

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

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

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

STIPULATION OF SETTLEMENT

This Document Relates To:

ALL ACTIONS.

SETTLEMENT AGREEMENT AND RELEASE

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

1. DEFINITIONS

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

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

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

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

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

12 1.2 “Apple” means Apple Inc.

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

as set forth in paragraph 8.4.

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

1.23 “Parties” means Apple and the Named Plaintiffs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **3. CONFIDENTIALITY**

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

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

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

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

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

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

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

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

18 **5. SETTLEMENT CONSIDERATION**

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

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

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

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

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

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

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

1 **6. NOTICE AND SETTLEMENT ADMINISTRATION**

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

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

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

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

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

1 Settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **7. COURT APPROVAL**

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

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

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

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

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

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

8. ATTORNEYS' FEES AND EXPENSES AND NAMED PLAINTIFF SERVICE AWARDS

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

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

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

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

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

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

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

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

9. CALIFORNIA STATE ACTIONS AND JCCP ACTION

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

10. RELEASES AND DISMISSAL OF ACTIONS

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

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

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

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

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

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

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

a) Section 1542 of the California Civil Code, 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.**

and

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

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

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

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

11.1 Apple has indicated its intent to vigorously contest each and every claim in the Actions, and denies all of the material allegations in the Actions. Apple enters into this Settlement 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 Actions be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend the Actions, 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.

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

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

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

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

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

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

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

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

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

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

13. NOTICES

13.1 All notices to Named Plaintiffs shall be delivered to:

Joseph W. Cotchett, Esq.
Mark C. Molumphy, Esq.
Anya Thepot, Esq.
Cotchett, Pitre & McCarthy LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
jcotchett@cpmlegal.com
mmolumphy@cpmlegal.com
athepot@cpmlegal.com

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

13.2 All notices to Apple shall be delivered to:

Theodore J. Boutrous, Jr., Esq.
Richard J. Doren, Esq.
Christopher Chorba, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
TBoutrous@gibsondunn.com
RDoren@gibsondunn.com
CChorba@gibsondunn.com

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

14. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


27 *[Signatures on following page]*
28

DATED: _____, 2020

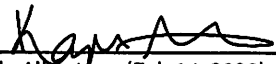


Lilav Akrawy

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Romeo Alba

DATED: 02/14, 2020


Kayla Albertson (Feb 14, 2020)

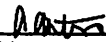
Kayla Albertson

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Rifah Alexander
Rifah Alexander (Feb 17, 2020)

Rifah Alexander


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Ashley Antonucci (Feb 14, 2020)

Ashley Ann Antonucci

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3 DATED: 2/15/, 2020


Denise Bakke (Feb 15, 2020)

Denise Bakke

DATED: 2/11/2020, 2020

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Tim Baldwin

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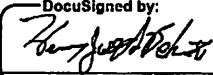
Tim Baldwin

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DATED: 2/11/2020, 2020

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Henry Becker

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2 *Kristin Bilic*

3 DATED: _____, 2020

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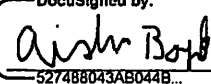
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Aisha Boyd

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Alisha Boykin

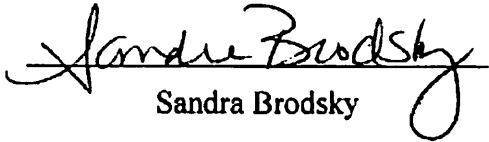
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Alisha Boykin


DATED: 2/4, 2020


Angela Boykin

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Sandra Brodsky

DATED: Feb 20, 2020


Amy Brown

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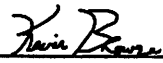
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Kimberly Brown (Feb 14, 2020)

4 Kimberly Brown
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3 DATED: 02/14, 2020


Kevin Browne (Feb 14, 2020)

Kevin Browne

DATED: 2/10/2020, 2020

DocuSigned by:

82EE08B7C039438...

Natasha Bryant

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3 DATED: 2-14, 2020

Patti Burriss
Patti Burriss (Feb 14, 2020)

4 Patti Burriss
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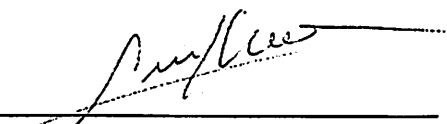
DATED: Feb 5, 2020

Julianna Caceres

Dr. Julianna Caceres



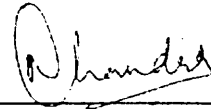
DATED: February 7th, 2020



Guilherme Canoa de Oliveira

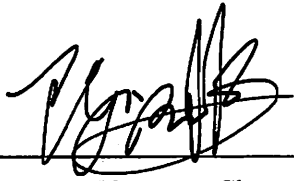
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DATED: 1st February, 2020



