

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

LATANYA SIMMONS and KEVIN TOBIN,  
individually and on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 17-CV-312251

**SETTLEMENT AGREEMENT AND RELEASE**

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## **PREAMBLE**

This Settlement Agreement and Release is entered into by and between plaintiffs Latanya Simmons and Kevin Tobin, on behalf of themselves and the members of the members of the Class as defined herein, on the one hand, and defendant Apple Inc. (“Defendant” or “Apple”), on the other (referred to collectively as “the Parties”).

## **RECITALS**

**A.** On June 26, 2017, Plaintiffs Latanya Simmons and Kevin Tobin filed a class action complaint against Apple in the Superior Court of the State of California in and for the County of Santa Clara, Case No. 17CV312251 (the “Action”). The complaint in the Action alleges that Apple falsely advertised that the Powerbeats 2 earphones (“Powerbeats”) were “sweat & water resistant” and “built to endure,” when in reality, the earphones contain a design defect that causes them to stop retaining a charge after a short amount of time. The causes of action asserted in the complaint are for breach of express warranty, violation of the Song-Beverly Act (Cal. Civ. Code §§ 1790 *et seq.*)/breach of implied warranty of merchantability, violation of the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*), violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*), unjust enrichment, common law fraud, and negligence.

**B.** Apple denies the allegations asserted in the Action. Specifically, Apple denies any wrongdoing or liability. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Apple has agreed to settle the Action on the terms set forth in this Settlement Agreement, subject to Court approval.

**C.** Class Counsel have fully analyzed and evaluated the merits of all Parties’ contentions and this Settlement as it impacts all Parties, including the individual members of the Class. After taking into account the substantial risks of continued litigation, and the likelihood that the Action, if not settled now, will be protracted and expensive, Class Counsel are satisfied

that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action is in the best interests of the Class.

**D.** The Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth of any of the claims asserted in the Action, or of the infirmity of the defenses that have been or could be raised by Apple.

**E.** The Settlement contemplated by this Settlement Agreement resulted from good faith, arm's length settlement negotiations and is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, as defined herein, upon the Court's approval of the terms and conditions of the Settlement Agreement.

## **AGREEMENT**

### **1. DEFINED TERMS**

In addition to the definitions included in the Distribution Plan (Section 3) of the Agreement, the following shall be defined terms for purposes of this Settlement Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are in bold-face font and listed in alphabetical order:

**1.1 "Action"** means the putative class action lawsuit entitled *Simmons et al. v. Apple, Inc.*, Case No. 17CV312251, pending in the Superior Court of the State of California in and for the County of Santa Clara.

**1.2 "Administration Expenses"** means any and all fees, costs, and charges incurred, charged, or invoiced by the Settlement Administrator relating to the administration of the Settlement, including the costs of notice to Class Members.



**1.3 “Authorized Claimant”** means any Class Member who timely submits a complete and sufficient Claim Form according to the terms of this Settlement Agreement and does not validly request exclusion from the Class.

**1.4 “Claim”** means the act of submitting a Claim Form to the Settlement Administrator.

**1.5 “Claim Form”** means a paper or online claim form in substantially the same form as **EXHIBIT 6**. The Claim Form shall state that no Proof of Purchase is necessary to submit a claim. Only one Claim Form may be submitted per household.

**1.6 “Claimant”** means any Class Member who submits a Claim Form for a cash settlement under this Settlement Agreement.

**1.7 “Class” or “Class Members”** means, for the purposes of settlement only, all persons residing in the United States who purchased new Powerbeats 2 earphones for primarily personal, family, or household purposes, and not for resale, before the date the Court enters the Preliminary Approval Order. Excluded from the Class are employees, officers, and directors of Apple, members of the immediate families of the officers and directors of Apple, and their legal representatives, heirs, successors, or assigns, and any entity in which they have a controlling interest. Also excluded from the Class are the Court, and the Court’s staff, as well as their heirs, successors, or assigns. Upon entry of the Final Approval Order and Judgment, persons who would otherwise be Class Members but who submitted a timely and valid request for exclusion, will also be excluded from the Class.

**1.8 “Class Counsel” or “Plaintiffs’ Counsel”** means the law firms of Tycko & Zavareei LLP (including lead counsel Hassan Zavareei, who is a member of the California Bar); The Miller Law Firm, P.C.; and Greg Coleman Law.

**1.9 “Class Member List”** means a list of persons who, according to a reasonable search of Apple’s business records, fall within the definition of the Class. The Class Member List shall include: the names of all persons who, according to a reasonable search of Apple’s business records, fall within the definition of the Class; their last known mailing address; and their last known email address. This list is not exclusive and there are Class Members who are not on this list.

**1.10 “Class Notice”** means the Email Notice, the Postcard Notice, Publication Notice, and the Detailed Notice.

**1.11 “Class Representatives” or “Plaintiffs”** means Latanya Simmons and Kevin Tobin.

**1.12 “Court”** means the Superior Court of the State of California in and for the County of Santa Clara.

**1.13 “Cy Pres Recipient”** means the Consumer Federation of America.

**1.14 “Defense Counsel”** means Cooley LLP.

**1.15 “Detailed Notice”** means the notice to be posted on the Settlement Website and mailed or emailed to Class Members upon request that discloses the terms of this Settlement Agreement, substantially in the form attached hereto as **EXHIBIT 2**.

**1.16 “Distribution Plan”** is the plan, set forth in Section 3, for distributing the Net Settlement Amount to Class Members.

**1.17 “Effective Date”** means two (2) court days after the latest of the following events occurs: (a) sixty-one (61) calendar days after notice of entry of the Final Approval Order and Judgment has been served on Defendant, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other

effort to obtain review has been initiated, the date sixty-one (61) calendar days after such appeal or other review has been finally concluded in favor of the Final Approval Order and Judgment and the Final Approval Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise. If the Final Approval Order and Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Effective Date shall not occur.

**1.18 “Email Notice”** means the notice to be emailed to Class Members by the Settlement Administrator, substantially in the form attached hereto as **EXHIBIT 3**.

**1.19 “Fee and Expense Award”** means such funds as may be approved and awarded by the Court to Class Counsel for the attorneys’ fees and costs incurred in connection with the Action and Settlement.

**1.20 “Fee Application”** means Class Counsel’s application for the Fee and Expense Award.

**1.21 “Final Approval Hearing” or “Fairness Hearing”** mean the hearing at or after which the Court will determine whether to finally approve the Settlement.

