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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE  
PERFORMANCE LITIGATION

CASE NO. 5:18-md-02827-EJD  
**STIPULATION OF SETTLEMENT**

This Document Relates To:  
  
ALL ACTIONS.

**SETTLEMENT AGREEMENT AND RELEASE**

The Parties, by and through their respective counsel, in consideration for and subject to the promises, terms, and conditions contained in this Settlement Agreement, hereby warrant, represent, acknowledge, covenant, stipulate and agree, subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, as follows:

**1. DEFINITIONS**

As used herein, the following terms have the meanings set forth below:

1.1 “Actions” means the MDL Action and the JCCP Action, collectively; and each term is defined as follows:

1.1.1 “JCCP Action” means the California state lawsuits that were coordinated in San Francisco Superior Court pursuant to California Code of Civil Procedure § 404.1, and consolidated into Judicial Council Coordination Proceeding (JCCP) No. 4976. The JCCP Action shall also include any additional California

1 state actions that have been or may be filed and/or coordinated with the JCCP  
2 Action.

3 1.1.2 “MDL Action” means the actions consolidated by the Judicial Panel on  
4 Multidistrict Litigation (JPML) in the Northern District of California pursuant  
5 to 28 U.S.C. § 1407, into proceedings captioned *In re Apple Inc. Device*  
6 *Performance Litigation*, No. 18-md-2827-EJD. The MDL Action shall include  
7 the actions identified in Appendix A, as well as include any and all additional  
8 federal actions that have been or may be filed, related to, and/or consolidated  
9 into the MDL Action, including but not limited to *Rodriguez v. Apple Inc.*,  
10 No. 18-3989-EJD (N.D. Cal. filed July 2, 2018), and other individually filed  
11 actions before and after JPML centralization in this District.

12 1.2 “Apple” means Apple Inc.

13 1.3 “Approved Claims” means those Claims which are approved by the Settlement  
14 Administrator for payment.

15 1.4 “Attorneys’ Fees and Expenses” means any award of attorneys’ fees and expenses.

16 1.5 “Claim Form” means the proof of claim and release form(s) substantially in the form  
17 attached as Exhibit A.

18 1.6 “Claim” means any claim submitted by a Settlement Class Member.

19 1.7 “Claims Period” means the period between the Notice Date until the deadline set forth  
20 in paragraph 6.4.

21 1.8 “Class Counsel” means the law firms of Cotchett, Pitre & McCarthy LLP and Kaplan  
22 Fox & Kilsheimer LLP, who have any and all authority and capacity necessary to execute this  
23 Settlement Agreement and bind all of the Named Plaintiffs who have not personally signed this  
24 Settlement Agreement, as if each of those individuals had personally executed this Settlement  
25 Agreement.

26 1.9 “Class Notice” means the Notice of Pendency and Proposed Settlement of Class Action,  
27 substantially in the form attached as Exhibit B.

28 1.10 “Court” means the United States District Court for the Northern District of California.

1 1.11 “Defense Counsel” means the law firm of Gibson, Dunn & Crutcher LLP.

2 1.12 “Effective Date” shall mean the first day after which all of the following events and  
3 conditions of this Settlement Agreement have been met or occurred:

- 4 a) All non-U.S. Named Plaintiffs have personally executed this Settlement  
5 Agreement;
- 6 b) Class Counsel have confirmed in writing that they have used best efforts to have  
7 all the remaining Named Plaintiffs personally execute this Settlement  
8 Agreement;
- 9 c) Apple, Class Counsel, JCCP Counsel, and Defense Counsel have executed this  
10 Settlement Agreement;
- 11 d) The Court has conditionally certified the Settlement Class, preliminarily  
12 approved the Settlement, and approved notice to the Settlement Class;
- 13 e) The time period for members of the Settlement Class to exclude themselves has  
14 expired;
- 15 f) The Settlement Administrator has delivered the spreadsheet(s) and information  
16 to Defense Counsel and Class Counsel as specified in paragraphs 6.9 and 6.10;
- 17 g) All disputed Claims have been resolved;
- 18 h) The Court has entered the Final Approval Order and Final Judgment;
- 19 i) The time for appeal or writ of the Final Approval Order and Final Judgment has  
20 expired or, if an appeal and/or petition for review is taken and the Settlement is  
21 affirmed, the time period during which further petition for hearing, appeal, or  
22 writ of certiorari can be taken has expired;
- 23 j) The time for appeal or writ of any order regarding Attorneys’ Fees and Expenses  
24 and/or Named Plaintiff Service Awards has expired or, if an appeal and/or  
25 petition for review is taken and the order is affirmed, the time period during  
26 which further petition for hearing, appeal, or writ of certiorari can be taken has  
27 expired;
- 28 k) The JCCP Action is dismissed with prejudice and a final judgment is entered;

1 and

2 l) The time for appeal or writ of the final judgment in the JCCP Action has expired  
3 or, if an appeal and/or petition for review is taken and the dismissal is affirmed,  
4 the time period during which further petition for hearing, appeal, or writ of  
5 certiorari can be taken has expired.

6 1.13 “Final Approval Order and Final Judgment” means the final approval order and  
7 judgment dismissing and closing the MDL Action in the form attached as Exhibits E and F.

8 1.14 “Final Hearing” means the hearing(s) held by the Court to consider and determine  
9 whether the requirements for certification of the Settlement Class have been met and whether the  
10 Settlement should be approved as fair, reasonable, and adequate; whether Class Counsel’s Attorneys’  
11 Fees and Expenses and/or Named Plaintiff Service Awards should be approved; and whether the final  
12 judgment approving the Settlement and dismissing the Actions on the merits and with prejudice should  
13 be entered. The Final Hearing may, from time to time and without further notice to the Settlement  
14 Class (except those who have filed timely and valid objections and requested to speak at the Final  
15 Hearing), be continued or adjourned by order of the Court.

16 1.15 “JCCP Counsel” means the attorneys with The Brandi Law Firm and The Law Offices  
17 of Andrew J. Brown appointed as Co-Lead Counsel in the JCCP Action.

18 1.16 “iPhone” means Apple iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE devices.

19 1.17 “Maximum Class Settlement Amount” means Five Hundred Million U.S. Dollars  
20 (\$500,000,000.00), less any amounts paid to the Named Plaintiffs as Service Awards.

21 1.18 “MDL Counsel” means the attorneys appointed as interim counsel in the MDL Action.

22 1.19 “Minimum Class Settlement Amount” means Three Hundred Ten Million U.S. Dollars  
23 (\$310,000,000.00). Under no circumstances shall any portion of the Minimum Class Settlement  
24 Amount revert to Apple.

25 1.20 “Named Plaintiffs” means all individuals identified in Appendix B. Notwithstanding  
26 the foregoing, the “Named Plaintiffs” shall further exclude any individual who requests exclusion from  
27 the Settlement Class and/or submits an objection to the Settlement.

28 1.21 “Named Plaintiff Service Awards” means the service awards for the Named Plaintiffs,

1 as set forth in paragraph 8.4.

2 1.22 “Notice Date” means seventy-five (75) days after the deadline for the Settlement  
3 Administrator to receive the names, email addresses, mailing addresses, and serial numbers for the  
4 members of the Settlement Class as provided in paragraph 6.2.2.

5 1.23 “Parties” means Apple and the Named Plaintiffs.

6 1.24 “Plaintiffs’ Counsel” means Class Counsel, MDL Counsel, JCCP Counsel, and all of  
7 the attorneys, associates, law firms, and legal representatives, who have represented and/or purport to  
8 represent any of the Named Plaintiffs and/or who brought any of the Actions, including but not limited  
9 to all of the attorneys and firms identified in Appendix C.

10 1.25 “Preliminary Approval Order” means the order preliminarily approving the Settlement,  
11 providing for notice to the Settlement Class, and other related matters in the form attached as Exhibit D.

12 1.26 “Released Parties” means (a) Apple and its past, present, and future parents,  
13 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,  
14 whether foreign or domestic, that are owned or controlled by Apple; and (b) the past, present, and future  
15 shareholders, officers, directors, members, agents, employees, independent contractors, consultants,  
16 administrators, representatives, fiduciaries, insurers, predecessors, successors, and assigns of the  
17 entities in part (a) of this paragraph.

18 1.27 “Residual” means the difference between the value of the Approved Claims and the  
19 Minimum Settlement Amount, as set forth in paragraph 5.3.

20 1.28 “Settlement” and “Settlement Agreement” mean the settlement described in this  
21 Stipulation of Settlement.

22 1.29 “Settlement Administrator” means Angeion Group, which shall provide settlement  
23 notice and administration services pursuant to the terms of this Settlement Agreement.

24 1.30 “Settlement Administration Protocol” means the protocol attached as Exhibit G.

25 1.31 “Settlement Class Member” means and includes every member of the Settlement Class  
26 who does not validly and timely request exclusion from the Settlement Class.

27 1.32 “Settlement Class” means all former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s  
28 Plus, 7, 7 Plus, and SE devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE

1 devices) or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions before  
2 December 21, 2017. For purposes of this definition, “U.S. owners” shall include individuals who  
3 owned, purchased, leased, or otherwise received an eligible device, and individuals who otherwise used  
4 an eligible device for personal, work, or any other purposes. An individual qualifies as a “U.S. owner”  
5 if his or her device was shipped to the United States, its territories, and/or its possessions. The  
6 Settlement Class shall not include iPhone owners who are domiciled outside of the United States, its  
7 territories, and/or its possessions. Additionally, excluded from the Settlement Class are (a) directors,  
8 officers, and employees of Apple or its subsidiaries and affiliated companies, as well as Apple’s legal  
9 representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as well as any appellate  
10 court to which this matter is ever assigned and its staff, (c) any of the individuals identified in paragraph  
11 1.36, as well as their legal representatives, heirs, successors, or assigns, (d) Defense Counsel, as well  
12 as their immediate family members, legal representatives, heirs, successors, or assigns, and (e) any  
13 other individuals whose claims already have been adjudicated to a final judgment.

14 1.33 “Settlement Funds” means funds sufficient to pay the Approved Claims and the Named  
15 Plaintiff Service Awards.

16 1.34 “Settlement Website” means an Internet website that the Settlement Administrator shall  
17 establish to inform the Settlement Class of the terms of this Settlement, their rights, dates, deadlines,  
18 and related information.

19 1.35 “Summary Notice” means the Summary Notice of Settlement, substantially in the form  
20 attached as Exhibit C.

21 1.36 Notwithstanding the foregoing definitions and terms, the following individuals and  
22 former plaintiffs are not Settlement Class Members, because their claims have been dismissed with  
23 prejudice: Meghan Mesloh; Aja Johnson; and Quinn Lewis. These individuals shall have no right to  
24 any payment(s) pursuant to this Settlement.

## 25 **2. RECITALS**

26 A. Between December 2017 and June 2018, multiple class action complaints were filed  
27 against Apple in the United States District Courts for the Northern District of Alabama, the Central  
28 District of California, the Northern District of California, the Southern District of California, the

1 District of Columbia, the Southern District of Florida, the Southern District of Georgia, the Northern  
2 District of Illinois, the Southern District of Illinois, the Eastern District of Louisiana, the Eastern  
3 District of Missouri, the Western District of Missouri, the Southern District of Mississippi, the District  
4 of New Jersey, the Eastern District of New York, the Southern District of New York, the Northern  
5 District of Ohio, the Southern District of Ohio, the District of South Carolina, and the Eastern District  
6 of Texas.<sup>1</sup> Beginning on April 4, 2018, these actions were consolidated by the JPML in the Northern  
7 District of California pursuant to 28 U.S.C. § 1407, into the MDL Action, captioned *In re Apple Inc.*  
8 *Device Performance Litigation*, No. 18-md-2827-EJD. A list of these actions that have been  
9 consolidated into the MDL Action is attached hereto as Appendix A.

10 B. After their appointment, Class Counsel filed a Consolidated Amended Complaint in the  
11 MDL Action on July 2, 2018. The Consolidated Amended Complaint contained allegations concerning  
12 unexpected power-offs and a performance management feature that Apple introduced in iOS 10.2.1  
13 and iOS 11.2 to avoid them. The Consolidated Amended Complaint identified the “Devices” at issue  
14 in the case as including “the iPhone 5, iPhone 5s, iPhone 5c, iPhone SE, iPhone 6, iPhone 6s, iPhone  
15 6 Plus, iPhone 6s Plus, iPhone 7, [and] iPhone 7 Plus” and purported to seek certification of a putative  
16 class of “[a]ll purchasers, owners, users or lessees” of the devices in the United States and in 40 foreign  
17 countries. The Consolidated Amended Complaint alleged that these devices were “defective” and  
18 brought claims against Apple for fraud, breach of contractual obligations, violation of consumer  
19 protection laws, “trespass to chattels,” and alleged violations of the California Computer Data Access  
20 and Fraud Act (CDAFA) and the federal Computer Fraud Abuse Act (CFAA).

21 C. On October 1, 2018, the Court entered an order granting in part and denying in part  
22 Apple’s motion to dismiss the Consolidated Amended Complaint, which dismissed the fraudulent  
23 misrepresentation and omission-based claims without prejudice.

24 D. Class Counsel filed a Second Consolidated Amended Complaint on November 30,  
25 2018, which brought the same legal claims under the same consumer protection laws, as well as  
26 asserting claims for “trespass to chattels” and for alleged violations of the CDAFA and CFAA.

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27  
28 <sup>1</sup> The MDL Action shall also include any additional federal actions that have been or may be filed,  
related to, and/or consolidated into the MDL Action.

1 E. The Court issued another order granting in part and denying in part Apple’s motion to  
2 dismiss the Second Consolidated Amended Complaint on April 22, 2019. In its order, the Court  
3 dismissed, with prejudice, the claims that the iPhones were “defective,” all claims based on  
4 iPhone 5/5c/5s devices, and all common law and statutory fraud claims (whether based on a theory of  
5 affirmative misrepresentation or omission). The Court also dismissed, without prejudice, claims  
6 related to the Named Plaintiffs’ theory that Apple had breached contractual obligations. However, the  
7 Court did not dismiss the claims for trespass to chattels and under the CDAFA and CFAA. The Named  
8 Plaintiffs did not amend their complaint to try to replead the contract claims, and they instead elected  
9 to stand on their Second Consolidated Amended Complaint.

10 F. The Parties engaged in extensive discovery in the MDL and JCCP Actions. Class  
11 Counsel served more than 170 document requests on Apple, in response to which Apple produced more  
12 than 7 million pages of documents. Apple also served written discovery and document requests to each  
13 of the Named Plaintiffs, who produced more than 6,000 pages of documents. The Parties also deposed  
14 19 individuals, including ten Apple witnesses and nine Named Plaintiffs. The Parties also litigated  
15 several discovery motions before the Hon. Rebecca Westerfield (Ret.).

16 G. Between December 2017 and June 2018, four class action complaints were filed against  
17 Apple in California state courts for the counties of Los Angeles, San Francisco, San Mateo, and Santa  
18 Clara. The Judicial Council coordinated these actions in the San Francisco Superior Court pursuant to  
19 California Code of Civil Procedure § 404.1, and consolidated them into proceedings captioned *In re*  
20 *Apple OS Cases*, JCCP No. 4976. A Consolidated Master Complaint was filed in the JCCP Action on  
21 January 22, 2019, which brought claims under California’s Unfair Competition Law and for “trespass  
22 to chattels” on behalf of “all California citizens who purchased, owned, or leased” these devices. On  
23 June 20, 2019, the Superior Court entered an order sustaining in part and overruling in part Apple’s  
24 demurrer to the Consolidated Master Complaint, holding that the Consolidated Master Complaint did  
25 not state an affirmative misrepresentation or omissions-based claim, but declined to sustain Apple’s  
26 demurrer to the “trespass to chattels” claim. The JCCP Plaintiffs filed their First Amended  
27 Consolidated Master Complaint on August 5, 2019, which again asserted fraud, consumer protection,  
28 and trespass to chattels claims concerning the same devices. At the time of this Settlement, Apple’s



1 demurrer to the First Amended Consolidated Master Complaint in the JCCP Action was fully briefed  
2 and awaiting decision.

3 H. The Parties engaged in extensive, arm's-length negotiations over the course of many  
4 months, including by engaging in several all-day, in-person mediation sessions and numerous  
5 additional discussions with the Hon. Layn R. Phillips (Ret.) of Phillips ADR, a former United States  
6 District Court Judge and one of the most experienced mediators in the United States. As a result of  
7 these arm's-length negotiations, the Parties reached the Settlement set forth in this Settlement  
8 Agreement, which memorializes the Parties' agreement and rulings by the Hon. Layn R. Phillips (Ret.)  
9 regarding certain disputed settlement terms. The Parties intend that this Settlement completely resolve  
10 any and all claims that were, or could have been, asserted in the Actions on behalf of individuals in the  
11 United States, as well as any non-U.S.-based Named Plaintiffs who filed claims in the United States.

12 I. Apple vigorously disputes the claims alleged in the Actions and is entering into this  
13 Settlement to avoid burdensome and costly litigation. The Settlement is not an admission of  
14 wrongdoing, fault, liability, or damage of any kind. Among other things, Apple disputes that Plaintiffs'  
15 dismissed and remaining claims have merit, that Plaintiffs will be able to certify any class in these  
16 actions for litigation purposes, that Plaintiffs are entitled to pursue claims on behalf of non-U.S.  
17 claimants, that California law would apply nationwide (or beyond U.S. borders), and that Plaintiffs and  
18 the putative class would be entitled to any relief. Without admitting any of the allegations made in the  
19 Actions or any liability whatsoever, Apple is willing to enter into this Settlement solely in order to  
20 eliminate the burdens, distractions, expense and uncertainty of protracted litigation and in order to  
21 obtain the releases and final judgment contemplated by this Settlement.

22 J. Class Counsel and the Named Plaintiffs believe that the claims asserted in the Actions  
23 have merit and have examined and considered the benefits to be obtained under this Settlement, the  
24 risks associated with the continued prosecution of this complex and potentially time-consuming  
25 litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement  
26 is fair, adequate, reasonable and in the best interests of the Settlement Class.

27 K. The Parties desire to settle the Actions in their entirety with respect to all potential  
28 claims arising out of the same facts alleged in the complaints filed in each of the Actions. The Parties

1 intend this Settlement Agreement to bind Apple, the Named Plaintiffs, and all other Settlement Class  
2 Members.

3 **3. CONFIDENTIALITY**

4 3.1 The Parties must comply with all portions of the Stipulated Protective Order (Dkt. 224  
5 in the MDL Action) and the Protective Order Regarding the Disclosure and Use of Discovery Materials  
6 (executed March 22, 2019 in the JCCP Action) (collectively, the “Protective Order”), and all orders  
7 construing the Protective Order, including but not limited to: (i) the Court’s Order re Motion for  
8 Sanctions (Dkt. 350); (ii) Section 8.1, which limits the use of Protected Material (as defined in the  
9 Protective Order) to prosecuting, defending, or attempting to settle the Actions, and prohibits the use  
10 of Protected Material for any other purpose, including, without limitation, in any other litigation, or for  
11 any business or competitive function; and (iii) Section 15, which requires the return, destruction, or  
12 deletion of Protected Material (as defined in the Protective Order) within 60 days of the final disposition  
13 of the Actions.

14 3.2 This Settlement Agreement and its terms, including the fact of the proposed Settlement,  
15 shall remain completely confidential until all documents are executed and the Motion for Preliminary  
16 Approval is filed with the Court. Pending the filing of that Motion, Plaintiffs’ Counsel may disclose  
17 this Settlement Agreement and its terms to their respective clients who brought any of the actions in  
18 the MDL Action, who will also maintain the complete confidentiality of this Settlement Agreement  
19 and its terms, including the fact of the proposed Settlement.

20 3.3 If, through the actions of any of the Parties or their counsel, this Settlement Agreement  
21 and the proposed Settlement become public before the Motion for Preliminary Approval is filed with  
22 the Court, the responsible Party or counsel shall pay liquidated damages of Twenty-Five Thousand  
23 U.S. Dollars (\$25,000.00) to the non-responsible Party.

