UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IN RE THE HONEST COMPANY SECURITIES LITIGATION	2:21-cv-07405-MCS-PLA **ORDER RE: MOTION FOR CLASS CERTIFICATION (ECF No. 113)**

Lead Plaintiff Kathie Ng moves for an order granting class certification, appointing Lead Plaintiff as class representative, and appointing Labaton Sucharow LLP as class counsel. (Mot., ECF No. 113.) Defendants The Honest Company, Inc. ("Honest"), Katie Bayne, Scott Dahnke, Kelly Kennedy, Eric Liaw, Jeremy Liew, Avik Pramanik, Nikolaos Vlahos, and Jessica Warren (collectively, the "Honest Company Defendants") filed an opposition. (Opp'n, ECF No. 115.) Defendants Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC, Jefferies LLC, BofA Securities, Inc., Citigroup Global Markets, Inc., William Blair & Company, L.L.C., Guggenheim Securities, LLC, Telsey Advisory Group LLC, C.L. King & Associates, Inc., Loop Capital Markets LLC, Penserra Securities LLC, and Samuel A. Ramirez & Company, Inc. (collectively, the "Underwriter Defendants") joined the Honest Company Defendants' opposition. (Joinder, ECF No. 116.) Lead Plaintiff filed a reply. (Reply, ECF No. 117.) The Court heard oral argument on April 17, 2023.

I. BACKGROUND

The Court set forth a detailed account of the factual allegations in this action in its prior order regarding the Honest Company Defendants' motion to dismiss. (Order Re: Motion to Dismiss 2–3, ECF No. 71.) In short, Lead Plaintiff seeks to represent a class consisting of purchasers of Honest's common stock who she claims were damaged by Defendants' misrepresentations and omissions made as part of Honest's initial public offering ("IPO"). Lead Plaintiff brings two causes of action: 1) violation of Section 11 of the Securities Act, 15 U.S.C. § 77k (Consol. Compl. ¶¶ 130–41, ECF No. 59), and 2) violation of Section 15 of the Securities Act, 15 U.S.C. § 77o, (*Id.* ¶¶ 142–47).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 23 requires a party seeking class certification to "affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This requires a district court to conduct a "rigorous analysis" that will frequently "entail some overlap with the merits of the plaintiff's underlying claim." *Id*. at 351 (internal quotation marks omitted). A plaintiff must demonstrate that the four requirements of Rule 23(a) are met: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. These requirements effectively "limit the class claims to those fairly encompassed by the named plaintiff's claims," and "ensure[] that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." *Dukes*, 564 U.S. at 349 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982)). The party also must prove the class meets one of the three alternative provisions in Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013).

Where, as here, the plaintiff seeks certification under Rule 23(b)(3), the plaintiff must show "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed.

R. Civ. P. 23(b)(3). In evaluating predominance and superiority, courts consider four factors: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id*.

III. ANALYSIS

A. Rule 23 Requirements

1. Numerosity – Fed. R. Civ. P. 23(a)(1)

Rule 23(a)(1) requires a class to "be so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Courts routinely find this requirement satisfied for classes that have 40 or more members. *Astorga v. County of Los Angeles*, No. CV 20-9805-AB (AGRx), 2021 U.S. Dist. LEXIS 78138, at *7 (C.D. Cal. Mar. 17, 2021). "[I]t is not necessary to state the exact number of class members when the plaintiff's allegations 'plainly suffice' to meet the numerosity requirement." *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009).

Lead Plaintiff acknowledges "the exact number of persons and entities that purchased or otherwise acquired Honest common stock shares pursuant and/or traceable to the Offering Documents cannot be determined without further discovery." (Mot. 9.) Lead Plaintiff also alleges that "there are at least thousands of members in the proposed Class as [Honest] offered over 25 million shares of common stock in the IPO." (Consol. Compl. ¶ 125.) "In this case, the Court can reasonably infer that the numerosity standard is met" considering "[c]ourts have regularly found numerosity based on similar allegations." *In re China Intelligent Lighting & Elecs., Inc. Sec. Litig.*, No. CV 11-2768 PSG (SSx), 2013 WL 5789237, at *4 (C.D. Cal. Oct. 25, 2013) (collecting cases). "Further, because this is a securities action involving a publicly-traded stock, it is highly likely that the members of the Class are geographically diverse, making joinder impractical." *Id.*

Defendants do not address or object to Lead Plaintiff's argument that the numerosity requirement is satisfied. Accordingly, the Court deems the argument conceded. *See, e.g.*, *John-Charles v. California*, 646 F.3d 1243, 1247 n.4 (9th Cir. 2011) (deeming issue waived where party "failed to develop any argument"); *City of Arcadia v. EPA*, 265 F. Supp. 2d 1142, 1154 n.16 (N.D. Cal. 2003) ("[T]he implication of this lack of response is that any opposition to this argument is waived.").