**1.22 “Final Approval Order and Judgment”** means the proposed final order and judgment to be submitted to and entered by the Court in connection with the Final Approval Hearing, the proposed form of which is attached hereto as **EXHIBIT 8**.

**1.23 “Gross Settlement Amount”** means nine million, seven hundred and fifty thousand dollars (\$9,750,000) which shall be used to make payments to the Class Members, any Fee and Expense Award, any Service Awards, and Administration Expenses. No interest shall be due on the Gross Settlement Amount. In no event shall Apple be required to pay more than \$9,750,000.

**1.24 “Net Settlement Amount”** means the Gross Settlement Amount, minus any Fee and Expense Award, any Service Awards, all Administration Expenses, and any taxes owed by the Gross Settlement Amount (but not any taxes owed by any individual Class Counsel, Plaintiffs or Class Members).

**1.25 “Notice Plan”** means the procedure for providing notice to the Class, including by Postcard Notice, Email Notice and Publication Notice.

**1.26 “Opt-Out Form”** means a paper or online form which Class Members may request exclusion from the Class, in substantially the same form as **EXHIBIT 7**.

**1.27 “Publication Notice”** means the procedure for providing notice to the Class who do not receive notice via Postcard Notice or Email Notice, the proposed form of which is attached hereto as **EXHIBIT 5**.

**1.28 “Parties”** means Latanya Simmons, Kevin Tobin, and Apple.

**1.29 “Point Multiplier”** is defined by mathematical formula in the Distribution Plan (Section 3).

**1.30 “Postcard Notice”** means the notice to be mailed to Class Members by the Settlement Administrator, substantially in the form of **EXHIBIT 4**.

**1.31 “Preliminary Approval Hearing”** means the hearing at or after which the Court will determine whether to preliminarily approve the Settlement and authorize the Class Notice.

**1.32 “Preliminary Approval Order” and “Preliminary Approval and Provisional Certification Order”** mean the order to be submitted to and entered by the Court in connection with the Preliminary Approval Hearing, the proposed form of which is attached hereto as **EXHIBIT 1**.

**1.33 “Proof of Purchase”** means one of the following submitted by a Class Member along with his or her Claim Form: (a) an itemized retail sales receipt evidencing the Class Member’s purchase of new Powerbeats 2 earphones; (b) a record of the Class Member’s online purchase of new Powerbeats 2 earphones; or (c) any other Proof of Purchase that counsel for the Parties agree is sufficient.<sup>1</sup>

**1.34 “Released Claims”** means any actions, causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent, which they may have or claim to have, that directly or indirectly arise out of, relate to, or derive in any way from Powerbeats 2 earphones.

**1.35 “Released Parties”** means Apple and each of its past and present parents, subsidiaries, affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns, and third party suppliers and vendors.

**1.36 “Releasing Parties”** means the Class Representatives and each Class Member, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

**1.37 “Response Deadline”** means one hundred and five (105) calendar days after entry of the Preliminary Approval Order.

**1.38 “Service Award”** means such funds as may be awarded by the Court to the Plaintiffs in recognition of their time and effort expended in pursuing the Action and in fulfilling their obligations and responsibilities as the Class Representatives.

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<sup>1</sup> A given Proof of Purchase can only be used in support of one Claim.

**1.39 “Service Award Application”** means Class Counsel’s application for a Service Award for each of the Class Representatives.

**1.40 “Settlement,” “Settlement Agreement,” and “Agreement”** means the settlement of the Action by the Parties and the terms thereof contemplated by this Settlement Agreement.

**1.41 “Settlement Administrator”** means the third-party administrator chosen to administer the Settlement and to provide notice of the Settlement to the Class. The Settlement Administrator will be chosen by Class Counsel, with due regard to cost, from among four providers who submitted competing bids.

**1.42 “Settlement Share”** is defined by mathematical formula in the Distribution Plan (Section 3). The checks or electronic payments sent to Authorized Claimants shall be in the amount of that Authorized Claimant’s Settlement Share.

**1.43 “Settlement Website”** means an internet website to be established and maintained by the Settlement Administrator solely for the purpose of this Settlement.

**1.44 “Total Points Claimed”** is defined by mathematical formula in the Distribution Plan (Section 3).

**1.45 “Valid Claim”** means a Claim determined by the Settlement Administrator as a complete, sufficient and timely Claim submitted by the Response Deadline.

## **2. SETTLEMENT CONSIDERATION (BENEFITS AND RELEASE OF CLAIMS)**

### **2.1 Monetary Payments.**

**2.1.1 Payment of the Gross Settlement Amount.** On or before twenty-one (21) calendar days after entry of the Preliminary Approval Order, Apple shall pay the estimated Administration Expenses to the Settlement Administrator. On or before ten (10) business days after the Effective Date, Apple shall provide the remainder of the Gross Settlement Amount to the

Settlement Administrator that was not already provided to the Settlement Administrator pursuant to preceding sentence. Apple shall not have the obligation to segregate the funds comprising the Gross Settlement Amount from its other assets, and if Apple retains and/or exercises authority or control over Gross Settlement Amount after entry of the Preliminary Approval Order, it shall do so in conformity with its obligations under this Agreement, applicable state and federal law, and Court order(s).

**2.1.2 Class Member Benefits.** Class Members shall be eligible to receive monetary benefits from the Net Settlement Amount in accordance with the Distribution Plan provided in Section 3.

**2.1.3 Service Awards.** On or before twenty-one (21) days prior to the Response Deadline, Class Counsel may apply to the Court for a Service Award from the Gross Settlement Amount for each Class Representative not to exceed one thousand dollars (\$1,000.00) per Class Representative, in recognition of their service to the Class, in addition to any other relief to which they are entitled as Class Members. Apple shall not oppose such application. If the Court approves Service Awards for the Class Representatives, the Settlement Administrator shall pay the Court-approved Service Awards from the Gross Settlement Amount to the respective Plaintiffs within thirty (30) calendar days of the Effective Date according to the procedures set forth herein. However, the Settlement Administrator shall have no obligation to forward funds for Service Awards for a Class Representative until it has received a signed Form W-9 for the Class Representative. The Settlement Administrator shall mail a check made out to each Plaintiff in the amount approved by the Court to the Plaintiffs care of Hassan A. Zavareei, 1828 L Street NW, Suite 1000, Washington, D.C. 20036. This Settlement is not conditioned upon the Court awarding the amounts sought by the Class Representatives as a Service Award. If the amounts awarded by

the Court are less than what was sought by the Class Representatives, the remaining provisions of this Settlement Agreement shall be binding and effective.