24 **4. CERTIFICATION OF THE SETTLEMENT CLASS**

25 4.1 The Parties stipulate and agree that, subject to Court approval, the Settlement Class  
26 should be conditionally certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure  
27 solely for purposes of the Settlement embodied in this Settlement Agreement. If, for any reason, this  
28 Settlement Agreement is not approved by the Court, the stipulation for certification and all of the

1 agreements contained herein shall be considered null and void as provided in paragraph 7.5.

2 4.2 Apple does not consent to certification of the Settlement Class (or to the propriety of  
3 class treatment) for any purpose other than to effectuate this Settlement. Apple's agreement to  
4 provisional certification does not constitute an admission of wrongdoing, fault, liability, or damage of  
5 any kind, or that any class certification would be appropriate for litigation or any other purpose other  
6 than to effectuate this Settlement.

7 4.3 If for any reason the Effective Date does not occur or this Settlement Agreement is  
8 terminated, disapproved by any court (including any appellate court), or not consummated for any  
9 reason, the order certifying the Settlement Class for purposes of effectuating the Settlement (and all  
10 preliminary and final findings regarding that class certification order) shall be automatically vacated  
11 upon notice of the same to the Court. The Actions shall then proceed as though the Settlement Class  
12 had never been certified pursuant to this Settlement Agreement and such findings had never been made,  
13 and the Actions shall return to their procedural postures on the date this Settlement Agreement was  
14 signed. Additionally, the Parties and their counsel shall not refer to or invoke the vacated findings  
15 and/or order relating to class settlement or Rule 23 of the Federal Rules of Civil Procedure if this  
16 Settlement Agreement is not consummated and the Actions are later litigated and contested by Apple  
17 under Rule 23 or any equivalent statute or rule.

18 **5. SETTLEMENT CONSIDERATION**

19 5.1 **Cash Payment to Settlement Class Members.** In consideration of the releases and  
20 dismissals set forth in this Settlement Agreement, subject to Court approval, and subject to the other  
21 terms and conditions of this Settlement Agreement (including the Maximum Class Settlement Amount  
22 and Minimum Class Settlement Amount), Settlement Class Members who meet the requirements and  
23 follow the procedures set forth in paragraphs 6.3 to 6.7 shall be sent Twenty-Five U.S. Dollars (\$25.00)  
24 for each iPhone owned. The actual amount of payment may differ, depending on the amount of any  
25 Attorneys' Fees and Expenses, Named Plaintiff Service Awards, notice expenses, and whether the  
26 aggregate value of Approved Claims reaches the Minimum Class Settlement Amount or Maximum  
27 Class Settlement Amount, as set forth in paragraphs 5.2 to 5.3.3 below. Additionally, if multiple  
28 Settlement Class Members submit Claims pertaining to the same eligible device, the payment amount

1 for that device shall be divided equally among those submitting Approved Claims regarding that  
2 particular device.

3       **5.2 Maximum Class Settlement Amount.** Notwithstanding paragraph 5.1, in no event  
4 shall the aggregate cash payment to the Settlement Class Members exceed the Maximum Class  
5 Settlement Amount. If the number of iPhone devices identified in Approved Claims submitted by  
6 Settlement Class Members, multiplied by Twenty-Five U.S. Dollars (\$25.00), exceeds the Maximum  
7 Class Settlement Amount, then the cash payment for each iPhone identified in the Approved Claims  
8 shall be reduced on a pro rata basis to ensure the aggregate cash payment to Settlement Class Members  
9 does not exceed the Maximum Class Settlement Amount.

10       **5.3 Minimum Class Settlement Amount.** Notwithstanding paragraph 5.1, if payment of  
11 Twenty-Five U.S. Dollars (\$25.00) for each iPhone device identified in Approved Claims submitted  
12 by Settlement Class Members, the payment of Attorneys' Fees and Expenses the Court awards to Class  
13 Counsel (as contemplated in paragraph 8.1), and the payment of the Named Plaintiff Service Awards  
14 would not reach the Minimum Class Settlement Amount, the Residual shall be allocated in order of  
15 priority as follows:

16               5.3.1 The Residual shall be used to pay the costs of settlement notice and  
17 administration (as contemplated in paragraph 6.1) up to the amount of Twelve Million Seven-Hundred-  
18 Fifty Thousand U.S. Dollars (\$12,750,000.00), plus any postage expense incurred after the \$12,750,000  
19 cap has been reached.

20               5.3.2 If there are funds remaining in the Residual after paying the costs of settlement  
21 notice and administration (as contemplated in paragraph 5.3.1), then the cash payment for each  
22 Approved Claim shall be increased on a pro rata basis until the aggregate value of Approved Claims,  
23 Attorneys' Fees and Expenses, and costs of settlement notice and administration equal the Minimum  
24 Class Settlement Amount. Notwithstanding the foregoing, the pro rata payment for each Approved  
25 Claim per applicable device shall not exceed Five Hundred U.S. Dollars (\$500.00).

26               5.3.3 If the total amount calculated in paragraph 5.3.2 does not reach the Minimum  
27 Class Settlement Amount following the pro rata adjustment described therein, then the Parties shall  
28 confer on the distribution of the remaining amount, with resolution subject to Court approval.

1 **6. NOTICE AND SETTLEMENT ADMINISTRATION**

2 6.1 **Neutral Settlement Administrator.** Subject to Court approval, the Settlement  
3 Administrator shall provide settlement notice and administration services, in accordance with the terms  
4 of this Settlement Agreement and the Settlement Administration Protocol. Except as provided in  
5 paragraph 5.3.1, Apple shall pay reasonable costs of notice and the costs of administering the  
6 Settlement.

7 6.2 **Notice Procedures.** The Parties agree to the following forms and methods of notice to  
8 the Settlement Class:

9 6.2.1 A copy of the Class Notice, together with the Claim Form, the Settlement, the  
10 motions for Final Approval Order and Final Judgment, Attorneys' Fees and Expenses, and Named  
11 Plaintiff Service Awards, and Court orders pertaining to the Settlement, shall be posted and available  
12 for download on the Settlement Website maintained by the Settlement Administrator. The information  
13 shall remain available on the Settlement Website until the Effective Date.

14 6.2.2 The Settlement Administrator shall email a copy of the Summary Notice to the  
15 email address of record on the Apple ID account of the members of the Settlement Class. The electronic  
16 version of the Summary Notice shall contain a direct link to the Settlement Website and the instructions  
17 for the Claim Form. To facilitate the distribution of the Summary Notice, within thirty (30) days of  
18 the Court's entry of the Preliminary Approval Order, Apple shall provide the Settlement Administrator  
19 with the names, email addresses, mailing addresses, and serial numbers for the members of the  
20 Settlement Class. If Apple does not have a valid email address for a member of the Settlement Class,  
21 the Settlement Administrator shall mail a copy of the Summary Notice via postcard to that member of  
22 the Settlement Class. An email address is not considered valid if it results in a hard bounce back.

23 6.2.3 The names, email addresses, mailing addresses, and serial numbers are personal  
24 information about the members of the Settlement Class and shall be provided to the Settlement  
25 Administrator solely for the purposes of providing notice, processing requests for exclusion, and  
26 administering payment. The Settlement Administrator shall execute the Stipulated Protective Order  
27 (Dkt. 224), treat all such information as "Highly Confidential – Attorneys' Eyes Only," and take all  
28 reasonable steps to ensure that all such information is used solely for the purpose of administering this

1 Settlement.

2           6.2.4 The Settlement Administrator shall complete the email notice (and, if applicable,  
3 the notice via postcard) by the Notice Date. If, despite using best efforts, the Settlement Administrator  
4 is unable to complete the notice by the Notice Date, the Settlement Administrator shall inform the  
5 Parties of the status of the notice, and notify the Parties when the notice has been completed.

6           6.2.5 In addition to the notice required by the Court, the Parties may jointly agree to  
7 provide additional notice to the members of the Settlement Class, although Class Counsel and Apple  
8 must approve any additional notice.

9           6.2.6 If this notice plan is not approved, or is modified in a material way by the Court,  
10 Apple shall have the right to unilaterally terminate the Settlement.

11           6.3 **Claim Form.** Settlement Class Members who wish to receive a cash payment will be  
12 required to submit a Claim Form. The Claim Form shall, among other things, require the Settlement  
13 Class Member to certify, under penalty of perjury, that (a) their eligible iPhone device ran iOS 10.2.1  
14 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices) or iOS 11.2 or later (for iPhone 7 and 7 Plus  
15 devices) before December 21, 2017; and (b) they experienced diminished performance on the eligible  
16 device when running iOS 10.2.1 or iOS 11.2 before December 21, 2017. The Claim Forms shall be  
17 submitted to the Settlement Administrator via U.S. mail or electronically through the Settlement  
18 Website.

19           6.4 **Claims Period.** To be valid, Claim Forms, requests to opt out, and objections must be  
20 received by the Settlement Administrator within forty-five (45) days from the Notice Date.

21           6.5 **Process for Opting Out of Settlement.** The Class Notice shall provide a procedure  
22 whereby members of the Settlement Class may exclude themselves from the Settlement. The members  
23 of the Settlement Class shall have no less than forty-five (45) days following the Notice Date to exclude  
24 themselves. Any member of the Settlement Class who does not timely and validly request exclusion  
25 shall be a Settlement Class Member and shall be bound by the terms of this Settlement. As soon as  
26 practicable after the opt-out deadline, the Settlement Administrator shall provide the Court with a list  
27 of the individuals who timely and validly requested exclusion from the Settlement.

28           6.6 **Process for Objections.** The Class Notice shall provide a procedure whereby

1 Settlement Class Members may object to the Settlement. Objections shall be filed with the Court and  
2 served on Class Counsel and Defense Counsel within forty-five (45) days from the Notice Date. Any  
3 objection shall, at a minimum, require the individual to provide: (a) a detailed statement of such  
4 Settlement Class Member's specific objections to any matters before the Court; (b) the grounds for  
5 such objections and the reason such Settlement Class Member desires to appear and to be heard; and  
6 (c) proof of membership in the Settlement Class, as well as all other materials the Settlement Class  
7 Member wants the Court to consider.

8           **6.7 Review of Claims Submitted.** The Settlement Administrator shall determine whether  
9 a submitted Claim Form meets the requirements set forth in this Settlement Agreement. Each Claim  
10 Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine whether  
11 each Claim shall be allowed. The Settlement Administrator shall use best practices and all reasonable  
12 efforts and means to identify and reject duplicate and/or fraudulent claims, including, without  
13 limitation, indexing all payments provided to the Settlement Class Members.

14           **6.8 Rejection of Claims Forms.** Claim Forms that do not meet the requirements set forth  
15 in this Settlement and/or in the Claim Form instructions shall be rejected. Where a good faith basis  
16 exists, the Settlement Administrator may reject a Claim Form for, among other reasons, the following:  
17 (a) the Claim Form identifies a product that is not covered by the terms of this Settlement; (b) failure  
18 to fully complete and/or sign the Claim Form; (c) illegible Claim Form; (d) the Claim Form is  
19 fraudulent; (e) the Claim Form is duplicative of another Claim Form; (f) the person submitting the  
20 Claim Form is not a Settlement Class Member; (g) the person submitting the Claim Form requests that  
21 payment be made to a person or entity other than the Settlement Class Member for whom the Claim  
22 Form is submitted; (h) failure to timely submit a Claim Form; or (i) the Claim Form otherwise does not  
23 meet the requirements of this Settlement Agreement. Claim Forms that do not meet the terms and  
24 conditions of this Settlement shall be promptly rejected by the Settlement Administrator. The  
25 Settlement Administrator shall have thirty (30) days from the end of the Claims Period to exercise the  
26 right of rejection. The Settlement Administrator shall notify the claimant using the contact information  
27 provided in the Claim Form of the rejection. Class Counsel and Defense Counsel shall be provided  
28 with copies of all such notifications of rejection, provided that the copies do not contain the name,

1 email address, mailing address, or other personal identifying information of the claimant. If any  
2 claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection,  
3 the claimant must, within ten (10) days from receipt of the rejection, transmit to the Settlement  
4 Administrator by email or U.S. mail a notice and statement of reasons indicating the claimant's grounds  
5 for contesting the rejection, along with any supporting documentation, and requesting further review  
6 by the Settlement Administrator, in consultation with Class Counsel and Defense Counsel, of the denial  
7 of the Claim. If Class Counsel and Defense Counsel cannot agree on a resolution of the claimant's  
8 notice contesting the rejection, the disputed Claim shall be presented to the Court or a referee appointed  
9 by the Court for summary and non-appealable resolution. No person shall have any claim against  
10 Apple, Defense Counsel, the Named Plaintiffs, Class Counsel, and/or the Settlement Administrator  
11 based on any eligibility determinations, distributions, or awards made in accordance with this  
12 Settlement. This provision does not affect or limit in any way the right of review by the Court or  
13 referee of any disputed Claim Forms as provided in this Settlement.

14       **6.9 Information Regarding Claims Submitted, Approved, and Rejected.** Within forty-  
15 five (45) days from the end of the Claims Period, the Settlement Administrator shall provide a  
16 spreadsheet to Class Counsel and Defense Counsel that contains information sufficient to determine:  
17 (a) the number of Settlement Class Members that submitted a claim; (b) the number of submitted Claim  
18 Forms that are valid and timely, and which are not; (c) the number of submitted Claim Forms the  
19 Settlement Administrator intends to treat as Approved Claims; and (d) the number of submitted Claim  
20 Forms the Settlement Administrator has denied and the reason(s) for the denials. The Settlement  
21 Administrator shall provide supplemental spreadsheets with respect to any Claim Forms submitted  
22 after the expiration of the deadline, within a reasonable time after receiving such Claim Forms. The  
23 materials that the Settlement Administrator provides to Class Counsel pursuant to this paragraph shall  
24 not contain the names, email addresses, mailing addresses, or other personal identifying information of  
25 the Settlement Class Members. The Settlement Administrator shall retain the originals of all Claim  
26 Forms (including envelopes with postmarks, as applicable), and shall make copies available to Class  
27 Counsel or Defense Counsel (with redactions to remove the names, email addresses, mailing addresses,  
28 or other personal identifying information of the Settlement Class Members) upon request. All such



1 spreadsheets and related materials (including Claim Forms) shall be designated as “Highly Confidential  
2 – Attorneys’ Eyes Only” as provided in paragraph 6.2.3. Should Class Counsel believe they require  
3 the name, email address, mailing address, or other personal identifying information of any particular  
4 Settlement Class Member, the Parties shall meet-and-confer, on a case-by-case basis, to determine  
5 whether the release of such personal identifying information is necessary. Any disputes regarding  
6 whether such information may be released to Class Counsel shall be presented to the Court or a referee  
7 appointed by the Court for summary and non-appealable resolution. The Settlement Administrator  
8 shall only release personal identifying information upon authorization of Apple and/or the authorization  
9 of the Court or referee.

10 **6.10 Calculation of Cash Payments.** In addition to the spreadsheet(s) specified in  
11 paragraph 6.9, within twenty (20) days from the Effective Date, the Settlement Administrator shall  
12 provide to Defense Counsel and Class Counsel information sufficient to calculate the per-device and  
13 aggregate cash payment for the Approved Claims, calculated in accordance with paragraphs 5.1, 5.2,  
14 and 5.3. If multiple Settlement Class Members submit Claims pertaining to the same eligible device,  
15 the payment amount for that device shall be divided equally among those Settlement Class Members  
16 submitting Approved Claims regarding that particular device.

17 **6.11 Opportunity for Review.** Defense Counsel and Class Counsel shall have fourteen (14)  
18 days after receiving the spreadsheet(s) and information specified in paragraph 6.9 to contest the  
19 Settlement Administrator’s determination with respect to any of the submitted Claims. Defense  
20 Counsel and Class Counsel shall meet and confer in good faith within ten (10) days to reach resolution  
21 of any such disputed Claim(s). If Class Counsel and Defense Counsel cannot agree on a resolution of  
22 any such disputed Claim(s), the disputed Claim(s) shall be presented to the Court or a referee appointed  
23 by the Court for summary and non-appealable resolution.

24 **6.12 Timing of Payment to Settlement Administrator.** Within fifty (50) days after the  
25 Effective Date, Apple shall deliver the Settlement Funds to the Settlement Administrator. The  
26 Settlement Administrator shall agree to hold the Settlement Funds in a non-interest-bearing account,  
27 and administer the Settlement Funds, subject to the continuing jurisdiction of the Court and from the  
28 earliest possible date, as a qualified settlement fund as defined in Treasury Regulation § 1.468B-1, *et*

1 *seq.* Any taxes owed by the Settlement Funds shall be paid by the Settlement Administrator out of the  
2 Settlement Funds.

3       **6.13 Procedures for Distribution of Cash Payments.** Within thirty (30) days after  
4 receiving the Settlement Funds pursuant to paragraph 6.12, the Settlement Administrator shall have  
5 substantially completed issuance of the payments to the Settlement Class Members for the Approved  
6 Claims (and in the case of Named Plaintiffs, the additional Named Plaintiff Service Awards), which  
7 shall be sent to Settlement Class Members through electronic distribution, or in the form of checks that  
8 are mailed to the addresses provided on the submitted Claim Forms to those Settlement Class Members  
9 for whom electronic distribution is not available.

10 **7. COURT APPROVAL**

11       7.1 The Parties agree to recommend approval of the Settlement to the Court as fair and  
12 reasonable and to undertake their best efforts to obtain such approval. “Best efforts” includes that the  
13 Parties may not oppose any application for appellate review by one of the Parties in the event the Court  
14 denies preliminary or final approval. The Parties therefore agree that, by no later than February 28,  
15 2020, the Named Plaintiffs shall submit this Settlement Agreement, together with its exhibits, to the  
16 Court and shall apply for entry of the Preliminary Approval Order.

17       7.2 Class Counsel shall draft the Motion for Preliminary Approval requesting issuance of  
18 the Preliminary Approval Order as soon as practicable after execution of this Settlement Agreement,  
19 and provide that draft to Defense Counsel at least fourteen (14) days before filing the Motion with the  
20 Court. The Motion for Preliminary Approval shall be written in a neutral manner that does not contain  
21 inflammatory language about the Parties or their perceived conduct in the Actions.

22       7.3 Upon filing of the Motion for Preliminary Approval, Apple shall provide timely notice  
23 of the Settlement as required by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*

24       7.4 In accordance with the schedule set in the Preliminary Approval Order, Class Counsel  
25 shall draft the motion for Final Approval Order and Final Judgment and provide that draft to Defense  
26 Counsel at least ten (10) days before filing such motion with the Court.

27       7.5 In the event that the Settlement is not approved (following the exhaustion of any  
28 appellate review), then (a) this Settlement Agreement shall be null and void and of no force or effect,

1 (b) any payments made to the Settlement Administrator, including any and all interest earned thereon  
2 less monies expended toward settlement administration and/or Settlement Funds, shall be returned to  
3 Apple within ten (10) days from the date the Settlement Agreement becomes null and void, (c) any  
4 release shall be of no force or effect, and (d) the Settlement may not be referred to or used as evidence  
5 or for any other purpose whatsoever in the Actions or in any other action or proceeding. In such event,  
6 each Action will proceed as if no settlement has been attempted, and the Parties shall be returned to  
7 their respective procedural postures existing on the date the Settlement is executed, so that the Parties  
8 may take such litigation steps that they otherwise would have been able to take absent the pendency of  
9 this Settlement. However, any reversal, vacatur, or modification on appeal of (a) any amount of the  
10 Attorneys' Fees and Expenses awarded by the Court to Class Counsel, or (b) any determination by the  
11 Court to award less than the amounts requested in Attorneys' Fees and Expenses or Named Plaintiff  
12 Service Awards shall not give rise to any right of termination or otherwise serve as a basis for  
13 termination of this Settlement.

14 **8. ATTORNEYS' FEES AND EXPENSES AND NAMED PLAINTIFF SERVICE**  
15 **AWARDS**

16 8.1 Any award of Attorneys' Fees and Expenses shall be decided by the Court and payable  
17 from the Minimum Class Settlement Amount. At least fourteen (14) days before filing a motion  
18 seeking any award of Attorneys' Fees and Expenses, Class Counsel will disclose to Apple their lodestar  
19 and the amount of fees they intend to seek. If the Parties do not agree on the amount of Attorneys'  
20 Fees and Expenses that Class Counsel will seek, Class Counsel will seek, on behalf of all Plaintiffs'  
21 Counsel, Attorneys' Fees and Expenses for the benefit of all Named Plaintiffs and all other Settlement  
22 Class Members. It is the Parties' understanding that no other counsel will be entitled to an independent  
23 award of attorneys' fees or expenses.