As a result, the numerosity requirement of Rule 23(a)(1) is satisfied.

2. Commonality and Predominance – Fed. R. Civ. P. 23(a)(2), (b)(3)

"Because the Rule 23(b)(3) predominance inquiry subsumes the Rule 23(a)(2) commonality inquiry, and for the sake of efficiency, a court may analyze commonality and predominance together in the context of each proposed class and subclass." *Wilson v. Pactiv LLC*, No. 5:20-cv-01691-SB-KK, 2021 WL 5818492, at *6 (C.D. Cal. Dec. 3, 2021) (cleaned up). Rule 23(a)(2) requires a plaintiff to demonstrate the presence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This "requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 350 (internal quotation marks omitted). Claims arising from this injury "must depend upon a common contention," which "must be of such a nature that it is capable of classwide resolution." *Id*. Stated differently, the "determination of [the common question's] truth or falsity [must] resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. As a result, certification under Rule 23(a)(2) does not turn upon "the raising of common 'questions'—even in droves—but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Id*. (internal quotation marks omitted).

To qualify for certification under Rule 23(b)(3), a plaintiff must show that common questions "*predominate* over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3) (emphasis added). The predominance requirement of Rule 23(b)(3) overlaps with Rule 23(a)(2)'s commonality requirement but "is even more demanding." *Comcast*, 569 U.S. at 34. "The Rule 23(b)(3) predominance inquiry

tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "Implicit in" this requirement "is the notion that the adjudication of common issues will help achieve judicial economy." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (internal quotation marks omitted).

Lead Plaintiff argues "the Complaint and Defendants' asserted defenses raise several important questions applicable to all Class members," such as

> 1. Do the Offering Documents contain any misrepresentations or omissions?
> 2. Were those misstatements and omissions material?
> 3. Did the Defendants violate the Securities Act?
> 4. Can Defendants establish a class-wide defense of negative causation?
> 5. Did the Underwriter Defendants perform adequate due diligence prior to the IPO?
> 6. Are the Individual Defendants control persons of Honest?

(Mot. 11.) Unlike other causes of action brought under federal securities laws, class members will not need to provide individualized proof of reliance to sustain a Section 11 claim. *Hildes v. Arthur Andersen LLP*, 734 F.3d 854, 859 (9th Cir. 2013). Similarly, individualized proof of loss causation is not required for class certification. *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 812 (2011). It appears, then, that "a classwide proceeding" could "generate common answers" to these questions "apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350 (internal quotation marks omitted).

Defendants do not dispute this conclusion to the extent the class is "limited, at minimum, to shareholders who purchased Honest's stock prior to August 19, 2021, the date on which nonregistered, non-IPO shares transferred pursuant to an early lock-up release first became 'commingled' with registered IPO shares, making the required

'tracing' of title back to the disputed offering impossible." (Opp'n 1.) The Court shares Defendants' concerns and, for the reasons outlined below, concludes that Lead Plaintiff's proposed class definition must be modified to satisfy the commonality and predominance requirements of Rule 23.

In relevant part, Lead Plaintiff's proposed class definition includes "[a]ll persons and entities that purchased or otherwise acquired Honest's publicly traded common stock pursuant and/or traceable to the Offering Documents for Honest's IPO, and who were damaged thereby." (Mot. 1.) While tracing the origin of any specific share to the IPO would seem like a simple task, in many cases the realities of modern securities trading have rendered this virtually impossible. Under the modern regime, stocks are generally deposited with the Depository Trust Company ("DTC"), "a registered clearing agency" and "the nation's principal securities depository." *Perrin v. Sw. Water Co.*, No. CV 08-7844 DMG (AGRx), 2014 WL 10979865, at *2 (C.D. Cal. July 2, 2014) (internal quotation marks omitted). Once a stock is deposited with DTC, it is "registered by a company in 'street name'—that is, the name of DTC's nominee, Cede & Co." *Id.* As a result, "Cede & Co., and not the shares' beneficial owner, appears on the issuer's stock records as the registered owner of the shares." *Id.* (footnote omitted). Stated differently, all shares deposited with DTC are registered under the same "street name" rather than in the name of the "beneficial owners," or the actual "investors who paid for, and have the right to vote and dispose of, the shares." *Id.* at *2 & n.3 (internal quotation marks omitted). While this system may seem odd at first blush, it "allow[s] changes in beneficial ownership to be effected through automated book entries rather than through the physical transfer of securities certificates." *Id.* at *2.