**2.1.4 Class Counsel's Attorneys' Fees and Costs.** On or before twenty-one (21) days prior to the Response Deadline, Class Counsel may apply to the Court for a Fee and Expense Award from the Gross Settlement Amount. Apple may respond to the Fee Application as it deems appropriate. If the Fee Application is approved, any Fee and Expense Award shall be payable within ten (10) calendar days of receipt by the Settlement Administrator of the full Gross Settlement Amount. However, the Settlement Administrator shall have no obligation to pay forward the Fee and Expense Award until it receives the Form W-9 (or Form W-9s, if applicable) and payment instructions from Tycko & Zavareei LLP. The Settlement Administrator shall make such payment directly to Tycko & Zavareei LLP. Tycko & Zavareei LLP shall be solely responsible for paying any monies due to any and all other counsel for any Plaintiffs, out of the Fee and Expense Award. Apple shall not be liable for any claims ensuing from distribution of attorneys' fees and costs. Class Counsel and Class Representatives expressly disclaim any right to recover attorneys' fees and costs in the Action in excess of the amount awarded by the Court from any person or entity. Class Counsel and Class Representatives also agree that the amounts of such attorneys' fees and costs awarded shall compensate them for all legal work in the Action up to and including the Effective Date, as well as for all legal work and costs that may be incurred in the Action after the Effective Date. This Settlement is not conditioned upon the Court awarding the amounts sought by Class Counsel as a Fee and Expense Award. If the amounts awarded by the Court are less than what was sought by Class Counsel, the remaining provisions of this Settlement Agreement shall be binding and effective.



**2.1.5 Administrator Expenses.** All costs and expenses of the Settlement Administrator, including but not limited to costs of notice and all costs of the Settlement Administrator in processing Claims, objections and exclusion requests, and distributing the Gross Settlement Amount, shall be paid from the Gross Settlement Amount. Apple shall have no separate responsibility for paying such costs.

**2.1.6 No Additional Amounts Due.** In no event shall Apple be required to pay more than nine million, seven hundred and fifty thousand dollars (\$9,750,000) under this Agreement.

## **2.2 Releases.**

**2.2.1 Class Representatives and the Class Members Provide the Following Releases:** Upon the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Parties will be deemed to have completely released and forever discharged the Released Parties from the Released Claims.

**2.2.2 Unknown Claims.** With respect to the Released Claims, Plaintiffs and the Class Members shall be deemed to have, and by operation of the Settlement Agreement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (to the extent applicable, or any other similar provision under federal, state, or local law to the extent any such provision is applicable), which reads:

**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.**

Thus, subject to and in accordance with this Agreement, even if the Plaintiffs and/or Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Plaintiffs and each Class Member, upon entry of the Final Approval Order and Judgment, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released all of the Released Claims. This is true whether such claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discover or existence of such additional or different facts.

**2.2.3 Plaintiffs' General Release.** In addition to the release contained in paragraphs 2.2.1 and 2.2.2, Plaintiffs on behalf of each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, release and forever discharge the Released Parties from any actions, causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent, which they may have or claim to have that arise before entry of the Final Approval Order and Judgment.

With respect to the release in this paragraph 2.2.3, Plaintiffs, on behalf of each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf,

shall be deemed to have, and by operation of the Settlement Agreement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (to the extent applicable, or any other similar provision under federal, state, or local law to the extent any such provision is applicable), which reads:

**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.**

Each Plaintiff expressly waives and relinquishes, to the fullest extent permitted by law all rights and benefits under Section 1542 of the California Civil Code, and any law or legal principle of similar effect in any jurisdiction, whether federal or state, with respect to the release and/or discharge granted in this Agreement. Each Plaintiff fully understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiffs and/or Plaintiffs' Counsel to be true and expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding any such difference in facts.

**2.2.4 Covenant Not to Sue.** Class Representatives agree and covenant, and each Class Member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the claims released in this Agreement, and agree to be forever barred from doing so in any court of law or equity, arbitration proceeding, or any other forum.

### **3. DISTRIBUTION PLAN**

**3.1 Payments From Gross Settlement Amount.** The Gross Settlement Amount shall be used to pay, in the following order: (i) all Administration Expenses, (ii) any taxes

owed by the Gross Settlement Amount (but not any taxes owed by any individual Class Counsel, Plaintiffs or Class Members), (iii) any Fee and Expense Award as approved by the Court, (iv) any Service Awards to the Class Representatives as approved by the Court, and (v) Valid Claims of Authorized Claimants.

**3.2 Authorized Claimant Settlement Award Calculations.** The awards to Authorized Claimants shall be calculated and apportioned as follows:

**3.2.1** The “Total Points Claimed” shall be calculated by the Settlement Administrator by adding the total number of “points” from Valid Claims submitted by Authorized Claimants. “Points” are available pursuant to the following formula:

(a) Each Authorized Claimant for whom Apple has no record of performing a warranty repair or replacement on a Powerbeats 2 and who submits a timely and valid Claim Form without a Proof of Purchase is eligible for one point.

(b) Each Authorized Claimant who submits a timely and valid Claim Form, and either (a) submits at least one valid Proof of Purchase in support of his or her Claim Form or (b) is identified in Apple’s records as having received a warranty repair or replacement on a Powerbeats 2, shall be eligible for two points per Proof of Purchase or record of warranty repair or replacement, whichever is greater.<sup>2</sup>

**3.2.2** The “Point Multiplier” shall be calculated by dividing the Net Settlement Amount by Total Points Claimed.

**3.2.3** The Settlement Share of each Authorized Claimant shall be calculated by the number of valid points the Authorized Claimant claimed multiplied by the Point Multiplier.

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<sup>2</sup> Records of two or more warranty repairs or replacements will only be eligible for additional points if they are “successive,” meaning that the second, or later, warranty repair or replacement must be on the device that was previously repaired or was provided to the customer as a replacement unit.

However, the maximum amount an Authorized Claimant may receive for a Settlement Share is one hundred and eighty nine dollars (\$189) multiplied by the number of valid Proofs of Purchase submitted with a timely and valid Claim Form. The maximum amount an Authorized Claimant may receive for a Settlement Share if he or she does not submit any Proof of Purchase is one hundred and eighty nine dollars (\$189).

