

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

-----		X
Chaim Lerman, individually and on behalf of others	:	
similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	15-cv-07381 (SJ) (LB)
	:	
Apple Inc.,	:	
	:	
Defendant.	:	
	:	
-----		X

## **SETTLEMENT AGREEMENT AND RELEASE**

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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 “Action” means the litigation styled *Lerman v. Apple Inc.*, No. 15-cv-07381 (SJ) (LB) (E.D.N.Y.), filed in the United States District Court for the Eastern District of New York.

1.2 “Apple” means Apple Inc.

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

1.4 “Attorneys’ Fees and Expenses” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Gross Settlement Amount.

1.5 “CAFA Notice” means notice of this settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and the form of which is attached in **Exhibit A**.

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

1.7 “Claim Form” means the proof of claim and release form(s) substantially in the form attached as **Exhibit B**, which form is to be approved by the Court.

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

1.9 “Class Counsel” means the law firms of Pomerantz LLP and Bronstein, Gewritz & Grossman, LLC, who have any and all authority and capacity necessary to execute this Settlement Agreement and bind all of the Named Plaintiffs who have not personally signed this Settlement Agreement, as if each of those individuals had personally executed this Settlement Agreement.

1.10 “Class Notice” means the form of notice to be disseminated to Settlement Class Members informing them about the terms of this Settlement Agreement, their right to participate in this Settlement Agreement, to opt out, or to object to same, and to appear at the Final Approval Hearing, and instructing Settlement Class Members on how to submit requests for the cash payment. A copy of the proposed Class Notice is attached as **Exhibit C**.

1.11 “Court” means the United States District Court for the Eastern District of New York.

1.12 “Defense Counsel” means the law firm of DLA Piper LLP (US).

1.13 “Effective Date” shall be the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment, and when no further appeals are possible.

1.14 “Final Approval Order” and “Final Judgment” mean the final approval order and judgment dismissing and closing the Action, respectively, in the form attached as **Exhibit D**.

1.15 “Final Approval 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 Action on the merits and with prejudice should be entered. The Final Approval 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 Approval Hearing), be continued or adjourned by order of the Court.

1.16 “Gross Settlement Amount” means Twenty Million U.S. Dollars (\$20,000,000.00), which constitutes the non-reversionary funds used to resolve the claims asserted against Apple in this Action.

1.17 “Mediator” means the Honorable Diane M. Welsh (Ret.).

1.18 “Named Plaintiffs” means Chaim Lerman, Roslyn Williams, and James Vorrasi. 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.

1.19 “Named Plaintiff Service Awards” means the service awards for the Named Plaintiffs, as set forth in paragraph 8.6.

1.20 “Net Settlement Amount” means the Gross Settlement Amount, less any amounts paid for Class Counsel’s Attorneys’ Fees and Expenses, administrative and notice costs, any Named Plaintiff Service Awards, and any other costs associated with resolving the claims asserted against Apple.

1.21 “Notice Date” means thirty (30) days after the deadline for the Settlement Administrator to receive the names, e-mail addresses, mailing addresses (where available), and serial numbers (where available) for the members of the Settlement Class as provided in paragraph 6.2.3.

1.22 “Notice Plan” means the plan created by the Parties for the purpose of providing notice of this Settlement Agreement to the Settlement Class Members, as described in Section 6.

1.23 “Opt-Out and Objection Date” means the date ordered by the Court.

1.24 “Parties” means Apple and the Named Plaintiffs.

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 F**.

1.26 “Release” means the release set forth in Section 9.

1.27 “Released Claims” means any and all claims (excluding claims for personal injury), whether known or unknown, relating to the Action during the Class Period under federal, state, foreign, or any other law or regulation.

1.28 “Released Parties” means Apple and its successors and predecessors in interest, subsidiaries, affiliates, direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related entities, partners and privities, and each of Apple’s past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, insurers, and reinsurers.

1.29 “Residual” means the difference between the value of the Approved Claims and the Net Settlement Amount.

1.30 “Settlement” and “Settlement Agreement” mean the settlement described in this Settlement Agreement and Release, including all of its exhibits.

1.31 “Settlement Claims Administrator” and “Settlement Administrator” means JND Legal Administration, which shall provide settlement notice and administration services pursuant to the terms of this Settlement Agreement.

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

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

1.34 “Settlement Class” encompasses the following classes, as defined by the Court in its Order Granting Plaintiffs’ Motion for Class Certification (ECF No. 127 in the Action):

Class One: All individuals and entities in New York who currently own or have owned an iPhone 4S that was updated to any version of iOS 9 from any version of iOS 7 or iOS 8.