To further complicate matters, "DTC holds deposited securities in 'fungible bulk,' such that its participants do not own specifically identifiable shares." *Id.* Instead, beneficial owners "own a pro rata interest in the aggregate number of shares of a particular issuer held at DTC." *Id.* (internal quotation marks omitted). As a result, once shares that did not originate from an IPO are commingled with IPO shares, it is

effectively impossible to determine the origin of any individual stock. *See In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107 (9th Cir. 2013).

This process presents a significant issue in this case because there are two distinct "groups" of shares: 1) shares issued and registered pursuant to the IPO, and 2) shares issued *prior* to the IPO pursuant to so-called "lock-up" agreements with the underwriters. (Opp'n 11–12.) To have statutory standing to bring a Section 11 claim, a plaintiff must be able to trace its shares to an IPO. *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d at 1109. As a result, shares issued pursuant to the "lock-up" agreements would not give their beneficial owners standing to bring a claim under Section 11.

There is no dispute that shares purchased before August 19, 2021, are traceable to the IPO because from the date of the IPO to "August 19, 2021, the only Honest shares in the public market were those issued and registered pursuant to the IPO." (Opp'n 11; *see* Reply 5.) However, on August 19, 2021, 6,740 shares of Honest common stock "issued prior to the IPO and never registered under the operative registration statement" were "commingled with all the other Honest shares held in electronic 'fungible bulk' by DTC, including shares issued in the IPO." (Opp'n 12; *see id.* at 3 (citing evidence for this proposition).) Defendants contend that "[f]rom that point forward (at minimum), any shares purchased on the open market can no longer be traceable to the disputed registration statement and must, accordingly, be excluded from any proposed class." (*Id.* at 12 (footnote omitted).)

In her reply brief, Lead Plaintiff offers two principal reasons why the August 19, 2021, date should not be used to circumscribe the class definition. First, Lead Plaintiff points out that the proposed class definition already "expressly limits the Class to only those who can establish that they purchased or otherwise acquired Honest's publicly traded common stock pursuant and/or traceable to the Offering Documents for Honest's IPO." (Reply 3 (cleaned up).) As a result, Lead Plaintiff argues "there is no need or legal basis for the temporal cut-off that Defendants propose" at the class certification stage. (*Id.* at 4.) Second, Lead Plaintiff argues that at the class certification stage, courts

should analyze "traceability only in the context of whether a ***lead plaintiff*** must establish the traceability of her shares." (*Id.*) Because "Lead Plaintiff purchased her shares of Honest stock on June 18, 2021, over two and a half months before" the "lock-up" shares were commingled with the IPO shares, there is no issue as to whether her shares are traceable to the IPO. (*Id.* at 5.) At oral argument, Lead Plaintiff's counsel also noted that a class definition applying a purchase cut-off date may be underinclusive. For example, a class that only included shareholders who purchased Honest's stock prior to August 19, 2021, might inappropriately exclude shareholders who inherited a retirement account from a decedent who had purchased Honest's stock before the cut-off.

After considering the well-reasoned arguments of both sides, the Court concludes that Lead Plaintiff's proposed class definition must be modified to satisfy the predominance and commonality requirements of Rule 23. Tracing a particular share to the IPO is impossible once non-IPO shares became commingled.[1] Without a properly