Nakul Chandra

DATED: Feb 20, 2020



Hanpeng Chen

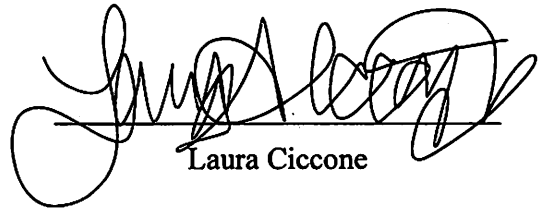
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DATED: 2-10-20, 2020

Fredrick Christensen

Fredrick Christensen

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3 DATED: February 11, 2020
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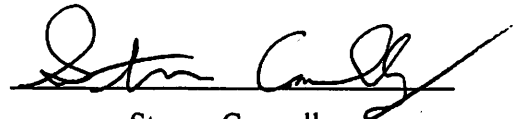

Laura Ciccone

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3 DATED: 2/13, 2020



Thomas A. Ciccone

DATED: February 24th, 2020


Steven Connolly

DATED: FEB 12, 2020



Thomas Cook

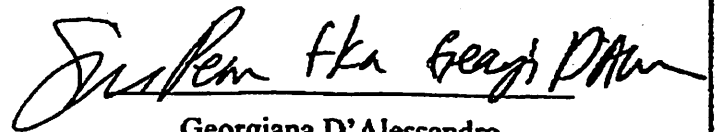
DATED: _____, 2020

Burim Daci

Hønefoss den 14.02.2020

Burim Daci

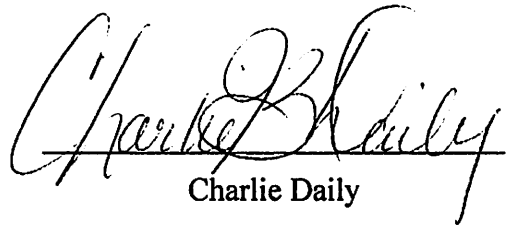
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3 DATED: Feb. 10th, 2020



Georgiana D'Alessandro

(PERNA)

DATED: February 13, 2020


Charlie Daily

DATED: 2/11/2020, 2020

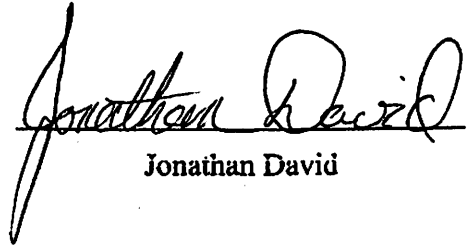
DocuSigned by:




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Irwin Darack

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Jonathan David

DATED: 02/14, 2020

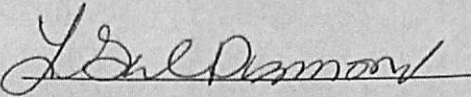

Alvin Davis (Feb 14, 2020)

Alvin Davis

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3 DATED: February 6, 2020


Patrick DeFillippo

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Laura Gail Diamond

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3 DATED: February 14,, 2020

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

Lillie R. Diaz

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3 DATED: February 17, 2020


Erica Dillard (Feb 17, 2020)

Erica Dillard

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3 DATED: February 7th, 2020

Samara Diner

4 Samara Diner
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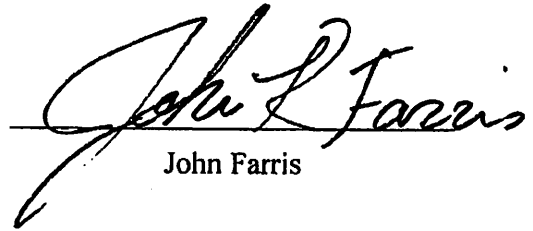
William C. Ellis

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DATED: February 15, 2020


Beckie Erwin

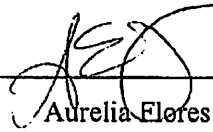
DATED: February 11, 2020



John Farris

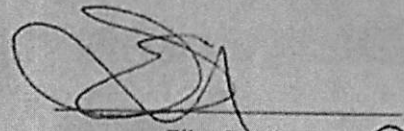
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DATED: Feb 8, 2020


Aurelia Flores

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DATED: Feb 07, 2020


Elisa Gaudio

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DATED: February 8th, 2020



Christopher Gautreaux


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DATED: 2/7/2020, 2020

DocuSigned by:

