

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made as of January 6, 2022, by and between James Stewart (“Named Plaintiff”), on behalf of himself and a class of iCloud subscribers as defined below (“Subscriber Class”), and Apple Inc., and all its affiliates, subsidiaries, parent companies, and related companies (“Apple”) (collectively, the “Parties,” and individually a “Party”).

DEFINITIONS

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

- A. “Action” means the litigation styled *Williams v. Apple Inc.*, No. 19-cv-04700-LB (N.D. Cal.), filed in the United States District Court for the Northern District of California.
- B. “Administrative and Notice Costs” means all fees, costs, and expenses incurred by the Settlement Administrator while carrying out its duties under this Agreement, including, without limitation: issuing Email and Website Notice; reviewing and approving claims; and administering, calculating, and distributing the Net Settlement Amount to Subscriber Class Members.
- C. “Apple Counsel” means Apple’s counsel of record in the Action.
- D. “Attorneys’ Fees and Costs” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Gross Settlement Amount.
- E. “Class Counsel” means:
 - a. Roy A. Katriel, of The Katriel Law Firm, P.C., 2262 Carmel Valley Road, Suite 200-D, Del Mar, CA 92014
 - b. Azra Mehdi, of The Mehdi Firm, P.C., 201 Mission Street, Suite 1200, San Francisco, CA 94105
- F. “Class Payment” means a pro rata distribution from the Net Settlement Amount to each Subscriber Class Member based on the overall payments made by each Subscriber Class Member for his or her iCloud subscription during the Subscriber Class Period. Such pro rata distribution shall not exceed the value of the total amount a Subscriber Class Member paid for his or her iCloud subscription during the Subscriber Class Period.
- G. “Court” means the United States District Court for the Northern District of California, where the Action was filed.
- H. “Effective Date” means five days after which all of the following events and conditions of this Agreement have occurred or have been met: (a) the Court has entered a Final Approval Order approving the Settlement, and (b) the Court has entered Final Judgment that has become final in that the time for appeal or writ of certiorari has expired or, if an appeal or

writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Final Judgment shall not become final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date.

- I. “Email Notice” means the notice of the Settlement to be emailed to all Subscriber Class Members (if an email address is available) in connection with the Settlement, in the form attached hereto as Exhibit 1, and as set forth below.
- J. “Final Approval Hearing” means the Court hearing where the Parties will request the Final Approval Order be entered approving this Agreement, and where Class Counsel will request that the Court enter Final Judgment.
- K. “Final Approval Order” means the final order to be entered by the Court, following the Final Approval Hearing, approving the Settlement. A proposed Final Approval Order is attached hereto as Exhibit 2.
- L. “First Amended Class Action Complaint” means the First Amended Class Action Complaint filed in this Action (ECF No. 38 in the Action).
- M. “Gross Settlement Amount” means the amount not to exceed fourteen million and eight hundred thousand dollars (\$14,800,000.00), which constitutes the total amount of non-reversionary funds that will comprise the Class Payment, Class Counsel’s Attorneys’ Fees and Costs, Administrative and Notice Costs, any Service Award to Named Plaintiff, and any distribution to the *cy pres* recipient as outlined in Section 2.5.
- N. “Final Judgment” means a document labeled by the Court as such and that has the effect of a judgment under Fed. R. Civ. P. 54. The Final Judgment will set the amounts of the Attorneys’ Fees and Costs award and Service Award and allow for the distribution of Class Payment. A proposed Final Judgment is attached hereto as Exhibit 3.
- O. “Net Settlement Amount” means the Gross Settlement Amount reduced by the sum of the following amounts: (1) Administrative and Notice Costs; and (2) any Attorneys’ Fees and Costs payment to Class Counsel, and any Service Award to the Named Plaintiff, as set forth below.
- P. “Notice Date” means the date set forth in the Preliminary Approval Order for commencing the transmission of the Email Notice and the publication of the Website Notice.
- Q. “Objection” means the written notice that a Subscriber Class Member may submit to the Court objecting to the Settlement.
- R. “Objection and Exclusion Deadline” means the date by which a Subscriber Class Member must submit an Objection, if any, to the Court or an Opt-Out Form to the Settlement

Administrator. The Objection and Exclusion Deadline shall be 65 days after the Notice Date.

