding that Lead Plaintiff had properly served Pegatron and ordering Pegatron to meet and confer with Lead Plaintiff pursuant to responding to the subpoena. ECF 152.

78. Following Judge Spero's March 29, 2021 order, Lead Plaintiff and Pegatron met and conferred about the appropriate scope of Pegatron's search for documents, including appropriate document custodians whose files should be searched. Pursuant to those discussions, on September 7 and December 7, 2021, Pegatron produced in total over 20,000 pages of documents.

c. Foxconn

79. On December 15, 2020, Lead Plaintiff served its subpoena *duces tecum* for production of documents on Hon Hai Precision Industry Co., Ltd. a/k/a Foxconn Technology Group ("Foxconn") seeking documents and communications concerning Apple iPhone volume productions plans, forecasts, expectations, reductions, or cancellations, as well as analysis, monitoring, or tracking of iPhone orders, pre-orders, sales, or upgrades. On January 29, 2021, Foxconn served objections and responses to Lead Plaintiff's subpoena.

80. On February 5, 2021, Lead Plaintiff served a deposition subpoena on Foxconn noticing a Rule 30(b)(6) deposition. Notwithstanding Foxconn's and Lead Plaintiff's efforts to meet and confer regarding Lead Plaintiff's requests for production of documents, and for a deposition of a Rule 30(b)(6) corporate representative, Foxconn refused to produce documents or designate a Rule 30(b)(6) witness for a deposition.

81. On February 10, 2021, Foxconn and Lead Plaintiff filed a joint discovery dispute letter with the Court. ECF 132. On February 19, 2021, Judge Spero ordered Foxconn and Lead

Plaintiff to meet and confer, and to file a joint discovery letter outlining any remaining discovery disputes. ECF 136. Foxconn and Lead Plaintiff continued to meet and confer from the end of February to the beginning of May 2021.

82. On May 10, 2021, Foxconn and Lead Plaintiff filed a joint discovery letter with the Court outlining their dispute. ECF 167. On June 1, 2021, Judge Spero held oral argument on the discovery dispute between Foxconn and Lead Plaintiff and ordered Foxconn to produce specific categories of documents and to meet and confer with Lead Plaintiff concerning designing search terms and other methods for producing other categories of documents, and to do so without waiting for Defendant Apple to start or complete its productions. ECF 175.

83. On July 12, 2021, following multiple communications and meet and confers concerning compliance with Judge Spero's June 1, 2021 order, Foxconn made its first production of documents to Lead Plaintiff. Lead Plaintiff and Foxconn continued to meet and confer following that production as Lead Plaintiff continued to pursue production of all the areas of materials Judge Spero ordered Foxconn to produce. On November 8, 2021, Foxconn finally substantially completed its production. In total, Foxconn ultimately produced over 31,000 pages of documents.

d. Lumentum

84. On December 11, 2020, Lead Plaintiff served its subpoena *duces tecum* on Lumentum Holdings, Inc. ("Lumentum") also seeking documents and communications concerning Apple iPhone volume productions plans, forecasts, expectations, reductions, or cancellations, as well as analysis, monitoring, or tracking of iPhone orders, pre-orders, sales, or upgrades. In conjunction with long-running efforts to meet and confer between January and October 2021, Lumentum made productions on April 9, October 1, and October 21, 2021, and in total produced over 9,500 pages of documents.

85. In total, Lead Plaintiff obtained more than 100,000 pages of documents from the four Apple manufacturers described above. Many of these documents, particularly those from

Foxconn, were critical evidence reflecting that Apple's iPhone production cuts were concentrated on iPhones intended for the Greater China market.

2. Financial Analysts

86. Lead Plaintiff subpoenaed documents from more than 20 securities firms, including BofA Securities, Inc., J.P. Morgan Securities LLC, Rosenblatt Securities, Inc., Wedbush Securities Inc., and Wells Fargo Securities LLC that employed analysts to cover Apple during the Class Period. The subpoenas sought, among other things, documents related to: securities reports issued covering Apple; all notes, research and communications relied upon in issuing these reports; communications with Apple employees; and email related to Apple. Lead Plaintiff served its subpoenas for these records between December of 2020 and February of 2021, and met and conferred with each of the non-parties throughout calendar year 2021. Lead Plaintiff ultimately received more than 125,000 pages of documents from the analysts as a result of Lead Counsel's discovery efforts. Many of these documents were relevant to market efficiency, the content and impact of Company-related statements and disclosures, loss causation, and damages. The documents were also necessary to contest Defendants' defenses to falsity, materiality, and scienter, as Defendants asserted (and provided expert reports purporting to evidence) that the market's understanding of the alleged false and misleading statement was contrary to Lead Plaintiff's theory of liability, as (again, purportedly) evidenced by the reports of financial analysts.

F. Defendants' Discovery Directed at Lead Plaintiff

1. Defendants' Fed. R. Civ. P. 34 Requests for the Production of Documents

87. On January 14, 2021, pursuant to Fed. R. Civ. P. 34, Defendants served requests for the production of documents ("Defendants' 1st RFPs") directed largely at Lead Plaintiff's investigation into the Complaint and to support their challenge to class certification. Defendants' 1st RFPs included demands for Lead Plaintiff's trading records, brokerage statements, monthly and annual account statements, investment management agreements, and statements of financial

condition, among other responsive documents.[5] On February 16, 2021, Lead Plaintiff served its objections and responses to Defendants' 1st RFPs.

88. On April 3, 2021, May 14, 2021, June 11, 2021, and July 1, 2021, Lead Plaintiff produced documents responsive to Defendant's 1st RFPs totaling 2,306 pages.

89. On August 4, 2021, Defendants served their second set of requests for Production of Documents ("Defendants' 2nd RFPs"). Defendants' 2nd RFPs were comprised of one request seeking all documents concerning the transfer of Apple securities between Norfolk accounts from August 1, 2018, through July 2, 2019. On September 3, 2021, Lead Plaintiff served its objections and responses to Defendants' 2nd RFPs. On January 11, 2022, Lead Plaintiff produced an additional 29 pages in response documents to Defendants' requests.

2. Defendants' Fed. R. Civ. P. 33 Interrogatories

90. On August 4, 2021, pursuant to Fed. R. Civ. P. 33, Apple served its first set of interrogatories to Lead Plaintiff ("Apple's 1st Interrogatories"), requesting information about Lead Plaintiff's trades in Apple securities. Lead Plaintiff served its objections and responses on September 3, 2021. On January 11, 2022, Lead Plaintiff served supplemental objections and responses to Apple's 1st Interrogatories.