Class Two: All individuals and entities in New Jersey who currently own or have owned an iPhone 4S that was updated to any version of iOS 9 from any version of iOS 7 or iOS 8.

The Settlement Class excludes: (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) Defense Counsel, as well as their immediate family members, legal representatives, heirs, successors, or assigns; (d) any other individuals whose claims already have been adjudicated to a final judgment; and (e) those individuals who timely and validly request exclusion.

1.35 “Settlement Escrow Account” means an interest-bearing escrow account at Huntington National Bank that receives the Gross Settlement Amount and is administered by the Settlement Administrator.

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

1.37 “Settlement Website” means an Internet website that the Settlement Claims Administrator shall establish to inform the Settlement Class of the terms of this Settlement, their rights, dates, deadlines, and related information. The website and URL will not include any Apple trademarks, Apple tradenames, or Apple logos. For the avoidance of doubt, the Settlement Website may reference “Apple” or “Apple Inc.”



1.38 “Summary Notice” means the Summary Notice of Settlement, substantially in the form attached as **Exhibit H**.

1.39 Notwithstanding the foregoing definitions and terms, the following individual and former plaintiff is not a Settlement Class Member, because her claims have been dismissed with prejudice: Christina Gonzalez. This individual shall have no right to any payment(s) pursuant to this Settlement.

## **2. RECITALS**

2.1 On December 29, 2015, Plaintiff Chaim Lerman filed the initial Complaint. The initial Complaint alleged that Mr. Lerman upgraded his iPhone 4S devices to iOS 9 as a result of Apple’s allegedly false and deceptive representations about iOS 9, and that Apple allegedly violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., and New York General Business Law §§ 349 and 350.

2.2 The First Amended Class Action Complaint was filed on January 18, 2016, on behalf of plaintiffs Roslyn Williams, Chaim Lerman, Christina Gonzalez, and James Vorrasi. Apple filed an initial Motion to Dismiss on March 14, 2016.

2.3 The Second Amended Class Action Complaint was filed on March 28, 2016, on behalf of plaintiffs Roslyn Williams, Chaim Lerman, Christina Gonzalez, and James Vorrasi. Apple again moved to dismiss. On November 1, 2017, the Court denied Apple’s Motion to Dismiss.

2.4 On May 15, 2018, the Court granted the Parties’ stipulation to the dismissal with prejudice of the claims brought by Plaintiff Christina Gonzalez.

2.5 The Second Amended Class Action Complaint asserted claims on behalf of New York and New Jersey classes, and on September 27, 2019, the Named Plaintiffs moved for



certification of the New York and New Jersey classes. On October 7, 2020, the Court granted the motion in part, certifying the New York and New Jersey classes for monetary relief, and denied the motion in part as to the claims for injunctive relief.

2.6 The Parties have investigated the facts and have analyzed the relevant legal issues regarding the claims and defenses asserted in this Action, including through extensive fact and expert discovery, including more than fifteen depositions, briefing, arguments, a decision on class certification, *Daubert* briefing, a Rule 23(f) petition to the Second Circuit Court of Appeals, and more than six years of hard-fought litigation and is the product of extensive, arm's-length settlement negotiations and a mediation session before the Mediator on February 16, 2022.

2.7 The Settlement is not an admission by Apple of wrongdoing, fault, liability, or damage of any kind. Apple vigorously disputes the claims alleged in the Action and is entering into this Settlement to avoid burdensome and costly litigation. Apple denies each and every one of the plaintiffs' allegations, Apple has asserted numerous defenses to the plaintiffs' claims, Apple disclaims any liability whatsoever, and Apple further denies that this case satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23. Apple specifically denies that it made any misrepresentation or omission with respect to iOS 9 on the iPhone 4S. Without admitting any of the allegations made in the Action or any liability whatsoever, the Parties recognize that the outcome of this Action is uncertain, and that a final resolution through the litigation process would require several more years of protracted, adversarial litigation, trial, and appeals, substantial risk and expense, the distraction and diversion of Apple's personnel and resources, and the expense of any possible future litigation raising similar or duplicative claims. Apple is willing to enter into this Settlement solely in order to eliminate the burdens, distractions,

expense, and uncertainty of protracted litigation and in order to obtain the releases and Final Judgment contemplated by this Settlement.

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

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

### **3. CONFIDENTIALITY**

3.1 The Parties must comply with all portions of the Stipulated Protective Order (ECF No. 46).

3.2 This Settlement Agreement and its terms, including the fact of the proposed Settlement, shall remain completely confidential until all documents are executed, and the Motion for Preliminary Approval is filed with the Court. Pending the filing of that Motion, Class Counsel may disclose this Settlement Agreement and its terms to the Named Plaintiffs, who will also maintain the complete confidentiality of this Settlement Agreement and its terms, including the fact of the proposed Settlement. Apple may, at its sole discretion, disclose the terms of the Settlement Agreement to its auditors and other parties as reasonably necessary.