24 8.2 The Parties have not yet agreed upon the amount of Attorneys' Fees and Expenses that  
25 Class Counsel will seek, and Apple, while recognizing that the Settlement entitles Class Counsel to  
26 seek reasonable fees and expenses, reserves the right, if any, to object to and oppose Class Counsel's  
27 requests for Attorneys' Fees and Expenses. Settlement Class Members shall also have at least thirty-  
28 five (35) days to object to and oppose Class Counsel's request for Attorneys' Fees and Expenses by

1 filing with the Court and serving on Class Counsel and Defense Counsel any objections relating to  
2 Class Counsel's Motion for Attorneys' Fees and Expenses.

3           8.3     Within fourteen (14) business days of the Court's Final Approval Order and Final  
4 Judgment, Apple shall pay to Class Counsel, either through the Settlement Administrator or directly to  
5 Class Counsel, fifty percent (50%) of any Court-approved Attorneys' Fees and Expenses, subject to  
6 Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs attached as Exhibit H,  
7 and providing all information necessary to effectuate such transmission, including adequate payment  
8 instructions consisting of wire transfer instructions, instructions for payment by check, and completed  
9 IRS Forms W-9 (including addresses and tax identification numbers). Pursuant to the Undertaking  
10 Regarding Attorneys' Fees and Costs, Class Counsel hereby jointly and severally submit themselves  
11 and their law firms (including all shareholders, members, and/or partners of their law firms) to the  
12 obligation to repay to Apple the Attorneys' Fees and Expenses that have been paid if the Court's Final  
13 Approval Order and Final Judgment and/or order regarding Attorneys' Fees and Expenses is vacated,  
14 overturned, reversed, or rendered void. Furthermore, the Undertaking Regarding Attorneys' Fees and  
15 Costs authorizes the Court to summarily issue orders (including but not limited to judgments and  
16 attachment orders) against each of Class Counsel for up to the full amount of Attorneys' Fees and  
17 Expenses (plus any additional attorneys' fees or expenses incurred by Apple in connection with the  
18 litigation or enforcement of the Undertaking), and to make findings for sanctions for contempt of court  
19 and all other appropriate relief. Class Counsel submits to the jurisdiction of the Court to issue such  
20 orders. Within seventy-five (75) days after the Effective Date, Apple shall pay to Class Counsel, either  
21 through the Settlement Administrator or directly to Class Counsel, the remainder of the Court-approved  
22 Attorneys' Fees and Expenses, net of any modifications or reversals on appeal or otherwise. Class  
23 Counsel has the authority and responsibility to allocate and distribute the awarded funds to other  
24 counsel based, in its sole discretion, on counsel's efforts and contributions in the Actions, provided that  
25 the allocation and distribution is consistent with the Court's order(s) regarding Attorneys' Fees and  
26 Expenses. Apple and Defense Counsel shall have no liability or other responsibility for allocation of  
27 any such awarded funds, and, in the event that any dispute arises relating to the allocation of fees or  
28 costs, Class Counsel and the Settlement Administrator agree to hold Apple and Defense Counsel

1 harmless from any and all such liabilities, costs, and expenses of such dispute.

2 8.4 Class Counsel will apply to the Court for the payment of a service award for the Named  
3 Plaintiffs, not to exceed One Thousand Five-Hundred U.S. Dollars (\$1,500.00) for each Named  
4 Plaintiff who was not deposed in the Actions, and not to exceed Three Thousand Five-Hundred U.S.  
5 Dollars (\$3,500.00) for each Named Plaintiff who was deposed in the Actions (i.e., Romeo Alba,  
6 Denise Bakke, Alisha Boykin, Steven Connolly, Alvin Davis, Loren Haller, Charlene Lowery, Cynthia  
7 Stacy, and Trent Young). The Named Plaintiffs who are Settlement Class Members also shall be  
8 required to submit Claim Forms as specified in paragraph 6.3.

9 8.5 The Settlement Administrator shall dispense the Named Plaintiff Service Awards from  
10 the Settlement Funds (as defined in paragraph 1.33), and in the manner and timing set forth in paragraph  
11 6.13.

12 8.6 The Court's award(s) of Attorneys' Fees and Expenses and/or Named Plaintiff Service  
13 Awards, if any, shall be separate from its determination of whether to approve the Settlement. In the  
14 event the Court approves the Settlement, but declines to award Class Counsel's Attorneys' Fees and  
15 Expenses and/or Named Plaintiff Service Awards in the amounts requested by Class Counsel, the  
16 Settlement will nevertheless be binding on the Parties.

17 **9. CALIFORNIA STATE ACTIONS AND JCCP ACTION**

18 9.1 JCCP Counsel have agreed to the terms and conditions of this Settlement. Within ten  
19 (10) days after entry of the Final Approval Order and Final Judgment in the MDL Action, JCCP  
20 Counsel shall request dismissal of the JCCP Action with prejudice. Class Counsel shall allocate from  
21 the Court's award of Attorneys' Fees and Expenses, if any, to JCCP Counsel an appropriate amount of  
22 attorneys' fees and expenses that, in Class Counsel's discretion, is fair and equitable. Neither JCCP  
23 Counsel nor any other plaintiffs' counsel in any of the California state actions that constitute the JCCP  
24 Action shall make an independent claim for attorneys' fees or expenses in any federal or state court.

25 **10. RELEASES AND DISMISSAL OF ACTIONS**

26 10.1 As of the Effective Date, the Settlement Class Members and their respective heirs,  
27 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,  
28 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,

1 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were  
2 brought, could have been brought, or are related to the same facts underlying the claims asserted in the  
3 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,  
4 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not  
5 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,  
6 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released  
7 as a matter of law, including, without limitation, claims for monetary relief, damages (whether  
8 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,  
9 interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement  
10 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any  
11 claims relating to the continued enforcement of the Settlement or the Protective Orders.

12 10.2 As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named  
13 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,  
14 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any  
15 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,  
16 damages, rights and liabilities, that were brought, could have been brought, or are related to the same  
17 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or  
18 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to  
19 any theory of recovery (including, but not limited to, those based in contract or tort, common law or  
20 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released  
21 Parties, for any type of relief that can be released as a matter of law, including, without limitation,  
22 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,  
23 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or  
24 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the  
25 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of  
26 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims  
27 relating to the continued enforcement of the Settlement or the Protective Orders.

28 10.3 As of the Effective Date, Apple shall have fully, finally, and forever released,

1 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal  
2 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL  
3 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,  
4 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order  
5 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and  
6 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any  
7 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all  
8 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release  
9 does not constitute a general release.

10 10.4 As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall  
11 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,  
12 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising  
13 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the  
14 Named Plaintiffs as of the Effective Date, against Apple's attorneys, legal representatives, and  
15 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any  
16 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all  
17 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release  
18 does not constitute a general release.

19 10.5 After entering into this Settlement, the Settlement Class Members and/or Named  
20 Plaintiffs may discover facts other than, different from, or in addition to, those that they know or believe  
21 to be true with respect to the claims released by this Settlement, but they intend to release fully, finally  
22 and forever any and all such claims. The Settlement Class Members and Named Plaintiffs expressly  
23 agree that, upon the Effective Date, they waive and forever release any and all provisions, rights, and  
24 benefits conferred by:

25 a) Section 1542 of the California Civil Code, which reads:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
27 **THAT THE CREDITOR OR RELEASING PARTY DOES**  
28 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
**FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
**AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**

**MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR OR RELEASED PARTY.**

1  
2 and

3 b) any law of any state, territory, or possession of the United States (or for the non-  
4 U.S. Named Plaintiffs, their respective country, province, or state), or principle  
5 of common law, which is similar, comparable, or equivalent to Section 1542 of  
6 the California Civil Code.

7  
8 10.6 Upon the Effective Date, the Actions shall be dismissed with prejudice. Class Counsel  
9 shall have the responsibility for ensuring that the MDL Action (including the actions identified in  
10 Appendix “A”) and the JCCP Action are dismissed with prejudice in accordance with the terms of this  
11 Settlement.

12 10.7 The Court shall retain jurisdiction over this Action to enforce the terms of this  
13 Settlement. In the event that any applications for relief are made, such applications shall be made to  
14 the Court. To avoid doubt, the Final Judgment applies to and is binding upon the Parties, the Settlement  
15 Class Members, and their respective heirs, successors, and assigns.

16 **11. DEFENDANT’S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE  
17 PROCEEDINGS**

18 11.1 Apple has indicated its intent to vigorously contest each and every claim in the Actions,  
19 and denies all of the material allegations in the Actions. Apple enters into this Settlement Agreement  
20 without in any way acknowledging any fault, liability, or wrongdoing of any kind. Apple nonetheless  
21 has concluded that it is in its best interests that the Actions be settled on the terms and conditions set  
22 forth herein in light of the expense that would be necessary to defend the Actions, the benefits of  
23 disposing of protracted and complex litigation, and the desire of Apple to conduct its business  
24 unhampered by the distractions of continued litigation.

25 11.2 Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the  
26 negotiation or proceedings connected with it, shall be construed as an admission or concession by  
27 Apple of the truth of any of the allegations in the Actions, or of any liability, fault, or wrongdoing of  
28 any kind.

11.3 To the extent permitted by law, neither this Settlement Agreement, nor any of its terms,



1 nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received  
2 in evidence in any pending or future civil, criminal, administrative, or other action or proceeding to  
3 establish any liability or admission by Apple.

4 11.4 To the extent permitted by law, this Settlement Agreement may be pleaded as a full and  
5 complete defense to, and may be used as the basis for an injunction against, any action, suit, or other  
6 proceeding which may be instituted, prosecuted, or attempted for claims covered by the releases in this  
7 Settlement Agreement.

8 **12. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

9 12.1 Apple may, at its sole discretion, terminate this Settlement Agreement if the number of  
10 devices associated with the individuals who seek exclusion from the Settlement Class exceeds a  
11 specified number of devices attached as Exhibit I and submitted to the Court for *in camera* review.

12 12.2 The terms and provisions of this Settlement Agreement may be amended, modified, or  
13 expanded by written agreement of the Parties and approval of the Court; provided, however, that after  
14 entry of the Final Approval Order and Final Judgment, the Parties may by written agreement effect  
15 such amendments, modifications, or expansions of this Settlement Agreement and its implementing  
16 documents (including all exhibits) without further notice to the Settlement Class or approval by the  
17 Court if such changes are consistent with the Court's Final Approval Order and Final Judgment and do  
18 not materially alter, reduce, or limit the rights of Settlement Class Members.

19 12.3 In the event the terms or conditions of this Settlement Agreement, other than terms  
20 pertaining to the Attorneys' Fees and Expenses and/or Named Plaintiff Service Awards, are materially  
21 modified by any court, Apple may, in its sole discretion and within thirty (30) days of such material  
22 modification, declare this Settlement null and void as provided in paragraph 7.5. For purposes of this  
23 paragraph, material modifications include any modifications to the definitions of the Settlement Class,  
24 Settlement Class Members, Released Parties, or the scope of the releases (as provided in paragraphs  
25 10.1 and 10.2), any modifications to the terms of the Settlement consideration (as provided in  
26 paragraphs 5.1 to 5.3.3), and any changes to the notice provisions. In the event of any modification by  
27 any court, and in the event Apple does not exercise its unilateral option to withdraw from this  
28 Settlement, the Parties shall meet and confer within fourteen (14) days of such modification to attempt

1 to reach an agreement as to how best to effectuate the court-ordered modification.

2 12.4 If the Effective Date is not reached, this Settlement Agreement is without prejudice to  
3 the rights of any party hereto, and all terms, negotiations, and proceedings connected therewith shall  
4 not be deemed or construed to be an admission by any Party or evidence of any kind in these Actions  
5 or any other action or proceeding.

6 **13. NOTICES**

7 13.1 All notices to Named Plaintiffs shall be delivered to:

8 Joseph W. Cotchett, Esq.  
9 Mark C. Molumphy, Esq.  
10 Anya Thepot, Esq.  
11 Cotchett, Pitre & McCarthy LLP  
12 840 Malcolm Road, Suite 200  
13 Burlingame, CA 94010  
14 jcotchett@cpmlegal.com  
15 mmolumphy@cpmlegal.com  
16 athepot@cpmlegal.com

17 Laurence D. King, Esq.  
18 Frederic S. Fox, Esq  
19 Donald R. Hall, Esq.  
20 David A. Straite, Esq  
21 Kaplan Fox & Kilsheimer LLP  
22 1999 Harrison Street, Suite 1560  
23 Oakland, CA 94612  
24 lking@kaplanfox.com  
25 ffox@kaplanfox.com  
26 dhall@kaplanfox.com  
27 dstraite@kaplanfox.com

19 13.2 All notices to Apple shall be delivered to:

20 Theodore J. Boutrous, Jr., Esq.  
21 Richard J. Doren, Esq.  
22 Christopher Chorba, Esq.  
23 Gibson, Dunn & Crutcher LLP  
24 333 South Grand Avenue  
25 Los Angeles, CA 90071  
26 TBoutrous@gibsondunn.com  
27 RDoren@gibsondunn.com  
28 CChorba@gibsondunn.com

13.3 The notice recipients and addresses designated in paragraphs 13.1 and 13.2 may be  
changed upon written notice provided to all individuals identified in those paragraphs.

27 **14. MISCELLANEOUS**

28 14.1 The exhibits and appendices attached to this Settlement Agreement are integral parts

1 thereof and together with this Settlement Agreement, contain the entire, complete and integrated  
2 statement of each and every term and provision of the Settlement. This Settlement Agreement may not  
3 be modified in any respect except upon the written consent of the Parties.

4 14.2 The undersigned each represent and warrant that each has authority to enter into this  
5 Settlement Agreement on behalf of the Party indicated below his or her name.

6 14.3 If, prior to the Effective Date, Class Counsel knows, or has reason to know, of any  
7 Named Plaintiff who intends to exclude himself or herself from the Settlement or who intends to submit  
8 an objection to the Settlement, Class Counsel shall promptly notify Defense Counsel within three (3)  
9 days. The Parties shall thereafter meet and confer within seven (7) days of such notification to  
10 determine whether any modifications to the Settlement, or any other actions or filings, are required.

11 14.4 Class Counsel and the Named Plaintiffs represent and warrant that they have not  
12 assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any  
13 portion thereof or interest therein, including, but not limited to, any interest in the Actions or any related  
14 action, and they further represent and warrant that they know of no such assignments or transfers on  
15 the part of any member of the Settlement Class.

16 14.5 The Parties, together with Class Counsel and Defense Counsel, have jointly participated  
17 in the drafting of this Settlement Agreement. No Party hereto shall be considered the drafter of this  
18 Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of  
19 interpretation or construction that would or might cause any provision to be construed against the  
20 drafter hereof.

21 14.6 As used in this Settlement Agreement, the masculine, feminine, or neutral gender, and  
22 the singular or plural wording, shall each be deemed to include the others whenever the context so  
23 indicates.

24 14.7 Unless otherwise noted, all references to “days” in this Settlement Agreement shall be  
25 to calendar days. In the event any date or deadline set forth in this Settlement Agreement falls on a  
26 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

27 14.8 Any and all disputes arising from or related to this Settlement Agreement must be  
28 brought by the Parties, Class Counsel, Defense Counsel, and/or members of the Settlement Class

1 exclusively to the Court. The Parties, Class Counsel, Defense Counsel and members of the Settlement  
2 Class irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action,  
3 proceeding, or dispute arising out of or relating to this Settlement Agreement. All terms of this  
4 Settlement Agreement and any suit, action, proceeding, or dispute arising out of or relating to this  
5 Settlement Agreement shall be governed by and interpreted according to the substantive laws of the  
6 State of California without regard to choice of law or conflicts of laws principles; however, nothing in  
7 this Settlement Agreement shall operate as a waiver of any Party's position regarding the applicable  
8 law governing the underlying claims at issue in the Actions.

9 14.9 Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable  
10 extensions of time to carry out any of the provisions of this Settlement Agreement.

11 14.10 All motions, discovery, and other proceedings in the Actions shall be stayed until the  
12 Court enters the Final Approval Order and Final Judgment, or this Settlement Agreement is otherwise  
13 terminated.

14 14.11 Nothing in this Settlement Agreement shall alter or abrogate any prior Court orders  
15 entered in the MDL Action.

16 14.12 This Settlement Agreement may be executed in counterparts. Facsimile or PDF  
17 signatures shall be considered valid as of the date they bear.

18 14.13 The Parties, together with Class Counsel and Defense Counsel, agree to prepare and  
19 execute all documents, to seek Court approvals, to defend Court approvals, and to do all things  
20 reasonably necessary to complete the Settlement.

21 14.14 This Settlement Agreement is executed voluntarily by each of the Parties without any  
22 duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant  
23 to each other that they have read and fully understand the provisions of this Settlement Agreement and  
24 have relied on the advice and representation of legal counsel of their own choosing.

25 14.15 This Settlement Agreement may be amended or modified only by a written instrument  
26 signed by Defense Counsel and Class Counsel and approved by the Court.