91. On February 14, 2022, Apple served its second set of interrogatories on Lead Plaintiff ("Apple's 2nd Interrogatories"), and Cook and Maestri each separately served their first set of interrogatories on Lead Plaintiff ("Cook's 1st Interrogatories" and "Maestri's 1st Interrogatories"), including seven interrogatories from Apple, six from Cook, and three from Maestri, all requesting the bases for various contentions alleged by Lead Plaintiff. Apple's 2nd Interrogatories generally sought the basis for Lead Plaintiff's contentions that Defendants made false and misleading statements with scienter. Cook's 1st Interrogatories requested the bases for contentions related to his role in making the alleged false and misleading statements. Maestri's

[5] In addition to the discovery requests served on Lead Plaintiff, Defendants also served document requests on named plaintiffs Rhode Island and City of Roseville. Plaintiffs' Counsel and their clients spent significant time and resources responding to these requests and producing relevant documents.

1st Interrogatories requested documents supporting the contention that Maestri acted as a control person within the meaning of §20(a) of the Exchange Act.

92. On March 16, 2022, Lead Plaintiff served its objections and responses to each of Defendants' February 14, 2022 interrogatories. Lead Plaintiff's objections and responses, in combination, totaled over 750 pages, and responded in both narrative fashion and by identifying the specific documents in the record supporting its responses.

3. Defendants' Fed. R. Civ. P. 30 Depositions of Plaintiffs' Witnesses

93. On May 20, 2021 (amended June 11, 2021), pursuant to Fed. R. Civ. P. 30(b)(6), Defendants served a notice of deposition on Lead Plaintiff regarding topics including Lead Plaintiff's investments, the information it relied upon in making its purchasing and selling decisions, communications with Defendants, its decision to serve as Lead Plaintiff, its discovery responses, and its other litigation history. On June 22, 2021, Defendants took the deposition of Norfolk and its Rule 30(b)(6) representative, Head of Funding and Investment, Alexander Younger.

94. On July 9, 2021, Defendants served notices of Rule 30(b)(6) deposition on named plaintiffs Rhode Island and City of Roseville, demanding testimony on 16 separate topics including their transactions in Apple stock, losses suffered in connection with those transactions, and their relationship with their counsel.

95. On July 23, 2021, Defendants took the deposition of City of Roseville and its Rule 30(b)(6) corporate designee Sharon Maas. Lead Counsel and Ms. Maas expended substantial resources and time reviewing the necessary documentation, and preparing for and providing testimony in compliance with the notice of deposition.

96. On August 4, 2021, Defendants took the deposition of Rhode Island and its Rule 30(b)(6) corporate designee Justin Maistrow. Counsel for Plaintiffs in the action and Mr. Maistrow expended a substantial amount of time and resources preparing for and providing testimony in compliance with the notice of deposition.

4. Defendants' Discovery Directed at Non-Parties

97. Following Defendants' efforts to collect information from Lead Plaintiff, Defendants sought further information from Lead Plaintiff's investment managers, non-party United Kingdom firms, Capital International Limited ("Capital International"), and FIL Pensions Management ("FIL Pensions"). Though ultimately targeted at non-parties, Defendants' efforts to seek discovery from Lead Plaintiff's investment managers required further time and effort from Lead Plaintiff.

98. On November 23, 2021, Defendants moved for issuance of letters of request pursuant to the Hague Convention ("Letters of Request"), in order to issue their Letters of Request to Senior Master of Queen's Bench Division of the High Court, Royal Courts of Justice as to Stephen Gosztony (Capital International) and Nicholas Birchall (FIL Pensions). *See* ECF 209-212. On November 29, 2021, Judge Spero granted the request and issued the Letters of Request to the relevant foreign court. *Id.*

99. On January 10, 2022, Defendants filed their applications to give effect to the Letters of Request. Defendants thereafter decided not to pursue a deposition of Mr. Gosztony of Capital International; Defendants informed the Senior Master of Queen's Bench Division of the High Court, Royal Courts of Justice of this fact, and, on March 30, 2022, that foreign court set aside its order permitting Defendants' deposition of Mr. Gosztony. Instead, on February 18, 2022, Defendants served a notice of subpoena to The Capital Group Companies, Inc. ("Capital Group"), comprised of six requests for the production of documents regarding purchases, sales, or transfers of Apple securities Capital Group made on behalf of Norfolk. On February 28, 2022, Lead Counsel attended the deposition of Nicholas Birchall of FIL Pensions and questioned the witness. Then, on March 2, 2022, Defendants served a notice of Rulel 30(b)(6) deposition on Capital Group seeking similar information sought in Defendants' non-party subpoena for the production of documents. That deposition did not take place.

5. Disputes with Lead Plaintiff Arising out of Defendants' Discovery Requests

100. As part of Defendants' pursuit of discovery from Lead Plaintiff, Defendants insisted, among other things, that Lead Plaintiff was required to produce documents significantly in advance of Lead Plaintiff's motion for class certification scheduled for May 5, 2021. Defendants also demanded the search of a wide range of potential custodians, and that Lead Plaintiff search for and produce documents for a period extending over a year beyond the Class Period, and significantly beyond the time frame agreed upon for Defendants' search and productions to Lead Plaintiff. These disputes, to the extent they were not resolved through the meet and confer process, were presented to Judge Spero for resolution in a May 26, 2021 discovery letter. ECF 170.[6]

101. On June 1, 2021, Judge Spero held oral argument and ordered Lead Plaintiff to produce "post-class period transactions in Apple securities six (6) months following the end of the class period" and for the Parties to meet and confer concerning the timing of any outstanding discovery, particularly the scheduling of depositions of named plaintiffs. ECF 176. Lead Plaintiff timely complied with the order.

G. Lead Plaintiff's Motions for Class Certification

102. On May 5, 2021, Lead Plaintiff filed a motion to certify a class of purchasers of Apple securities (common stock and options), appoint Norfolk as Class Representative, and appoint Robbins Geller as Class Counsel pursuant to Fed. R. Civ. P. 23. ECF 165; *see id.* at 6. The motion was supported by the expert report of Steven P. Feinstein, Ph.D., CFA, who opined on market efficiency and set forth a methodology to calculate damages on a class-wide basis. *See infra* §II.I.2. Defendants opposed Lead Plaintiff's class certification motion, asserting that Norfolk did not meet the typicality requirement under Fed. R. Civ. P. 23(a), that a perceived mismatch between the contents of the alleged misrepresentation and the corrective disclosures was sufficient to rebut the presumption of reliance, and that Lead Plaintiff could not demonstrate that Apple's

[6] The Parties had resolved nearly all of the disputes prior to filing the letter, and disputed whether certain issues had been conferred on and were appropriate to raise before the Court. *See* ECF 170 at 6.

options traded in an efficient market, based on, among other things, a report filed by its expert, Dr. Steven Grenadier. ECF 196. On August 24, 2021, Lead Plaintiff filed its reply along with an additional report by Dr. Feinstein which further detailed his proposed out-of-pocket damages methodology and option market efficiency analysis. ECFs 202, 202-4. On January 18, 2022, the Court heard oral argument on Lead Plaintiff's motion. ECF 218.