### **3.3 Payment of Net Settlement Amount.**

**3.3.1 Distribution of Authorized Claimant Awards.** The Claim Form shall allow Claimants to elect between receiving an award by check or electronically (in an electronic payment format recommended by the Settlement Administrator such as Automated Clearing House (“ACH,” a/k/a direct deposit), PayPal, Venmo, Square Cash, or Google Wallet, and agreed-upon by the Parties). For those Authorized Claimants who requested an award by check, their Settlement Share shall be mailed as a check by the Settlement Administrator within thirty (30) calendar days following the Effective Date. To those Authorized Claimants who requested the award to be transmitted by electronic means, a transfer reflecting their Settlement Shares shall be transmitted to the Authorized Claimants within thirty (30) calendar days after the Effective Date.

**3.3.2 Address Verification.** Prior to mailing checks under this Settlement, the Settlement Administrator shall attempt to update the last known addresses of Authorized Claimants through the National Change of Address database. No skip-tracing shall be done as to any checks that are returned by the postal service with no forwarding address. Authorized Claimants’ checks returned with a forwarding address shall be re-mailed to the new address within seven (7) calendar days. The Settlement Administrator shall not mail checks to addresses from which Postcard Notices were returned undeliverable.

**3.3.3 Deceased Authorized Claimant.** If a Class Member is deceased and a death certificate is provided to the Settlement Administrator prior to the Effective Date, and a Valid Claim is submitted on behalf of the Class Member, the Settlement Administrator shall pay the applicable Settlement Share to the deceased Class Member's estate.

**3.3.4 Uncashed Settlement Checks.** Checks issued under this Settlement shall be negotiable for ninety (90) days after the date of issuance. Individual checks that have not been negotiated within ninety (90) calendar days after issuance, if any, shall be void.

**3.3.5 Failed Electronic Transmission of Funds.** Authorized Claimants who elect that their Settlement Share be transmitted to themselves via electronic means, but fail to provide sufficient or correct information to permit such transfer, shall, after a reasonable attempt to resolve any such payment issues, relinquish their right to payment pursuant to the Agreement

**3.3.6 Cy Pres Distribution.** Any remaining funds in the Gross Settlement Amount after the Settlement has been administered, including due to the effect of uncashed checks or unsuccessful electronic transmission of funds, will be distributed to the Cy Pres Recipient. In no event shall any such remaining funds be returned to Apple.

#### **4. CLASS NOTIFICATION PROCEDURES**

**4.1 Provision of Information to the Settlement Administrator.** As soon as practicable, but starting no later than fourteen (14) days of entry of the Preliminary Approval Order, Apple shall provide the Settlement Administrator the Class Member List in an electronic format. In preparing the Class Member List, Apple may rely on its reasonably available electronic records and is only obligated to provide the last known mailing address and email address as they presently exist in its business records.

## **4.2 Notice Plan.**

**4.2.1 Email Notice.** As soon as practicable, but starting no later than thirty calendar (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send the Email Notice to all Class Members for whom Apple has provided the Settlement Administrator with an email address. It will be conclusively presumed that the intended recipients received the Email Notice if the Settlement Administrator did not receive a hard-bounce-back message.

**4.2.2 Postcard Notice.** As soon as practicable, but starting no later than thirty calendar (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send the Postcard Notice, by mail to all Class Members for whom Apple has not provided an email address and to all Class Members to whom the Settlement Administrator sent the Email Notice but for whom the Settlement Administrator receives an uncured hard-bounce-back message. Before mailing the Postcard Notice, the Settlement Administrator shall update the addresses provided by Apple with the National Change of Address database. If the Postcard Notice is returned as undeliverable, the Settlement Administrator shall perform a skip trace search and shall make one attempt to re-mail the Postcard Notice as soon as possible before the Response Deadline. It will be conclusively presumed that the intended recipients received the Postcard Notice if the mailed Postcard Notices have not been returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days of mailing.

**4.2.3 Publication Notice.** As soon as practicable, but starting no later than thirty calendar (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall initiate distribution of the Publication Notice. The Publication Notice will be substantially similar to the sample notice contained in **Exhibit 5**.

#### **4.3 Additional Information for the Class.**

**4.3.1 Settlement Website.** Prior to the date on which the Settlement Administrator initiates the Class Notice, the Settlement Administrator shall also establish the Settlement Website, which shall contain:

- (a) the Detailed Notice in downloadable PDF format;
- (b) the Detailed Notice in HTML format with a clickable table of contents, described on the Settlement Website as answers to frequently asked questions;
- (c) a contact information page that includes the address for the Settlement Administrator and addresses and telephone numbers for Class Counsel and Defense Counsel;
- (d) the Settlement Agreement;
- (e) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof;
- (f) a downloadable and online version of the Claim Form and Opt-Out Form; and
- (g) (when they become available) the publicly filed motion for final approval, Fee Application, Service Award Application, and any motions papers and declarations in support thereof.

The Settlement Website shall remain accessible until thirty (30) calendar days after the Settlement Administrator has completed its obligations under this Settlement Agreement.

**4.3.2 Detailed Notice.** The Settlement Administrator shall mail or email the Detailed Notice to any Class Member who requests a copy.



**4.3.3 Toll Free Phone Number.** Prior to the date on which the Settlement Administrator initiates the Class Notice, the Settlement Administrator shall establish a toll-free number to call to obtain recorded information about the Settlement and request a mailed or emailed version of the Detailed Notice.

## **5. CLAIMS SUBMISSION AND VALIDATION PROCESS**

### **5.1 Claims Process.**

**5.1.1 One Claim Per Household.** Every Class Member shall have the right to submit a Claim for payment from the Net Settlement Amount. A Claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth herein. Class Members from the same household (i.e., the same address) may file only one (1) Claim.

**5.1.2 Claim Form Requirements.** On the Claim Form, the Class Member must certify the truth and accuracy of the following:

- (a)** The Class Member's name and mailing address;
- (b)** The Class Member's email address, if the Class Member elects to provide that information;
- (c)** That the Class Member purchased new Powerbeats 2 earphones as shown in the Proof of Purchase submitted with the Claim Form, or, in the alternative the approximate month and year of purchase, and the place of purchase; and
- (d)** That the claimed purchases were not made for purposes of resale.

A Claim Form not complying with all of the elements listed in this Section 5.1.2 is not a Valid Claim.

### **5.1.3 Claim Form Submission.**

**(a) Paper Submission.** At the election of the Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms must be postmarked or submitted online no later than the Response Deadline, and Claim Forms submitted after that date will not be Valid Claims.