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

#### **4. THE SETTLEMENT CLASS**

4.1 This Court has certified a class as defined at paragraph 1.34, above.

4.2 Apple contends that this Action should not have been certified as a class action under Federal Rule of Civil Procedure 23(b). Nothing in this Settlement Agreement shall be construed as an admission by Apple that this Action or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Apple from opposing class certification or seeking decertification of the Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason. Apple supports certification of the class for settlement purposes only.

4.3 The Parties stipulate and agree that, subject to Court approval, the Settlement Class should be conditionally certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure solely for purposes of the Settlement embodied in this Settlement Agreement. If, for any reason, this Settlement Agreement is not approved by the Court, the stipulation for certification and all of the agreements contained herein shall be considered null and void as provided in paragraph 7.4.

4.4 Apple does not consent to certification of the Settlement Class (or to the propriety of class treatment) for any purpose other than to effectuate this Settlement. Apple's agreement to provisional certification does not constitute an admission of wrongdoing, fault, liability, or damage



of any kind, or that any class certification would be appropriate for litigation or any other purpose other than to effectuate this Settlement.

4.5 If for any reason the Effective Date does not occur or this Settlement Agreement is terminated, disapproved by any court (including any appellate court), or not consummated for any reason, the order certifying the Settlement Class for purposes of effectuating the Settlement (and all preliminary and final findings regarding that settlement class certification order) shall be automatically vacated upon notice of the same to the Court. The Action shall then proceed as though such findings had never been made. Additionally, the Parties and their counsel shall not refer to or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Federal Rules of Civil Procedure if this Settlement Agreement is not consummated, and the Action is later litigated and contested by Apple under Rule 23 or any equivalent statute or rule.

## **5. SETTLEMENT CONSIDERATION**

5.1 **Cash Payment to Settlement Class Members.** In consideration of the releases and dismissals set forth in this Settlement Agreement, subject to Court approval, and subject to the other terms and conditions of this Settlement Agreement (including the Gross Settlement Amount), Settlement Class Members who meet the requirements of and follow the procedures set forth in paragraphs 6.3 to 6.7 and who submit a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 that, to the best of their knowledge, (1) they downloaded iOS 9 (which was first released in September 2015), or any version thereof, onto their iPhone 4S; (2) they lived in New York or New Jersey at the time that they first downloaded any version of iOS 9; and (3) their iPhone 4S experienced a significant decline in performance as a result, shall be sent Fifteen U.S. Dollars (\$15.00) per applicable device. The actual amount of payment may differ, depending on the amount of any Attorneys' Fees and Expenses, Named Plaintiff Service Awards, Claims



Administration Expenses, and whether the aggregate value of Approved Claims reaches the Net Settlement Amount, as set forth in paragraphs 5.2 to 5.3.2 below. Additionally, if multiple Settlement Class Members submit Claims pertaining to the same eligible device, the payment amount for that device shall be divided equally among those submitting Approved Claims regarding that particular device.

**5.2 Gross Settlement Amount.** Subject to the terms of this Settlement Agreement, Apple's total financial commitment under this Settlement shall not exceed the Gross Settlement Amount of \$20,000,000. Apple shall have no other financial obligations under this Settlement Agreement. Moreover, notwithstanding anything to the contrary herein, in no event shall the aggregate cash payment to the Settlement Class Members exceed the Net Settlement Amount. If the total amount of validated claims submitted by members of the Settlement Class, inclusive of the Named Plaintiff Service Awards, exceeds the Net Settlement Amount, then the cash payment for each applicable device identified in the Approved Claims shall be reduced on a pro rata basis to ensure the aggregate cash payment to Settlement Class Members does not exceed the Net Settlement Amount.

**5.3** Notwithstanding paragraph 5.1, if payment of Fifteen U.S. Dollars (\$15.00) for each iPhone 4S device identified in Approved Claims submitted by Settlement Class Members does not reach the Net Settlement Amount, the Residual shall be allocated in order of priority as follows:

**5.3.1** The cash payment for each Approved Claim shall be increased on a pro rata basis until the aggregate value of Approved Claims is equal to the Net Settlement Amount.

Notwithstanding the foregoing, the pro rata payment for each Approved Claim per applicable device shall not exceed One Hundred Fifty U.S. Dollars (\$150.00).