103. On February 4, 2022, the Court issued an Order granting in part and denying in part Lead Plaintiff's motion for class certification, appointing Norfolk as Class Representative and Robbins Geller as Class Counsel; certifying a Class of purchasers of Apple common stock during the Class Period; and denying without prejudice Lead Plaintiff's motion with respect to the request to include investors of Apple stock options in the class. ECF 224. The Court held Lead Plaintiff did not adequately demonstrate that damages to Apple options investors could be calculated on a Class-wide basis. *Id.* at 20. The Court further explained that should Lead Plaintiff again seek certification with respect to options investors, it should also address market efficiency for options. *Id.* at 20 n.11.

104. On April 15, 2022, Lead Plaintiff filed its Supplemental Motion to Certify Class of Apple Options Investors. ECF 239. In response to the Court's request, Lead Plaintiff submitted the expert report of Dr. Don M. Chance ("Chance Report"), professor of finance at Louisiana State University and an expert in derivative securities and risk management, concerning the efficiency of the Apple options market. *See infra* §II.I.3.

105. On June 24, 2022, Defendants opposed the supplemental motion. ECF 247. On August 26, 2022, Lead Plaintiff filed a reply, including a reply report from Dr. Chance which further discussed the appropriate factors to consider when evaluating the efficiency of options markets and academic literature regarding the efficiency of options markets. ECFs 289, 289-2.

106. On March 28, 2023, the Court issued an Order granting Lead Plaintiff's supplemental motion, and modifying the Class definition to include "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." ECF 352 at 4 (emphasis in original). In particular, the Court credited

the evidence in the Chance Report that options markets are efficient and that the market for Apple options met the *Cammer* factors courts traditionally consider to determine market efficiency. *Id.* at 2.

107. On July 28, 2023, Lead Plaintiff filed its Joint Proposal for Dissemination of Notice to the Class, which remained pending at the time of the Settlement. ECF 394.

H. The Proposed Second Amended Complaint and Motion for Reconsideration

108. As detailed above in ¶39, on November 4, 2020, the Court issued the MTD II Order granting in part and denying in part Defendants' motion to dismiss the Complaint. ECF 123. Among the statements on which the Court granted the motion to dismiss was a November 1, 2018 statement by Cook, made in response to an analyst question, that Apple had "very, very little data" on early demand for the recently released iPhone XR (the "XR Demand Statement"). Cook's response conveyed to investors that Apple's disappointing 1Q19 revenue range was not the result of low-observed demand for the iPhone XR. *See* ECF 123 at 10-11. That alleged false and misleading statement had been upheld in the MTD Order I, but dismissed in the MTD Order II. *See* ECF 110 at 23-24. However, based on documents obtained in discovery, as well as the opinions advanced by Defendants' own experts, Lead Plaintiff believed that the evidence supported the material falsity of that statement. Lead Plaintiff expended substantial effort marshalling that evidence into a proposed amended complaint that endeavored to satisfy the Court's concerns articulated in the MTD II Order and meet the PSLRA pleading standard for the statement. Accordingly, as part of that effort, on July 5, 2022, Lead Plaintiff filed a motion for leave to modify the scheduling order and file the Proposed Second Amended Complaint for Violation of the Federal Securities Laws ("PSAC"). ECFs 249, 250. That motion explained the applicable caselaw regarding leave to amend, and that it was timely because Defendants did not make any meaningful production of documents for the first seven months of discovery, and attached the PSAC incorporating the new evidence in support of the claim. *See* ECF 250 at 2 (identifying "XR Demand Statement").

109. On July 26, 2022, Defendants opposed the motion, arguing in substance that the motion for leave was untimely, the discovery had already been designed around the MTD II Order, and it would be prejudicial to Defendants to have to redouble their discovery efforts at this late stage of the case. ECFs 266-267. In addition, Defendants contended the newly alleged facts did not meet the PSLRA's exacting standard in any event and that the Court's ruling on November 4, 2020, as it pertained to the statement, had been and remained correct. *Id.*

110. On August 5, 2022, Lead Plaintiff filed a reply in support of its motion for leave, arguing, among other things, that there was good cause to modify the case schedule, and that Defendants would not be prejudiced by amendment. ECFs 278, 279.

111. On September 19, 2022, the Court issued an Order denying 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 PSAC. ECF 310.

112. On May 8, 2023, Lead Plaintiff moved for leave to file a motion for partial reconsideration of the MTD II Order, arguing the Ninth Circuit's opinion in *Glazer Cap. Mgmt., L.P. v. Forescout Techs, Inc.*, 63 F.4th 747 (9th Cir. 2023), supported reconsideration of the XR Demand Statement. ECF 358. On May 12, 2024, the Court granted leave for Lead Plaintiff to file its motion. ECF 362. On May 19, 2023, Lead Plaintiff filed its motion for partial reconsideration. ECF 364. On May 26, 2023, Defendants opposed (ECF 366), and on May 31, 2023, Lead Plaintiff replied. ECF 367. On June 29, 2023, the Court denied the motion for partial reconsideration on the ground *Forescout* did not establish new law. ECF 371.

I. Lead Plaintiff's Expert Disclosures and Related Discovery

113. Lead Counsel engaged expert witnesses to prepare analyses that would substantially assist Lead Counsel in pursuing discovery, seeking certification of the class, refining Lead Plaintiff's claims for trial, and in developing evidence to assist the jury in understanding the nature and economic impact of the alleged fraud. Lead Counsel expended a tremendous amount of time, analysis, and effort working with retained experts to review documents, analyze relevant

research papers, respond to discovery, prepare expert reports, and prepare for, sit for, and defend depositions.

1. Lead Plaintiff's Expert Dr. Oded Shenkar

114. Dr. Oded Shenkar is the Ford Motor Company Chair in Global Business Management and Professor of Management and Human Resources at the Fisher College of Business at the The Ohio State University, and a Member of the East Asian Studies Center/Institute for Chinese Studies. Dr. Shenkar is an expert in the field of China's economy and business conditions. Dr. Shenkar holds a Ph.D. in Sociology from Columbia Univerity. Dr. Shenkar provided expert analyses, an expert report, and consultation in connection with the Litigation. Dr. Shenkar helped Lead Plaintiff review and analyze thousands of documents produced in the case, as well as relevant books and academic articles. Dr. Shenkar's April 27, 2022 expert report set forth his opinions on the background and history of the Chinese economy, the consumer and socioeconomic trends in the context of the development of the smartphone market in China, and the type of data foreign corporations (like Apple) typically rely upon to assess consumer sentiment and consumer preferences in China. Dr. Shenkar expended significant time and effort preparing to give testimony in this matter, including in advance of his multi-hour deposition on July 27, 2022. He also reviewed and analyzed the expert reports of Defendants' experts.