**(b) Electronic Submission.** For Claim Forms that are submitted online, the Class Member shall have the opportunity to: (i) upload Proof of Purchase image files (e.g., .jpg, .tif, .pdf); (ii) review, prior to submitting the Claim, a page that redisplay all information entered into the Claim Form and the names of image files uploaded; and (iii) print, immediately after the Claim Form has been submitted, a page showing the information entered, the names of the files uploaded, and the date and time the Claim Form was received. In addition, for Claim Forms that are submitted online, the Class Member shall be sent an email confirmation of the submitted Claim showing the information entered, the names of the image files uploaded, and the date and time the Claim Form was submitted.

**(c) Claim Form Submission Deadline.** Claim Forms must be submitted by the Response Deadline. If submitted electronically (through the Settlement Website), Claim Forms must be received on or before the Response Deadline by 11:59 p.m. PST. An untimely Claim is not a Valid Claim.

## **5.2 Claims Review Process.**

**5.2.1 Review of Claims.** The Settlement Administrator shall review all submitted Claim Forms within a reasonable time for completeness, validity, accuracy, compliance with the Claim protocol and timeliness, and may contact any Claimant to request additional information and documentation to determine the validity of any Claim. The Settlement

Administrator shall follow its ordinary course of practice regarding approval of Claims, subject to all Parties' right to audit Claims and challenge the Settlement Administrator's decision. In addition, the Settlement Administrator must otherwise verify that: (1) the information set forth in a submitted Claim Form is accurate; and (2) the Claimant is a Class Member. To be considered an "Authorized Claimant" a Claimant must submit a valid, complete and timely Claim Form. Claim Forms that do not meet the submission requirements shall be rejected.

**5.2.2 Deficient Claims.** Prior to rejection of a Claim Form, the Settlement Administrator shall communicate with the Claimant in an effort to remedy curable deficiencies in the Claim Form submitted, except in instances where the Claim is untimely, clearly fraudulent (e.g., a Claim submitted by "John Doe"), or clearly uncurable (e.g., the Claim Form relates to something other than Powerbeats 2). Untimely and clearly fraudulent or uncurable Claims shall be rejected without cure attempt.

**5.2.3 Manner of Communicating Deficiency.** Within thirty (30) days after the Response Deadline, the Settlement Administrator shall email all Class Members whose Claims were denied to state the reason for the denial, at the email address (if any) provided by the Class Member on the Claim Form. If no email address is provided by the Class Member on the Claim Form, the Settlement Administrator shall not have an obligation to provide the Class Member with any notification of the reasons for denial of the Claim. The Settlement Administrator's determination of whether a Claim is a Valid Claim, if not disputed by the Parties, shall be final and not subject to further review.

**5.2.4 Disputes about Deficiency.** If the Parties and the Settlement Administrator cannot collectively agree how to resolve disputed Claims, then such disputes will be resolved by the Court.

**5.3 Resolution of Disputes Over Claims.** Any disputes regarding payments to Claimants, such as a dispute about a payment or the proper recipient of a payment, will be resolved in the following manner. Class Counsel and Defense Counsel will first meet and confer in good faith to attempt to resolve that dispute. In the event the dispute cannot be resolved informally between Class Counsel and Defense Counsel, the Court will resolve the dispute and such resolution shall be final and binding on the Claimant. In resolving such disputes, Apple's records shall be presumed to be accurate, and shall be final and binding, unless the information provided by the Claimant proves otherwise.

## **6. OBJECTIONS AND REQUESTS FOR EXCLUSION**

**6.1 Requests for Exclusion.** As set forth below, Class Members shall have the right to opt out of the Class and this Settlement.

**6.1.1 Notification on Right to Request Exclusion.** The Detailed Notice, as well as the Email Notice and Postcard Notice, shall advise Class Members of their rights to forego the benefits of this Settlement and pursue an individual claim, in compliance with the requirements set forth in this Settlement Agreement. The Detailed Notice will also provide that any Class Member wishing to exclude themselves who fail to properly or timely file or serve the requested information and/or documents will be precluded from doing so.

**6.1.2 Request for Exclusion Requirements.** In the event a Class Member wishes to be excluded from the Settlement and not to be bound by this Settlement Agreement, that person must, prior to the Response Deadline, either complete the online Opt-Out Form or sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice of intention to opt-out must:

- (a) be postmarked on or before the Response Deadline;

- (b) include the Class Member's name, address, and telephone number;
- (c) be personally signed and dated by the Class Member; and
- (d) contain a clear request that the individual would like to "opt out" or

be excluded, by use of those or other words clearly indicating a desire not to participate in the Settlement. Any Class Member who timely and properly requests exclusion in compliance with these requirements will not be entitled to receive payment from the Net Settlement Amount and will not be bound by this Settlement Agreement or the Final Approval Order and Judgment.

**6.1.3 Submission of Claim Form and Request for Exclusion.** If a Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

**6.2 Objections to the Settlement.** As set forth below, any Class Member who has not submitted a timely request for exclusion may object to this Settlement Agreement, the Fee Application, and/or the Service Award Application.

**6.2.1 Notification of Right to Object.** The Detailed Notice, as well as the Email Notice and Postcard Notice, shall advise Class Members of their right to object to this Settlement Agreement, the Fee Application, and/or the Service Award Application. The Detailed Notice will also provide that any Class Members wishing to object who fail to properly do so will be precluded from objecting.

**6.2.2 Objection Requirements.** Any Class Member who has not submitted a timely request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must sign and mail a letter to the Settlement Administrator, stating their intention to object to the Settlement. For a written objection to be considered, the written objection must:

- (a) be postmarked on or before the Response Deadline;
  - (b) include the objecting Class Member's name, address, and telephone number;
  - (c) be personally signed and dated by the objecting Class Member;
  - (d) state each objection and the specific legal and factual bases for each;
- and
- (e) include Proof of Purchase if available, or alternative information sufficient to show that the objector is a member of the Class.

**6.2.3 Appearance at Final Approval Hearing.** Any Class Member who has not submitted a timely request for exclusion may appear at the Final Approval Hearing either in person or through an attorney. However, if the Class Member intends to appear at the Fairness Hearing through counsel, the Class Member must have submitted a written objection pursuant to this paragraph that also identified the attorney(s) representing him or her who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if the Class Member intends to request the Court to allow him or her to call witnesses at the Fairness Hearing, such request must be made in a written brief, which must also contain a list of any such witnesses and a summary of each witness' expected testimony.

**6.2.4 Failure to Object.** Any Class Member who does not provide a timely written objection or who does not make a record of his or her objection at the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, the Fee Application, the Fee and Expense Award, the Service Award Application, or the Service Awards.