5.3.2 If the total amount calculated in paragraph 5.3.1 does not reach the Net Settlement Amount following the pro rata adjustment described therein, the remaining Residual shall be distributed to the *cy pres* recipient. By the hearing on the motion for final approval, the Parties will publicly file with the Court a proposed *cy pres* recipient or recipients.

## **6. NOTICE AND SETTLEMENT ADMINISTRATION**

6.1 **Neutral Settlement Claims Administrator.** Subject to Court approval, the Settlement Claims Administrator shall provide settlement notice and administration services, in accordance with the terms of this Settlement Agreement and the Settlement Administration Protocol. The reasonable costs of notice and the costs of administering the Settlement shall be paid from the Gross Settlement Amount. The Parties jointly will oversee the Settlement Administrator's administration of the settlement.

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

6.2.1 A copy of the Class Notice, together with the Claim Form, the Settlement Agreement, the motions for Final Approval Order and Final Judgment, Attorneys' Fees and Expenses, and Named Plaintiff Service Awards, and Court orders pertaining to the Settlement, shall be posted and available for download on the Settlement Website maintained by the Settlement Claims Administrator. In addition, the Settlement Website will include a section for frequently asked questions and procedural information regarding the status of the Court-approval process, such as an announcement when the final approval hearing is scheduled, deadlines for opting out and objecting, when the Final Order and Judgment has been entered, and when the Effective Date

is expected or has been reached. The Settlement Website and URL may not include any of Apple's logos, tradenames, or trademarks. The Settlement Claims Administrator will terminate the Settlement Website thirty (30) days after either (1) the Effective Date, or (2) the date on which the settlement is terminated or otherwise not approved by a court. The Settlement Claims Administrator will then promptly transfer ownership of the URL to Apple.

6.2.2 The Settlement Administrator also shall establish a toll-free telephone number that will have recorded information answering frequently asked questions about certain terms of the Settlement Agreement, including, but not limited to, the claim process and instructions about how to request a Claim Form, Class Notice, and/or Summary Notice.

6.2.3 The Settlement Claims Administrator shall e-mail a copy of the Summary Notice to the e-mail address of record on the Apple ID account of the members of the Settlement Class. If the claims rate is below five (5) percent twenty-one (21) days after the e-mailing of the Summary Notice, the parties will meet and confer about whether to send a second e-mail with a copy of the Summary Notice to the e-mail address of record on the Apple ID account of the members of the Settlement Class. If the parties are not able to reach agreement from this meet-and-confer process within three (3) days, they will submit the matter to the Mediator for a binding decision within 24 hours. The electronic version of the Summary Notice shall contain a direct link to the Settlement Website and the instructions for the Claim Form. To facilitate the distribution of the Summary Notice, within thirty (30) days of the Court's entry of the Preliminary Approval Order, Apple shall provide the Settlement Claims Administrator with the names, e-mail addresses, mailing addresses (where available), and serial numbers (where available) in Apple's records for the members of the Settlement Class. If Apple does not have a valid e-mail address for a member of the Settlement Class, the Settlement Claims Administrator shall mail a copy of the



Summary Notice via postcard to that member of the Settlement Class. An e-mail address is not considered valid if it results in a hard bounce back.

6.2.4 The names, e-mail addresses, mailing addresses, and serial numbers are personal information about the members of the Settlement Class and shall be provided only to the Settlement Claims Administrator and solely for the purposes of providing notice, processing requests for exclusion, and administering payment. The Settlement Claims Administrator shall execute the Stipulated Protective Order (ECF No. 46), treat all such information as “Highly Confidential – Attorneys’ Eyes Only,” and take all reasonable steps to ensure that all such information is used solely for the purpose of administering this Settlement.

6.2.5 The Settlement Claims Administrator shall complete the initial e-mail notice (and, if applicable, the notice via postcard) by the Notice Date. If, despite using best efforts, the Settlement Claims Administrator is unable to complete the notice by the Notice Date, the Settlement Claims Administrator shall inform the Parties of the status of the notice and notify the Parties when the notice has been completed.

6.2.6 Apple shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials not later than ten (10) days after the filing of this Settlement Agreement with the Court. A proposed form of CAFA Notice, without the accompanying attachments, is attached as **Exhibit A**. Within a reasonable time



thereafter, Apple shall file with the Court a certification of the date(s) on which the CAFA Notice was served.

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

6.3 **Claim Form.** Settlement Class Members who wish to receive a cash payment will be required to submit a Claim Form. The Claim Form shall, among other things, require the Settlement Class Member to certify, under penalty of perjury, to the best of their knowledge, (1) they downloaded iOS 9 (which was first released in September 2015), or any version thereof, onto their iPhone 4S; (2) they lived in New York or New Jersey at the time that they first downloaded any version of iOS 9; and (3) their iPhone 4S experienced a significant decline in performance as a result. The Claim Form will also require the Settlement Class Member to provide their name, e-mail, and mailing address, and iPhone 4S serial number, if they have it. The Claim Forms shall be submitted to the Settlement Claims Administrator via U.S. mail or electronically through the Settlement Website.