2. Lead Plaintiff's Expert Dr. Steven P. Feinstein

115. Dr. Steven P. Feinstein is an Associate Professor of Finance at Babson College, and the founder and president of Crowninshield Financial Research, Inc. Dr. Feinstein holds a Ph.D. in Economics from Yale University. Dr. Feinstein is also a Chartered Financial Analyst. Dr. Feinstein provided expert reports, testimony, and analyzed the expert testimony of Defendants' economic expert in connection with Lead Plaintiff's motions for class certification and Defendants' motion for summary judgment.

116. In support of Lead Plaintiff's motion for class certification, Dr. Feinstein's May 5, 2021 expert report set forth his opinions on market efficiency for Apple common stock and options and class-wide damages methodology. On May 11, 2021, Lead Counsel reviewed and provided

Defendants almost 1,000 pages of documents reviewed by or relied on by Dr. Feinstein in preparing his report in connection with Lead Plaintiff seeking class certification. On June 3, 2021, Defendants served two document requests further seeking all documents, facts, data, communications, or assumptions provided to Dr. Feinstein that he relied on in drafting his report. The Parties met and conferred and determined that, to the extent any responsive materials had not already been produced, Defendants' deposition of Dr. Feinstein (also noticed on June 3, 2021, in conjunction with Defendants' document requests) was the most appropriate manner of developing such discovery. Following receipt of the report from Defendants' market efficiency and damages expert, on August 24, 2021, Dr. Feinstein submitted a rebuttal report in which he expanded on his findings, and provided a detailed factual rebuttal of the analysis contained in the defense expert's report.

117. On April 27, 2022, Dr. Feinstein submitted a report on loss causation and damages, which applied settled economic principles and provided expert analysis and opinion concerning Apple's stock price declines on November 5 and 12, 2018, and January 2, 2019, and their causal connection to the information previously concealed by the alleged misrepresentations and omissions. In the report, Dr. Feinstein also provided a damages methodology opinion for both stock and options.

118. Lead Counsel and Dr. Feinstein dedicated a significant amount of time and effort in support of the prosecution of the claims in addition to the above, including responding to additional expert discovery, as well as preparing for two separate depositions in connection with his expert reports submitted in the case. Dr. Feinstein also assisted Lead Counsel in developing the Plan of Allocation.

3. Lead Plaintiff's Expert Dr. Don M. Chance

119. Dr. Don M. Chance is a Chartered Financial Analyst and professor of finance at Louisiana State University as well as holder of the James C. Flores Endowed Chair of MBA Studies. He holds a Ph.D. in Finance from Louisiana State University. He is an expert in derivative securities, including options, and risk management. On April 15, 2022, Dr. Chance submitted a

report in connection with Lead Plaintiff's supplemental motion for class certification concerning the efficiency of the market for Apple options and presented a methodology to calculate options damages on a class-wide basis. On April 20, 2022, Plaintiff produced 1,757 pages of documents considered by Dr. Chance. Dr. Chance's expert report discussed the academic literature on options market efficiency and set forth his expert opinions on whether Apple options contracts trade in an efficient market and whether a common methodology can be used to estimate the damages to a class of Apple options holders. Lead Counsel prepared and defended Dr. Chance's deposition on June 8, 2022. On August 26, 2022, Dr. Chance submitted a reply report which responded to the report of Defendants' expert Steven Grenadier, concerning the efficiency of the options market and the ability to calculate damages on a class wide basis. ECF 289-2. Dr. Chance's reports were essential to Lead Plaintiff's successful effort to modify the Class definition to include purchasers of Apple call options and sellers of Apple put options.

4. Lead Plaintiff's Expert Professor Frank Partnoy

120. Professor Frank Partnoy is the Adrian A. Kragen Professor of Law at the UC Berkeley School of Law, and co-chair of the UC Berkeley Center for Law and Business since 2018. Professor Partnoy is an expert in the fields of securities markets and regulation, finance, and accounting. Professor Partnoy holds a J.D. from Yale Law School. Professor Partnoy's June 10, 2022 rebuttal report set forth his expert opinions rebutting those offered by Defendants' experts Mr. Alex Gauna and Professor Brett Trueman. Professor Partnoy's rebuttal report specifically opined on Mr. Gauna's and Professor Trueman's methodologies (or lack thereof), the recognized sources of financial analyst bias, and Mr. Gauna's and Professor Trueman's treatment of such bias in connection with their expert opinions, and certain facts, including analyst reports and analyst discussion about Apple's business in China, as well as evidence produced in discovery, that is inconsistent with Mr. Gauna's and Professor Trueman's opinions. Lead Counsel and Professor Partnoy also dedicated significant time and effort to the prosecution of Lead Plaintiff's claims, including the report discussed above and preparing for and providing deposition testimony on July 21, 2022.

5. Expert Document Discovery

121. In connection with the disclosure of these experts and the submission of their reports in support of Lead Plaintiff's claims, Lead Counsel, along with each respective expert, expended significant time responding to Defendants' requests for production of information relied on by the experts and producing relevant information.

122. On July 6 and July 14, 2022, Defendants served document requests on Lead Counsel, on behalf of Dr. Feinstein, Dr. Shenkar, and Professor Partnoy, in connection with each expert and specifically documents they relied on in drafting their respective reports. Lead Counsel reviewed and provided Defendants with responsive documents, and, on May 23, 2022, Lead Plaintiff produced more than 5,968 pages in response to Defendants' requests.

123. On June 8, 2023, Lead Plaintiff produced an additional 533 pages in response to Defendants' requests. On July 15, 2023, Lead Plaintiff produced an additional 661 pages in response to Defendants' requests. Lead Counsel and staff expended significant time working with the experts and their staffs to define and locate the universe of documents sought by the requests, to review all of these documents for applicable privilege, and to prepare and format responsive, non-privileged documents for production.

J. Discovery that Lead Plaintiff Propounded on Defendants' Experts

124. On April 27, 2022, Defendants disclosed their experts under Fed. R. Civ. P. 26 and served the expert reports of: (i) Eric Poer, as an expert on corporate finances; (ii) Professor Brett Trueman, Ph.D., as an expert on financial analysts and markets; (iii) Professor Dennis Yang, Ph.D., as an expert on China and China's economy; and (iv) Alex Gauna, MBA, as an expert on financial analysts and markets. On May 9, 2022, Defendants served "corrected" versions of the Poer and Gauna reports. On September 27, 2023, Defendants served a second corrected version of the Poer report. On June 10, 2022, Defendants identified (in the case of Ms. Taylor and Dr. Grenadier) and served the rebuttal expert reports of Mr. Poer, Dr. Trueman, Dr. Yang, Dr. Grenadier, and Carlyn R. Taylor.

125. On June 21, 2022, Lead Plaintiff served requests for production of documents on Defendants seeking, among other things, documents relied upon by Defendants' experts in forming

their opinions, reports and testimony from other actions, documents related to compensation and hours worked, and other requests targeting specific opinions and their supporting evidence. Between July 19, 2021, and July 12, 2022, Defendants produced over 28,000 pages of expert document discovery.