**6.2.5 Submission of Claim Form and Objection.** A Class Member who objects to the Settlement may also submit a Claim Form on or before the Response Deadline, which shall be processed in the same manner as all other Claim Forms. A Class Member shall not be entitled to an extension of the Response Deadline merely because that Class Member has also submitted an objection.

**6.2.6 Responding to Objections.** The Class Representatives, Class Counsel, and/or Apple may file responses to any timely written objections no later than seven (7) days prior to the Final Approval Hearing.

## **7. COURT APPROVAL PROCEDURES**

### **7.1 Provisional Class Certification and Preliminary Approval Order.**

**7.1.1 Class.** Solely for the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that a class shall be certified in the Action in accordance with the definition of the “Class” set forth above, and Class Counsel shall be appointed as counsel for the Class. The certification of the Class shall be binding only with respect to the Settlement set forth in this Settlement Agreement.

**7.1.2 Plaintiffs’ Brief in Support of Preliminary Approval Order.** The Class Representatives, through Class Counsel, shall file a motion for preliminary approval. The motion shall request entry of the Preliminary Approval Order for the purposes of, among other things:

- (a) conditionally certifying the Class in the Action for settlement purposes only;
- (b) appointing Plaintiffs as the Class Representatives;
- (c) appointing Class Counsel as counsel for the Class;
- (d) appointing the Settlement Administrator;

- (e) scheduling a Final Approval Hearing;
- (f) approving the Class Notice; and
- (g) approving the objection and exclusion procedures for Class

Members.

**7.1.3 Apple's Brief in Support of Preliminary Approval Order.** Apple and Defense Counsel shall not oppose the motion and may file a statement of non-opposition to the request for preliminary approval.

## **7.2 Motion for Final Approval.**

**7.2.1 Motion for Final Settlement Approval.** Plaintiffs will submit for the Court's consideration, by the deadline set by the Court, the Final Approval and Judgment Order, which does all of the following:

- (a) finds that the Court has personal and subject matter jurisdiction over the Action;
- (b) certifies the Class for settlement purposes;
- (c) approves the Settlement;
- (d) finds that the notice to the Class given in the manner described herein constitutes the best notice practicable and in full compliance with requirements of California Rules of Court and due process of law;
- (e) confirms that the Class Representatives and Class Members have released all Released Claims against the Released Parties;
- (f) identifies those who have timely opted out of the Settlement;
- (g) requires the Parties to report the amounts paid to Authorized Claimants; and



(h) retains the Court's jurisdiction relating to the administration, consummation, validity, enforcement, and interpretation of this Agreement, the Final Approval Order, any final order approving the Fee and Expense Award and Service Awards, and for any other necessary purpose.

#### **7.2.2 Apple's Brief in Support of Final Approval Order and Judgment.**

Apple and Defense Counsel shall not oppose the motion and may file a statement of non-opposition to the request for entry of the Final Approval Order and Judgment.

**7.3 Modifications Suggested by the Court.** If the Court suggests any modifications to the Agreement or conditions entry of the Preliminary Approval Order, Final Approval Order and Judgment on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, the Parties shall not be obligated to make any additions or modifications to the Agreement that would affect the benefits provided to Class Members, or the cost to or burden on Apple, the content or extent of notices required to Class Members, or the scope of any of the releases contemplated in this Agreement. If the Court orders or proposes such additions or modifications, the Parties will each have the right to terminate the Settlement Agreement within twenty one (21) calendar days from the date of the Court's order or proposal, unless otherwise agreed by the Parties. If either Party elects to terminate the Settlement Agreement pursuant to this section, the Agreement will be deemed null and void *ab initio* and the provisions of Sections 9.2 - 9.4 will apply.

### **8. OBLIGATIONS OF THE SETTLEMENT ADMINISTRATOR**

**8.1 Notice and Settlement Administration Duties.** As discussed in more detail elsewhere in the Agreement, the Settlement Administrator shall perform the duties, tasks, and

responsibilities associated with providing notice and administering the Settlement, including the following:

**8.1.1** Preparing and disseminating notice to the Class;

**8.1.2** Maintaining the Settlement Website;

**8.1.3** Keeping track of requests for exclusion and objections to the Settlement, including maintaining the original envelope in which they were mailed (or an electronic copy thereof);

**8.1.4** According to the timeline set forth in this Section 8, deliver to Class Counsel and Defense Counsel copies of any requests for exclusion, objections, or, upon request of Class Counsel and Defense Counsel, other written or electronic communications from the Class;

**8.1.5** Resolving disputes during the administration process in the manner provided below;

**8.1.6** Making distributions to Authorized Claimants;

**8.1.7** Performing any tax reporting duties required by this Agreement and federal, state, or local law;

**8.1.8** Maintaining adequate records of all its activities, including the dates of transmission of the Postcard and Email Notices, returned mail, and other communications and attempted written or electronic communications with the Class;

**8.1.9** Confirming in writing its completion of the administration of the Settlement; and

**8.1.10** Such other tasks as Class Counsel and Defense Counsel mutually agree.

**8.2 Preserving Confidentiality of Customer Information.** The Settlement Administrator, understands and agrees that it will be provided with certain personal identifying

information relating to Apple customers who are Class Members; accordingly, it agrees to keep this information secure, not to disclose or disseminate this information and such information will be used solely for the purpose of effectuating this Settlement Agreement.

### **8.3 Settlement Administrator Reporting.**

**8.3.1 Settlement Administrator Interim Reports.** Starting one week after the deadline to start providing notice to the Class under Section 4, the Settlement Administrator shall provide weekly reports to Defense Counsel and Class Counsel concerning the Claim Forms received during the prior week and the amount claimed to date. The report shall also identify the number of valid requests for exclusions received (*see* Section 6.1, *supra*) and transmit any received objections (*see* Section 6.2, *supra*) to counsel.

**8.3.2 Final Claims Accounting.** No later than fourteen (14) calendar days before the filing date for Class Representative's motion in support of the Final Approval Order and Judgment, the Settlement Administrator will serve upon Class Counsel and Defense Counsel a report indicating, among other things, the number of timely and valid Claim Forms that were submitted and the Total Points Claimed associated with such forms.