- S. “Objector” means a person or entity who is a Subscriber Class Member who submits an Objection.
- T. “Opt-Out Form” means a Subscriber Class Member’s request to be excluded from the Settlement by submitting a written request to be excluded to the Settlement Administrator containing their name, address, and email address.
- U. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement and providing for Email Notice and Website Notice.
- V. “Released Claims” means any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, or liabilities, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, legal, equitable, or otherwise, that arise out of or relate to the allegations made by Named Plaintiff or Subscriber Class Members in the Action and that occurred during the Subscriber Class Period.
- W. “Released Persons” means Apple and each of its past or present directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs, and assigns.
- X. “Releasing Persons” means Named Plaintiff and all Subscriber Class Members, including any and all of their respective heirs, executors, administrators, or assigns, provided that any Subscriber Class Member who timely and properly excludes themselves under Section 5 below shall not be included herein.
- Y. “Service Award” means the award sought by Named Plaintiff in consideration for his service during the course of the Action and approved by the Court. Any such Service Award is separate and apart from any Class Payment the Named Plaintiff may receive as a Subscriber Class Member.
- Z. “Settlement Administrator” means Angeion Group (“Angeion”), an independent settlement administrator, or any such administrator approved by the Court to provide notice and administer the settlement claims in this Action.
- AA. “Settlement Website” means a publicly accessible website created and maintained by the Settlement Administrator for the purpose of providing the Subscriber Class with notice of and information about the proposed Settlement, as well as the option of providing information within a specified time period to the Settlement Administrator to receive the Class Payment by ACH transfer or by check.
- BB. “Subscriber Class” means the class as defined by the Court in its Order Granting in Part and Denying in Part Motion for Class Certification (ECF No. 110 in the Action):

All persons in the United States who paid for a subscription to iCloud at any time during the period September 16, 2015 to January 31, 2016. Excluded from this Class definition are all employees, officers, or agents of Defendant Apple Inc. Also excluded from this Class definition are all judicial officers assigned to this case as well as their staff and immediate families.

- CC. “Subscriber Class Members” means any person who meets the criteria set forth in the Court’s definition (“Subscriber Class”) as defined above.
- DD. “Subscriber Class Period” means the time period inclusive of September 16, 2015 to January 31, 2016.
- EE. “Website Notice” means the notice of the Settlement to be displayed to all Subscriber Class Members in connection with the Settlement on the Settlement Website maintained by the Settlement Administrator, in the form attached hereto as Exhibit 4, and as set forth in Section 6.2 below.

RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, on August 12, 2019, Plaintiffs Andrea M. Williams and James Stewart filed their initial Complaint. The initial Complaint alleged that Apple breached its contract with users by storing iCloud data using third-party servers, that Apple violated California’s Unfair Competition Law (“UCL”), and that Apple violated California’s False Advertising Law (“FAL”). Apple filed an initial Motion to Dismiss on October 4, 2019. On March 27, 2020, the Court granted in part and denied in part Apple’s Motion to Dismiss. The Court allowed the breach of contract claim to proceed. The Court dismissed the UCL and FAL claims with leave to amend. The Court also dismissed the injunctive relief claims with leave to amend.

WHEREAS, the First Amended Class Action Complaint was filed on April 27, 2020 on behalf of Plaintiffs Andrea M. Williams and James Stewart. Apple again moved to dismiss. On November 17, 2020, the Court dismissed the UCL and FAL claims with prejudice but allowed the injunctive relief claims to proceed.

WHEREAS, Plaintiffs Andrea M. Williams and James Stewart alleged a nationwide class in the Complaint and the First Amended Class Action Complaint and moved to certify a nationwide class for the period of September 16, 2015 to October 31, 2018. The Court, denying in part and granting in part, certified a nationwide class for the inclusive period of September 16, 2015 to January 31, 2016. The Court did not certify the nationwide class as to Plaintiffs Andrea M. Williams’s and James Stewart’s injunctive claims. The Court also held that Plaintiff Andrea M. Williams was inadequate, leaving Plaintiff James Stewart as the only remaining class representative.

WHEREAS, the Parties have investigated the facts and have analyzed the relevant legal issues regarding the claims and defenses asserted in this Action, including through significant motion practice and extensive fact and expert discovery. The Parties also conducted two

mediations before the Hon. Edward A. Infante (Ret.), on February 17, 2021 and October 27, 2021.