K. Summary Judgment and *Daubert* Motions

126. On July 29, 2022, Defendants filed a pre-motion letter requesting a Motion for Summary Judgment Pre-filing Conference, purporting to outline the reasons why Defendants' legal arguments and evidence warranted the filing of a motion for summary judgment. ECF 271. On August 3, 2022, Lead Plaintiff responded to Defendants' request with argument and the description of evidence that showed that Defendants had no legitimate chance of prevailing on summary judgment. ECFs 274, 275. On September 1, 2022, the Court issued an Order allowing Defendants to move for summary judgment without a pre-filing conference. ECF 290.

127. On September 9, 2022, Defendants filed a motion for summary judgment seeking the entry of judgment on all claims on the grounds that the alleged false and misleading statements were not false or made with scienter, and that investors' losses were caused by Apple missing "accurate" financial guidance. ECF 293. Defendants' summary judgment motion was accompanied by a separate statement of undisputed facts, four declarations (including from Cook, Maestri, and other employees), and more than 100 exhibits totaling over 1,600 pages. ECFs 294-299.

128. On September 9, 2022, Defendants moved to exclude portions of the proffered opinions of Lead Plaintiff's experts Professor Partnoy and Dr. Shenkar. ECF 292. These motions raised significant issues on both sides regarding core issues in the Litigation, including the reliability of methodologies for measuring, and evidence supporting, claims related to iPhone demand in China, the market's understanding of Defendants' statements as evidenced in financial analysts' reports, and whether Defendants' disclosure of the Company's weak demand in China caused investors' losses.

129. On the same day, Lead Plaintiff filed its Omnibus Motion to Exclude Opinion Testimony of Defendants' Proposed Experts, which sought to exclude or limit the testimony of Defendants' six designated experts, Poer, Trueman, Yang, Grenadier, Gauna, and Taylor, based on detailed factual and legal arguments. ECF 301.

130. On October 20, 2022, Lead Plaintiff filed its response to the motion for summary judgment, including filing over 140 exhibits (totaling 2,003 pages) evidencing triable issues for a jury, and preparing a more than 20-page, 63-paragraph point-by-point response to Defendants' separate statement of undisputed facts. ECFs 322-324. The evidence submitted by Lead Plaintiff tended to show, *inter alia*, at the time of the alleged false statement: (i) primarily as a result of weak demand for the newly launched iPhone XR, Apple's revenue outlook for China had turned negative and forced Apple to reduce its 1Q19 internal forecast by $6 billion; (ii) resellers in China told Apple to stop shipping iPhone XRs; (iii) Apple was already experiencing declining demand trends; (iv) weak demand caused Apple to cut production of the iPhone XR by 34 million units; (v) to meet even Apple's reduced financial guidance, iPhone XR sales had to grow at an unprecedented rate, *i.e.*, faster than any other iPhone in history; and (vi) Apple had no experience predicting demand for a product like the iPhone XR. Given this evidence, Lead Plaintiff believes there were triable issues of fact.

131. On October 20, 2022, the Parties filed oppositions to each other's motions to exclude, and, on November 17, 2022, filed their respective reply briefs. ECFs 318, 321, 331, 334.

132. On May 10, 2023, the Court heard oral argument on Defendants' motion for summary judgment. ECF 359. On June 26, 2023, the Court issued an Order denying Defendants' motion for summary judgment, rejecting Defendants' argument that the issues of falsity, scienter, and loss causation could be determined as a matter of law. ECF 369. The Court concluded that Lead Plaintiff had produced sufficient facts, *inter alia*, for a jury to find: falsity, because Defendants had not disclosed that Apple was seeing reductions in demand for iPhones in China; scienter, because Defendants knew that weak demand and related iPhone production cuts were

then-existing facts; and loss causation, because that weak iPhone demand caused harm to investors. *Id.* at 6-9.

133. On July 17, 2023, the Court issued an Order on the motions to exclude granting three of Lead Plaintiff's motions to exclude in part, and denying all of Defendants' motions. ECF 384. In granting Lead Plaintiff's motions, the Court concluded that Dr. Yang had impermissibly mischaracterized Lead Plaintiff's claims, and had opined on ultimate issues, specifically that the allegedly false statement was "accurate," and excluded those opinions. *Id.* at 6. The Court also agreed that "parts of [Mr. Gauna's] opinions impermissibly opine on what the law requires [in particular, what Defendants were required to disclose], are outside Gauna's experience, and further, do so in a vague manner likely to confuse or mislead a jury," and excluded such opinions and testimony. *Id*. at 9-10. The Court also excluded portions of Dr. Grenadier's opinions concluding that Lead Plaintiff could not prove damages for a theory of fraud Lead Plaintiff had not in fact alleged (*i.e.*, that purportedly Lead Plaintiff's theory was that Cook had constructively signaled to the market that Apple "'was not facing any "pressure" in China'"). *Id.* at 16.

L. Lead Plaintiff and Lead Counsel's Trial Preparation

134. On December 22, 2020, the Court issued a Case Management Order (ECF 128), setting case management deadlines through the last day for any party to file summary judgment or *Daubert* motions. While the Case Management Order did not set a trial date, Lead Plaintiff and Lead Counsel, as detailed above and below, had always been preparting the case for the eventual jury trial.

135. On July 28, 2023, the Court set a trial date of May 6, 2024, and related pre-trial deadlines, including the exchange of witness lists, exhibit lists, deposition designations, motions *in limine*, and the preparation of the pre-trial binder consistent with the Court's specifications. ECF 392. Lead Plaintiff complied with Court-set September 29, 2023 deadline to exchange preliminary exhibit and witness lists, as well as deposition designations, and the October 27, 2023 deadline to exchange motions *in limine* and cross-designations of deposition testimony. On November 2, 2023, the Court modified the pre-trial deadlines, some of which had already passed.

ECF 414. On February 27, 2024, trial was rescheduled for September 9, 2024, and the pre-trial deadlines were rescheduled as well. ECF 420.

136. The preparation of trial exhibit lists was a complicated and time-intensive task. Lead Plaintiff identified key trial exhibits from the hundreds of thousands of documents produced in this Litigation, assessed their likelihood of admissibility, and identified particular versions of certain documents with the requisite metadata necessary to assist in an effective cross-examination of witnesses. In all, Lead Counsel identified and reviewed tens of thousands of potential trial exhibits and eventually designated over 600 preliminary trial exhibits likely to support plaintiffs' case. Lead Counsel also reviewed and narrowed thousands of potential documents before identifying what Lead Plaintiff and its experts intended to use as support for demonstrative Fed. R. Evid. 1006 summaries at trial.

137. In addition to analyzing and preparing the exhibit list for Lead Plaintiff's case-in-chief, Lead Counsel analyzed 750 trial exhibits designated by Defendants, making evidentiary objections as appropriate and making counter-designations of documents as necessary.