6.4 **Claims Period.** To be valid, Claim Forms must be received by the Settlement Claims Administrator by no later forty-two (42) days from the Notice Date. Requests to opt out and objections must be received by the Settlement Claims Administrator within forty-two (42) days from the Notice Date.

6.5 **Process for Opting Out of Settlement.** The Parties agree to the following process:

6.5.1 Any Settlement Class Member who wishes to be excluded from the settlement; (i.e., to opt out of the Settlement Class), must mail or deliver a written request for exclusion to the Settlement Claims Administrator, received by the Opt-Out and Objection Date, which shall be no later than forty-two (42) days from the Notice Date. The written request must

provide the Settlement Class Member's name, address and telephone number, state that the Settlement Class Member requests exclusion from the Settlement Class, and must be signed by the Settlement Class Member. Any Settlement Class Member who does not submit a timely request for exclusion shall be bound by the terms of the Settlement including the releases defined herein in Section 9, all subsequent proceedings, orders, and the Final Order and Judgment in this Action relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Apple relating to the Released Claims.

6.5.2 The Settlement Claims Administrator shall receive and maintain the exclusion requests and provide copies of the exclusion requests to the Parties' counsel.

6.5.3 At least seven (7) court days before the Final Approval Hearing, the Settlement Claims Administrator shall provide the Parties' counsel with a list of all Settlement Class Members who submitted timely, valid exclusion requests as well as a statement as to the percent of the total number of members of the Settlement Class Members that such exclusion requests represent. As soon as practicable after the opt-out deadline, the Settlement Claims Administrator shall provide the Court with a list of the individuals who timely and validly requested exclusion from the Settlement.

6.6 **Process for Objections.** The Parties agree to the following process:

6.6.1 Objections shall be filed with the Court and served on Class Counsel and Defense Counsel within forty-two (42) days from the Notice Date.

6.6.2 The Parties shall request that the Court require any objection to be in writing, filed with the Court, and include the following information: (a) the objector's name, address, telephone number and, if represented by counsel, the name, address, and telephone number of his or her counsel; (b) proof of membership in the Settlement Class, as well as all other

materials the Settlement Class Member wants the Court to consider; (c) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (d) all grounds for his or her objection, accompanied by any legal support for the objection known to the objector or his or her counsel; (e) copies of any papers, briefs, or other documents upon which the objection is based or upon which the objector or his or her counsel intends to rely; (f) a statement of whether the objector or his or her counsel will ask to speak at the Final Approval Hearing and, if so, the amount of time the objector or counsel requested; and (g) the objector's handwritten signature.

6.6.3 The Parties shall also request that the Court require any objector or his or her counsel who intends to make an appearance at the Final Approval Hearing to file, and serve on Class Counsel and Defense counsel, a notice of intention to appear at the Final Approval Hearing by no later than the Opt-Out and Objection Date.

**6.7 Review of Claims Submitted.** The Settlement Claims Administrator shall determine whether a submitted Claim Form meets the requirements set forth in this Settlement Agreement. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine, based on its discretion and in consultation with the parties, whether each Claim shall be allowed. The Settlement Claims Administrator shall use best practices and all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, but not limited to: (i) indexing all payments provided to the Settlement Class Members; (ii) validating claims against Apple's records, (iii) determining the amount of the Cash Option payment based solely upon Apple's records, (iv) using a class member identifier, which will be matched to the notice list, and (v) screening for multiple or fraudulent claims which are not consistent with the facts. The Settlement Claims Administrator shall have the right to audit claims,



and the Settlement Claims Administrator may request additional information from members of the Settlement Class submitting claims.

**6.8 Rejection of Claims Forms.** The Parties agree as follows:

6.8.1 Claim Forms that do not meet the requirements set forth in this Settlement and/or in the Claim Form instructions shall be rejected.

6.8.2 Where a good faith basis exists, the Settlement Claims Administrator may reject a Claim Form for, among other reasons, the following: (a) the Claim Form identifies a product that is not covered by the terms of this Settlement; (b) failure fully to complete and/or sign the Claim Form; (c) illegible Claim Form; (d) the Claim Form is fraudulent; (e) the Claim Form is duplicative of another Claim Form; (f) the person submitting the Claim Form is not a Settlement Class Member; (g) the person submitting the Claim Form requests that payment be made to a person or entity other than the Settlement Class Member for whom the Claim Form is submitted; (h) failure to timely submit a Claim Form; or (i) the Claim Form otherwise does not meet the requirements of this Settlement Agreement. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator.