5088EA7AF3DA4EC

Shemina Gheewalla

DATED: 2/13, 2020



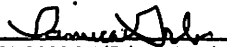
Robert Gilson

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3 DATED: FEB 24, 2020

TANYA Goodrich

Tanya Goodrich


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3 DATED: FEBRUARY 14, 2020


TAMICA GORDON (Feb 14, 2020)

4 Tamica Gordon
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DATED: 2/11/2020, 2020

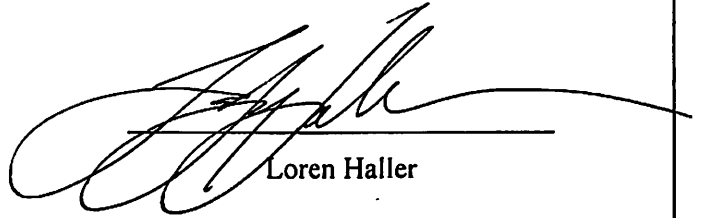
DocuSigned by:

SF1EA83959BC4C5...
Tammy Greenfield

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3 DATED: 2/19, 2020

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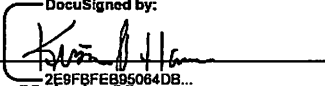

Jessica Greenshner

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Loren Haller

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DATED: 2/10/2020, 2020

DocuSigned by:

2E9F8FEEB95064DB...
Kristin Hansen

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3 DATED: February 7th, 2020



4 Sara Hawes

DATED: 2/18/2020, 2020

Ronald Hawkins
Ronald Hawkins (Feb 18, 2020)

Ronald Hawkins

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DATED: 2/11/2020, 2020

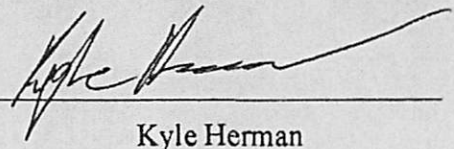
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Steven Henry

B93E3A82697B4F7...

Steven Henry

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Kyle Herman

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3 DATED: February 10, 2020

Amanda Holman


4 Amanda Holman
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Mary Jackson (Feb 14, 2020)

Mary Jackson

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3 DATED: 02/14/2020, 2020



Kelly Jankowski (Feb 14, 2020)

Kelly A. Jankowski

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3 DATED: Feb 21, 2020

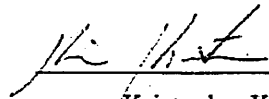

Dale Johnson

DATED: 2-17-, 2020



James Kile

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3 DATED: 02-08, 2020



Kristopher Kingston

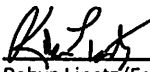
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Jill Klingman
Jill Klingman

DATED: February 20th, 2020


Benjamin Lazarus

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3 DATED: 2/14/20, 2020



Robyn Lipetz (Feb 14, 2020)

Robyn Lipetz

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3 DATED: 2/7, 2020


Lauren Long

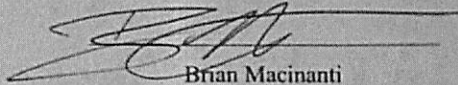
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Charlene Lowery (Feb 14, 2020)

4 Charlene Lowery
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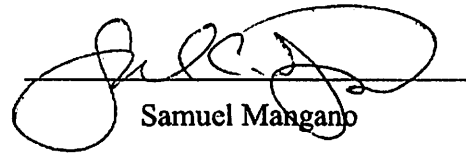
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Brian Macinanti

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

DATED: 2/12, 2020



Samuel Mangano



DATED: 2/19/20, 2020

Stephen Margolis

DATED: February 14, 2020

Michelle Martino
Michelle Martino (Feb 14, 2020)

Michelle Martino

DATED: _____, 2020



Brinley McGill (Feb 14, 2020)

Brinley McGill

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DATED: 2/10/2020, 2020

DocuSigned by:
Gary Merenstein
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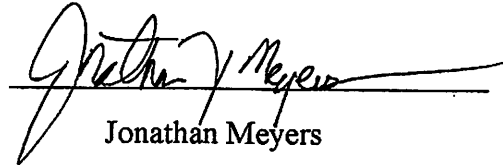
Gary Merenstein

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3 DATED: February 17, 2020, 2020

sandra J merola
sandra J merola (Feb 17, 2020)

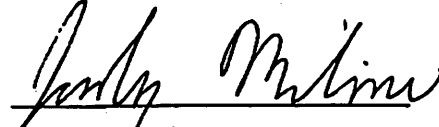
Sandra Merola

DATED: 2/24, 2020



Jonathan Meyers

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DATED: 2/11, 2020


Judy Milman

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3 DATED: 2/14, 2020



Craig Moore (Feb 14, 2020)