138. Lead Counsel also prepared its expected witness list and deposition designations from videotaped depositions to be presented at trial, ultimately designating testimony from nine depositions of seven witnesses for the trial of this case. In addition, Lead Plaintiff reviewed Defendants' deposition designations, identified counter-designations, and objected, as necessary.

139. Lead Plaintiff also reviewed Defendants' written discovery and designated portions of nine requests for admission and interrogatory responses for use at trial.

140. Lead Plaintiff also drafted five motions *in limine* which were exchanged with Defendants. Lead Plaintiff's motions concerned: (i) excluding Defendants' characterization of the alleged false statement as concerning either foreign exchange or other topics; (ii) finding waiver of the attorney-client privilege with respect to Apple's share repurchase program as it formed part of Apple's affirmative defense; (iii) excluding evidence related to stock events outside the Class Period; (iv) excluding evidence related to Lead Plaintiff's trading activity; and (v) excluding Defendants' purported defense that the challenged statement was not misleading in context

because Defendants' financial guidance was "accurate." At the time of Settlement, the Parties had exchanged but not yet filed their motions *in limine*, and they remained open issues impacting trial.

141. Defendants' five motions concerned: (i) the requested exclusion of an Apple executive's sale of $5 million in Apple stock in response to news that Apple slashed iPhone production in China; (ii) statements made by the Defendants about iPhone demand during the same November 1, 2018 earnings call as the alleged false and misleading statement, as well as later in the Class Period about iPhone demand; (iii) "editorial" articles about iPhone demand; (iv) testimony about "editorial" articles; and (v) Defendants' wealth and resources.

142. Substantial efforts were also made researching trial procedures, drafting jury instructions, addressing trial protocol, contesting evidentiary disputes (including objections to exhibit lists and deposition designations), preparing demonstratives, and developing strategic presentation of expert testimony. This process also involved extensive work with trial consultants, including conducting a mock trial. Many of these issues remained uncertain at the time of settlement.

III. THE SETTLEMENT

Lead Counsel believes that the Settlement is fair, reasonable, and adequate. Indeed, Lead Counsel believes the $490 million cash settlement is an excellent result for Class members, considering the risk of a delayed recovery at trial (due to the inevitable post-trial and appellate proceedings), or worse yet, recovering nothing at all.

1. The Strengths and Weaknesses of the Case Favor Settlement

143. Based on more than four years of litigation, including voluminous document discovery, testimony from 18 fact and expert depositions, extensive motion practice involving detailed analyses of the factual and legal issues underlying the Litigation at class certification, summary judgment, and *Daubert* motions, as well as extensive trial preparation, Lead Plaintiff and Lead Counsel had a thorough understanding of the issues and risks present in this case. While Lead Plaintiff developed substantial evidence to support a jury verdict in favor of the Class, it recognizes that there remained considerable risks and uncertainties were the case to have

proceeded to trial and judgment. Lead Plaintiff, in consultation with Lead Counsel, carefully considered these risks throughout the Litigation and in deciding to settle this matter.

144. At the time the Settlement was reached, Lead Plaintiff developed significant evidence supporting its allegations, including, but not limited to, the evidence Lead Plaintiff relied on to defeat Defendants' motion for summary judgment. This evidence included documents and testimony tending to show the effect of slowing economic growth in China and intense competition on demand for iPhones in China prior to, and at the time of, the alleged misrepresentations.

145. However, there were also numerous issues critical to Lead Plaintiff's ability to obtain a verdict in the Class' favor at trial and recover any judgment that remained outstanding, including motions *in limine* and evidentiary objections that would determine the extent of the evidence that could be presented at trial.

146. Defendants were poised to challenge not only the admissibility of a significant quantity of the evidence Lead Plaintiff intended to rely on at trial, but also were prepared to move to exclude a number of statements Defendants made about demand for iPhones in China, as well as any reports or statements by financial analysts that were not made within a handful of days of the challenged statement. If Defendants prevailed on these issues, Lead Plaintiff would have a sharply limited ability to effectively present the facts and Lead Plaintiff's theory of the case. Further, even if the Court overruled Defendants' objections, Lead Plaintiff would have to rely on Apple employees and former employees to authenticate and admit the majority of its evidence, and these individuals were likely to be hostile to plaintiffs. And Lead Plaintiff faced the risk that jurors would not credit the testimony of Lead Plaintiff's experts, or would unduly credit the testimony of Defendants' six experts, an example of a risk materially affecting the strength of the evidence actually admitted and presented to the jury.

a. Risks Relating to Proving Material Misrepresentations and Omissions

147. Lead Plaintiff faced significant risks in proving falsity to a jury, including because Defendants were prepared to present evidence that: (i) the Company's November 1, 2018 report of disappointing, but purportedly "accurate," financial guidance incorporated negative data

concerning China, rendering the challenged statement neither materially false nor misleading; (ii) the challenged statement actually concerned foreign exchange rates and not current conditions in China, and thus did not mislead investors concerning weak iPhone demand in China; (iii) the challenged statement was historical and accurately reported Apple's results from the prior fiscal quarter, and thus did not mislead investors concerning current weak iPhone demand in China; (iv) the challenged statement was not false because weak demand in China did not materialize until weeks or more after the challenged statement; and (v) even if weak demand in China had already materialized, the challenged statement was not misleading because Apple could still succeed in meeting its guidance and sales targets, such as through marketing efforts.

b. Risks Relating to Proving Scienter

148. In addition to the challenges to proving material falsity, Lead Plaintiff also faced significant risks in proving that Apple and Cook had the requisite state of mind, *i.e.*, the intent to deceive investors. Indeed, Apple and Cook are well-known and respected in the community in which this case would be tried. Cook has a reputation for being an effective leader with a persuasive public persona and was expected to testify: (i) that he did not intend to deceive investors, or even to speak about the current status of iPhone demand in China; (ii) with his comments on November 1, 2018, he intended to inform investors of all material facts about demand for iPhones in China and did so by incorporating the negative information about the region into the Company's 1Q19 guidance; and (iii) that even if he knew about weak iPhone demand, and did not effectively disclose it, he was otherwise not deliberately reckless, or did not have actual knowledge as to the misleading nature of the statement.

c. Risks Relating to Proving Loss Causation

149. Lead Plaintiff further faced significant risks in proving loss causation and establishing the Class' entitlement to some or all of the damages to a jury. Despite strong evidence, including expert testimony supporting Lead Plaintiff's claims, Defendants were prepared to put on evidence also supported by expert testimony that: (i) investors' losses were caused, in whole or in part, by the disappointing preannounced earnings miss, not any misstatements concerning iPhone

demand or conditions in China made on November 1, 2018; (ii) investors' losses were caused, in whole or in part, by other issues, such as "Batterygate"; (iii) damages would have to be reduced for November 5 and 12, 2018, or not be awarded at all, because the declines in Apple's stock price resulted from information concerning poor iPhone XR sales globally and provided no information specific to demand in Greater China; or (iv) damages would have to be reduced or eliminated because the stock price decline on January 2, 2019, was attributable to events occurring after the November 1, 2018 alleged false statement and thus were not recoverable, or that the market already knew of poor demand in China for iPhones, such that any stock price declines were unrelated to the matters Lead Plaintiff alleged to have been concealed.