27 *[Signatures on following page]*

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DATED: \_\_\_\_\_, 2020



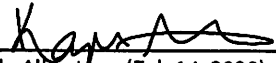
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DATED: February 21, 2020

  
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Romeo Alba

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4 DATED: 02/14, 2020

  
Kayla Albertson (Feb 14, 2020)

Kayla Albertson

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DATED: February 17, 2020

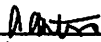
Rifah Alexander  
Rifah Alexander (Feb 17, 2020)

Rifah Alexander



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DATED: February 14, 2020

  
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Ashley Antonucci (Feb 14, 2020)

Ashley Ann Antonucci

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DATED: 2/15/, 2020

*Denise Bakke*  
Denise Bakke (Feb 15, 2020)

Denise Bakke

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DATED: 2/11/2020, 2020

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Tim Baldwin

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DATED: 2/13/2020, 2020



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DATED: 2/11/2020, 2020

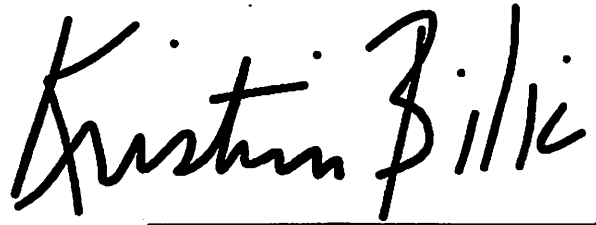
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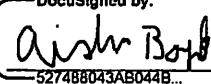
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Aisha Boyd

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DATED: 2/10/2020, 2020


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*Alisha Boykin*  
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Alisha Boykin



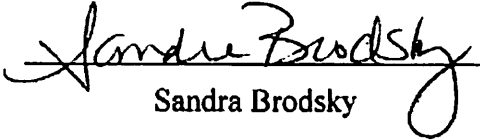
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DATED: 2/4, 2020

  
Angela Boykin


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DATED: February 20, 2020

  
Sandra Brodsky

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DATED: Feb 20, 2020

  
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Amy Brown

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DATED: 02/14/2020, 2020

  
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Kimberly Brown (Feb 14, 2020)

Kimberly Brown

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DATED: 02/14, 2020

  
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Kevin Browne (Feb 14, 2020)

Kevin Browne

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DATED: 2/10/2020, 2020

DocuSigned by:  
*Natasha Bryant*

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Natasha Bryant

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DATED: 2-14, 2020

Patti Burriss  
Patti Burriss (Feb 14, 2020)

Patti Burriss

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DATED: Feb 5, 2020

Julianna Caceres

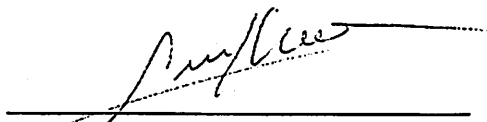
Dr. Julianna Caceres





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DATED: February 7<sup>th</sup>, 2020

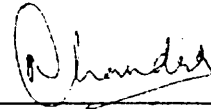


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Guilherme Canoa de Oliveira

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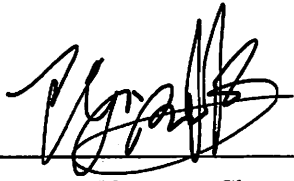
DATED: 1<sup>st</sup> February, 2020



Nakul Chandra

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DATED: Feb 20, 2020

  
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Hanpeng Chen

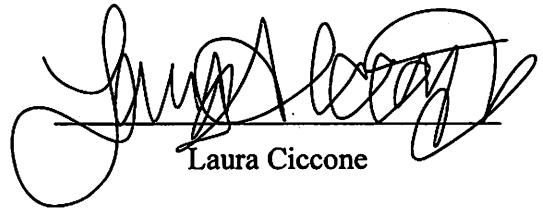
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DATED: 2-10-20, 2020

*Fredrick Christensen*  
Fredrick Christensen

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DATED: February 11, 2020



Laura Ciccone

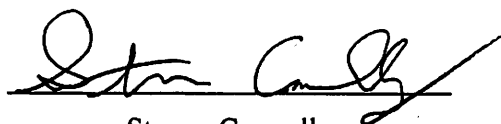
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DATED: 2/13, 2020

  
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Thomas A. Ciccone


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DATED: February 24<sup>th</sup>, 2020

  
Steven Connolly

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DATED: FEB 12, 2020

  
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Thomas Cook



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DATED: \_\_\_\_\_, 2020

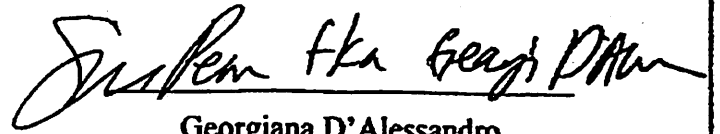
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Burim Daci

Hønefoss den 14.02.2020

Burim Daci

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DATED: Feb. 10<sup>th</sup>, 2020

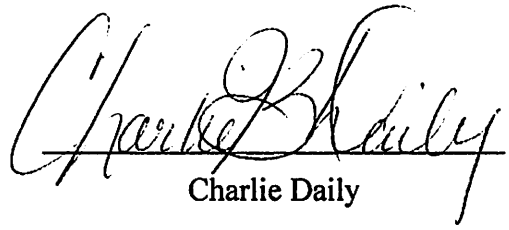


Georgiana D'Alessandro

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DATED: February 13, 2020

  
Charlie Daily

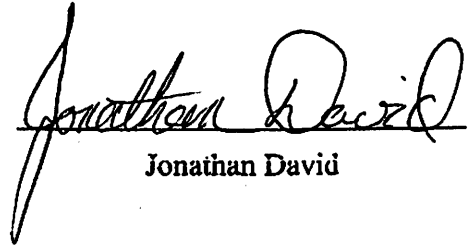
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DATED: 2/11/2020, 2020

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Irwin Darack


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DATED: 02-12, 2020

  
Jonathan David

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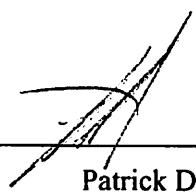
DATED: 02/14, 2020

  
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Alvin Davis (Feb 14, 2020)

Alvin Davis

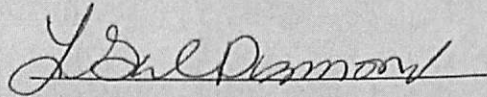
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DATED: February 6, 2020

  
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Patrick DeFillippo

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DATED 2/10/2020 2020

  
Laura Gail Diamond



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DATED: February 14, 2020

*Lillie Reap Diaz*  
Lillie Reap Diaz (Feb 14, 2020)

Lillie R. Diaz

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DATED: February 17, 2020

  
Erica Dillard (Feb 17, 2020)

Erica Dillard

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DATED: February 7th, 2020

*Samara Diner*

Samara Diner

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DATED: February 14, 2020



William C. Ellis

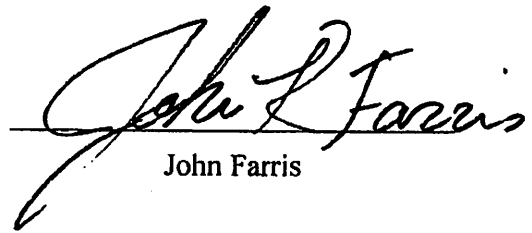
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DATED: February 15, 2020

  
Beckie Erwin

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DATED: February 11, 2020

  
John Farris

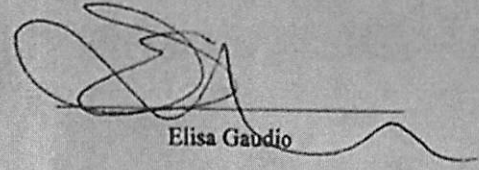
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DATED: Feb 8, 2020

  
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Aurelia Flores

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DATED: Feb 07, 2020



Elisa Gaudio



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DATED: February 8<sup>th</sup>, 2020



Christopher Gautreaux

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DATED: 2/7/2020, 2020

DocuSigned by:  
  
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Shemina Gheewalla

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DATED: 2/13, 2020



Robert Gilson

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3 DATED: FEB 24, 2020

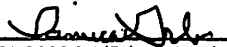
TANYA Goodrich

Tanya Goodrich

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DATED: FEBRUARY 14, 2020

  
TAMICA GORDON (Feb 14, 2020)

Tamica Gordon

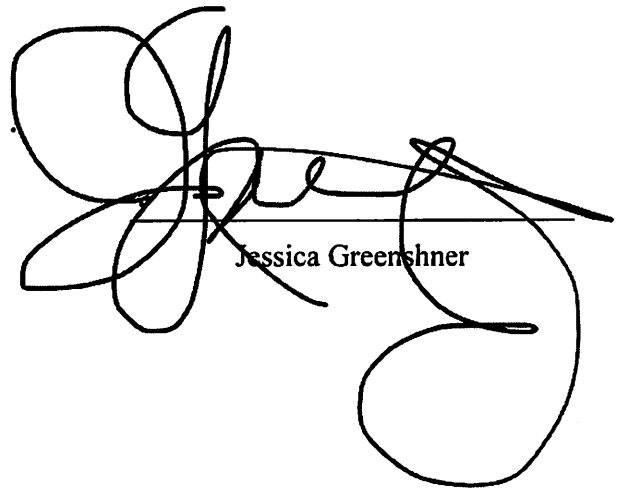
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DATED: 2/11/2020, 2020

DocuSigned by:  
  
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Tammy Greenfield

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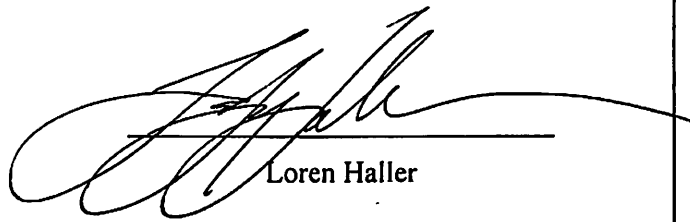
DATED: 2/19/, 2020



Jessica Greenshner

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DATED: February 12, 2020




Loren Haller



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DATED: 2/10/2020, 2020

DocuSigned by:  
  
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Kristin Hansen

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DATED: February 7<sup>th</sup>, 2020



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Sara Hawes

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DATED: 2/18/2020, 2020

Ronald Hawkins  
Ronald Hawkins (Feb 18, 2020)

Ronald Hawkins

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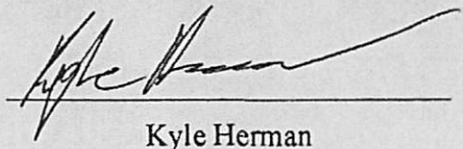
DATED: 2/11/2020, 2020

DocuSigned by:  
Steven Henry  
B93E3A82697B4F7...

Steven Henry

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DATED: 2-13, 2020

  
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Kyle Herman

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DATED: February 10, 2020

*Amanda Holman*

Amanda Holman

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DATED: 2/14/ \_\_\_\_\_, 2020

Mary Jackson (Feb 14, 2020)

Mary Jackson

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DATED: 02/14/2020, 2020


  
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Kelly Jankowski (Feb 14, 2020)

Kelly A. Jankowski



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DATED: Feb 21, 2020



Dale Johnson

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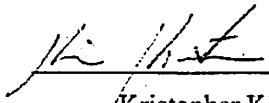
DATED: 2-17-, 2020

  
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James Kile

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DATED: 02-08, 2020

  
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Kristopher Kingston


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DATED: 2/10, 2020

*Jill Klingman*  
Jill Klingman

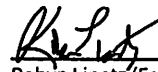
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DATED: February 20<sup>th</sup>, 2020

  
Benjamin Lazarus

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DATED: 2/14/20, 2020

  
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Robyn Lipetz (Feb 14, 2020)

Robyn Lipetz


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DATED: 2/7, 2020

  
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Lauren Long

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DATED: February 14, 2020

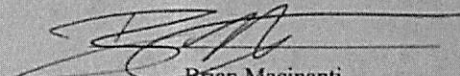
  
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Charlene Lowery (Feb 14, 2020)

Charlene Lowery



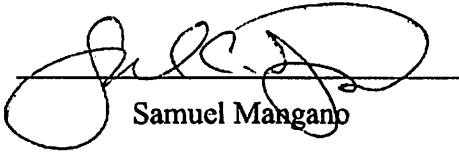
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DATED: 02-10, 2020

  
Brian Macinanti

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DATED: 2/12, 2020

  
Samuel Mangano



DATED: 2/19/20, 2020

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Stephen Margolis

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DATED: February 14, 2020

Michelle Martino  
Michelle Martino (Feb 14, 2020)

Michelle Martino

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DATED: \_\_\_\_\_, 2020

  
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Brinley McGill (Feb 14, 2020)

Brinley McGill

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DATED: 2/10/2020, 2020

DocuSigned by:  
*Gary Merenstein*  
76D876C888F84DB...

Gary Merenstein

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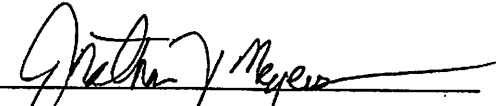
DATED: February 17, 2020  
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sandra J merola  
sandra J merola (Feb 17, 2020)

Sandra Merola

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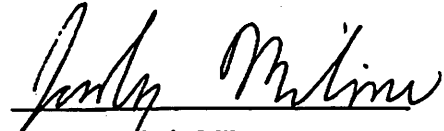
DATED: 2/24, 2020

  
Jonathan Meyers




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DATED: 2/11, 2020

  
Judy Milman

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DATED: 2/14, 2020

  
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Craig Moore (Feb 14, 2020)

Craig J. Moore

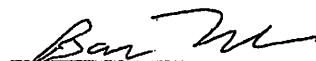
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DATED: 10 February, 2020

*TMorgan*  
Tim Morgan

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DATED: 2/11/2020, 2020



Barbara Moriello

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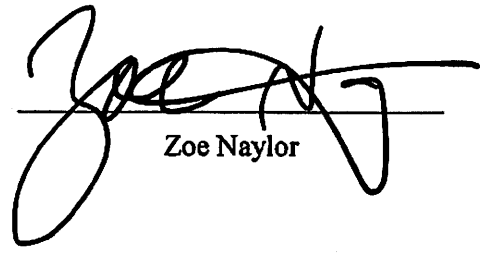
DATED: February 6, 2020



Yuichi Murakami

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DATED: February 10, 2020



Zoe Naylor

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DATED: 2/10/2020, 2020

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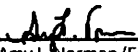
*Kaixuan Ni*

1735E398D2664F4...

Kaixuan Ni

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DATED: 02/17/, 2020

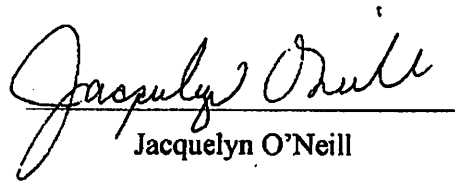
  
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Amy L. Norman (Feb 17, 2020)

Amy Norman



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DATED: FEB 12, 2020

  
Jacquelyn O'Neill

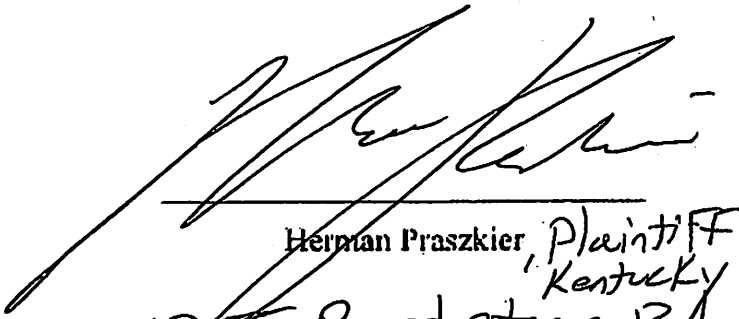
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DATED: 2/10/2020, 2020

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*Lawrence Pethick*  
1ED8F5831B8246B...  
Lawrence Pethick

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DATED: 2/13 . 2020

  
Hernan Praszker, Plaintiff  
Kentucky  
1385 Bardstoun Rd  
#217  
Louisville, KY  
40204


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DATED: February 12, 2020

*Jason Ratner*  
Jason Ratner

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DATED: February 14, 2020

  
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Jhonjulee Ray (Feb 14, 2020)

Jhonjulee Ray

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DATED: 02/14, 2020

*Alex Rodriguez*  
Alex Rodriguez (Feb 14, 2020)

Alex Rodriguez

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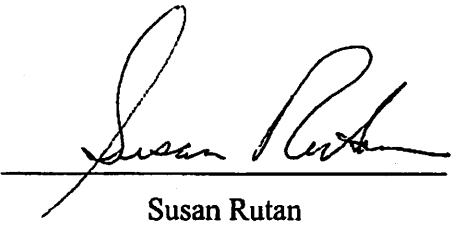
DATED: FEB 10, 2020



Daphne B. Rodriguez

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DATED: February 11, 2020

  
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Susan Rutan



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DATED: 2/14/2020, 2020

*Darlane Saracina*  
Darlane Saracina (Feb 14, 2020)

Darlane Saracina

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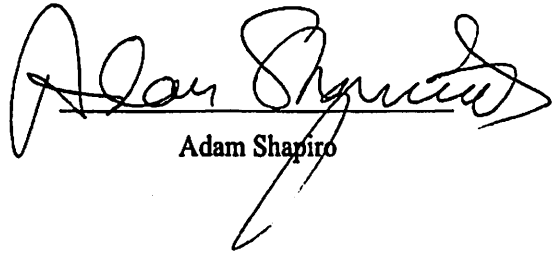
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Caren Schmidt

Caren Schmidt

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DATED: Feb 8, 2020

  
Adam Shapiro

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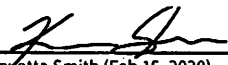
DATED: February 24, 2020

*matthew shaske*

Matthew Shaske

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DATED: February 14, 2020

  
Kenyotta Smith (Feb 15, 2020)

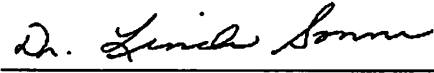
Kenyotta Smith

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION  
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE  
DIVISION, CASE NO. 5:18-md-02827-EJD, STIPULATION OF SETTLEMENT

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I approve.

DATED: February 19, 2020



Linda Sonna

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DATED: February 14, 2020

Cynthia A. Stacy  
Cynthia Stacy (Feb 14, 2020)

Cynthia A. Stacy

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DATED: 17 February, 2020

*Sarah Stone*  
Sarah Stone (Feb 17, 2020)

Sarah Stone



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DATED: 2/11/2020, 2020

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Hannah Stratton

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DATED: 14 FEB, 2020



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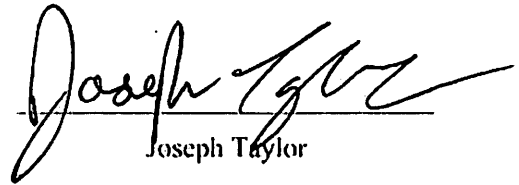
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Jeanette Taylor  
Jeanette Taylor (Feb 17, 2020)

Jeanette Taylor

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DATED: 02-10 -, 2020

  
Joseph Taylor

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DATED: February 14, 2020

  
Judith A Thompson (Feb 14, 2020)

Judith Thompson

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DATED: 0218, 2020

Tonya Thompson  
Tonya Thompson (Feb 18, 2020)

Tonya M. Thompson

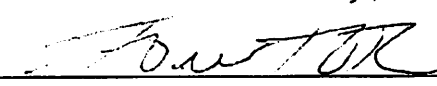
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DATED: Feb 18, 2020

Shiriam Torres  
Shiriam Torres

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DATED: 2/16, 2020

  
Thomas Toth



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DATED: 2,17, 2020

  
HEIDI VALLE (Feb 17, 2020)

Heidi Valle

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DATED: Feb 14, 2020

*Drew Victory*  
Drew Victory (Feb 14, 2020)

Drew Victory

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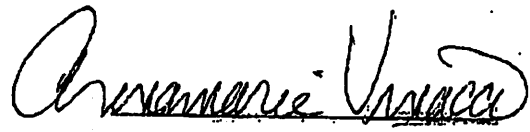
DATED: 2/14, 2020

  
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Ida Villegas (Feb 14, 2020)

Ida Villegas

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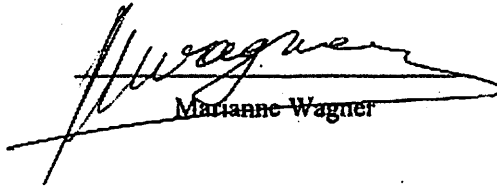
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Annamarie Vinacco

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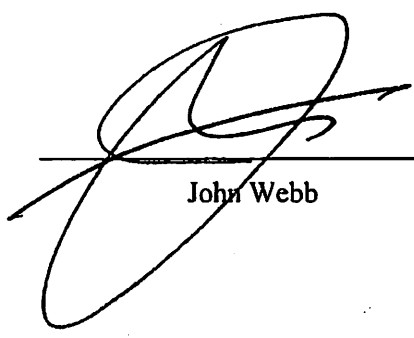
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Marianne Wagner

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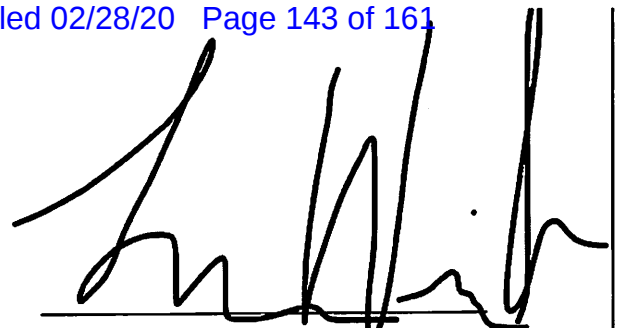
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John Webb

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DATED: 2/20, 2020



Lauren Weintraub

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DATED: 2/14/, 2020

Brandi White  
Brandi White (Feb 14, 2020)

Brandi S. White



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DATED: 02/14/2020, 2020



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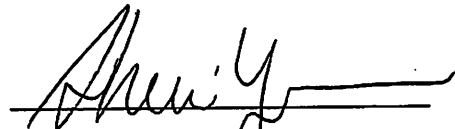
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Andrew Yashchuk  
Andrew Yashchuk (Feb 16, 2020)

Andrew Yashchuk

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DATED: 2/11/, 2020

  
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Sherri Yelton

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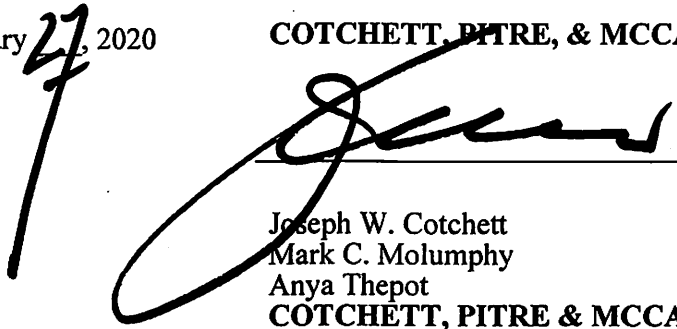
*Trent Young*