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[1] The Court notes that there is a split in authority within this Circuit as to whether so-called "statistical tracing" can be used to satisfy Section 11's tracing requirement. *In re Snap Inc. Sec. Litig.*, 334 F.R.D. 209, 223 (C.D. Cal. 2019); *Doherty v. Pivotal Software, Inc.*, No. 3:19-cv-03589-CRB, 2019 WL 5864581, at *10–11 (N.D. Cal. Nov. 8, 2019). This Court shares the concern articulated in *In re Snap Inc.* that "[a]s a policy matter, barring use of statistical tracing in litigation following a major IPO would mean that waiving the lock-up period for even nominal number of pre-IPO investors would effectively inoculate a corporation against nearly all potential Section 11 liability it might face for misstatements or omissions in its registration statement." 334 F.R.D. at 224. However, the Ninth Circuit has concluded that the tracing requirement is the "the condition Congress has imposed for granting access to the relaxed liability requirements § 11 affords." *In re Century Aluminum*, 729 F.3d at 1107 (citing, inter alia, *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 497 (5th Cir. 2005)) (internal quotation marks omitted). In *Krim*, the Fifth Circuit concluded that, "[i]n limiting those who can sue to 'any person acquiring such security,' Congress specifically conferred standing on a *subset* of security owners," and allowing statistical tracing "would contravene the language and intent of Section 11." 402 F.3d at 497 (quoting 15 U.S.C. § 77k(a)). Whatever the merits of statistical tracing may be as a matter of policy, it is not for this Court to subvert the reasoned decisions of the legislative branch. Accordingly, the

cabined class definition, individual class members would be required to prove that they can trace their shares to the IPO. At oral argument, Lead Plaintiff's counsel argued that this can be accomplished during the claims process, but the ability to trace a stock to an IPO is a requirement to state a cognizable injury under Section 11. *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d at 1109. If all class members are required to provide individualized evidence that they suffered an injury, Lead Plaintiff's claims would not be "capable of classwide resolution," *Dukes*, 564 U.S. at 350, because the individualized assessments "regarding class members' injury, [would] overwhelm common ones," *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022) (internal quotation marks omitted).

The tracing issue does not have to present an insurmountable hurdle to establishing commonality and predominance here. There are no issues with tracing if Lead Plaintiff's proposed class definition is slightly modified as follows: "All persons and entities that purchased or otherwise acquired Honest's publicly traded common stock pursuant and traceable to the Offering Documents for Honest's Initial Public Offering prior to August 19, 2021, as well as all persons and entities that acquired ownership of a trading account, retirement account, or any other similar investment account or portfolio containing Honest's publicly traded common stock that was purchased or otherwise acquired pursuant and traceable to the Offering Documents for Honest's Initial Public Offering prior to August 19, 2021, and were damaged thereby." Because the tracing issue is the only impediment to satisfying the commonality and predominance requirements of Rule 23, these conditions are satisfied if the class definition is modified in this manner.

3. Typicality – Fed. R. Civ. P. 23(a)(3)

Rule 23(a)(3) requires that "the claims or defenses of the representative parties

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Court concludes that statistical tracing cannot be used to alleviate issues with predominance or commonality.

are typical of the claims or defenses of the class." "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1020 (9th Cir. 1998). "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon*, 976 F.2d at 508).

Lead Plaintiff has satisfied the typicality requirement. "Lead Plaintiff alleges that Defendants violated the Securities Act by issuing Offering Documents that misrepresented and omitted material facts. Lead Plaintiff also alleges that she," like all other members of the proposed class, "acquired Honest common stock pursuant and/or traceable to the Offering Documents." (Mot. 12 (citing Consol. Compl. ¶ 14).) As a result, Lead Plaintiff's claims "are reasonably co-extensive with those of absent class members," if not outright "identical." *Hanlon*, 150 F.3d at 1020. Additionally, Lead Plaintiff does not appear to be subject to any unique defense. *See Todd v. STAAR Surgical Co.*, No. CV-14-05263-MWF-RZ, 2017 WL 821662, at *5 (C.D. Cal. Jan. 5, 2017) ("District courts generally find that where plaintiffs have bought and sold stock for investment purposes, subject to the same information and representations as the market at large[,] those plaintiffs are typical and not subject to a unique defense." (internal quotation marks omitted)).

Defendants do not address or object to Lead Plaintiff's argument that her claims are typical under Rule 23(a)(3), and the Court again deems the argument conceded. *See, e.g.*, *John-Charles*, 646 F.3d at 1247 n.4; *City of Arcadia*, 265 F. Supp. 2d at 1154 n.16.

4. Adequacy – Fed. R. Civ. P. 23(a)(4)

Rule 23(a)(4) requires a showing that "the representative parties will fairly and

adequately protect the interests of the class." Generally, "[t]o determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis*, 657 F.3d at 985 (quoting *Hanlon*, 150 F.3d at 1020). Here, Defendants argue Lead Plaintiff is inadequate on two principal grounds: 1) she is not monitoring or directing the litigation, (Opp'n 12–15), and 2) she has not been sufficiently forthcoming, (*id*. at 15–17).