6.8.3 The Settlement Claims Administrator shall have forty-five (45) days from the end of the Claims Period to exercise the right of rejection. The Settlement Claims Administrator shall notify the claimant using the contact information provided in the Claim Form of the rejection. Class Counsel and Defense Counsel shall be provided with copies of all such notifications of rejection, provided that the copies do not contain the name, email address, mailing address, or other personal identifying information of the claimant.

6.8.4 If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within ten (10) days from receipt of the



rejection, transmit to the Settlement Claims Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator, in consultation with Class Counsel and Defense Counsel, of the denial of the Claim.

6.8.5 If Class Counsel and Defense Counsel cannot agree on a resolution of the claimant's notice contesting the rejection, the disputed Claim shall be presented to the Court or to the Mediator if appointed by the Court for summary and non-appealable resolution.

6.8.6 No person shall have any claim against Apple, Defense Counsel, the Named Plaintiffs, Class Counsel, and/or the Settlement Claims Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

6.8.7 This provision does not affect or limit in any way the right of review by the Court or referee of any disputed Claim Forms as provided in this Settlement.

6.9 Information Regarding Claims Submitted, Approved, and Rejected. The Parties agree as follows:

6.9.1 Within sixty (60) days from the end of the Claims Period, the Settlement Claims Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel that contains information sufficient to determine: (a) the number of Settlement Class Members that submitted a claim; (b) the number of submitted Claim Forms that are valid and timely, and which are not; (c) the number of submitted Claim Forms the Settlement Claims Administrator intends to

treat as Approved Claims; and (d) the number of submitted Claim Forms the Settlement Claims Administrator has denied and the reason(s) for the denials.

6.9.2 The Settlement Claims Administrator shall provide supplemental spreadsheets with respect to any Claim Forms submitted after the expiration of the deadline, within a reasonable time after receiving such Claim Forms.

6.9.3 The materials that the Settlement Claims Administrator provides to Class Counsel pursuant to this paragraph shall not contain the names, e-mail addresses, mailing addresses, or other personal identifying information of the Settlement Class Members.

6.9.4 The Settlement Claims Administrator shall retain the originals of all Claim Forms (including envelopes with postmarks, as applicable), and shall make copies available to Class Counsel or Defense Counsel (with redactions to remove the names, e-mail addresses, mailing addresses, or other personal identifying information of the Settlement Class Members) upon request.

6.9.5 All such spreadsheets and related materials (including Claim Forms) shall be designated as “Highly Confidential – Attorneys’ Eyes Only” as provided in paragraph 6.2.4.

**6.10 Calculation of Cash Payments.** In addition to the spreadsheet(s) specified in paragraph 6.9, within sixty (60) days from the end of the Claims Period, the Settlement Claims Administrator shall provide to Defense Counsel and Class Counsel information sufficient to calculate the per-device and aggregate cash payment for the Approved Claims, calculated in accordance with paragraphs 5.1, 5.2, and 5.3. If multiple Settlement Class Members submit Claims pertaining to the same eligible device, the payment amount for that device shall be divided equally among those Settlement Class Members submitting Approved Claims regarding that particular device.

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

**6.12 Timing of Payment to Settlement Administrator.** Within thirty (30) days after the Court enters the Preliminary Approval Order, and after provision to Apple of all information necessary to effectuate a transfer of funds, Apple shall deliver the Gross Settlement Amount to the Settlement Escrow Account, with the Settlement Administrator serving as escrow agent for the Settlement Escrow Account. The Settlement Administrator shall administer the Settlement Escrow Account that receives the Gross Settlement Amount, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined in Treasury Regulation § 1.468B-1, *et seq.* Any taxes owed by the Gross Settlement Amount shall be paid by the Settlement Claims Administrator out of the Gross Settlement Amount.

**6.13 Procedures for Distribution of Cash Payments.** Within ninety (90) days after the Effective Date, the Settlement Claims Administrator shall have substantially completed providing instructions for the payments to the Settlement Class Members for the Approved Claims (and in the case of Named Plaintiffs, the additional Named Plaintiff Service Awards) to be made from the Settlement Funds in the Settlement Escrow Account, which shall be sent to Settlement Class Members through electronic distribution, or in the form of checks that are mailed to the addresses provided on the submitted Claim Forms to those Settlement Class Members.