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Trent Young

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DATED: February 27, 2020

**COTCHETT, PITRE, & MCCARTHY LLP**



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Joseph W. Cotchett  
Mark C. Molumphy  
Anya Thepot  
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840 Malcolm Road, Suite 200  
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athepot@cpmlegal.com

*Interim Co-Lead Class Counsel*

DATED: February \_\_, 2020

**KAPLAN FOX & KILSHEIMER LLP**

---

Frederic S. Fox  
Laurence D. King  
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David A. Straite  
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*Interim Co-Lead Class Counsel*

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andrewb@thebrownlawfirm.com

*JCCP Counsel*

1 DATED: February \_\_\_, 2020

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mmolumphy@cpmlegal.com  
8 athepot@cpmlegal.com

9 *Interim Co-Lead Class Counsel*

10  
11 DATED: February 28, 2020

**KAPLAN FOX & KILSHEIMER LLP**

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Laurence D. King  
15 Donald R. Hall  
David A. Straite  
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18 dhall@kaplanfox.com  
dstraite@kaplanfox.com

19 *Interim Co-Lead Class Counsel*

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21 DATED: February \_\_\_, 2020

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andrewb@thebrownlawfirm.com

26  
27 *JCCP Counsel*

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DATED: February \_\_, 2020

**COTCHETT, PITRE, & MCCARTHY LLP**

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Joseph W. Cotchett  
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athepot@cpmlegal.com

*Interim Co-Lead Class Counsel*

DATED: February \_\_, 2020

**KAPLAN FOX & KILSHEIMER LLP**

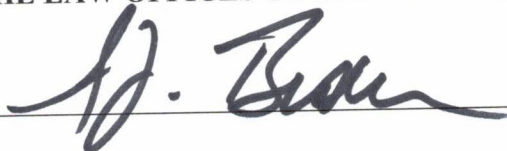
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Frederic S. Fox  
Laurence D. King  
Donald R. Hall  
David A. Straite  
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1999 Harrison Street, Suite 1560  
Oakland, CA 94612 ffox@kaplanfox.com  
lking@kaplanfox.com  
dhall@kaplanfox.com  
dstraite@kaplanfox.com

*Interim Co-Lead Class Counsel*

DATED: February \_\_, 2020

**THE LAW OFFICES OF ANDREW J. BROWN**



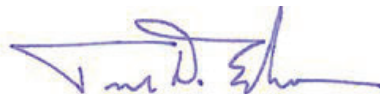
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Andrew J. Brown  
**THE LAW OFFICES OF ANDREW J. BROWN**  
501 West Broadway, Suite 1490  
San Diego, CA 92101  
andrewb@thebrownlawfirm.com

*JCCP Counsel*

1 DATED: February 28, 2020

**THE BRANDI LAW FIRM**



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Thomas J. Brandi  
Terence D. Edwards  
THE BRANDI LAW FIRM  
354 Pine Street, Third Floor  
San Francisco, CA 94104

*JCCP Counsel*

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9 DATED: February \_\_\_\_, 2020

**APPLE INC.**

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Noreen Krall  
Vice President & Chief Litigation Counsel

*Apple Inc.*

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15 DATED: February \_\_\_\_, 2020

**GIBSON, DUNN & CRUTCHER LLP**

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Theodore J. Boutros, Jr.  
Richard J. Doren  
Christopher Chorba  
Diana M. Feinstein  
GIBSON, DUNN & CRUTCHER LLP  
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rdoren@gibsondunn.com  
cchorba@gibsondunn.com  
dfeinstein@gibsondunn.com

*Counsel for Apple Inc.*



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DATED: February \_\_, 2020

**THE BRANDI LAW FIRM**

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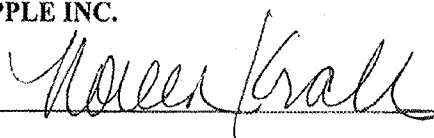
Thomas J. Brandi  
Terence D. Edwards  
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354 Pine Street, Third Floor  
San Francisco, CA 94104

*JCCP Counsel*

DATED: February 28, 2020

**APPLE INC.**

---



Noreen Krall  
Vice President & Chief Litigation Counsel

*Apple Inc.*

DATED: February 28, 2020

**GIBSON, DUNN & CRUTCHER LLP**

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Theodore J. Boutrous, Jr.  
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Los Angeles, CA 90071  
tboutrous@gibsondunn.com  
rdoren@gibsondunn.com  
cchorba@gibsondunn.com  
dfeinstein@gibsondunn.com

*Counsel for Apple Inc.*

**APPENDIX A**  
**Actions in the MDL Action**

<b>Case</b>	<b>District</b>	<b>Case No.</b>
<i>Abdulla v. Apple Inc.</i>	N.D. Ill.	1:17-cv-09178
<i>Aburos v. Apple Inc.</i>	S.D. Fla.	1:17-cv-24712
<i>Banks v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00241
<i>Batista v. Apple Inc.</i>	N.D. Cal.	5:17-cv-07355
<i>Bilic v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00449
<i>Block v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00481
<i>Bogdanovich v. Apple Inc.</i>	C.D. Cal.	2:17-cv-09138
<i>Bond v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00833
<i>Borstelmann v. Apple Inc.</i>	E.D. Mo.	4:18-cv-00289
<i>Brand v. Apple Inc.</i>	D.S.C.	2:17-cv-03453
<i>Brodsky v. Apple Inc.</i>	E.D.N.Y.	2:18-cv-01998
<i>Brody v. Apple Inc.</i>	E.D.N.Y.	1:18-cv-00080
<i>Burton v. Apple Inc.</i>	W.D. Mo.	2:17-cv-04257
<i>Canoa de Oliveira v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00735
<i>Chapel v. Apple Inc.</i>	W.D. Mo.	2:18-cv-04007
<i>Cook v. Apple Inc.</i>	S.D. Cal.	3:17-cv-02579
<i>Corporacion Nacional de Consumidores y Usuarios de Chile v. Apple Inc.</i>	N.D. Cal.	3:18-cv-02527
<i>Cunningham v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00338
<i>Diner v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00179
<i>Donahoe v. Apple Inc.</i>	N.D. Ohio	1:18-cv-00763
<i>Drantivy v. Apple Inc.</i>	E.D.N.Y.	1:17-cv-07480
<i>Fahey v. Apple Inc.</i>	D.D.C.	1:18-cv-00937
<i>Ferguson v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00206
<i>Ford v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00760
<i>Fung v. Apple Inc.</i>	N.D. Cal.	5:18-cv-01585
<i>Gallmann v. Apple Inc.</i>	N.D. Cal.	5:17-cv-07285
<i>Gilson v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00216
<i>Gonzalez v. Apple Inc.</i>	N.D. Cal.	5:19-cv-06646
<i>Grillo v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00148
<i>Hakimi v. Apple Inc.</i>	N.D. Cal.	5:17-cv-07292
<i>Harvey v. Apple Inc.</i>	N.D. Cal.	5:17-cv-07274
<i>Hawes v. Apple Inc.</i>	N.D. Cal.	5:18-cv-01339
<i>Hogue v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00910
<i>Holman v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00125
<i>Honigman v. Apple Inc.</i>	E.D.N.Y.	2:18-cv-00046
<i>Johnson v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00385
<i>Jones v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00406
<i>LaNasa v. Apple Inc.</i>	E.D. La.	2:17-cv-17878

<b>Case</b>	<b>District</b>	<b>Case No.</b>
<i>Lankford v. Apple Inc.</i>	N.D. Ala.	5:18-cv-00257
<i>Lazarus v. Apple Inc.</i>	E.D.N.Y.	1:17-cv-07485
<i>Liebermann v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00110
<i>Littlefied v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00182
<i>Mailyan v. Apple Inc.</i>	C.D. Cal.	2:17-cv-09192
<i>Mallh v. Apple Inc.</i>	E.D.N.Y.	1:18-cv-00051
<i>McDonald v. Apple Inc.</i>	N.D. Ill.	1:18-cv-00226
<i>McInnis v. Apple Inc.</i>	S.D. Miss.	1:17-cv-00358
<i>Merenstein v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00771
<i>Miller v. Apple Inc.</i>	E.D. Tex.	4:17-cv-00889
<i>Mills v. Apple Inc.</i>	D.N.J.	3:18-cv-00780
<i>Munro v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00128
<i>Naylor v. Apple Inc.</i>	N.D. Cal.	5:19-cv-04421
<i>Neilan v. Apple Inc.</i>	N.D. Ill.	1:17-cv-09296
<i>Neumann v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00324
<i>Rabinovits v. Apple Inc.</i>	S.D.N.Y.	1:17-cv-10032
<i>Rodriguez v. Apple Inc.</i>	N.D. Cal.	5:18-cv-03989
<i>Schroeder v. Apple Inc.</i>	S.D. Ind.	1:17-cv-04750
<i>Sens v. Apple Inc.</i>	S.D. Fla.	0:18-cv-60128
<i>Simon v. Apple Inc.</i>	S.D. Fla.	1:18-cv-20151
<i>Solak v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00123
<i>Stefanou v. Apple Inc.</i>	S.D. Ohio	1:18-cv-00007
<i>Taylor v. Apple Inc.</i>	N.D. Ala.	7:18-cv-00168
<i>Webb v. Apple Inc.</i>	N.D. Cal.	3:18-cv-02167
<i>Werner v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00283
<i>Wetherald v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00371
<i>White v. Apple Inc.</i>	N.D. Cal.	5:18-cv-00305
<i>Williams v. Apple Inc.</i>	N.D. Cal.	3:18-cv-00440
<i>Yun v. Apple Inc.</i>	N.D. Cal.	5:18-cv-01632

**APPENDIX B**  
**Named Plaintiffs**

1		
2		
3	Akrawy, Lilav (Netherlands)†	Gautreaux, Christopher
	Alba, Romeo*	Gheewalla, Shemina
4	Albertson, Kayla	Gilson, Robert
	Alexander, Rifah	Goldfeld, Hayley
5	Antonucci, Ashley Ann	Goodrich, Tanya
	Bakke, Denise*	Gordon, Tamica
6	Baldwin, Timothy	Greenfield, Tammy
	Batista, Aniledis	Greenshner, Jessica
7	Becker, Henry	Haller, Loren*
	Bilic, Kristin	Hansen, Kristin
8	Boyd, Aisha	Hawes, Sara
	Boykin, Alisha*	Hawkins, Ronald
9	Boykin, Angela	Henry, Steven
10	Brodsky, Sandra	Herman, Kyle
	Brown, Amy	Holman, Amanda
11	Brown, Kimberly	Jackson, Mary
	Browne, Kevin	Jankowski, Kelly A.
12	Bryant, Natasha	Johnson, Dale
	Burriss, Patti	Kile, James
13	Caceres, Juliana (Colombia)†	Kingston, Kristopher
14	Canoa de Oliveira, Guilherme (Brazil)†	Klingman, Jill
	Carlo, Laura	Krueger, Connie
15	Chandra, Nakul (India)†	Langlands, Lisa
	Chen, Hanpeng (Canada)†	Lazarus, Benjamin
16	Christensen, Fredrick	Lipetz, Robyn
	Cicccone, Laura	Long, Lauren
17	Cicccone, Thomas Anthony	Lowery, Charlene*
	Connolly, Steven*	Macinanti, Brian
18	Cook, Thomas	Mangano, Samuel
	D'Alesandro, Georgiana	Margolis, Stephen
19	Daci, Burim (Norway)†	Martino, Michelle
	Daily, Charlie Bell	McGill, Brinley
20	Darack, Irwin	Merenstein, Gary
	David, Jonathan	Merola, Sandra
21	Davis, Alvin*	Meyers, Jonathan Jed
	DeFillippo, Patrick	Milman, Judy
22	Diamond, Laura Gail	Moore, Craig Jonathan
	Diaz, Lillie Reap	Morgan, Tim
23	Dillard, Erica	Moriello, Barbara
	Diner, Samara	Murakami, Yuichi (Japan)†
24	Ellis, William C.	Naylor, Zoe
	Erwin, Beckie	Ni, Kaixuan (China)†
25	Farris, John	Norman, Amy
	Flores, Aurelia	O'Neill, Jacquelyn
26	Gaudio, Elisa (Canada)†	Pethick, Lawrence
27		
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1	Praszker, Herman	Thompson, Tonya Margarette
	Rabbanian, Aaron	Tiano, Gerald
2	Ratner, Jason	Torres, Shiriam
3	Ray, Jhonjulee	Toth, Thomas
	Rodriguez, Alex Eugene	Valle, Heidi
4	Rodriguez, Daphne Bowles	Vega, Patricia
	Rosalia, Sheri	Victory, Drew
5	Rutan, Susan	Villegas, Ida
	Santino, Nikita	Vinacco, Annamarie
6	Saracina, Darlane	Wagner, Marianne (Belgium)†
7	Schmidt, Caren	Webb, John
	Shapiro, Adam	Weintraub, Lauren
8	Shaske, Matthew	White, Brandi S.
	Smith, Kenyotta	Williams, Khendle Harvest
9	Sonna, Linda (Mexico)†	Woolsey, Kenneth
	Stacy, Cynthia*	Yashchuk, Andrew
10	Stone, Sarah	Yeganeh, Andrew
11	Stratton, Hannah	Yelton, Sherri
	Tandel, Jessica	Young, Trent*
12	Tanovan, Eric	
	Taylor, Jeanette	* Deposed
13	Taylor, Joseph	† Non-U.S. Named Plaintiff
14	Thompson, Judith	

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**APPENDIX C**  
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**EXHIBIT A**

*In re Apple Inc. Device Performance Litig.*

**Claim Form and Instructions (Online and Print Formats)**

**INSTRUCTIONS**

Please read these instructions carefully then select either the Electronic Claim Form or Printed Claim Form option at the bottom of the page. If you need assistance completing a Claim Form, you may send an email to [e-mail address for Claims Administrator] or visit [link to FAQ page]. Refer back to [link to full notice] for more information about the Settlement.

**Deadline and Submission Method.** Claim Forms must be either:

(1) submitted online by [date]; or

(2) printed and received by the Claims Administrator via U.S. mail by [date].

**Eligibility.** The Settlement will provide a cash payment if you are the owner of an eligible device and experienced diminished performance when running a certain version of iOS prior to December 21, 2017. See below for details.

Eligible devices and iOS versions:

- iPhone 6, 6 Plus, 6s, 6s Plus, or SE device running iOS 10.2.1 or later
- iPhone 7 and 7 Plus running iOS 11.2 or later

You are limited to one cash payment per device. If you are the owner of more than one eligible device, you must fill out a separate Claim Form for each device.

Unless you request exclusion from the class as explained in the Class Notice, you will be bound by the Settlement Agreement and Release and the Final Judgment even if you do not submit the Claim Form.

You must fill out and submit a complete and accurate Claim Form by any of the above submission methods by [date]. If your Claim Form is incomplete, contains false information, or is not submitted by the deadline, your claim will be rejected and you will waive all rights to receive a payment under this Settlement. The Claims Administrator may contact you to request more information to verify your claim. The information you provide will be treated as confidential and used for the purpose of this Settlement only.

Please select one of the Claim Form methods below to begin the Claim Form process.

Continue to Electronic Claim Form

Continue to Printed Claim Form

**ELECTRONIC CLAIM FORM**

In this electronic Claim Form, you must fill out and submit a complete and accurate Claim Form below by [date]. If your Claim Form is incomplete, contains false information, or is not submitted by the deadline, your claim will be rejected and you will waive all rights to receive a payment under this Settlement. The information you provide will be treated as confidential and used for the purpose of this Settlement only. Any payment provided in response to your claim will be issued to the email address you provide on this Claim Form, unless you elect to have payment mailed to the mailing address on this Claim Form. If you prefer to submit a Printed Claim Form, follow this [link].

**Step 1—INFORMATION REQUIRED FOR ALL CLAIMANTS**

First Name	Last Name	
Mailing Address 1	Mailing Address 2	
City	State	Zip Code
Email Address		

iPhone Serial Number:

[You can find your serial number on your iPhone in Settings > General > About. If you no longer have your iPhone, you can check the barcode on your device's original packaging or refer to the original receipt or invoice.]

Please indicate your preferred method of payment. (Please select only one option from the drop-down menu.)

- **Digital Check.** If I have submitted a valid claim, please send me a digital check at the email address above. I understand that I will be contacted at this email address with instructions for receiving the digital check, for which you will need to provide your routing and bank account number.
- **Mailed Check.** If I have submitted a valid claim, please send me a check at my mailing address above.

**Step 2—DEVICE AND iOS VERSION** (Please select only one option from the drop-down menu.)

- I am the owner of an iPhone 6, 6 Plus, 6s, 6s Plus, or SE device that ran iOS 10.2.1 or later prior to December 21, 2017;
- I am the owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later prior to December 21, 2017.

**Step 3—DECLARATION UNDER PENALTY OF PERJURY, SIGNATURE, & DATE**

- I experienced diminished performance on my iPhone 6, 6 Plus, 6s, 6s Plus, or SE device when running iOS 10.2.1 or later before December 21, 2017 OR my iPhone 7 or 7 Plus when running iOS 11.2 or later before December 21, 2017.

You must sign this Claim Form by checking the box below and entering today's date.

- By checking this box, I declare under penalty of perjury that the information above is true and correct to the best of my knowledge and belief. I understand that my claim is subject to audit, review, and validation using all available information.

Type Your Name Here to Sign Your Claim Form

To file your claim, be sure to click on the [Submit Claim Form](#) button below.

**REMINDERS**

Your Claim Form must be submitted by [date]. Late or incomplete Claim Forms will be denied.

All information provided on this Claim Form is subject to verification.

After you click [Submit Claim Form](#), you will be able to print and save a copy of this Claim Form for your records.

[Submit Claim Form](#)

**PRINTED CLAIM FORM**

In this printed Claim Form, you must fill out and deliver via U.S. mail a complete and accurate Claim Form below by [date]. If your Claim Form is incomplete, contains false information, or is not submitted by the deadline, your claim will be rejected and you will waive all rights to receive a payment under this Settlement. The information you provide will be treated as confidential and used for the purpose of this Settlement only. Any payment provided in response to your claim will be issued to the email address you provide on this Claim Form, unless you elect to have payment mailed to the mailing address on this Claim Form. If you prefer to submit a Claim Form electronically, follow this [link].

Please type or print clearly in blue or black ink.

**Step 1—INFORMATION REQUIRED FOR ALL CLAIMANTS**

Name (First and Last): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Email Address: \_\_\_\_\_

iPhone Serial Number:     

[You can find your serial number on your iPhone in Settings > General > About. If you no longer have your iPhone, you can check the barcode on your device’s original packaging or refer to the original receipt or invoice.]

Please indicate your preferred method of payment. (Please check only one option.)

- Digital Check.** If I have submitted a valid claim, please send me a digital check at the email address above. I understand that I will be contacted at this email address with instructions for receiving the digital check.
- Mailed Check.** If I have submitted a valid claim, please send me a check at my mailing address above.

**Step 2—DEVICE AND iOS VERSION** (Please check only one option.)

- I am the owner of an iPhone 6, 6 Plus, 6s, 6s Plus, or SE device that ran iOS 10.2.1 or later prior to December 21, 2017.
- I am the owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later prior to December 21, 2017.

**Step 3—DECLARATION UNDER PENALTY OF PERJURY, SIGNATURE, & DATE**

- I experienced diminished performance on my iPhone 6, 6 Plus, 6s, 6s Plus, or SE device when running iOS 10.2.1 or later before December 21, 2017 OR my iPhone 7 or 7 Plus when running iOS 11.2 or later before December 21, 2017.

I declare under penalty of perjury that the information above is true and correct to the best of my knowledge and belief. I understand that my claim is subject to audit, review, and validation using all available information.

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
DATED

Please retain a copy of this Claim Form for your records.