WHEREAS, Class Counsel and Named Plaintiff believe that the claims asserted in the Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Subscriber Class Members.

WHEREAS, Apple has at all times denied and continues to deny any and all alleged wrongdoing or liability. Specifically, Apple denies that it has breached any contractual provision in the iCloud Terms and Conditions or made any misrepresentations with respect to the storage of iCloud user data. Even so, taking into account the uncertainty and risks inherent in litigating this case through trial, Apple has concluded that continuing to defend this Action would be burdensome and expensive.

WHEREAS, the Parties desire to settle the Action in its entirety as to the Named Plaintiff, the Subscriber Class, and Apple with respect to all claims arising out of the facts underlying this Action. The Parties intend this Agreement to bind Named Plaintiff (both as the class representative and individually), Apple, Class Counsel, and all Subscriber Class Members.

In light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

1. CONFIDENTIALITY

- 1.1 The Parties must comply with all portions of the Stipulated Protective Order (ECF No. 31 in the Action).
- 1.2 This Agreement and its terms shall remain completely confidential until all documents are executed and the Motion for Preliminary Approval is filed with the Court. Pending the filing of that motion, Class Counsel and Apple Counsel may disclose this Agreement and its terms to their respective clients who are reasonably involved in the implementation of the Settlement, who will also maintain the complete confidentiality of this Agreement and its terms.

2. CONSIDERATION FOR SETTLEMENT AND CLASS PAYMENTS

- 2.1 Subject to the terms of this Agreement, Apple's total financial commitment under this agreement shall not exceed the Gross Settlement Amount of \$14,800,000.00. Apple shall have no other financial obligations under this Agreement.
- 2.2 Class Payment to Subscriber Class Members. Subscriber Class Members shall receive a pro rata distribution of the Net Settlement Amount based on the overall payments made by each Subscriber Class Member for his or her iCloud subscription during the Subscriber Class Period. Such pro rata distribution shall not exceed the value of a Subscriber Class Member's total iCloud subscription payments during the Subscriber Class Period.

- 2.3 Payment Method. Within 90 days of the Effective Date, subject to such supervision and direction of the Court and the Parties as may be necessary or as circumstances may require, the Class Payment shall be distributed to Subscriber Class Members. In the Email and Website Notice, Subscriber Class Members will be notified of the Settlement and each will be given the option of providing information to the Settlement Administrator to receive the Class Payment by ACH transfer or by check. In the event a Subscriber Class Member does **not** elect to receive the Class Payment by ACH transfer or check by providing the necessary information to the Settlement Administrator within the specified timeframe, the following shall apply:
- 1) For those Subscriber Class Members who, at the time Class Payment is distributed, are monthly iCloud subscribers to any kind of monthly paid iCloud plan and who have a U.S. mailing address associated with their plan, Apple shall issue Class Payment to the Apple accounts that pay for the Subscriber Class Members' subscriptions.
 - 2) For those Subscriber Class Members who, at the time Class Payment is distributed, are no longer monthly iCloud subscribers to any kind of monthly paid iCloud plan or who do not have a U.S. mailing address associated with their plan, the Settlement Administrator shall issue each of them a check sent to the mailing address associated with their account.
- 2.4 To the extent economically feasible, the Settlement Administrator shall follow up and communicate with Subscriber Class Members who have not cashed their Class Payment checks within 90 days of the checks being mailed or emailed.
- 2.5 Distribution of Any Remainder. It is the intent of the Parties that the entire Net Settlement Amount be distributed to the Subscriber Class Members. To that end, the Settlement does not require the filing of any claim forms as a condition of receiving a payment from the Net Settlement Amount. Nevertheless, the Parties recognize that even Subscriber Class Members who receive a payment may not cash or deposit their payment check or that certain checks may be undeliverable due to, inter alia, incorrect addresses. Any remaining funds from the Gross Settlement Amount after the Administrative and Notice Costs, Class Payment, Attorneys' Fees and Costs, and Service Award are distributed, including those resulting from uncashed checks, will be distributed to the *cy pres* recipient, except that if, for any reason, the determination of Attorneys' Fees and Costs occurs after Class Payments are distributed and the Attorneys' Fees and Costs are less than those requested by Class Counsel's Motion For Attorneys' Fees and Costs, the Parties shall determine the extent to which any reduction in Attorneys' Fees and Costs can be distributed to the Subscriber Class in an administratively and economically feasible manner. If any distribution is not administratively and economically feasible, any reduction will be distributed to the *cy pres* recipient. In no event shall the remainder be returned to Apple. By the hearing on the motion for preliminary approval, the Parties will publicly file with the Court a proposed *cy pres* recipient.