d. Trial, Post-Trial, and Appellate Risks

150. Because of the risks set forth above, the jury might not be convinced by the evidence presented in support of Lead Plaintiff's complex financial fraud allegations. *See, e.g.*, *In re JDS Uniphase Corp. Sec. Litig.*, No. 02-cv-01486, Corrected Final Judgment (N.D. Cal. Mar. 28, 2008) (ECF 1422) (case dismissed and judgment entered in favor of defendants after jury trial rejecting plaintiffs' federal securities laws violations). Such a risk materialized more recently, in *In re Tesla, Inc. Sec. Litig.*, No. 18-cv-04865 (N.D. Cal. 2018), a securities class action brought under the Exchange Act in the United States District Court for the Northern District of California. In that case, which was litigated for four years, plaintiff filed an offensive motion for summary judgment and the court ruled in its favor, concluding as a matter of law that the alleged misrepresentation at issue was false and defendant Elon Musk ("Musk") recklessly made the statement. *In re Tesla, Inc. Sec. Litig.*, 2022 WL 1497559, at *17-*18 (N.D. Cal. Apr. 1, 2022). Notably, Musk had recently entered into a settlement agreement with the SEC arising from the same alleged false statements. At trial, however, after lengthy examination and cross-examination of Musk, the jury found Tesla and Musk not liable for securities fraud, and after over four years of litigation, plaintiff got no recovery at all. The case is now pending in the United States Court of Appeal for the Ninth Circuit.

151. There was also the risk that if plaintiffs prevailed at trial, Defendants would appeal the verdict. An appeal could take years and also create the risk of reversal, in which case the Class would receive nothing even after having prevailed on the claims at trial. In *Jaffe v. Household Int'l, Inc.*, No. 1:02-cv-05893 (N.D. Ill. 2002), a securities class action filed in 2002, plaintiffs won a verdict after trial in 2009. After post-trial proceedings, the district court entered a $2.4 billion judgment in 2013. Defendants appealed to the United States Court of Appeals for the Seventh Circuit arguing, among other things, that plaintiffs' proof of loss causation at trial was insufficient to support the jury verdict. Six years after the jury verdict and 13 years after the case was initially filed, the Seventh Circuit vacated the judgment, finding that plaintiffs' expert on loss causation failed to account for firm-specific non-fraud factors that may have influenced the company's stock price and reversed, granting defendants a new trial primarily on the issue of loss causation. *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 423 (7th Cir. 2015).

152. Having considered the foregoing, it was the informed judgment of Lead Plaintiff and Lead Counsel, based upon all proceedings to date and their extensive experience in litigating shareholder class actions, that the proposed Settlement of this matter for $490 million in exchange for a mutual release of all claims, and including the other terms set forth in the Stipulation, provides fair, reasonable, and adequate consideration, and is in the best interests of the Class.

153. In summary, while Lead Plaintiff developed strong evidence, including expert opinion, it faced both factual and legal challenges in presenting this matter to a jury and potentially on appeal. These strengths and weaknesses of the case along with the trial, post-trial, and appellate risks were carefully considered by Lead Counsel and Lead Plaintiff as they engaged in extensive settlement negotiations with Defendants and Judge Phillips and reached an initial agreement to settle the Litigation.

B. The Plan of Allocation Is Fair and Reasonable[7]

154. Upon entry of a judgment, and satisfaction of the other conditions to the Settlement, the Settlement Fund will cover certain administrative expenses, including the cost of providing notice to the Class; the cost of publishing notice; payment of taxes assessed against the Settlement Fund; costs associated with the processing of claims submitted; and Lead Counsel's approved fees and expenses, and any PSLRA award to Lead Plaintiff. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed to Class members who submit valid and timely Proofs of Claim.

155. As detailed in the Notice, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class members who submit timely and valid Proofs of Claim. Lead Plaintiff, with the assistance of its damages expert, developed the Plan of Allocation. As explained in the Notice, the Plan of Allocation apportions the recovery among eligible Class members based on the timing of purchases and sales of Apple securities.

156. In accordance with the Plan of Allocation, the Claims Administrator shall determine each Class member's share of the Net Settlement Fund based upon the recognized loss formula (the "Recognized Loss"). A Recognized Loss will be calculated for each share of Apple common stock purchased or otherwise acquired during the Class Period, for each call option purchased on Apple common stock, and each put option sold on Apple common stock during the Class Period. The Recognized Loss is not intended to estimate the amount a Class member might have been able to recover after a trial, nor to estimate the amount that will be paid to a Class member pursuant to the Settlement. The Recognized Loss is the basis upon which the Net Settlement Fund will be proportionately and equitably allocated to Class members.

[7] The summary of the Plan of Allocation provided herein is intended only to explain the basis on which the plan was developed in order to assist the Court in evaluating the fairness, reasonableness, and adequacy of the proposed Settlement. Nothing set forth herein is intended to, or does, modify or affect the interpretation of the Plan of Allocation, which is set forth in full in the Notice and will be applied by the settlement administrator according to its express terms.

157. In sum, the Plan of Allocation represents a method to fairly and equitably weigh the claims of claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

158. As of the date of this Declaration, no written objections have been filed by any Class member to the Plan of Allocation.

C. Lead Counsel's Application for Attorneys' Fees and Expenses Is Reasonable

159. Based on the extensive efforts on behalf of the Class, as described above, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and has requested a fee in the amount of 25% of the Settlement Fund, plus payment of Lead Counsel's costs, charges, and expenses incurred in connection with this Litigation of $2,343,472.76, plus interest thereon.[8] In addition, Lead Plaintiff requests an award of $29,946.40 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class.

160. In light of the nature and extent of the Litigation, the diligent prosecution of the action over four years from commencement to the brink of trial, the complexity of the factual and legal issues presented, and the other factors described above and in the accompanying motion for approval of the fee award, Lead Counsel believes that the requested fee of 25% of the Settlement Fund is fair and reasonable in light of the effort required and the excellent results obtained resulting in the third largest securities class action recovered in the Northern District of California.