**EXHIBIT B**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later before December 21, 2017, and/or a U.S. owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later before December 21, 2017, you could be entitled to benefits under a class action settlement.**

*The United States District Court for the Northern District of California authorized this notice.  
This is not a solicitation from a lawyer.*

- Under the proposed settlement, Apple will make a minimum, non-reversionary payment of \$310,000,000 and a maximum payment of \$500,000,000, depending on the number of claims submitted.
- You may be entitled to settlement benefits if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) you experienced diminished performance on your device(s). For more information, you can visit the settlement website at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com).
- Your legal rights are affected whether you act or don't act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
OPTION	EXPLANATION	DEADLINE
SUBMIT A CLAIM FORM ONLINE OR IN THE MAIL	The only way to get a payment under the settlement.	[date]
EXCLUDE YOURSELF	Get no payment under the settlement. This is the only option that allows you to be a part of any other lawsuit against Apple about the claims and allegations in this case.	[date]
OBJECT TO THE SETTLEMENT	Write to the Court about why you don't like the settlement.	[date]
OBJECT TO ATTORNEYS' FEES AND/OR EXPENSES	Write to the Court about why you don't like the attorneys' fees and/or expenses that Class Counsel requests.	[date]
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.	[date]

DO NOTHING	Get no payment under the settlement and give up your right to compensation for the claims and allegations in this case.	N/A
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- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

**WHAT THIS NOTICE CONTAINS**

BASIC INFORMATION..... 4

    1. Why did I get a notice? ..... 4

    2. What is this lawsuit about? ..... 4

    3. Why is this a class action? ..... 4

    4. Why is there a settlement? ..... 4

WHO IS IN THE SETTLEMENT..... 5

    5. What is an eligible device? ..... 5

    6. How do I know if I am part of the settlement? ..... 5

    7. Are there exceptions to being included? ..... 5

    8. I’m still not sure if I am included..... 5

THE SETTLEMENT BENEFITS—WHAT YOU GET ..... 5

    9. What does the settlement provide? ..... 5

    10. What are the requirements to receive a settlement benefit?..... 6

HOW YOU GET A SETTLEMENT BENEFIT—SUBMITTING A CLAIM FORM..... 6

    11. How can I get a settlement benefit? ..... 6

    12. When would I get my settlement benefit? ..... 6

    13. What am I giving up to get a settlement benefit? ..... 7

EXCLUDING YOURSELF FROM THE SETTLEMENT..... 7

    14. How do I get out of the settlement? ..... 7

    15. If I don’t request exclusion, can I sue Apple for the same thing later? ..... 7

    16. If I request exclusion, can I get a settlement benefit?..... 7

THE LAWYERS REPRESENTING YOU ..... 8

    17. Do I have a lawyer in this case?..... 8

    18. How will the lawyers be paid? ..... 8

OBJECTING TO THE SETTLEMENT..... 8

    19. How do I tell the Court that I don’t like the settlement?..... 8

    20. What’s the difference between objecting and requesting exclusion? ..... 9

THE COURT’S FAIRNESS HEARING..... 9

    21. When and where will the Court decide whether to approve the settlement? ..... 9

    22. Do I need to come to the Final Hearing? ..... 9

    23. May I speak at the Final Hearing? ..... 10

IF YOU DO NOTHING ..... 10

    24. What happens if I do nothing at all? ..... 10

GETTING MORE INFORMATION.....	10
25. Are there more details about the settlement? .....	10
26. How do I get more information?.....	10

## BASIC INFORMATION

### 1. Why did I get a notice?

You may be a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device that ran iOS 10.2.1 or later (or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later) before December 21, 2017. For more information, you can visit the settlement website at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com).

The Court ordered this notice because you have a right to know about a proposed settlement of class action lawsuits against Apple relating to certain iOS software that allegedly diminished the performance of Apple devices, and about your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after any appeals are resolved, an administrator will make the payments that the settlement allows.

This notice explains the lawsuits, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. The people who sued are Plaintiffs, and the company they sued, Apple Inc., is the Defendant. The proposed settlement also resolves similar class actions filed in other federal districts of the United States, as well as a class action filed in Superior Court for the State of California, County of San Francisco.

### 2. What is this lawsuit about?

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is *not* an admission of wrongdoing by Apple.

### 3. Why is this a class action?

In a class action, one or more people, called Named Plaintiffs, sued on behalf of all people who purportedly have similar claims (called “Settlement Class Members”). Together, the Named Plaintiffs and the other members of the Settlement Class make up the “Settlement Class.” One court resolves the dispute for all members of the Settlement Class, except for those who exclude themselves from the Class. United States District Court Judge Edward J. Davila is in charge of this class action.

### 4. Why is there a settlement?

The Court did not decide the case in favor of Plaintiffs or Apple. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Settlement Class Members. The Named Plaintiffs and their attorneys (“Class Counsel”) think

the settlement is in the best interests of the members of the Settlement Class.

## WHO IS IN THE SETTLEMENT

To see if you are eligible for benefits, you first must determine whether you are a member of the Settlement Class.

### 5. What is an eligible device?

iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE devices that ran iOS 10.2.1 or later or iPhone 7 and 7 Plus devices that ran iOS 11.2 or later. Eligible members of the Settlement Class must meet the other requirements described in this notice.

### 6. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) you experienced diminished performance on your device(s). **You must meet all three criteria to be a member of the Settlement Class.**

A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions.

### 7. Are there exceptions to being included?

The Settlement Class *excludes* Apple; any entity in which Apple has a controlling interest; Apple's directors, officers, and employees; Apple's legal representatives, successors, and assigns; members of the Court; all persons who submit valid requests to be excluded from the settlement; and certain other individuals whose claims have already been adjudicated.

### 8. I'm still not sure if I am included.

If you are still not sure whether you are a member of the Settlement Class, you can visit the Settlement Website at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com).

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 9. What does the settlement provide?

Apple will provide a cash payment per eligible device (calculated as set forth below) to each Settlement Class Member who submits a declaration under penalty of perjury stating that they are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) they experienced diminished performance on the device(s).

**Amount of Cash Payment:** The cash payment per eligible device depends on the actual number of approved claims and other factors, including the award of attorneys' fees and expenses and named plaintiff service awards. Under the proposed settlement, Apple shall pay a minimum of \$310,000,000 (the "Floor") and a maximum of \$500,000,000 (the "Ceiling"). Under no circumstances shall any of the Floor revert to Apple.

Apple will provide a cash payment of approximately \$25 per eligible device, provided that Apple will not pay more than \$500 million in aggregate to the Settlement Class Members. If the total value of approved claims submitted exceeds the \$500 million Ceiling, the value of each approved claim (per eligible device) will be reduced on a pro rata basis. Additionally, under the proposed settlement, if the total value of approved claims submitted by Settlement Class Members does not exceed the \$310 million Floor, the value of each approved claim (per eligible device) may be increased on a pro rata basis, up to a maximum of \$500 per device. For more details, please refer to the more detailed Settlement Agreement available at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com).

#### 10. What are the requirements to receive a settlement benefit?

To receive a settlement benefit, you must complete a valid Claim Form that includes, among other things, your name, mailing address, and iPhone serial number. You also must declare under penalty of perjury that you are or were: (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) you experienced diminished performance on your device(s). If you have multiple eligible devices, you must submit a separate Claim Form for each device.

If you satisfy these requirements, you will receive a cash payment for each valid Claim Form you submit, based on the calculation explained above.

#### HOW YOU GET A SETTLEMENT BENEFIT—SUBMITTING A CLAIM FORM

#### 11. How can I get a settlement benefit?

To qualify for a settlement benefit, you must submit a valid online Claim Form. This Claim Form, including instructions on how to make a Claim, can be accessed at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com). You can also request a Claim Form by calling toll-free [phone].

You must read the instructions carefully, fill out the Claim Form as directed in the instructions, and electronically sign the Claim Form. You must (a) submit the Claim electronically at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com) or (b) mail it to [mailing address]. The Claim Form must be received by [date], 2020. **If you fail to submit your Claim Form by the deadline, your Claim will be rejected, and you will be deemed to have waived all rights to receive any cash benefit under this settlement.**

Please carefully follow all instructions on the Claim Form.

#### 12. When would I get my settlement benefit?

The Court will hold a Final Hearing on [date], 2020 at [time], to decide whether to approve

the settlement. The date of the Final Hearing may change without further notice. You should check the Court's Public Access to Court Electronic Records (PACER) site at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed. The Final Hearing will take place at the San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113. If Judge Davila approves the settlement, there may be appeals. The appeal process can take time, perhaps more than a year. If there is no appeal, your settlement benefit will be processed promptly. Please be patient.

**13. What am I giving up to get a settlement benefit?**

Unless you submit a valid request to be excluded from the Settlement Class, you will be a Settlement Class Member. If you remain a Settlement Class Member, you will be eligible for a settlement benefit but you can't sue, continue to sue, or be part of any other lawsuit against Apple about the claims and allegations in this case. It also means that all of the Court's orders will apply to you and legally bind you.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want a payment from this settlement, but you want to keep the right to sue, or continue to sue, Apple on your own about the claims and allegations in this case, then you must take steps to get out of the Settlement Class. This is what it means to request to be excluded from or "opt out" of the Settlement Class.

**14. How do I get out of the settlement?**

To request to be excluded from the settlement, you must send a letter saying that you want to be excluded from the Settlement Class in *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. You must include your name, mailing address, telephone number, and your signature. Your exclusion request must be received by no later than [date], 2020, [time] to:

***In re Apple Inc. Device Performance Litigation***  
**ATTN: Claims Administrator**  
**1650 Arch Street Suite 2210**  
**Philadelphia, PA 19103**

If you are excluded, you will not receive any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Apple in the future about the claims and allegations in this case.

**15. If I don't request exclusion, can I sue Apple for the same thing later?**

No. Unless you request to be excluded, you give up the right to sue Apple for the claims that this settlement resolves.

**16. If I request exclusion, can I get a settlement benefit?**

No. If you request to be excluded, you may not submit a Claim Form to ask for any benefit. But you will not lose any right you may have to sue, continue to sue, or be part of a different

lawsuit against Apple about the claims and allegations in this case.

### THE LAWYERS REPRESENTING YOU

#### 17. Do I have a lawyer in this case?

The Settlement Class is represented by Joseph W. Cotchett of Cotchett, Pitre & McCarthy, LLP and Laurence D. King of Kaplan Fox & Kilsheimer LLP, who have been appointed by the Court as Class Counsel for the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 18. How will the lawyers be paid?

Court-appointed Class Counsel, which have been prosecuting this litigation since its inception in 2017, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced all expenses necessarily incurred in order to prosecute the Action. Class Counsel will ask the Court for attorneys' fees in the amount not to exceed [ ]% of the \$310,00,000 Floor. Class Counsel will also apply for reimbursement of expenses paid on behalf of the Class in an amount not to exceed \$[ ] and Service Awards to Named Plaintiffs of up to \$[ ] each. A copy of Class Counsel's Motion for Attorneys' Fees and Expenses and for Named Plaintiff Service Awards will be available at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com) by [date] 2020.

### OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

#### 19. How do I tell the Court that I don't like the settlement?

If you're a Settlement Class Member, you can object to the settlement if you don't agree with a part of it and give reasons you think the Court should not approve it. You can also object to the requested award of Attorneys' Fees and Expenses or Service Awards to the Named Plaintiffs. The Court will consider your views. To object, you must send a letter stating that you object to the settlement in *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. You must include the case name and number, your name, mailing address, telephone number, your signature, a detailed statement of your specific objections, and proof of membership in the Class, as well as any documents that you want the Court to consider. The letter and any supporting documents must be delivered to and received by the following addressees by [date] 2020: Any objections to Class Counsel's request for attorneys' fees and expenses must be received by [date] 202[ ].



Court	Class Counsel	Defense Counsel
Clerk of the Court United States District Court Northern District of California San Jose Division 280 South 1st Street San Jose, CA 95113	Mark C. Molumphy, Esq. Cotchett, Pitre & McCarthy LLP 840 Malcolm Road, Suite 200 Burlingame, CA 94010 mmolumphy@cpmlegal.com  Laurence D. King, Esq. Kaplan Fox & Kilsheimer LLP 1999 Harrison Street, Suite 1560 Oakland, CA 94612 lking@kaplanfox.com	Christopher Chorba, Esq. Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071 CChorba@gibsondunn.com

## 20. What's the difference between objecting and requesting exclusion?

If you object, you are telling the Court that you disagree with something in the settlement. You can object only if you *stay in* the Settlement Class. If you object but the Court still approves the settlement, you will be bound by the settlement and can receive the benefits it provides.

If you request exclusion, you are telling the Court that you don't want to be part of the Settlement Class. You would then have no basis to object, because the settlement would no longer affect you.

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you don't have to.

## 21. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Hearing at [time] on [date], 2020, at the United States District Court for the Northern District of California, San Jose Division, Courtroom 4 (5th Floor) located at 280 South 1st Street, San Jose, California 95113. At the Final Hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Davila will listen to Settlement Class Members who have asked to speak at the hearing. The Court will also consider how much money to award Class Counsel and the amount of the Named Plaintiff Service Awards. After the Final Hearing, the Court will decide whether to approve the settlement and will rule on Class Counsel's Motion for Attorneys' Fees and/or Expenses, and for Named Plaintiff Service Awards.

We do not know how long these decisions will take. The date of the Final Hearing can change without further notice. Please check [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com) for further updates.

## 22. Do I need to come to the Final Hearing?

No. Class Counsel will answer questions about the settlement that Judge Davila may have. But you are welcome to come at your own expense. If you send an objection, you don't need to come to the Final Hearing to talk about it. As long as your written objection was received on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not

necessary.

**23. May I speak at the Final Hearing?**

You may ask the Court for permission to speak at the Final Hearing. To do so, you must send a letter stating that you intend to appear and speak at the Final Hearing in *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. You must include the case name and number, your name, mailing address, telephone number, and your signature. Your letter must be received by the Clerk of the Court and the Claims Administrator, at the two addresses above by [date], 2020. You cannot speak at the Final Hearing if you requested to be excluded from the Settlement Class.

**IF YOU DO NOTHING**

**24. What happens if I do nothing at all?**

If you do nothing, you will be a Settlement Class Member. You will not receive a benefit from the settlement unless you file a valid Claim Form on time. If you submit a valid Claim Form on time, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apple about the claims and allegations in this case.

**GETTING MORE INFORMATION**

**25. Are there more details about the settlement?**

This Class Notice summarizes the proposed settlement. More details are in a Settlement Agreement. Copies of the Settlement Agreement and the pleadings and other documents relating to the case, including motions for approval of the Settlement and awards of Attorneys' Fees and Expenses and Service Awards, are on file at the United States District Court for the Northern District of California, San Jose Division. The Settlement Agreement and other important documents are also available on the Settlement Website at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com).

In addition, you can access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>. You can also visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1st Street, Second Floor, San Jose, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**26. How do I get more information?**

You can visit the Settlement Website at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com), where you will find answers to common questions about the settlement, a Claim Form, and other information.

**Questions may not be directed to the Court.**

Date: [date], 2020

**EXHIBIT C**

## **LEGAL NOTICE**

**If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later before December 21, 2017, and/or a U.S. owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later before December 21, 2017, you could be entitled to benefits under a class action settlement.**

### **WHAT'S THIS ABOUT?**

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is *not* an admission of wrongdoing by Apple.

Under the settlement, Apple will pay a minimum of \$310,000,000 and a maximum of \$500,000,000, depending on the number of claims submitted. If the settlement is approved by the Court, your rights may be affected. The United States District Court for the Northern District of California authorized this Summary Notice. The Court will have a Final Hearing to consider whether to approve the settlement so that the benefits may be paid. This summary provides basic information about the settlement.

### **WHO'S AFFECTED?**

You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) you experienced diminished performance on your device(s). **You must meet all three criteria to be a member of the Settlement Class.**

### **WHAT BENEFIT CAN YOU GET FROM THE SETTLEMENT?**

Apple will provide a cash payment per eligible device to each Class Member who submits a declaration under penalty of perjury stating that they are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017; and (3) they experienced diminished performance on the device(s).

A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions.

**Amount of Cash Payment:** Under the proposed settlement, Apple will provide a cash payment of approximately \$25 per eligible device. Please note that the actual cash payment per eligible device may be greater than or less than \$25, depending on the total number of approved claims and other factors. The total payments to be made by Apple under the proposed settlement are subject to a minimum and maximum as set forth in the more detailed Class Notice available at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com).

### HOW DO YOU GET A PAYMENT?

An online Claim Form package contains everything you need and is available at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com). You may also submit a Claim Form by clicking this link.

### WHAT ARE YOUR OPTIONS AND WHAT ARE THE DEADLINES?

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
OPTION	EXPLANATION	DEADLINE
SUBMIT A CLAIM FORM ONLINE OR IN THE MAIL	The only way to get a payment under the settlement.	[date]
EXCLUDE YOURSELF	Get no payment under the settlement. This is the only option that allows you to be a part of any other lawsuit against Apple about the claims and allegations in this case.	[date]
OBJECT TO THE SETTLEMENT	Write to the Court about why you don't like the settlement.	[date]
OBJECT TO ATTORNEYS' FEES AND/OR EXPENSES	Write to the Court about why you don't like the attorneys' fees and/or expenses that Class Counsel requests.	[date]
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.	[date]
DO NOTHING	Get no payment under the settlement and give up your right to compensation for the claims and allegations in this case.	N/A

Please read the more detailed Class Notice, which is available at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com), and decide whether you want to make a Claim.

To claim a settlement benefit, your Claim Form must be received on or before **[date]**, 2020. **If you do not claim a settlement benefit by this deadline, you will lose your right to obtain this benefit.**

If you don't want to make a Claim and you don't want to be legally bound by the settlement, your request to be excluded must be received by **[date]**, or you won't be able to sue, or continue to sue, Apple about the claims and allegations in this case. If you request to be excluded, you will not be eligible to receive a payment from this settlement.

If you stay in the Settlement Class, you may object to the settlement. Objections to the settlement must be received by **[date]**. Objections to Class Counsel's request for Attorneys' Fees and Expenses must be received by **[date]**.

The more detailed Class Notice available at [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com) explains how to request exclusion from the Settlement Class or object to the settlement. The Court will hold a Final Hearing in this case (*In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD) on **[date]** at **[time]** to consider whether to approve (1) the settlement and (2) Attorneys' Fees and Expenses of up to \$**[ ]** million for Class Counsel, and (3) Named Plaintiff Service Awards of up to \$**[ ]** each. The Final Hearing will take place at the San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113. You may appear at the Final Hearing, but you don't need to. The date of the Final Hearing may change without further notice. You should check the Court's Public Access to Court Electronic Records (PACER) site, for a fee, at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed.

#### **FOR MORE INFORMATION ABOUT THE SETTLEMENT**

To obtain a Class Notice, Claim Form, copy of the settlement agreement, copies of motions for settlement approval and attorneys' fees, expenses and service awards, and any other important documents in this case, go to [www.SmartphonePerformanceSettlement.com](http://www.SmartphonePerformanceSettlement.com) or call toll-free **[number]**. For more details, you also may write to Class Counsel at Cotchett, Pitre & McCarthy LLP, Attn: Mark C. Molumphy, 840 Malcolm Road, Suite 200, Burlingame, California 94010 and/or Kaplan Fox & Kilsheimer LLP, Attn: Laurence D. King, 1999 Harrison Street, Suite 1560, Oakland, CA 94612.

In addition, you can access the Court docket in this case, for a fee, through the Court's PACER site at <https://ecf.cand.uscourts.gov>. You can also visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1<sup>st</sup> Street, Second Floor, San Jose, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

BY ORDER OF THE U.S. DISTRICT COURT

**EXHIBIT D**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE  
PERFORMANCE LITIGATION,

CASE NO. 5:18-md-02827-EJD

**CLASS ACTION**

This Document Relates To:  
  
ALL ACTIONS.

**[PROPOSED] ORDER CERTIFYING  
SETTLEMENT CLASS; GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT; AND  
APPROVING FORM AND CONTENT OF  
CLASS NOTICE**



1           **WHEREAS**, the Named Plaintiffs and Defendant Apple Inc. entered into a Settlement  
2 Agreement (Dkt. \_\_\_\_ ) on \_\_\_\_\_, 2020, which, together with the exhibits and appendices  
3 thereto, sets forth the terms and conditions for a proposed resolution of this litigation and for its  
4 dismissal with prejudice;

5           **WHEREAS**, this Court has reviewed the Settlement entered into by the Parties, all exhibits  
6 thereto, the record in this case, and the Parties' arguments;

7           **WHEREAS**, this Court preliminarily finds, for the purpose of settlement only, that the  
8 Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification,  
9 including numerosity, commonality, typicality, predominance of common issues, superiority, and that  
10 the Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class;

11           **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:**

12           1. All terms and definitions used herein have the same meanings as set forth in the  
13 Settlement Agreement.