## 7. COURT APPROVAL

7.1 The Parties agree to recommend approval of the Settlement to the Court as fair and reasonable and to undertake their best efforts to obtain such approval. “Best efforts” includes that the Parties may not oppose any application for appellate review by one of the Parties in the event the Court denies preliminary or final approval. The Parties therefore agree that, by no later than April 29, 2022, the Named Plaintiffs shall submit this Settlement Agreement, together with its exhibits, to the Court and shall apply for entry of the Preliminary Approval Order.

7.2 Upon filing of the Motion for Preliminary Approval, Apple shall provide timely notice of the Settlement as required by the Class Action Fairness Act, 28 U.S.C. § 1711, et seq., in the substantially the form of **Exhibit A**.

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

7.4 In the event that the Settlement is not approved (following the exhaustion of any 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 Action or in any other action or proceeding. In such event, the 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 Class Counsel has the right to seek Attorneys' Fees and Expenses. Class Counsel shall make any motion for Attorneys' Fees and Expenses by no later than thirty-five (35) days before the Final Approval Hearing. Any objection or opposition to Class Counsel's request for Attorneys' Fees and Expenses shall be filed by no later than twenty-one (21) days before the Final Approval Hearing, and it shall be served on Class Counsel and Defense Counsel.

8.2 Within twenty (20) business days of the Court's Final Approval Order and Final Judgment, the Settlement Claims Administrator shall instruct for Class Counsel to be paid from the Gross Settlement Amount that was deposited into the Settlement Escrow Account, fifty percent (50%) of any Court-approved Attorneys' Fees and Expenses, subject to the Undertaking Regarding Attorneys' Fees and Expenses attached as **Exhibit I** that Class Counsel executed on February 17, 2022, and providing all information necessary to effectuate such transmission, including adequate payment instructions consisting of wire transfer instructions and completed IRS Forms W-9 (including addresses and tax identification numbers).

8.3 Pursuant to the Undertaking Regarding Attorneys' Fees and Expenses, Class Counsel hereby jointly and severally submit themselves and their law firms (including all shareholders, members, and/or partners of their law firms) to the obligation to repay to Apple the Attorneys' Fees and Expenses that have been paid if the Court's Final Approval Order and Final

Judgment and/or order regarding Attorneys' Fees and Expenses is vacated, overturned, reversed, or rendered void. Furthermore, the Undertaking Regarding Attorneys' Fees and Expenses authorizes the Court to summarily issue orders (including but not limited to judgments and attachment orders) against each of Class Counsel for up to the full amount of Attorneys' Fees and Expenses (plus any additional attorneys' fees or expenses incurred by Apple in connection with the litigation or enforcement of the Undertaking), and to make findings for sanctions for contempt of court and all other appropriate relief. Class Counsel submits to the jurisdiction of the Court to issue such orders.

8.4 Within ten (10) days after the Effective Date, the Settlement Claims Administrator shall instruct for Class Counsel to be paid from the Gross Settlement Amount that was deposited into the Settlement Escrow Account, the remainder of the Court-approved Attorneys' Fees and Expenses, net of any modifications or reversals on appeal or otherwise.

8.5 Class Counsel has the authority and responsibility to allocate and distribute the awarded funds to other counsel based, in its sole discretion, on counsel's efforts and contributions in the Action, provided that the allocation and distribution is consistent with the Court's order(s) regarding Attorneys' Fees and Expenses. Apple and Defense Counsel shall have no liability or other responsibility for allocation of any such awarded funds, and, in the event that any dispute arises relating to the allocation of fees or costs, Class Counsel and the Settlement Claims Administrator agree to hold Apple and Defense Counsel harmless from any and all such liabilities, costs, and expenses of such dispute.

8.6 Class Counsel will apply to the Court for the payment of a service award for the Named Plaintiffs for each Named Plaintiff. The Named Plaintiffs who are Settlement Class Members also shall be required to submit Claim Forms as specified in paragraph 6.3.

8.7 The Settlement Claims Administrator shall dispense the Named Plaintiff Service Awards from the Settlement Funds (as defined in paragraph 1.36), and in the manner and timing set forth in paragraph 6.13.

8.8 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. RELEASES AND DISMISSAL OF ACTION**

9.1 Upon the Effective Date, the Named Plaintiffs and each of the members of the Settlement Class who have not timely requested exclusion from the Settlement Class, and each of their respective successors, assigns, legatees, heirs, and personal representatives, will be deemed to have released the Released Parties of all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known claims or unknown claims, in law or equity, fixed or contingent, which they have or may have arising out of or relating to any of the acts, omissions, or other conduct that was or could have been alleged or otherwise referred to in this Action (including in the Complaint, the First Amended Complaint, and the Second Amended Complaint), relating to iOS 9, or any version thereof, on the iPhone 4S, including, but not limited to, any and all acts, omissions, or other conduct asserting claims (including, without limitation, any unknown claims) arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action.