**8.3.3 Final Exclusion and Objection Accounting.** Within five (5) Court days of the Response Deadline, unless otherwise agreed by the Parties, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a report containing the information regarding requests for exclusions and objections that is required under Section 6, and confirming which requests for exclusion and objections are timely and untimely. No later than fourteen (14) calendar days before the filing date for Class Representative's motion in support of the Final Approval Order and Judgment, the Settlement Administrator will serve upon Class Counsel and Defense

Counsel a declaration indicating, among other things, the total number of valid requests for exclusion and copies of any objections received.

**8.4 Post Distribution Accounting.** The Settlement Administrator shall provide the Parties with a reconciliation and accounting of the Gross Settlement Amount at each of the following times: (i) no later than ten (10) calendar days after the payments are made pursuant to paragraph 3.3.1, and (ii) no later than ten (10) calendar days after the expiration of the 90-day period for negotiating checks issued under this Settlement.

## **9. TERMINATION**

**9.1 Option to Declare Settlement Void.** In the event that five hundred and one (501) or more Class Members are excluded from the Settlement pursuant to the procedures set forth in Section 6.1, Apple shall have the sole right to declare this Settlement Agreement void. Should Apple elect to void the Settlement Agreement on the basis of this provision, it must notify Class Counsel in writing of its intent to void the Settlement Agreement within five (5) business days of receiving written notice from the Settlement Administrator pursuant to paragraph 8.3.3 of the total number of exclusion requests from Class Members.

**9.2 Contingencies.** This Agreement shall be deemed terminated and cancelled, and shall have no further force and effect whatsoever, consistent with Section 9, if: (a) there is no Effective Date; (b) the Court fails to enter a Preliminary Approval Order substantially in the form attached as Exhibit 1; (c) the Court fails to enter Final Approval Order and Judgment substantially in the form attached as Exhibit 8; or (d) Apple elects to terminate pursuant to Section 9.1 above.

**9.3 Decertification of the Class if Settlement Not Approved.** If the Court does not enter the Final Approval Order and Judgment without material modification, subject to Section 9, or if the Final Approval Order and Judgment is reversed in whole or in part on appeal, or if the

Effective Date does not occur, certification of the Class will be vacated, and the Parties will be returned to their positions *status quo ante* as if the Settlement had not been entered into. In the event that Final Approval Order and Judgment or Effective Date is not achieved, (a) any court orders preliminarily or finally approving the certification of any Class contemplated by the Settlement and any other orders entered pursuant to the Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; and (b) this Agreement will become null and void, and the fact of this Settlement, that Apple did not oppose the certification of any Class under the Settlement, that Class Representatives acknowledged any risks associated with the litigation, or that the Court approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including but not limited to in any contested proceeding relating to the certification of any class or relating to enforcement of arbitration agreements and class-action waivers.

**9.4 Effect of Termination.** In the event that this Agreement is voided, terminated or cancelled, or fails to become effective for any reason whatsoever, then the Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and they shall proceed in all respects as if this Agreement, its exhibits, and any related agreements or orders, had never been executed or entered. Without limiting the foregoing of the other agreements between the Parties in this Agreement, but rather for clarity's sake, the Parties expressly agree that this Agreement, the settlement and mediation discussions leading to this Agreement, and any proceeding related to this Agreement (a) shall not be construed as a waiver, acknowledgment, or concession of risk by the Parties of any claim, defense, or argument, and the Parties' agreement to resolve the Action shall be inadmissible

pursuant to Evidence Code section 1152, and (b) shall not be used in any other proceeding for any purpose. No Party shall be deemed to have waived any claims, objections, rights, or defenses, or legal arguments or positions, including but not limited to claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend this Action in the event that this Settlement Agreement does not become final and binding.

## **10. MISCELLANEOUS.**

**10.1 No Admission of Liability.** Neither this Agreement nor the Final Approval Order and Judgment to be entered pursuant to this Agreement is an admission or concession by any person or entity of any fault, omission, liability, or wrongdoing.

**10.2 Termination of Discovery and Motion Practice.** By signing this Settlement Agreement, the Parties agree not to serve any discovery or proceed with any motion after the date of execution of the Settlement Agreement, except for motions related to the approval of the Settlement, unless the Parties are ordered to do so by the Court or the Final Approval Order and Judgment is not entered and this Settlement Agreement becomes void.

**10.3 Taxes and Tax Reporting.** The Parties shall have no liability or responsibility for any taxes owed by Class Members as a result of amounts paid to such Class Members under this Agreement. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accounts to the extent reasonably necessary to carry out the provisions set forth in this section.

**10.4 Date of Submission of Documents to Settlement Administrator.** If submitted by postal mail, the date of the postmark on the envelope containing the Claim Form, request for exclusion or objection shall be the exclusive means used to determine whether a Claim Form has been timely submitted. In the event a postmark is illegible, the date of mailing shall be deemed to

be three (3) days prior to the date that the Settlement Administrator received a copy of the Claim Form, request for exclusion or objection.

**10.5 No Claim Related to Distribution or Claims Processing.** No person shall have any claim against Plaintiffs, Apple, Plaintiffs' Counsel, Defense Counsel, or the Settlement Administrator based on any determination of a Valid Claim, distributions, or awards made in accordance with this Settlement Agreement and the Exhibits thereto.

**10.6 Best Efforts.** The Class Representatives and Apple agree that the terms of the Agreement reflect a good-faith settlement of disputed claims. They consider the Settlement effected by this Settlement Agreement to be fair and reasonable and will use their best efforts to seek preliminary approval, and if granted, final approval of the Agreement by the Court, including in responding to any objectors, intervenors or other persons or entities seeking to preclude entry of the Final Approval Order and Judgment and, if the Settlement is granted final approval, to effectuate the Agreement's terms. Neither the Parties nor any person acting on their behalf shall seek to solicit or encourage anyone to object to the Settlement or appeal from any order of the Court that is consistent with the terms of this Settlement.

**10.7 Each Party Is Represented by Counsel.** Plaintiffs, on the one hand, and Apple, on the other, acknowledge to each other that each has been advised and is represented by legal counsel of his or her own choosing throughout the negotiations which preceded the execution of this Settlement Agreement, and that they have executed this Settlement Agreement after being so advised and without reliance upon any promise or representation of any person or persons acting for or on behalf of the other, except as expressly set forth in this Settlement Agreement. Plaintiffs, on the one hand, and Defendant, on the other, further acknowledge that they and their counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary

or desirable in connection with the subject matter of this Settlement Agreement prior to the execution of this Settlement Agreement. Plaintiffs have each read and approved the language of this Settlement Agreement, with the assistance of counsel. Apple has also read and approved the language of this Settlement Agreement, with the assistance of counsel. This Settlement Agreement is a product of negotiation and preparation by Plaintiffs on the one hand with their attorneys, and Defendant Apple and its attorneys on the other. Therefore, Plaintiffs and Apple each expressly waive the provisions of Civil Code section 1654 and acknowledge and agree that this Settlement Agreement should not be deemed prepared or drafted by one Party or the other and shall be construed accordingly.