14           **Preliminary Certification of Settlement Class for Purpose of Settlement Only**

15           2. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate such  
16 that notice thereof should be given to members of the Settlement Class. Under Federal Rule of Civil  
17 Procedure 23(b)(3), the Settlement Class, as set forth in paragraph 1.32 of the Settlement Agreement  
18 and defined as follows, is preliminarily certified for the purpose of settlement only:

19           All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and  
20 SE devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE  
21 devices) or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these  
iOS versions before December 21, 2017.

22           For purposes of this definition, "U.S. owners" shall include all individuals who owned, purchased,  
23 leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device  
24 for personal, work, or any other purposes. An individual qualifies as a "U.S. owner" if his or her device  
25 was shipped to the United States, its territories, and/or its possessions. The Settlement Class shall not  
26 include iPhone owners who are domiciled outside of the United States, its territories, and/or its  
27 possessions. Additionally, excluded from the Settlement Class are (a) directors, officers, and  
28 employees of Apple or its subsidiaries and affiliated companies, as well as Apple's legal

1 representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as well as any appellate  
2 court to which this matter is ever assigned and its staff, (c) any of the individuals identified in paragraph  
3 1.36 of the Settlement Agreement, as well as their legal representatives, heirs, successors, or assigns,  
4 (d) Defense Counsel, as well as their immediate family members, legal representatives, heirs,  
5 successors, or assigns, and (e) any other individuals whose claims already have been adjudicated to a  
6 final judgment.

7 3. If the Settlement Agreement is not finally approved by this Court, or if such final  
8 approval is reversed or materially modified on appeal by any court, this Order (including but not limited  
9 to the certification of the class) shall be vacated, null and void, and of no force or effect, and Apple and  
10 Plaintiffs shall be entitled to make any arguments for or against certification for litigation purposes.

11 4. Class Counsel and the Named Plaintiffs are appointed as adequate representatives of the  
12 Settlement Class. Joseph W. Cotchett (of Cotchett, Pitre & McCarthy, LLP, 840 Malcolm Road, Suite  
13 200, Burlingame, California 94010) and Laurence D. King (of Kaplan Fox & Kilsheimer LLP, 1999  
14 Harrison Street, Suite 1560, Oakland, California 94612) are hereby appointed as Interim Co-Lead Class  
15 Counsel to represent the proposed Settlement Class.

16 **Notice to the Settlement Class**

17 5. The Court approves the Claim Form, Class Notice, and Summary Notice, which are  
18 attached to the Settlement Agreement as Exhibits A, B, and C, respectively, and finds that their  
19 dissemination substantially in the manner and form set forth in the Settlement Agreement meets the  
20 requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice  
21 practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise  
22 members of the Settlement Class of the pendency of the Actions, the effect of the proposed Settlement  
23 (including the releases contained therein), the anticipated Motion for Attorneys' Fees and/or Expenses  
24 and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the  
25 proposed Settlement.

26 6. By \_\_\_\_\_, 2020 [*thirty (30) days from the entry of this Preliminary*  
27 *Approval Order*], Apple shall, for the purpose of facilitating the distribution of the Summary Notice,  
28

1 provide the Settlement Administrator with the names, email addresses, mailing addresses, and serial  
2 numbers for the members of the Settlement Class.

3 7. By \_\_\_\_\_, 2020 [*seventy-five (75) days from the date specified in*  
4 *paragraph 6 above*], the Settlement Administrator shall complete the distribution of the email and/or  
5 postcard notices to the members of the Settlement Class, and establish the Settlement Website which  
6 shall contain all documents relating to the settlement, including the Settlement Agreement, the Class  
7 Notice, the Summary Notice, the Claim Form, and all motion papers and Court orders relating to  
8 preliminary and final approval of the Settlement. The Settlement Administrator shall send the  
9 Summary Notice via email to each member of the Settlement Class for whom Apple has a valid email  
10 address for the account of record on the Apple ID. The Settlement Administrator shall mail a postcard  
11 notice, substantially similar to the Summary Notice, to all members of the Settlement Class for whom  
12 Apple does not have a valid email address.

13 **Settlement Administration**

14 8. The Court appoints Angeion Group to serve as the Settlement Administrator. Angeion  
15 Group shall supervise and administer the notice procedures, establish and operate the Settlement  
16 Website, administer the claims processes, distribute cash payments according to the processes and  
17 criteria set forth in the Settlement Agreement, and perform any other duties that are reasonably  
18 necessary and/or provided for in the Settlement Agreement.

19 9. All reasonable costs of notice and costs of administering the Settlement shall be paid by  
20 Apple or from the Residual, if any, as contemplated by paragraph 5.3.1 of the Settlement Agreement.

21 10. Settlement Class Members who wish to make a Claim must do so by submitting a Claim  
22 Form by \_\_\_\_\_, 2020 [*forty-five (45) days from the date specified in paragraph 7*  
23 *above*], in accordance with the instructions contained therein. The Settlement Administrator shall  
24 determine the eligibility of Claims submitted and allocate the Settlement Funds in accordance with the  
25 Settlement Agreement.

26 11. Settlement Class Members who wish to object to the Settlement must provide: (a) a  
27 detailed statement of the Settlement Class Member's specific objections to any matters before the  
28 Court; (b) the grounds for such objections and the reason such Settlement Class Member desires to

1 appear and be heard; and (c) proof of membership in the Settlement Class, as well as all other materials  
 2 the Settlement Class Member wants the Court to consider. The objections must be sent to the following  
 3 addresses, and received by \_\_\_\_\_, 2020 [forty-five (45) days from the date specified in  
 4 paragraph 7 above]:

Court	Class Counsel	Defense Counsel
Clerk of the Court United States District Court Northern District of California San Jose Division 280 South 1st Street San Jose, CA 95113	Laurence D. King, Esq. Kaplan Fox & Kilsheimer LLP 1999 Harrison Street, Suite 1560 Oakland, CA 94612 lking@kaplanfox.com  Mark Molumphy, Esq. Cotchett, Pitre & McCarthy LLP 840 Malcolm Road, Suite 200 Burlingame, CA 94010 mmolumphy@cpmlegal.com	Christopher Chorba, Esq. Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071 CChorba@gibsondunn.com

11 12. Any putative member of the Settlement Class who seeks to be excluded from the  
 12 Settlement Class must submit a request for exclusion, which must be received by the Claims  
 13 Administrator by \_\_\_\_\_, 2020 [forty-five (45) days from the date specified in paragraph  
 14 7 above]:

<b>Claims Administrator</b>
<i>In re Apple Inc. Device Performance Litigation</i> ATTN: Claims Administrator 1650 Arch Street, Suite 2210 Philadelphia, PA 19103

15 Any member of the Settlement Class who does not file a valid and timely request for exclusion shall  
 16 be bound by the final judgment dismissing the MDL Action on the merits with prejudice.  
 17

18 **Final Approval Hearing**

19 13. The Final Hearing shall be held by the Court on \_\_\_\_\_, 202\_\_, beginning  
 20 at \_\_\_\_:\_\_\_\_.m., to determine whether the requirements for certification of the Settlement Class have  
 21 been met; whether the proposed settlement of the Actions on the terms set forth in the Settlement should  
 22 be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members;  
 23 whether Class Counsel’s motion or application for Attorneys’ Fees and Expenses and application for  
 24 the Named Plaintiff Service Awards should be approved; and whether final judgment approving the  
 25 Settlement and dismissing the Actions on the merits with prejudice against the Named Plaintiffs and  
 26  
 27  
 28

1 all other Settlement Class Members should be entered. The Final Hearing may, without further notice  
2 to the Settlement Class Members (except those who have filed timely and valid objections and  
3 requested to speak at the Final Hearing), be continued or adjourned by order of the Court.

4 14. Objections by any Settlement Class Member to (a) the certification of the Settlement  
5 Class; (b) the Settlement; and/or (c) the entry of the Final Approval Order and Final Judgment, shall  
6 be considered by the Court at the Final Hearing only if such Settlement Class Member files with the  
7 Court a notice of his or her objections, submits documentary proof that he or she is a Settlement Class  
8 Member, states the basis for such objections, and serves copies of the foregoing and any other papers  
9 in support of such objections on Defense Counsel and Class Counsel, as provided in paragraph 11.

10 15. By \_\_\_\_\_, 202\_\_ [*not less than sixty-five (65) days from the date*  
11 *specified in paragraph 13 above*], Class Counsel shall file all papers in support of the application for  
12 the Final Approval Order and Final Judgment, any Motion for Attorneys' Fees and/or Expenses and/or  
13 for Named Plaintiff Service Awards, and/or any response to any valid and timely objections with the  
14 Court, and shall serve copies of such papers upon Defense Counsel and upon any objectors who have  
15 complied with paragraphs 11 and 14 of this Order. All opposition papers shall be filed by  
16 \_\_\_\_\_, 202\_\_ [*not less than thirty-five (35) days from when Class Counsel file their*  
17 *Motion for Attorneys' Fees and/or Expenses*], and any reply papers shall be filed by  
18 \_\_\_\_\_, 202\_\_.

19 16. Objections by any Settlement Class Member to Class Counsel's request for Attorneys'  
20 Fees and/or Expenses shall be considered by the Court at the Final Hearing only if such Settlement  
21 Class Member files with the Court a notice of his or her objections, submits documentary proof that he  
22 or she is a Settlement Class Member, states the basis for such objections, and serves copies of the  
23 foregoing and any other papers in support of such objections on Defense Counsel and Class Counsel,  
24 as provided in paragraph 11, by \_\_\_\_\_, 202\_\_ [*not less than thirty-five (35) days from*  
25 *when Class Counsel file their Motion for Attorneys' Fees and/or Expenses, as specified in paragraph*  
26 *15 above*].

27 17. Class Counsel's motion or application for an award of Attorneys' Fees and Expenses,  
28 and costs and for the Named Plaintiff Service Awards will be considered separately from the fairness,

1 reasonably, and adequacy of the Settlement. Any appeal from any order relating solely to Class  
2 Counsel's Motion for Attorneys' Fees and/or Expenses, and/or for Named Plaintiff Service Awards, or  
3 any reversal or modification of any such order, shall not operate to terminate, vacate, or cancel the  
4 Settlement.

5 18. Defense Counsel and Class Counsel are hereby authorized to utilize all reasonable  
6 procedures in connection with the administration of the Settlement which are not materially  
7 inconsistent with either this Order or the Settlement Agreement.

8  
9 IT IS SO ORDERED.

10 Dated: \_\_\_\_\_, 2020

11 \_\_\_\_\_  
12 Hon. Edward J. Davila  
13 United States District Court  
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**EXHIBIT E**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE  
PERFORMANCE LITIGATION,

CASE NO. 5:18-md-02827-EJD

**CLASS ACTION**

\_\_\_\_\_  
This Document Relates To:  
  
ALL ACTIONS.

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT; AWARDING ATTORNEYS'  
FEES, EXPENSES, AND NAMED  
PLAINTIFF SERVICE AWARDS; AND  
ENTERING FINAL JUDGMENT**



1           **WHEREAS**, the Court held a Final Hearing to consider approval of this class action settlement  
2 on \_\_\_\_\_, 2020. The Court has considered the Settlement Agreement (Dkt. \_\_\_\_), the  
3 record in the MDL Action, and the Parties’ arguments and authorities.

4           **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:**

5           1. For purposes of this Order, the Court adopts the terms and definitions set forth in the  
6 Settlement Agreement.

7           2. The Court has jurisdiction over the subject matter of the MDL Action, the Named  
8 Plaintiffs, the Settlement Class Members, and Defendant Apple Inc.

9           3. The Court finds that the Class Notice constituted the best notice practicable under the  
10 circumstances to all Settlement Class Members and fully complied with the requirements of Federal  
11 Rule of Civil Procedure 23 and due process.

12           4. The Court finds that, for purposes of the Settlement only, all prerequisites for  
13 maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied.  
14 The Court certifies the following Settlement Class for purposes of Settlement only:

15                   All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE  
16 devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices)  
17 or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions  
before December 21, 2017.

18 For purposes of this definition, “U.S. owners” shall include all individuals who owned, purchased,  
19 leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device  
20 for personal, work, or any other purposes. An individual qualifies as a “U.S. owner” if his or her device  
21 was shipped to the United States, its territories, and/or its possessions. The Settlement Class shall not  
22 include iPhone owners who are domiciled outside of the United States, its territories, and/or its  
23 possessions. Additionally, excluded from the Settlement Class are (a) directors, officers, and  
24 employees of Apple or its subsidiaries and affiliated companies, as well as Apple’s legal  
25 representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as well as any appellate  
26 court to which this matter is ever assigned and its staff, (c) any of the individuals identified in paragraph  
27 1.36 of the Settlement Agreement, as well as their legal representatives, heirs, successors, or assigns,  
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1 (d) Defense Counsel, as well as their immediate family members, legal representatives, heirs,  
2 successors, or assigns, and (e) any other individuals whose claims already have been adjudicated to a  
3 final judgment. Also excluded from the Settlement Class are those individuals who timely and validly  
4 request exclusion.

5 5. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final  
6 approval of the Settlement and finds that the Settlement is fair, reasonable, and adequate and in the best  
7 interests of the Settlement Class Members based on the following factors, among other things:

8 a) There is no fraud or collusion underlying this Settlement, and it was reached as a result  
9 of extensive arm's-length negotiations, occurring over the course of several months and  
10 several mediation sessions with a respected mediator, warranting a presumption in favor  
11 of approval. *See, e.g., Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625  
12 (9th Cir. 1982); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir.  
13 2011) (presence of a neutral mediator is a factor weighing in favor of a finding of non-  
14 collusiveness).

15 b) The complexity, expense, and likely duration of the litigation favor settlement—which  
16 provides meaningful benefits on a much shorter time frame than otherwise possible—  
17 on behalf of the Settlement Class Members. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d  
18 811, 820 (9th Cir. 2012) (affirming the district court's approval of a settlement where  
19 class counsel "reasonably concluded that the immediate benefits represented by the  
20 Settlement outweighed the possibility—perhaps remote—of obtaining a better result at  
21 trial"); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth  
22 Circuit has a "strong judicial policy that favors settlements, particularly where complex  
23 class action litigation is concerned"). Based on the stage of the proceedings and the  
24 amount of investigation and discovery completed, the Parties have developed a  
25 sufficient factual record to evaluate their chances of success at trial and the proposed  
26 Settlement.

1 c) The support of Class Counsel and the Named Plaintiffs, who have participated in this  
2 litigation and evaluated the proposed Settlement, also favor final approval. *See Class*  
3 *Plaintiffs*, 955 F.2d at 1294; *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.  
4 1979).

5 d) The Settlement provides meaningful relief to the Class, including cash relief, and  
6 certainly falls within the range of possible recoveries by the Settlement Class Members.

7 6. As of the Effective Date, the Settlement Class Members and their respective heirs,  
8 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,  
9 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,  
10 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were  
11 brought, could have been brought, or are related to the same facts underlying the claims asserted in the  
12 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,  
13 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not  
14 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,  
15 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released  
16 as a matter of law, including, without limitation, claims for monetary relief, damages (whether  
17 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,  
18 interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement  
19 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any  
20 claims relating to the continued enforcement of the Settlement or the Protective Orders.

21 7. As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named  
22 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,  
23 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any  
24 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,  
25 damages, rights and liabilities, that were brought, could have been brought, or are related to the same  
26 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or  
27 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to  
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1 any theory of recovery (including, but not limited to, those based in contract or tort, common law or  
2 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released  
3 Parties, for any type of relief that can be released as a matter of law, including, without limitation,  
4 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,  
5 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or  
6 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the  
7 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of  
8 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims  
9 relating to the continued enforcement of the Settlement or the Protective Orders.

10 8. As of the Effective Date, Apple shall have fully, finally, and forever released,  
11 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal  
12 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL  
13 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,  
14 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order  
15 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and  
16 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any  
17 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all  
18 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release  
19 does not constitute a general release.

20 9. As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall  
21 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,  
22 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising  
23 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the  
24 Named Plaintiffs as of the Effective Date, against Apple's attorneys, legal representatives, and  
25 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any  
26 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all  
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1 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release  
2 does not constitute a general release.

3 10. The individuals identified in Exhibit \_\_ hereto timely and validly requested exclusion  
4 from the Settlement Class. These individuals shall not share in the monetary benefits of the Settlement,  
5 and this Order does not affect their legal rights to pursue any claims they may have against Apple.

6 11. The Court finds that an award of attorneys' fees and expenses in the total amount of  
7 \$ \_\_\_\_\_ to Class Counsel is fair and reasonable and therefore approves such award.  
8 Class Counsel shall distribute the awarded attorneys' fees and expenses among Plaintiffs' Counsel as  
9 Plaintiffs' Interim Co-Lead Counsel appointed by the Court (Dkt. \_\_) shall determine in their sole  
10 discretion based on each attorney's contributions to the prosecution and settlement of these Actions.  
11 No other counsel will be entitled to an independent award of attorneys' fees or expenses.

12 12. The Court finds that the payment of Named Plaintiff Service Awards is fair and  
13 reasonable and therefore approves such payment as follows: \_\_\_\_\_.

14 13. The MDL Action, including all actions consolidated into the MDL Action and all claims  
15 asserted in the actions, are settled and dismissed on the merits with prejudice.

16 14. Consummation of the Settlement shall proceed as described in the Settlement  
17 Agreement, and the Court reserves jurisdiction over the subject matter and each Party to the Settlement  
18 with respect to the interpretation and implementation of the Settlement for all purposes, including  
19 enforcement of any of the terms thereof at the instance of any Party and resolution of any disputes that  
20 may arise relating to the implementation of the Settlement or this Order.

21 15. Without affecting the finality of this Order in any way, the Court shall retain jurisdiction  
22 over this Action, the Named Plaintiffs, the Settlement Class Members, and Apple to enforce the terms  
23 of the Settlement, the Court's order preliminarily certifying the class (Dkt. \_\_), and this Order. In the  
24 event that any applications for relief are made, such applications shall be made to the Court. To avoid  
25 doubt, the Final Judgment applies to and is binding upon the Parties, the Settlement Class Members,  
26 and their respective heirs, successors, and assigns.

1           16.     The Settlement and this Order are not admissions of liability or fault by Apple or the  
2 Released Parties, or a finding of the validity of any claims in the Actions or of any wrongdoing or  
3 violation of law by Apple or the Released Parties. To the extent permitted by law, neither this Order,  
4 nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall  
5 be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative  
6 action or proceeding to establish any liability of, or admission by, the Released Parties.  
7 Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this  
8 Order in a proceeding to consummate or enforce the Settlement or this Order, or to defend against the  
9 assertion of released claims in any other proceeding, or as otherwise required by law.

10 **IT IS SO ORDERED.**

11  
12 Dated: \_\_\_\_\_, 202\_\_

\_\_\_\_\_  
13 Hon. Edward J. Davila  
14 United States District Court  
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**EXHIBIT F**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE  
PERFORMANCE LITIGATION,

CASE NO. 5:18-md-02827-EJD

**CLASS ACTION**

**[PROPOSED] JUDGMENT**

This Document Relates To:

ALL ACTIONS.



1 On \_\_\_\_\_, the Court signed and entered its Order Granting Final Approval of  
2 Class Action Settlement and Awarding Attorneys' Fees, Expenses, and Named Plaintiff Service  
3 Awards (Dkt. \_\_\_) (the "Final Approval Order") in the above-captioned matter as to the following class  
4 of persons:

5 All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE  
6 devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices)  
7 or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions  
before December 21, 2017.

8 **JUDGMENT IS HEREBY ENTERED**, pursuant to Federal Rule of Civil Procedure 58, as to the  
9 specified class of persons (excluding the individuals who validly and timely requested exclusion from  
10 the Settlement Class, as identified in Exhibit \_\_\_ to the Final Approval Order), the Named Plaintiffs,  
11 and Defendant Apple Inc. on the terms and conditions of the Settlement Agreement approved by the  
12 Court's Final Approval Order.

13 1. For purposes of this Order, the Court adopts the terms and definitions set forth in the  
14 Settlement Agreement.

