

## Northern District of California: Lack of Allegations Regarding Motive Do Not Defeat an Inference of Scienter

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On November 4, 2020, the Northern District of California denied in part a motion to dismiss securities fraud claims against Apple Inc. and certain of its executives determining that scienter was sufficiently alleged with respect to a statement by Apple CEO Tim Cook on Apple's business outlook in China. *In re Apple Inc. Sec. Litig.*, 2020 WL 6482014 (N.D. Cal. 2020) (Rogers, J.). The court found that plaintiff's lack of allegations regarding motive do not defeat an inference of scienter under a holistic analysis at the motion to dismiss stage.

### **Background**

On November 1, 2018, Apple held a conference call with analysts and investors. In response to a question about emerging markets, Cook discussed "[t]he emerging markets that we're seeing pressure in are markets like Turkey, India, Brazil, Russia, these are markets where currencies have weakened over the recent period." Cook went on to state that "[i]n relation to China specifically, I would not put China in that category." On January 2, 2019, Cook sent a letter to investors announcing that "Apple will miss its earnings guidance by up to \$9 billion." The letter noted that "China's economy began to slow in the second half of 2018" and "[t]his economic deceleration accounted for most of our revenue shortfall." Apple's stock price subsequently declined from \$157.92 to \$142.19 per share. Plaintiff alleged that Cook's statement (that he would not put China in the category of decelerating emerging markets) was false or misleading in light of his later admissions that Apple's China business was experiencing pressure at the time. Defendants argued that plaintiff's scienter allegations were insufficient as a matter of law.

### **The Court Must Examine Competing Inferences to Determine Scienter**

Discussing the standard for pleading scienter under the Private Securities Litigation Reform Act, the court explained that "courts must engage in comparative evaluation by considering not only inferences urged by the plaintiff but also competing inferences rationally drawn from the facts alleged." The court continued that "[t]hus, an inference of scienter is only strong if it is cogent and at least as compelling as any opposing inference of non-fraudulent intent." The court stated that "[i]n making this evaluation, the court accepts all factual allegations in the complaint as true, considers the allegations holistically, and takes into account plausible opposing inferences." Further, the court stated that "[i]n the Ninth Circuit, scienter covers not only intent to deceive, manipulate, or defraud, but also deliberate recklessness."

***A Lack of Allegations Regarding Motive Do Not Defeat an Inference of Scienter Under a Holistic Analysis***

Examining the competing inferences, the court stated that “[d]efendants argue that plaintiff’s theory of fraud does not make sense because defendants did not profit from the alleged fraud but, on the contrary, engaged in a \$1 billion stock repurchase at supposedly inflated prices.” Defendants compared the current case to *Nguyen v. Endologix, Inc.*, 962 F.3d 405 (9th Cir. 2020), “where the Ninth Circuit rejected a theory of fraud that it found does not make a whole lot of sense.” In *Nguyen*, the court dismissed the allegations, “that defendant knew that the FDA would not approve the device based on the same intractable issues that prevented approval in Europe, but misrepresented the state of affairs[,]” as implausible. The *Nguyen* court found that “the scienter allegation does not resonate in common experience because it depends on the supposition that defendants would rather keep the stock price high for a time and then face the inevitable fallout once the unsolvable problem was revealed.” In this case, the court noted “that *Nguyen* presents an unusual case because both the Supreme Court and the Ninth Circuit have found scienter on fairly similar allegations.” Discussing the applicable precedent on the issue of scienter, the court stated that “[n]one of these cases involved an obvious motive for fraud. On the contrary, these courts expressly held that allegations of motive are *not* required.” The court stated that it “does not interpret *Nguyen* to require a specific theory of defendants’ motives at the pleading stage.” Instead, the court considered *Nguyen* on its facts. The court explained that “[w]ithout stronger allegations of contemporaneous facts contradicting defendants’ statements, the more plausible inference was that defendants made promising statements about the timing of FDA approval based on the initial results of the U.S. clinical trial, but then modulated their optimism when the results began to raise questions.” The court here pointed out that “[t]hus, while lack of obvious motive presented a challenge, the deeper concern stemmed from lack of data of contemporaneous falsity.” The court thus found “that plaintiff’s lack of allegations regarding motive do not defeat an inference of scienter under a holistic analysis.” The court acknowledged that “while several courts in this District have found stock buy-backs to undermine scienter, the Court does not find that dispositive.” The court explained that “cursory background knowledge suggests that [stock buy-backs] enrich shareholders, such as Cook and Maestri, in a way that is entirely consistent with scienter.”

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