**10.8 Entire Agreement.** This Settlement Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

**10.9 Construction and Interpretation.** No course of prior dealing between the Parties, no usage of the trade, and no extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein. The Parties each represent and warrant to the other Party that they are not relying on any other Party for advice.

**10.10 Counterpart Originals and Electronic Signatures.** This Settlement Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement. It is further agreed that scanned and emailed and/or facsimile copies of executed signature pages may be assembled and that each and every one of the same shall be given the force and effect of an original signature. It is further agreed that electronic signatures (e.g., through DocuSign) shall be given the force and effect of an original signature.



**10.11 Execution Date.** This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

**10.12 Modification Only in Writing.** Neither this Settlement Agreement nor any provision hereof may be changed, waived, discharged, or terminated, save and except by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

**10.13 Headings.** Captions, section headings, and numbers have been set forth in this Settlement Agreement for convenience only and are not to be used in construing this Settlement Agreement.

**10.14 Time Periods.** The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Class Counsel and Defense Counsel.

**10.15 Notices.** Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email and overnight mail as follows:

To Class Representatives:

Hassan A. Zavareei  
TYCKO & ZAVAREEI LLP  
1828 L Street NW, Suite 1000  
Washington, D.C. 20036  
Telephone: (202) 973-0900  
Facsimile: (202) 973-0950  
Email: hzavareei@tzlegal.com

To Apple:

Michelle C. Doolin  
COOLEY LLP  
4401 Eastgate Mall  
San Diego, CA 92121  
Telephone: (858) 550-6000  
Facsimile: (858) 550-6420  
Email: mdoolin@cooley.com

**10.16 Governing Law.** This Agreement shall be governed and interpreted under California law, without regard to its choice of law principles.

**10.17 Court Retains Jurisdiction After Entry of Final Approval Order.** Without affecting the finality of the Final Approval Order and Judgment in any way, the Court shall retain jurisdiction over the administration, consummation, validity, enforcement, and interpretation of

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: 1/29/2020

DocuSigned by:  
*LaTanya Simmons*  
AAEB313798F5430...

Plaintiff Latanya Simmons

Dated: \_\_\_\_\_

Plaintiff Kevin Tobin

Dated: \_\_\_\_\_

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: \_\_\_\_\_

TYCKO & ZAVAREEI, LLP

By: \_\_\_\_\_  
Hassan A. Zavareei  
Annick M. Persinger

Dated: \_\_\_\_\_

THE MILLER LAW FIRM, P.C.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

GREG COLEMAN LAW

By: \_\_\_\_\_

*Attorneys for Plaintiffs*

Dated: \_\_\_\_\_

COOLEY LLP

By: \_\_\_\_\_

*Attorneys for Defendant Apple Inc.*

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: \_\_\_\_\_

Dated: 1/28/2020 \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Latanya Simmons

\_\_\_\_\_  
Plaintiff Kevin Tobin

\_\_\_\_\_  
Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: \_\_\_\_\_

TYCKO & ZAVAREEI, LLP

By: \_\_\_\_\_  
Hassan A. Zavareei  
Annick M. Persinger

Dated: \_\_\_\_\_

THE MILLER LAW FIRM, P.C.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

GREG COLEMAN LAW

By: \_\_\_\_\_

*Attorneys for Plaintiffs*

Dated: \_\_\_\_\_

COOLEY LLP

By: \_\_\_\_\_

*Attorneys for Defendant Apple Inc.*

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Latanya Simmons

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Kevin Tobin

Dated: Jan 27, 2020

Noreen Krall  
Noreen Krall, VP, Chief Litigation Counsel  
Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
TYCKO & ZAVAREEI, LLP

By: \_\_\_\_\_  
Hassan A. Zavareei  
Annick M. Persinger

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE MILLER LAW FIRM, P.C.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
GREG COLEMAN LAW

By: \_\_\_\_\_

*Attorneys for Plaintiffs*

Dated: March 12, 2020

\_\_\_\_\_  
COOLEY LLP

By: Michelle C. Dorn

*Attorneys for Defendant Apple Inc.*

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: \_\_\_\_\_

Plaintiff Latanya Simmons

Dated: \_\_\_\_\_

Plaintiff Kevin Tobin

Dated: \_\_\_\_\_

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: February 19, 2020

TYCKO & ZAVAREEI, LLP

By:   
Hassan A. Zavareei  
Annick M. Persinger

Dated: \_\_\_\_\_

THE MILLER LAW FIRM, P.C.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

GREG COLEMAN LAW

By: \_\_\_\_\_

*Attorneys for Plaintiffs*

Dated: \_\_\_\_\_

COOLEY LLP

By: \_\_\_\_\_

*Attorneys for Defendant Apple Inc.*

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Latanya Simmons

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Kevin Tobin

Dated: \_\_\_\_\_

\_\_\_\_\_  
Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: \_\_\_\_\_

TYCKO & ZAVAREEI, LLP

By: \_\_\_\_\_  
Hassan A. Zavareei  
Annick M. Persinger

Dated: 2/19/2020  
\_\_\_\_\_

 THE MILLER LAW FIRM, P.C.

By: \_\_\_\_\_  
Marc L. Newman

Dated: \_\_\_\_\_

GREG COLEMAN LAW

By: \_\_\_\_\_

*Attorneys for Plaintiffs*

Dated: \_\_\_\_\_

COOLEY LLP

By: \_\_\_\_\_

*Attorneys for Defendant Apple Inc.*

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Latanya Simmons

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Kevin Tobin

Dated: \_\_\_\_\_

\_\_\_\_\_  
Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: \_\_\_\_\_

TYCKO & ZAVAREEI, LLP

By: \_\_\_\_\_  
Hassan A. Zavareei  
Annick M. Persinger

Dated: \_\_\_\_\_

THE MILLER LAW FIRM, P.C.

By: \_\_\_\_\_

Dated: 2-20-2020

GREG COLEMAN LAW

By: Greg Coleman

*Attorneys for Plaintiffs*

Dated: \_\_\_\_\_

COOLEY LLP

By: \_\_\_\_\_

*Attorneys for Defendant Apple Inc.*