3. OBTAINING COURT APPROVAL OF THE AGREEMENT

- 3.1 Preliminary Approval. The Parties agree to recommend approval of the Settlement to the Court as fair and reasonable and to undertake their best efforts to obtain such approval. The Parties therefore agree that Named Plaintiff shall submit this Agreement, together with its exhibits, to the Court and shall apply for entry of a Preliminary Approval Order in the form attached as Exhibit 5 hereto. The Preliminary Approval Motion may be made by way of a calendared motion.
- 3.2 Class Counsel shall draft and file the motion requesting issuance of the Preliminary Approval Order and shall provide that draft to Apple Counsel in the Action no later than 4 days before filing. The motion shall be written in a neutral manner that does not contain inflammatory language about the Parties, the allegations or defenses asserted in the Action, or the Parties' perceived conduct in the Action. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback. Additionally, Apple may file supplemental briefing in support of Named Plaintiff's preliminary approval motion.
- 3.3 Upon filing of the motion requesting issuance of the Preliminary Approval Order, Apple shall provide timely notice of such motion to the appropriate official as required by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*
- 3.4 Final Approval and Final Judgment. In accordance with the schedule set forth in the Preliminary Approval Order, Class Counsel shall draft and file the motion requesting final approval of the Settlement, the Proposed Final Approval Order, and the Proposed Final Judgment and shall provide those drafts to Apple Counsel at least 10 days before filing such motion with the Court. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback. Additionally, Apple may file supplemental briefing in support of Named Plaintiff's final approval motion.
- 3.5 In the event that the Agreement is not approved, or in the event that its approval is conditioned on any modifications (including modifications to the proposed form and method of notice) that are not acceptable to Apple, then (a) this Agreement shall be null and void and of no force and effect and (b) any release shall be of no force or effect. In such event, the Action will revert to the status that existed before the Agreement's execution date, the Parties shall each be returned to their respective procedural postures so that the Parties may take such litigation steps that they otherwise would have been able to take absent the pendency of this Settlement, and neither the Agreement nor any facts concerning its negotiation, discussion, terms, or documentation shall be admissible in evidence for any purpose in this Action or in any other litigation.

4. OBJECTIONS

- 4.1 Objections. Any Subscriber Class Member who has not submitted a timely written Opt-Out Form and who wishes to object to the fairness, reasonableness, or adequacy of the

Settlement, the Attorneys' Fees and Costs award, or the Service Award must comply with the below requirements.

4.2 Content of Objections. All Objections and supporting papers must be in writing and must:

- (1) Clearly identify the case name and number, *Williams v. Apple Inc.*, No. 19-cv-04700-LB;
- (2) Include the full name, address, telephone number, and email address of the person objecting;
- (3) Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel); and
- (4) State the grounds for the Objection.

4.3 Submission of Objections. Any Objections from Subscriber Class Members regarding the proposed Agreement must be submitted in writing to the Court. If a Subscriber Class Member does not submit a timely written Objection, the Subscriber Class Member will not be able to participate in the Final Approval Hearing.

4.4 Deadline for Objections. Objections must be submitted by the Objection and Exclusion Deadline, which is 65 days after the Notice Date.

4.4.1 If submitted through ECF, Objections must be submitted no later than 11:59 p.m. PST of the date of the Objection and Exclusion Deadline.

4.4.2 If submitted by U.S. mail or other mail services, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement shall be the exclusive means used to determine whether an Objection has been timely submitted. In the event a postmark is illegible or unavailable, the date of mailing shall be deemed to be three days prior to the date that the Court scans the Objection into the electronic case docket.

4.5 Subscriber Class Members who fail to submit timely written Objections in the manner specified above shall be deemed to have waived any Objections and shall be foreclosed from making any Objection to the Agreement and the proposed Settlement by appearing at the Final Approval Hearing, or through appeal, collateral attack, or otherwise.