Concerning Defendants' first argument, "class action law presumes that a function of the class representative is to monitor class counsel." 1 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 3:70 (6th ed.) ("*Newberg*"). As a result, courts considering a motion for class certification should ensure a lead plaintiff is adequately capable of discharging this responsibility and is not "simply lending their name[] to a suit controlled entirely by the class attorney." *Alberghetti v. Corbis Corp*., 263 F.R.D. 571, 580 (C.D. Cal. 2010) (internal quotation marks omitted), *aff'd in relevant part*, 476 F. App'x 154 (9th Cir. 2012). A lead plaintiff may be considered an inadequate representative when she demonstrates a "striking unfamiliarity" with the case such that she is incapable of "checking the otherwise unfettered discretion of counsel in prosecuting the suit." *Welling v. Alexy (In re Cirrus Logic Secs.)*, 155 F.R.D. 654, 659 (N.D. Cal. 1994) (cleaned up). "The threshold knowledge required of the class representatives is low." *Nevarez v. Forty Niners Football Co., LLC*, 326 F.R.D. 562, 583 (N.D. Cal. 2018) (internal quotation marks omitted); *see also Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 372 (1966) (rejecting proposition that a plaintiff "who is uneducated generally and illiterate in economic matters, could never under any circumstances be a plaintiff in a derivative suit brought in the federal courts to protect her stock interests"). For this reason, "objections to adequacy based on a named representative's alleged ignorance are disfavored." *In re Facebook Biometric Info. Priv. Litig.*, 326 F.R.D. 535, 543 (N.D. Cal. 2018), *aff'd sub*

nom. Patel v. Facebook, Inc., 932 F.3d 1264 (9th Cir. 2019).

Defendants claim "the declarations submitted by Ms. Ng . . . are comprised exclusively of the kind of formulaic, boiler-plate assertions criticized by courts." (Opp'n 13 (internal quotation marks omitted).) Defendants also allege that "contrary to her claims that she has monitored the progress of this litigation and . . . regularly conferred with [her] counsel, . . . Ms. Ng testified that she is only in contact with her attorneys only once every quarter or so" and that she spent "at most an hour or two familiarizing herself with the allegations in the" Consolidated Complaint. (Opp'n 12–13 (internal quotation marks omitted) (alterations in original).)

Defendants' arguments fail to show that Lead Plaintiff lacks sufficient knowledge of the case or is "simply lending her name[] to a suit controlled entirely by the class attorney." *Alberghetti*, 263 F.R.D. at 580 (internal quotation marks omitted). As outlined in Lead Plaintiff's reply, her "deposition testimony establishes that she is familiar with this Action." (Reply 6.) Lead Plaintiff understood that this was a Securities Act case and that Defendants allegedly misled investors by failing to disclose specific facts related to the Clean Conscious Diaper and the destocking of COVID products. (*Id.* (excerpting deposition testimony).) Securities class actions are complicated, and it is not necessary for a lead plaintiff to demonstrate the legal acumen of a seasoned Wall Street attorney. *See Nevarez*, 326 F.R.D. at 583 ("A party must be familiar with the basic elements of her claim, and will be deemed inadequate only if she is startlingly unfamiliar with the case. It is not necessary that a representative be intimately familiar with every factual and legal issue in the case." (internal quotation marks omitted)). It is clear that Lead Plaintiff could articulate the basis for the suit in lay terms and understood the nature of the injury she had suffered. Lead Plaintiff has not exhibited the kind of "striking unfamiliarity" with the case that would lead the Court to believe she is incapable or unwilling to "check[] the otherwise unfettered discretion of counsel in prosecuting the suit." *Welling*, 155 F.R.D. at 659 (internal quotation marks omitted).