Craig J. Moore

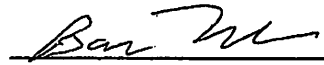
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DATED: 10 February, 2020



Tim Morgan

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3 DATED: 2/11/2020, 2020



Barbara Moriello

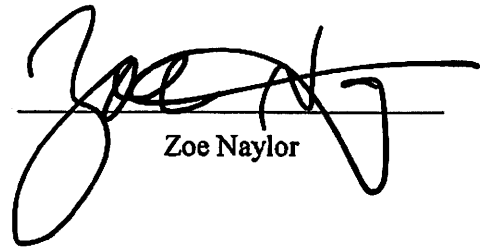
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DATED: February 6, 2020



Yuichi Murakami

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Zoe Naylor

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DATED: 2/10/2020, 2020

DocuSigned by:

Kaixuan Ni

1735E398D2664F4...

Kaixuan Ni

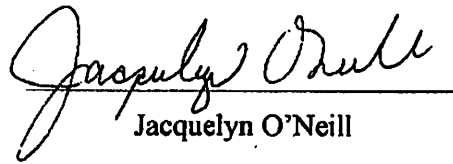
DATED: 02/17/, 2020



Amy L. Norman (Feb 17, 2020)

Amy Norman

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Jacquelyn O'Neill

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DATED: 2/10/2020, 2020

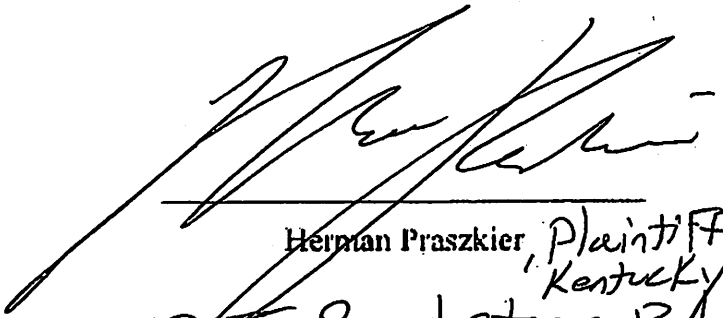
DocuSigned by:

Lawrence Pethick

1ED8F5831B8246B...

Lawrence Pethick

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3 DATED: 2/13 . 2020


Herman Praszkie, Plaintiff
Kentucky

1385 Bardstuen Rd

#217

Louisville, KY

40204


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DATED: February 12, 2020

Jason Ratner

Jason Ratner

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Jhonjulee Ray (Feb 14, 2020)


Jhonjulee Ray

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3 DATED: 02/14, 2020


Alex Rodriguez
Alex Rodriguez (Feb 14, 2020)

Alex Rodriguez

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3 DATED: FEB 10, 2020
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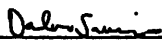

Daphne B. Rodriguez

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3 DATED: February 11, 2020
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Susan Rutan

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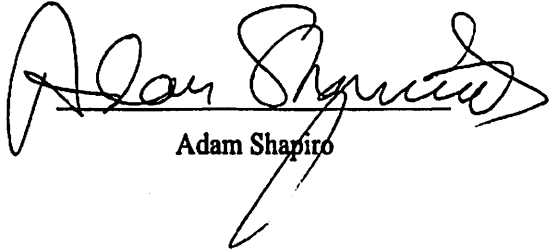

Darlane Saracina (Feb 14, 2020)

Darlane Saracina

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Caren Schmidt
Caren Schmidt

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3 DATED: Feb 8, 2020

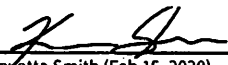
4 
Adam Shapiro

DATED: February 24, 2020

matthew shaske

Matthew Shaske

DATED: February 14, 2020


Kenyotta Smith (Feb 15, 2020)

Kenyotta Smith

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

I approve.

DATED: February 19, 2020



Linda Sonna

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3 DATED: February 14, 2020

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

Cynthia A. Stacy

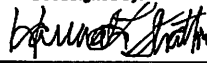
DATED: 17 February, 2020

Sarah Stone
Sarah Stone (Feb 17, 2020)

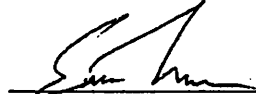
Sarah Stone

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DATED: 2/11/2020, 2020

DocuSigned by:

0F8B8F508015496...
Hannah Stratton

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3 DATED: 14 FEB, 2020
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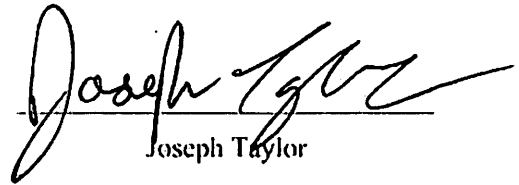