4.6 Attendance at Final Approval Hearing. Any Objector who timely submits an Objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Approval Hearing must include a request to appear and provide notice of his or her intention to appear in the body of the Objector's Objection.

4.7 Objectors' Attorneys' Fees and Costs. If an Objector makes an Objection through an attorney, the Objector shall be solely responsible for the Objector's attorneys' fees and

costs unless the Court orders otherwise. In no event shall Apple be responsible for more than the Gross Settlement Amount.

- 4.8 No Solicitation of Settlement Objections. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Subscriber Class Members to submit written Objections to the Settlement or encourage an appeal from the Court's Final Approval Order.

5. EXCLUSIONS

- 5.1 Opt-Out Forms. The Email and Website Notice shall advise all Subscriber Class Members of their right to exclude themselves from the Settlement. This Agreement will not bind Subscriber Class Members who exclude themselves from the Settlement.

- 5.2 How to Request Exclusion. To request to be excluded from the Settlement, Subscriber Class Members must timely submit a completed Opt-Out Form. The Opt-Out Form must be sent by postal mail to the Settlement Administrator.

- 5.3 Content of Opt-Out Form. All Opt-Out Forms and supporting papers must be in writing and must:

(5) Clearly identify the case name and number, *Williams v. Apple Inc.*, No. 19-cv-04700-LB; and

(6) Include the full name, address, telephone number, and email address of the person requesting exclusion.

- 5.4 Deadline to Request Exclusion. To be excluded from the Settlement, the completed Opt-Out Form must be received by the Objection and Exclusion Deadline, which is 65 days after the Notice Date.

- 5.5 Effect of Exclusion. Any person or entity who falls within the definition of the Subscriber Class and who validly and timely requests exclusion from the Settlement shall not be a Subscriber Class Member; shall not be bound by the Agreement; shall not be eligible to apply for any benefit under the terms of the Agreement; and shall not be entitled to submit an Objection to the Settlement. In the event that a Subscriber Class Member timely submits both an Objection and an Opt-Out Form, the Opt-Out Form shall prevail.

- 5.6 Exclusion List. No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Apple Counsel with the number and identity of the persons who have timely and validly excluded themselves from the Settlement.

6. SETTLEMENT ADMINISTRATION

- 6.1 Apple will provide to the Settlement Administrator the names and email addresses for all Subscriber Class Members with respect to whom it has records. The Settlement Administrator shall administer the Email and Website Notice described herein and pursuant

to the Preliminary Approval Order. The Settlement Administrator shall keep the Subscriber Class Members' identities and contact information strictly confidential and shall only use them for purposes of administering this Settlement.

6.2 The Parties agree upon and will request the Court's approval of the following forms and methods of notice to the Subscriber Class:

6.2.1 The Settlement Administrator shall establish and maintain the Settlement Website. The Settlement Website shall be optimized for viewing on both mobile devices and personal computers. The Settlement Website will include case-related documents, including, but not limited to, the operative complaint and answer to that complaint, this Agreement, the Website Notice, the Preliminary Approval Order, Plaintiffs' Motion for Attorneys' Fees and Costs, a set of frequently asked questions, information on how to submit an Objection or request exclusion, and contact information for Class Counsel, Apple Counsel, and the Settlement Administrator.

6.2.2 The Settlement Administrator shall email to each Subscriber Class Member for whom Apple has an email address a copy of the Email Notice substantially in the form attached hereto as Exhibit 1. The Email Notice shall inform Subscriber Class Members of the fact of the Settlement and that Settlement information is available on the Settlement Website.

6.2.3 Website Notice will also be available to all Subscriber Class Members on the Settlement Website.

6.2.4 The Settlement Website shall explain how Class Payment will be distributed. Subscriber Class Members will be given the option of providing information within a specified time period to the Settlement Administrator to receive the Class Payment by ACH transfer or by check. In the event a Subscriber Class Member does **not** elect to receive the Class Payment by ACH transfer or check by providing the necessary information to the Settlement Administrator within the specified timeframe, the following will apply:

For those Subscriber Class Members who, at the time Class Payment is distributed, are monthly iCloud subscribers to any kind of monthly paid iCloud plan and who have a U.S. mailing address associated with their plan, Apple shall issue Class Payment to the Apple accounts that pay for the Subscriber Class Members' subscriptions.