Defendants also attack Lead Plaintiff's adequacy by arguing she has not been sufficiently forthcoming. (Opp'n 15–17.) "Given that the proposed class representatives are performing a function on behalf of the absent class members, courts occasionally opine that they should do so with diligence and credibility." 1 *Newberg* § 3:68. The Court is cognizant that "[f]ew plaintiffs come to court with halos above their heads; fewer still escape with those halos untarnished." *Id.* (quoting *Dubin v. Miller*, 132 F.R.D. 269, 272 (D. Colo. 1990)). Consequently, the party challenging the plaintiff's credibility "must demonstrate that there exists admissible evidence *so severely undermining plaintiff's credibility* that a fact finder might reasonably focus on plaintiff's credibility, to the detriment of the absent class members' claims." *Id.* (quoting *Dubin*, 132 F.R.D. at 272) (emphasis added). In cases where courts have found integrity and credibility to be "relevant considerations," the analysis has been limited to factors "that are both directly relevant to the litigation and supported by confirmed examples of dishonesty." *Kouchi v. Am. Airlines, Inc.*, No. CV 18-7802 PSG (AGRx), 2021 WL 6104391, at *9 (C.D. Cal. Oct. 27, 2021) (internal quotation marks omitted).

Defendants have not shown Lead Plaintiff lacks sufficient credibility to serve as class representative. Defendants point to Lead Plaintiff's interrogatory responses stating she was "unaware" of any previous lawsuits or proceedings to which she was a party. (Opp'n 16.) Defendants claim that despite this response, Lead Plaintiff was involved in at least two other undisclosed lawsuits. (*Id.*) Lead Plaintiff claims she was unaware of one of the lawsuits because it was dismissed before she was ever served. (Reply 9.) The second lawsuit was "brought over 17 years ago in small claims court" and resulted "in a payment of $165." (*Id.* at 10.) Given the nature of these suits, the Court cannot conclude that Lead Plaintiff engaged in any outright deception. It is more likely that she was "unaware of, or simply did not recall, [the] prior lawsuits" when responding to Defendants' interrogatory. (*Id.* at 2.) Accordingly, nothing in her deposition or interrogatory responses "so severely undermin[es] plaintiff's credibility that a fact finder might reasonably focus on plaintiff's credibility, to the detriment of

the absent class members' claims." 1 *Newberg* § 3:68 (quoting *Dubin*, 132 F.R.D. at 272).

Defendants' arguments notwithstanding, Lead Plaintiff is an adequate class representative. Lead Plaintiff alleges that she "lost over $100,000" due to Defendants' conduct and that she is therefore "super motivated to participate in the case." (Reply 2 (internal quotation marks omitted).) Alleging such a significant loss gives rise to the strong inference that she will actively monitor class counsel's performance and hold them to account throughout this lawsuit. This inference is further supported by Lead Plaintiff's conduct to date. Lead Plaintiff has participated in discovery, including traveling to Los Angeles to attend a deposition on a Sunday. (*Id.* at 7.) Defendants do not argue that Lead Plaintiff has conflicting interests with the class members, (*see generally* Opp'n), and the Court sees no reason to conclude that she does. As a result, the adequacy requirement of Rule 23(a)(4) is satisfied.

5. Superiority – Fed. R. Civ. P. 23(b)(3)

In addition to the predominance requirement, "Rule 23(b)(3) also requires that class resolution must be 'superior to other available methods for the fair and efficient adjudication of the controversy.'" *Hanlon*, 150 F.3d at 1023 (quoting Fed. R. Civ. P. 23(b)(3)). "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). For this reason, "[d]istrict courts have consistently recognized that the common liability issues involved in securities fraud cases are ideally suited for resolution by way of a class action." *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. at 641. Here, if class members' individual claims are not resolved in a single, consolidated action, they would need to be resolved in hundreds, if not thousands, of individual lawsuits. This would only balloon litigation costs and waste limited judicial resources addressing duplicative issues in multiple individual cases. Additionally, and as discussed above, "because this is a securities action involving a publicly-traded stock, it is highly likely that the

members of the Class are geographically diverse, making joinder impractical." *In re China Intelligent Lighting & Elecs., Inc. Sec. Litig.*, 2013 WL 5789237, at *4.

Given the obvious benefits of consolidating the claims in a class action, "[t]he superiority requirement is both uncontested and easily satisfied here." *In re Snap Inc. Sec. Litig.*, 334 F.R.D. at 230. (*See generally* Opp'n.) The Court therefore concludes that a class action is superior to alternative methods for resolving these claims.

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Subject to the modification of Lead Plaintiff's proposed class definition, the Court concludes that the requirements of Rule 23(a)–(b) are satisfied. Lead Plaintiff's motion for class certification is GRANTED IN PART.