Eric Tanovan

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3 DATED: 02/17/, 2020

Jeanette Taylor
Jeanette Taylor (Feb 17, 2020)

Jeanette Taylor

DATED: 02-10 -, 2020


Joseph Taylor

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3 DATED: February 14, 2020


Judith A Thompson (Feb 14, 2020)

Judith Thompson

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3 DATED: 0218, 2020

Tonya Thompson
Tonya Thompson (Feb 18, 2020)

4 Tonya M. Thompson
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DATED: Feb 18, 2020

Shiriam Torres
Shiriam Torres

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3 DATED: 2/16, 2020


Thomas Toth

DATED: 2,17, 2020


HEIDI VALLE (Feb 17, 2020)


Heidi Valle

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3 DATED: Feb 14, 2020

Drew Victory
Drew Victory (Feb 14, 2020)

Drew Victory

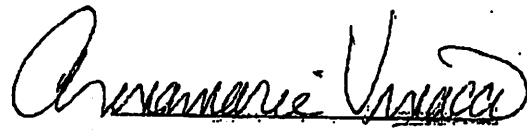
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3 DATED: 2/14, 2020


Ida Villegas (Feb 14, 2020)

Ida Villegas

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DATED: Feb 20, 2020

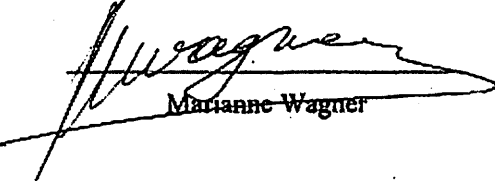


Annamarie Vinacco

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

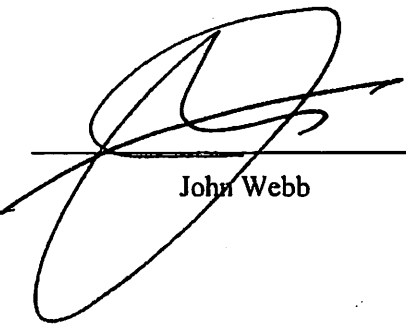
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DATED: *February 7th* 2020


Marianne Wagner

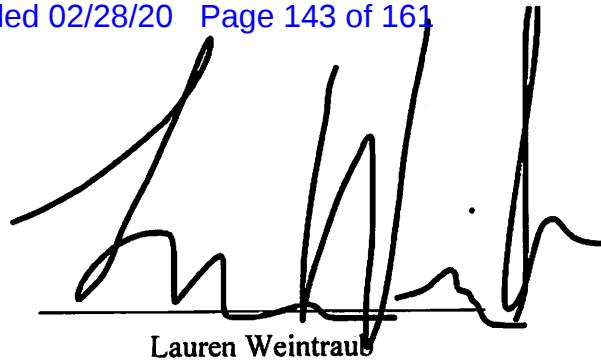
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DATED: 2.10, 2020



John Webb

DATED: 2/20, 2020



Lauren Weintraub

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3 DATED: 2/14/, 2020

Brandi White
Brandi White (Feb 14, 2020)

4 Brandi S. White
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DATED: 02/14/2020, 2020



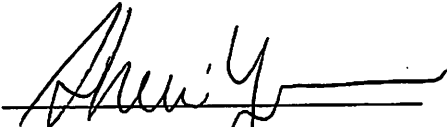
Khendle Harvest Williams

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3 DATED: 02/16, 2020

Andrew Yashchuk
Andrew Yashchuk (Feb 16, 2020)

4 Andrew Yashchuk

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3 DATED: 2/11/2020
4


Sherri Yelton

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3 DATED: February 14, 2020

Trent Young

Trent Young

1 DATED: February 27, 2020

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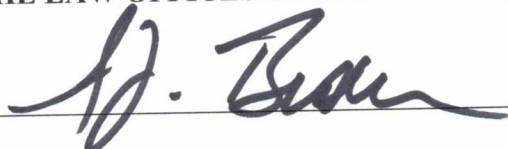
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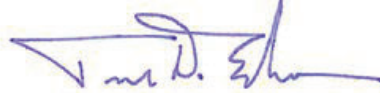
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Vice President & Chief Litigation Counsel

13 *Apple Inc.*

15 DATED: February ___, 2020

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Christopher Chorba
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11 Noreen Krall
12 Vice President & Chief Litigation Counsel

13 *Apple Inc.*

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15 DATED: February 28, 2020

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