For those Subscriber Class Members who, at the time Class Payment is distributed, are no longer monthly iCloud subscribers to any kind of monthly paid iCloud plan or who do not have a U.S. mailing address associated with their plan, the Settlement Administrator shall issue each of them a check sent to the mailing address associated with their account.

6.3 The Settlement Administrator has agreed to perform all settlement administration duties required by the Agreement at a cost (the Administrative and Notice Costs) not to exceed

two million and four hundred thousand dollars (\$2,400,000.00). This amount shall cover all costs and expenses related to the settlement administration functions to be performed by the Settlement Administrator, including providing Email Notice and Website Notice and performing the other administration processes described in this Agreement. In the event that unanticipated costs and expenses arise in connection with the notice and/or administration process, such that they exceed the capped amount of \$2,400,000.00, the Settlement Administrator shall promptly raise the matter with Apple Counsel and Class Counsel as soon as practicable after becoming aware of the unanticipated costs and expenses. If both Apple Counsel and Class Counsel, acting in good faith, agree that unanticipated costs and expenses justify an increase to the amount payable to the Settlement Administrator in excess of the agreed-upon cap, then the amount in excess of the capped amount shall be paid for exclusively from the Gross Settlement Amount by way of any funds represented by checks that remain uncashed after 210 days, as contemplated under Section 2.5. Apple shall under no circumstances be responsible for any Administration and Notice Costs in excess of its contribution to the Gross Settlement Amount under Section 2.1.

- 6.4 The Email Notice and Website Notice shall provide information on the procedure by which Subscriber Class Members may request exclusion from the Subscriber Class or submit an Objection to the Settlement.
- 6.5 No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator shall give written notice to Apple and Class Counsel of the total number and identity of Subscriber Class Members who have elected to exclude themselves from the Subscriber Class. If the number of Subscriber Class Members who request exclusion from the Subscriber Class exceeds more than 1,000 Subscriber Class Members, Apple, in its sole discretion, may elect to reject this Settlement, in which case the entire Agreement shall be null and void. Alternatively, Apple may elect to waive this condition and proceed with the Settlement. Any such waiver by Apple must be unambiguous and in writing and provided to Class Counsel with 14 days after the Settlement Administrator provides Apple and Class Counsel the total number and identity of Subscriber Class Members who have elected to exclude themselves from the Subscriber Class.

7. ATTORNEYS' FEES AND COSTS AND SERVICE AWARD

- 7.1 Class Counsel will apply to the Court seeking a portion of the Gross Settlement Amount as payment for their Attorneys' Fees and Costs incurred in connection with prosecuting the Action (the "Fee Application"). Class Counsel's Motion for Attorneys' Fees and Costs shall be filed at least 35 days before the Objection and Exclusion Deadline and shall be posted on the Settlement Website within 3 days of it being filed. Apple expressly reserves the right to oppose the Fee Application for any reason at its discretion.
- 7.2 Any remaining funds from the Gross Settlement Amount after the Settlement has been administered will be distributed in accordance with Section 2.5.
- 7.3 Class Counsel may also apply for a Service Award of no more than \$5,000.00 for the Named Plaintiff. The Service Award is not a measure of damages whatsoever, but is solely

an award for the Named Plaintiff's service. Apple, while recognizing that the Settlement may entitle Class Counsel to seek a reasonable Service Award for Named Plaintiff, reserves the right to object to and oppose Class Counsel's request for a Service Award. For tax purposes, the Service Award will be treated as a 100% non-wage claim payment. Class Counsel shall provide a Form W-9 for the Named Plaintiff receiving a Service Award within 60 days after the Effective Date. The Settlement Administrator shall issue an IRS Form Misc.-1099 for the Service Award payment to Named Plaintiff. The Settlement Administrator shall wire the Service Award to an account specified by Class Counsel no later than 90 days after the Effective Date.