B. Appointment of Lead Counsel

When a court certifies a class, it also must appoint class counsel. Fed. R. Civ. P. 23(g)(1). A court must consider the following factors: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). A court also must assure itself that class counsel will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). A court must conduct this inquiry even when, as here, the party opposing class certification does not oppose the appointment of specific counsel. Fed. R. Civ. P. 23(g)(2).

The Court previously appointed Labaton Sucharow as lead counsel in this case. (Order Consolidating Related Actions 8, ECF No. 47.) Since the Court issued that order, counsel from Labaton Sucharow have given ample reason to conclude the standards of Rule 23(g) are satisfied. As the Court noted at the hearing on this motion, counsel on both sides have put forth thoughtful, well-researched arguments. With respect to the Rule 23(g) factors, Lead Plaintiff's counsel have demonstrated exemplary knowledge of the applicable law, and have made it clear they have ample resources that

have been applied to representing the class in this case. Further, Labaton Sucharow has extensive "experience in handling class actions" and "the types of claims asserted in [this] action." Fed. R. Civ. P. 23(g)(1)(A)(ii); (*see* Mot. Ex. 7, ECF No. 113-7).

The Court concludes that Labaton Sucharow will fairly and adequately represent the class. Accordingly, Labaton Sucharow is appointed class counsel pursuant to Rule 23(g).

IV. CONCLUSION

Lead Plaintiff's motion for class certification is GRANTED IN PART. The Court certifies the following class:

> All persons and entities that purchased or otherwise acquired Honest's publicly traded common stock pursuant and traceable to the Offering Documents for Honest's Initial Public Offering prior to August 19, 2021, as well as all persons and entities that acquired ownership of a trading account, retirement account, or any other similar investment account or portfolio containing Honest's publicly traded common stock that was purchased or otherwise acquired pursuant and traceable to the Offering Documents for Honest's Initial Public Offering prior to August 19, 2021, and were damaged thereby. Excluded from the Class are: (i) Defendants and the Individual Defendants' immediate family members; (ii) the officers, directors, and subsidiaries of Honest and the Underwriter Defendants, at all relevant times; (iii) Honest's affiliates and employee retirement and/or benefit plan(s) and their participants and/or beneficiaries to the extent they purchased or acquired Honest's common stock pursuant or traceable to the Offering Documents through any such plan(s); (iv) any person who had or has a controlling

> interest in Honest, at all relevant times; (v) any entity in which any of the Defendants have or had a controlling interest, provided, however, that any "Investment Vehicle" shall not be excluded from the Settlement Class;[2] and (vi) the legal representatives, heirs, successors, or assigns of any such excluded person or entity, in their capacity as such.[3]

Lead Plaintiff satisfies the requirements of Rule 23(a) is appointed class representative on behalf of the class. Labaton Sucharow LLP satisfies the requirements of Rule 23(g) and is appointed class counsel on behalf of the class.

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[2] "Investment Vehicle" means any investment company or pooled investment fund, including but not limited to, mutual fund families, exchange traded funds, fund of funds and hedge funds, in which the Underwriter Defendants, or any of them, have, has or may have a direct or indirect interest, or as to which their respective affiliates may act as an investment advisor, but in which any Underwriter Defendant alone or together with its, his or her respective affiliates is not a majority owner or does not hold a majority beneficial interest.

[3] Unless otherwise noted, capitalized terms have the same meanings ascribed to them in Lead Plaintiff's Motion for Class Certification and accompanying memorandum of law, dated February 13, 2023 and filed with the Court on the same day.

The Court orders the parties to meet and confer regarding a proposed schedule for the remainder of the case, including the final date for hearing a dispositive motion, the date for a final pretrial conference and pretrial filings and a date for trial. The parties shall also meet and confer regarding a proposed plan for class notice to be given at Defendants' expense. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350 (1978) (recognizing district court's discretion to order defendants to bear cost of class notice "where a defendant can perform one of the tasks necessary to send notice, such as identification, more efficiently than the representative plaintiff"); (Compl. ¶ 125 ("Record owners and other members of the Class may be identified from records maintained by Honest or its transfer agent.")). The parties shall submit the proposed plan for class notice and a proposed trial schedule within 21 days of the date of this Order.

IT IS SO ORDERED.

Dated: May 1, 2023

Mark C. Scarsi

MARK C. SCARSI
UNITED STATES DISTRICT JUDGE