161. A 25% fee award is also consistent with percentages routinely awarded by courts in this District, *see, e.g.*, *In re Lyft Inc. Sec. Litig.*, 2023 WL 5068504, at *11-*13 (N.D. Cal. Aug. 7, 2023) (collecting cases and approving 25% fee award). *See also* Motion for an Award of Attorneys' Fees and Expenses, and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4), §V (filed concurrently herewith). The request is also justified by the specific facts and circumstances in this case and the substantial risks that Lead Plaintiff had to overcome at the

[8] Prior lead counsel, Labaton Keller Sucharow LLP, also seeks payment of expenses of $307,992.77. *See* Declaration of Christine M. Fox Filed on Behalf of Labaton Keller Sucharow LLP in Support of Lead Counsel's Application for an Award of Attorneys' Fees and Labaton Keller Sucharow's Expenses.

pleadings, class certification, fact and expert discovery, and summary judgment phases of the Litigation, and to prepare to prevail at trial, as set forth herein.

1. The Requested Fee Is Supported by Lead Plaintiff

162. This Litigation could not have been successfully prosecuted without the substantial participation of the Lead Plaintiff, Norfolk, who actively participated in the Litigation, attended Court and mediation hearings, as well as consulted with Lead Counsel throughout the course of the Litigation and settlement negotiations. Lead Plaintiff also expended substantial time and effort reviewing briefs and orders of the Court, answering discovery requests, producing documents, sitting for deposition, and preparing a declaration in support of class certification. *See* Declaration of Alexander Younger ("Younger Declaration"), submitted herewith. As a result, Lead Plaintiff developed a detailed understanding of the strengths and weaknesses of this case, the risks of continued litigation, and the nature and extent of Lead Counsel's efforts on behalf of the Class.

163. As reflected in the accompanying Younger Declaration, Lead Plaintiff negotiated the attorney's fee prior to the June 17, 2019 filing of its motion for appointment of lead plaintiff. Norfolk believes the requested fee is fair and reasonable in light of the result achieved, and supports award of Lead Counsel's requested fee. Younger Declaration, ¶¶6-7.

D. The Requested Fee Is Supported by the Effort Expended and Results Achieved

164. As set forth herein, the $490 million cash settlement was achieved as a result of extensive and creative prosecutorial and investigative efforts, contentious and complicated motion practice, years of hard-fought discovery, analysis of voluminous evidence, and ultimately, preparation for trial, as detailed herein.

165. As discussed in greater detail above, this case was fraught with significant risks concerning liability and damages. Lead Plaintiff's success was far from a certainty. Defendants disputed whether the alleged false statements were even actionable, disputed that investors were misled, and sought to attribute any harm suffered to non-fraud factors. Were this Settlement not achieved, and even if plaintiffs prevailed at trial, it and the Class potentially faced years of costly

and risky appellate litigation against Defendants, who have unlimited resources. It is also possible that a jury could have found no liability or no damages.

166. The proposed Settlement Amount, $490 million, represents approximately 20% of the estimated maximum damages that Lead Plaintiff could reasonably expect to be recovered at trial. If the jury were to reject some of Lead Plaintiff's allegations of fraud for reasons described above, the amount of damages recovered would have been significantly less, and the percentage recovery under the Settlement proportionally higher, than stated above. Of course, with only one alleged misrepresentation forming the basis of Lead Plaintiff's case at trial, if the jury were to reject some of Lead Plaintiff's allegations of fraud, there was a very real possibility that such rejection would be fatal to the entirety of Lead Plaintiff's claims.

167. As a result of this Settlement, thousands of Class members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement. These risk factors also support Lead Counsel's request for a benchmark 25% fee.

168. Lead Counsel is among the most experienced and skilled securities litigation law firms in the field. The expertise and experience of its partners are described in Exhibit H to the Robbins Geller Declaration. Robbins Geller has served as lead counsel in scores of class actions throughout the United States and in some of the most significant federal securities class actions, recovering billions for defrauded investors including *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (recovering in excess of $7.2 billion for investors); *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc., et al.*, No. 02-C-05893 (N.D. Ill. 2002) (largest securities class action settlement following a trial: $1.575 billion); *In re Am. Realty Cap. Props., Inc.*, No. 15-cv-00040 (S.D.N.Y. 2015) (recovering $1.025 billion for investors); *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J. 2015) (recovering $1.21 billion); *In re Twitter Inc. Sec. Litig.*, No. 4:16-cv-05314-JST (N.D. Cal. 2016) (recovering over $809 million); *In re UnitedHealth Grp., Inc. PSLRA Litig.*, No. 06-cv-1691 (D. Minn. 2006) (recovering over $925 million); *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio 2004) (recovering $600 million for investors);

In re HealthSouthCorp. Sec. Litig., No. cv-03-BE-1500-S (N.D. Ala. 2003) (representing Central States Group and others and obtaining a combined recovery of $671 million).

169. Furthermore, the recovery in this case was not without formidable well-accomplished adversaries as Defendants were represented by Orrick, Herrington & Sutcliffe LLP and Paul, Weiss, Rifkin, Wharton & Garrison LLP. Despite Defendants' zealous representation on every aspect of the Litigation, Lead Counsel secured the $490,000,000 settlement even as the Parties prepared for trial.

170. This action was prosecuted by Lead Counsel on an "at-risk" contingent fee basis. Lead Counsel committed 32,659 hours of attorney and paraprofessional time and incurred $2,343,472.76 in expenses in the prosecution of the Litigation, as set forth in the accompanying Robbins Geller Declaration. Lead Counsel fully assumed the risk of an unsuccessful result and has received no compensation for its services during the course of this Litigation and has incurred very significant expenses in litigating for the benefit of the Class. Any fees or expenses awarded have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result, and that such a result would be realized only after a lengthy and difficult effort. Lead Counsel is justly entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained. Under all the circumstances present here, a 25% fee plus expenses is fair and reasonable.

IV. MISCELLANEOUS EXHIBITS

171. Attached as Exhibit A hereto is the Declaration of Alexander Younger in Support of: (a) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (b) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to Class Representative Pursuant to 15 U.S.C. §78u-4(a)(4).

172. Attached as Exhibit B hereto is the Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date.

173. Attached as Exhibit C hereto is a true and correct copy of Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2023 Review and Analysis* (Cornerstone Research 2024).

174. Attached as Exhibit D hereto is a true and correct copy of Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full Year Review* (NERA Jan. 23, 2024).

175. Attached as Exhibit E hereto is a true and correct copy of The Top 100 U.S. Class Action Settlements of All Time (as of December 31, 2023) (ISS Sec. Class Action Servs. 2024).

V. CONCLUSION

176. Lead Plaintiff and Lead Counsel obtained an outstanding result for the Class. For all the foregoing reasons, Lead Counsel respectfully requests the Court approve the Settlement and Plan of Allocation, the fee and expense application, and award Lead Counsel 25% of the Settlement Fund plus $2,343,472.76 in expenses, plus the interest earned on both amounts at the same rate and for the same period as that earned on the Settlement Fund until paid, and award Norfolk $29,946.40 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of July, 2024, in the State of California.

s/ Shawn A. Williams
SHAWN A. WILLIAMS