- 7.4 Apple shall not be liable for any additional fees or expenses of Named Plaintiff or any Subscriber Class Member in connection with the Action. Class Counsel agree that they will not seek any additional fees or costs from Apple in connection with the Action or the Settlement of the Action beyond the approved Attorneys' Fees and Costs award. Apple expressly agrees that it will not seek to recover its Court costs, attorneys' fees, or expenses once the Court enters a Final Approval Order and Final Judgment.
- 7.5 In the event that, after the Court grants preliminary approval the Settlement does not become final or final approval is not granted, Apple agrees that it shall be solely responsible for, and will not seek to recover any of the costs incurred by, the Settlement Administrator for the notice and settlement administration tasks undertaken by the Settlement Administrator since the time preliminary approval was granted. Notwithstanding the foregoing, Apple may seek to recover such costs if the cause of the Settlement not becoming final or obtaining final approval is attributable to a material breach of this Agreement by Class Counsel.

8. RELEASES AND WARRANTIES

- 8.1 As of the Effective Date, each Subscriber Class Member releases and forever discharges and covenants not to sue, and is permanently enjoined from suing Apple, its past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing) from the Released Claims.
- 8.2 The Releasing Persons expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, or any other similar provision under federal or state law. The Releasing Persons understand that California Civil Code § 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES 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.

The Releasing Persons expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Releasing Persons hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Persons. In furtherance of such intention, the release herein given by the Releasing Persons to the Released Persons shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each Releasing Person and Released Person expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Releasing Persons and Released Persons hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Named Plaintiff and Subscriber Class Members shall be deemed by operation of the Final Approval Order and Final Judgment to have acknowledged that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

- 8.3 The amount of the Class Payment pursuant to this Agreement shall be deemed final and conclusive against all Subscriber Class Members who shall be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the releases provided for herein.
- 8.4 No person shall have any claim of any kind against the Parties, their counsel, or the Settlement Administrator with respect to the matters set forth in Section 6 hereof, or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order, the Final Judgment, or further order(s) of the Court.

9. APPLE’S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE PROCEEDINGS

- 9.1 Apple has indicated its intent to vigorously contest each and every claim in the Action and continues to vigorously deny all of the material allegations in the Action. Apple enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Apple nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend the Action, the benefits of disposing of protracted and complex litigation, and the desire of Apple to conduct its business unhampered by the distractions of continued litigation.
- 9.2 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Apple of the truth of any of the allegations in this Action, or of any liability, fault, or wrongdoing

of any kind, nor as an admission or concession by Named Plaintiff of any lack of merit of his claims against Apple.

- 9.3 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Apple.
- 9.4 To the extent permitted by law, the Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted for the Released Claims.

10. MISCELLANEOUS

- 10.1 Extensions of Time. All time periods and dates described in this Agreement are subject to the Court's approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. These time periods and dates may be changed by the Court or the Parties' counsel's written consent without notice to the Subscriber Class Members.
- 10.2 Integration. This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
- 10.3 Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.
- 10.4 Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
- 10.5 Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution hereof.
- 10.6 Representative Capacity. Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.
- 10.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 10.8 Cooperation of Parties. The Parties to this Agreement and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.

10.9 Execution Voluntary. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.

10.10 Notices.

10.10.1 All Notices to Class Counsel provided for herein shall be sent by email and a hard copy sent by overnight mail to: Class Counsel as identified in Definition E.

10.10.2 All Notices to Apple provided for herein shall be sent by email and a hard copy sent by overnight mail to: Michelle C. Doolin, Cooley LLP, 4401 Eastgate Mall, San Diego, CA 92121, mdoolin@cooley.com.

10.10.3 The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.

10.11 Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties' counsel and approved by the Court.

10.12 Any and all disputes arising out of or related to the Settlement or this Agreement must be brought by the Parties and/or each member of the Subscriber Class exclusively in this Court. The Parties and each member of the Subscriber Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or related to the Settlement or this Agreement.

[Signatures on next page]

The Parties have agreed to the terms of this Agreement and have signed below.

Dated: January __, 2022

JAMES STEWART

James Stewart

Named Plaintiff and Class Representative

Dated: January 13, 2022

APPLE INC.

Heather Grenier

Heather Grenier

Senior Director, Commercial Litigation and Head of
Operations for Legal and Global Security

Defendant Apple Inc.

The Parties have agreed to the terms of this Agreement and have signed below.

Dated: January 13, 2022

JAMES STEWART



James Stewart

Named Plaintiff and Class Representative

Dated: January 13, 2022

APPLE INC.

Heather Grenier

Senior Director, Commercial Litigation and Head of
Operations for Legal and Global Security

Defendant Apple Inc.