15 2. Payments to Settlement Class Members under the Settlement Agreement shall be made  
16 as outlined in the Final Approval Order and Settlement Agreement.

17 3. As of the Effective Date, the Settlement Class Members and their respective heirs,  
18 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,  
19 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,  
20 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were  
21 brought, could have been brought, or are related to the same facts underlying the claims asserted in the  
22 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,  
23 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not  
24 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,  
25 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released  
26 as a matter of law, including, without limitation, claims for monetary relief, damages (whether  
27 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,  
28 interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement

1 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any  
2 claims relating to the continued enforcement of the Settlement or the Protective Orders.

3 4. As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named  
4 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,  
5 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any  
6 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,  
7 damages, rights and liabilities, that were brought, could have been brought, or are related to the same  
8 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or  
9 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to  
10 any theory of recovery (including, but not limited to, those based in contract or tort, common law or  
11 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released  
12 Parties, for any type of relief that can be released as a matter of law, including, without limitation,  
13 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,  
14 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or  
15 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the  
16 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of  
17 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims  
18 relating to the continued enforcement of the Settlement or the Protective Orders.

19 5. As of the Effective Date, Apple shall have fully, finally, and forever released,  
20 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal  
21 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL  
22 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,  
23 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order  
24 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and  
25 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any  
26 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all  
27 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release  
28 does not constitute a general release.

1           6.       As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall  
2 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,  
3 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising  
4 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the  
5 Named Plaintiffs as of the Effective Date, against Apple’s attorneys, legal representatives, and  
6 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any  
7 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all  
8 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release  
9 does not constitute a general release.

10           7.       The MDL Action, including all actions consolidated into the MDL Action and all claims  
11 asserted in the actions, are settled and dismissed on the merits with prejudice.

12  
13 **JUDGMENT APPROVED AS TO FORM:**

14  
15 \_\_\_\_\_  
16 Hon. Edward J. Davila  
17 United States District Court

18 **JUDGMENT ENTERED:** \_\_\_\_\_, 202\_\_

19 By: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
20 OF CALIFORNIA

**EXHIBIT G**

**EXHIBIT G****SETTLEMENT ADMINISTRATOR PROTOCOL**

This Settlement Administration Protocol (“Protocol”) is a part of the Stipulation of Settlement and shall be used by the Settlement Administrator to review, address, implement, and process those claims submitted pursuant to the Settlement Agreement and otherwise implement the terms of the claim process in the Settlement Agreement. All capitalized terms used in this Protocol shall have the same meaning given in the Settlement Agreement. To the extent there is any conflict between the Settlement Agreement and this Protocol, the Settlement Agreement shall govern.

**1. Settlement Administrator’s Role and Duties**

- a. The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Settlement Agreement, this Protocol, and the orders issued by the Court, including the Stipulated Protective Order (Dkt. 224). Consistent with the Settlement Agreement, the Settlement Administrator shall not release the names, email addresses, mailing addresses, or other personal identifying information of Settlement Class Members to Class Counsel, except with the authorization of Apple and/or the authorization of the Court or referee.
- b. The Settlement Administrator shall be reimbursed up to a maximum of Twelve Million, Seven-Hundred-Fifty Thousand U.S. Dollars (\$12,750,000.00) toward reasonable costs, fees, and expenses of providing notice to the Settlement Class and administering the Settlement), plus any postage expense incurred after the \$12,750,000 cap has been reached. The costs, fees, and expenses associated with providing notice to the Settlement Class and administering the Settlement are estimated to amount to approximately Eight Million Six Hundred Seventy-Five Thousand U.S. Dollars (\$8,675,000.00) and shall be the responsibility of the Settlement Administrator.
- c. The costs of the Settlement Administrator shall be paid by Apple pursuant to the Settlement Agreement. Subject to the provisions of the Settlement Agreement, including but not limited to the cap described in paragraph 1(b), Apple shall make periodic reimbursements to the Settlement Administrator before the Effective Date, pursuant to invoices submitted by the Settlement Administrator.
- d. The Settlement Administrator warrants that it knows of no reason why it cannot fairly and impartially administer the claim process set forth in the Settlement Agreement. The Settlement Administrator shall not process the Claim of any member of the Settlement Class if the Settlement Administrator, Apple, Defense Counsel or Class Counsel determines that there is a conflict of interest. In the event that the Settlement Administrator, Apple, Defense Counsel, or Class Counsel learns of a conflict of interest as to a Claim, that party or counsel shall give written notice to the other Parties, who shall resolve any such circumstances by further written agreement. Any unresolved dispute over such conflict of interest shall be submitted to the Court or referee for resolution.
- e. The Settlement Administrator shall keep a clear and careful record of all communications with members of the Settlement Class, all Claims decisions, all costs, fees, and expenses, and all tasks performed in administering the claim process.
- f. The Settlement Administrator shall take all reasonable efforts to administer the Claims efficiently and to avoid unnecessary fees and expenses. As soon as work commences, the Settlement Administrator shall provide a detailed written accounting of all costs, fees, and expenses on a regular basis to Class Counsel and Defense Counsel, and shall

1 respond promptly to inquiries by Class Counsel and Defense Counsel concerning the  
2 administration and notice fees and expenses.

- 3 g. The Parties are entitled to observe and monitor the performance of the Settlement  
4 Administrator to assure compliance with the Settlement Agreement and this Protocol.  
The Settlement Administrator shall promptly respond to all inquiries and requests for  
information made by Apple, Defense Counsel, or Class Counsel.

5 **2. Locating, Obtaining, and Submitting Claim Forms**

- 6 a. The Claim Form, which is substantially similar to the form attached as Exhibit A to the  
7 Settlement Agreement, shall be available as part of the Class Notice, on the Settlement  
8 Website in response to requests through the toll-free voice response unit with message  
9 and interactive voice response (IVR), and also through contacting by email or by mail  
or other similar service the Settlement Administrator. The Claim Form on the  
Settlement Website and the hard copy Claim Form shall be consistent in all substantive  
respects.
- 10 b. If the Settlement Class Member does not timely comply and/or is unable to produce  
11 documents to substantiate and/or verify the information on the Claim Form and the  
Claim is otherwise not approved, the Claim may be denied.
- 12 c. Settlement Class Members may submit a Claim to the Settlement Administrator during  
13 the Claims Period. As part of the claim process, Settlement Class Members shall be  
14 eligible for the relief provided in the Settlement Agreement if the Settlement Class  
Member completes and timely submits the Claim Form to the Settlement Administrator  
within the Claims Period, subject to the terms herein and in the Settlement Agreement.
- 15 d. Claims may be submitted to the Settlement Administrator through mail or electronically  
16 through a web-based form at the Settlement Website.
- 17 e. The Settlement Administrator shall establish and maintain the Settlement Website,  
18 which shall be easily accessible through commonly used Internet Service Providers for  
the submission of Claims. The Class Notice, Summary Notice, Claim Form, Settlement  
19 Agreement and its exhibits, the Consolidated Amended Complaint, the Second  
Consolidated Amended Complaint, and all Court filings and orders relating to the  
20 Settlement (including relating to any requests for attorneys' fees and/or expenses) shall  
be available on the Settlement Website. The Settlement Website shall be designed to  
21 permit Settlement Class Members to readily and easily submit Claims and obtain  
information about the Settlement Class Members' rights and options under the  
Settlement Agreement. The Settlement Website shall be maintained continuously until  
22 the Effective Date.
- 23 f. The Settlement Administrator also shall establish a toll-free telephone number that will  
24 have recorded information answering frequently asked questions about certain terms of  
the Settlement Agreement, including, but not limited to, the claim process and  
instructions about how to request a Claim Form, Class Notice, and/or Summary Notice.

25 **3. Claim Form Review and Processing**

- 26 a. The Settlement Administrator shall begin the claim process so that it is completed within  
27 the time period specified in the Settlement Agreement. Settlement Class Members must  
submit their Claim Forms so that they are received by the Settlement Administrator no  
28 later than the end of the Claim Period.

- 1           b. Claim Forms that do not meet the requirements set forth in the Settlement Agreement  
2           and in the Claim Form instructions shall be rejected. Where a good faith basis exists,  
3           the Settlement Administrator may reject a Settlement Class Member’s Claim Form for,  
4           among other reasons, the following:
- 5                   i. The Claim Form identifies a product that is not covered by the terms of this  
6                   Settlement;
  - 7                   ii. Failure to fully complete and/or sign the Claim Form;
  - 8                   iii. Illegible Claim Form;
  - 9                   iv. The Claim Form is fraudulent;
  - 10                  v. The Claim Form is duplicative of another Claim Form;
  - 11                  vi. The person submitting the Claim Form is not a Settlement Class Member;
  - 12                  vii. The person submitting the Claim Form requests that payment be made to a  
13                  person or entity other than the Settlement Class Member for whom the Claim  
14                  Form is submitted;
  - 15                  viii. Failure to timely submit a Claim Form; or
  - 16                  ix. The Claim Form otherwise does not meet the requirements of the Settlement  
17                  Agreement.
- 18           c. The Settlement Administrator shall determine whether a Claim Form meets the  
19           requirements set forth in the Settlement Agreement. Each Claim Form shall be  
20           submitted to and reviewed by the Settlement Administrator, who shall determine in  
21           accordance with the terms and conditions of the Settlement Agreement the extent, if  
22           any, to which each Claim shall be allowed. The Settlement Administrator shall have the  
23           authority to determine whether a claim by any Settlement Class Member is complete  
24           and timely. The Settlement Administrator shall use all reasonable efforts and means to  
25           identify and reject duplicate and/or fraudulent Claims.
- 26           d. The Claim Form will be deemed to have been submitted when it is actually received by  
27           the Settlement Administrator.
- 28           e. The Settlement Administrator shall gather, review, prepare, and address the Claim  
Forms received pursuant to the Settlement Agreement as follows:
- i. Claims that have been properly submitted shall be designated as “Approved  
Claims.” The Settlement Administrator shall examine the Claim Form before  
designating the claim as an Approved Claim, to determine that the information  
on the Claim Form is reasonably complete and contains sufficient information  
to enable the distribution of the settlement payment to the Settlement Class  
Member.
  - ii. No Settlement Class Member may submit more than one Claim per iPhone  
device. The Settlement Administrator shall determine whether there is any  
duplication of Claims, if necessary by contacting the Settlement Class  
Member(s). The Settlement Administrator shall designate any such duplicative  
Claims as rejected Claims to the extent they allege the same damages or allege  
damages for the same iPhone device on behalf of the same Settlement Class  
Member.

- 1                   iii. The Settlement Administrator shall exercise, in its discretion, all usual and  
2                   customary steps to prevent fraud and abuse and take any reasonable steps to  
3                   prevent fraud and abuse in the claim process. The Settlement Administrator  
4                   may, in its discretion, deny in whole or in part any claim to prevent actual or  
5                   possible fraud or abuse.
- 6                   iv. By agreement, the Parties can instruct the Settlement Administrator to take  
7                   whatever steps it deems appropriate to further the purposes of the Settlement  
8                   Agreement if the Settlement Administrator identifies actual or possible fraud or  
9                   abuse relating to the submission of Claims, including, but not limited to, denying  
10                  in whole or in part any Claim to prevent actual or possible fraud or abuse.
- 11                  f. The Settlement Administrator shall provide periodic reports to Class Counsel and  
12                  Defense Counsel regarding the implementation of the Settlement Agreement and this  
13                  Protocol.
- 14                  g. The Settlement Administrator may review timely submitted Claim Forms and approve  
15                  or contest any of the Claims, including, but not limited to, requesting that the Settlement  
16                  Class Member submit documentation demonstrating purchase or use of any and all of  
17                  the relevant iPhone devices, use of the relevant iOS software version, and any other  
18                  pertinent matter.
- 19                  h. If a Claim Form is not contested, that Claim shall be processed for payment by the  
20                  Settlement Administrator. If a Claim Form is contested, the Settlement Administrator  
21                  shall promptly notify the Parties and mail a letter (or send an email, if a valid email  
22                  address is available) that advises the Settlement Class Member of the reason(s) why the  
23                  Claim Form was contested and request, if applicable, any and all additional information  
24                  and/or documentation, to validate the claim and have it submitted for payment. The  
25                  additional information and/or documentation can include, for example, receipts or other  
26                  documents evidencing purchase or use of the relevant iPhone devices, if not already  
27                  submitted. The Settlement Class Member shall have ten (10) days from the date of the  
28                  postmarked letter sent by the Settlement Administrator to respond to the request from  
                    the Settlement Administrator and the Settlement Class Member shall be so advised.
- i. In the event the Settlement Class Member timely and adequately provides the  
                    requested information and/or documentation, the Claim shall be deemed  
                    validated and shall be processed by the Settlement Administrator for payment.
- ii. In the event the Settlement Class Member does not timely and completely  
                    provide the requested information and/or documentation, the Settlement  
                    Administrator shall reduce or deny the Claim unless Apple and Class Counsel  
                    otherwise agree.
- i. The Settlement Administrator's denial of a Claim is final, but the Parties and/or  
                    Settlement Class Members may submit any disputed issues to the Court or referee for  
                    resolution.
- j. The Settlement Administrator shall provide all information gathered in investigating  
                    Claims, including, but not limited to, copies of all correspondence and email and all  
                    notes of the Settlement Administrator, the decision reached, and all reasons supporting  
                    the decision, if requested by Class Counsel or Defense Counsel. Consistent with the  
                    Settlement Agreement, the Settlement Administrator shall redact such materials to  
                    ensure that they do not contain names, email addresses, mailing addresses, or other  
                    personal identifying information, unless otherwise authorized by Apple and/or the Court  
                    or referee.



1 **4. Claim Calculation and Payment of Valid Claims**

- 2 a. The relief to be provided to eligible Settlement Class Members shall be as set forth in  
3 the Settlement Agreement.
- 4 b. As specified in the Settlement Agreement, the Settlement Administrator shall select the  
5 timely, valid, and approved claims submitted pursuant to the claim process to be paid,  
6 subject to any pro rata adjustments pursuant to the terms and conditions of the  
7 Settlement Agreement.
- 8 c. Within ten (10) days after the Effective Date, the Settlement Administrator shall provide  
9 to Defense Counsel the information necessary to facilitate transfer of the funds  
10 necessary to pay the Approved Claims and Named Plaintiff Service Awards  
11 (collectively, the "Settlement Funds"), including a completed W-9 form.
- 12 d. Within fifty (50) days after the Effective Date, Apple shall deliver to the Settlement  
13 Administrator sufficient funds to pay the "Settlement Funds." The Settlement  
14 Administrator shall administer the Settlement Funds, subject to the continuing  
15 jurisdiction of the Court and from the earliest possible date, as a qualified settlement  
16 fund as defined in Treasury Regulation § 1.468B-1, *et seq.* Any taxes owed by the  
17 Settlement Funds shall be paid by the Settlement Administrator out of the Settlement  
18 Funds.
- 19 e. Within thirty (30) days after receiving the Settlement Funds, the Settlement  
20 Administrator shall have substantially completed the issuance of the payments to the  
21 Settlement Class Members for the Approved Claims (and in the case of Named  
22 Plaintiffs, the additional Named Plaintiff Service Awards), which shall be issued  
23 through electronic distribution, or in the form of checks that are mailed to the addresses  
24 provided on the submitted Claim Forms to those individuals for which electronic  
25 distribution is not available. The checks shall have a stale date of ninety (90) days,  
26 during which period the check must be cashed.
- 27 i. Within one-hundred twenty (120) days after issuing the payments to the  
28 Settlement Class Members for the Approved Claims, the Settlement  
Administrator shall provide Class Counsel and Defense Counsel with a list of  
the payments that were not cashed before the expiration date.

**EXHIBIT H**

**EXHIBIT H**

**STIPULATED UNDERTAKING REGARDING ATTORNEYS' FEES AND EXPENSES**

Apple and Class Counsel stipulate and agree as follows:

WHEREAS, all terms used in this Exhibit shall have the same meaning assigned to those terms in the Stipulation of Settlement to which this Exhibit is attached;

WHEREAS, Class Counsel hereby give an undertaking (the "Undertaking") for repayment of any award of Attorneys' Fees and Expenses approved by the Court;

WHEREAS, the Parties agree that this Undertaking is in the best interests of all Parties and in service of judicial economy and efficiency;

**NOW, THEREFORE**, the undersigned Class Counsel, on behalf of themselves and as agents of their law firms, Cotchett, Pitre & McCarthy LLP and Kaplan Fox & Kilsheimer LLP, by making this Undertaking, hereby jointly and severally submit themselves and their law firms, Cotchett, Pitre & McCarthy LLP and Kaplan Fox & Kilsheimer LLP, and the shareholders, members, and/or partners of those law firms, to the continuing jurisdiction of the Court for the purpose of enforcing this Undertaking and any disputes relating to or arising out of the reimbursement obligation set forth herein and in the Settlement Agreement. If the Court's Final Approval Order and Final Judgment is vacated, overturned, reversed, or rendered void as a result of an appeal or for any other reason, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, in whole or in part, Class Counsel shall, within thirty (30) days of such action, repay Apple the full amount of the Attorneys' Fees and Expenses paid by Apple either directly or through the Settlement Administrator.

If the Attorneys' Fees and Expenses awarded by the Court are vacated, modified, reversed, or rendered void as a result of an appeal or for any other reason, in whole or in part, Class Counsel shall within thirty (30) days of such action repay Apple the Attorneys' Fees and Expenses paid by Apple to Class Counsel either directly or through the Settlement Administrator in the amount vacated, modified, reversed, or voided. This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Approval Order and Final Judgment.

If Class Counsel fails to repay Apple any Attorneys' Fees and Expenses owed to it pursuant to this Undertaking, the Court shall, upon application by Apple and notice to Class Counsel, summarily

1 issue orders, including but not limited to judgments and attachment orders against each of Class  
2 Counsel, Cotchett, Pitre & McCarthy LLP, and Kaplan Fox & Kilsheimer LLP for the full amount of  
3 the Attorneys' Fees and Expenses plus any additional attorneys' fees or expenses incurred by Apple in  
4 connection with the litigation or enforcement of this Undertaking, and may make findings for sanctions  
5 for contempt of court.

6 Neither the death, incapacitation, personal bankruptcy, or disbarment of any of Class Counsel  
7 nor the dissolution, winding up, bankruptcy, merger, acquisition, or other change in the composition  
8 or solvency of the law firms of Cotchett, Pitre & McCarthy LLP and/or Kaplan Fox & Kilsheimer LLP  
9 shall in any way affect the obligations of Class Counsel agreed to in this Undertaking.

10 The undersigned stipulates, warrants, and represents that they have both actual and apparent  
11 authority to enter into this stipulation, agreement, and Undertaking on behalf of the law firms of  
12 Cotchett, Pitre & McCarthy LLP and Kaplan Fox & Kilsheimer LLP, and the shareholders, members,  
13 and/or partners of those law firms respectively.

14 This Undertaking may be executed in one or more counterparts, each of which shall be deemed  
15 an original but all of which together shall constitute one and the same instrument. Signatures by  
16 facsimile or electronic signature shall be deemed the same as original signatures.

17 The undersigned declare under penalty of perjury under the laws of the United States that they  
18 have read and understand the foregoing and that it is true and correct.

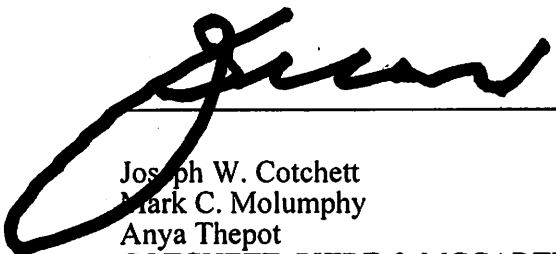
19 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

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21 *[Signatures on following page]*  
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DATED: February 27 2020

**COTCHETT, PITRE, & MCCARTHY LLP**



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*Interim Co-Lead Class Counsel*

DATED: February \_\_, 2020

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DATED: February 28, 2020

APPLE INC.



Noreen Krall  
Vice President & Chief Litigation Counsel

*Apple Inc.*

DATED: February 28, 2020

GIBSON, DUNN & CRUTCHER LLP



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# **EXHIBIT I**

Submitted for review  
*in camera*