9.2 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 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 Stipulated Protective Order, and all orders construing the Stipulated Protective Order, including but not limited to ECF No. 46. This release does not constitute a general release.

9.2.1 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 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 any law of any state, territory, or possession of the United States or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

9.3 As of the Effective Date, the Released Parties 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, prosecution, or settlement of the Action, including both known claims and unknown claims, against the Named Plaintiffs and Class Counsel. Notwithstanding the foregoing, this release shall not include any future claims relating to the continued enforcement of the Settlement, the Stipulated Protective Order, and all orders construing the Stipulated Protective Order, including but not limited to ECF No. 46. This release does not constitute a general release.

9.4 Upon the Effective Date, the Action shall be dismissed with prejudice.

9.5 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.

#### **10. DEFENDANT'S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE PROCEEDINGS**

10.1 Apple has indicated its intent vigorously to contest each and every claim in the Action and denies all of the material allegations in the Action. 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 Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend the Action, the benefits of disposing of protracted and complex litigation, and the desire of Apple to conduct its business unhampered by the distractions of continued litigation.

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

10.3 To the extent permitted by law, neither this Settlement Agreement, nor any of its terms, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, administrative, or other action or proceeding to establish any liability or admission by Apple.

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

## **11. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

11.1 Apple has the option to withdraw from the Settlement and render the Settlement Agreement null and void if the aggregate number of the members of the Settlement Class who timely and validly request exclusion therefrom, equals or exceeds 5 percent of the total number of members of the Settlement Class. If Apple exercises this option, it shall notify Class Counsel of its intent to do so in writing.

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



11.3 Apple has sole and exclusive discretion to terminate and withdraw from the Settlement and declare it null and void as provided in paragraph 7.4 if prior to final judgment:

- (a) the Court makes an order materially inconsistent with any term of the Settlement Agreement (other than reducing the award of Attorneys' Fees and Expenses or service award), including but not limited to an order denying preliminary or final approval, any modifications to the definitions of the Settlement Class, Settlement Class Members, Released Parties, or the scope of the releases (as provided in paragraph 9), any modifications to the terms of the Settlement consideration (as provided in paragraphs 5.1 to 5.3.2), and any changes to the notice provisions;
- (b) This Settlement Agreement is not upheld on appeal, including review by the United States Supreme Court;
- (c) any court certifies, on a conditional basis or otherwise, a class, collective, or representative action involving a claim described in this Action by any member(s) of the Settlement Class;
- (d) the Named Plaintiffs do not execute the Settlement Agreement or submit a valid and timely objection or opt-out notice; or
- (e) the Named Plaintiffs and/or Settlement Class Counsel materially breach the Settlement Agreement.

11.4 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 this Action or any other action or proceeding.

## 12. NOTICES

12.1 All notices to Named Plaintiffs shall be delivered to:

Jeremy A. Lieberman, Esq.  
Michael Grunfeld, Esq.  
Pomerantz LLP  
600 Third Avenue, 20<sup>th</sup> Floor  
New York, New York 10016  
[jalieberman@pomlaw.com](mailto:jalieberman@pomlaw.com)  
[mgrunfeld@pomlaw.com](mailto:mgrunfeld@pomlaw.com)

Peretz Bronstein, Esq.  
Eitan Kimelman, Esq.  
Bronstein, Gewirtz & Grossman, LLC  
60 East 42<sup>nd</sup> Street, Suite 4600  
New York, New York 10165  
[peretz@bgandg.com](mailto:peretz@bgandg.com)  
[ekimelman@bgandg.com](mailto:ekimelman@bgandg.com)

12.2 All notices to Apple shall be delivered to:

Raj N. Shah, Esq.  
DLA Piper LLP  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606  
[raj.shah@us.dlapiper.com](mailto:raj.shah@us.dlapiper.com)

Keara M. Gordon  
DLA Piper LLP  
1251 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, New York 10020  
[keara.gordon@us.dlapiper.com](mailto:keara.gordon@us.dlapiper.com)

12.3 The notice recipients and addresses designated in paragraphs 12.1 and 12.2 may be changed upon written notice provided to all individuals identified in those paragraphs.

## 13. MISCELLANEOUS

13.1 Entire Agreement: The exhibits and appendices attached to this Settlement Agreement are integral parts thereof and together with this Settlement Agreement, contain the entire, complete, and integrated statement of each and every term and provision of the Settlement.

This Settlement Agreement may not be modified in any respect except upon the written consent of the Parties.

13.2 Authority: The individual signing this Settlement Agreement on behalf of Apple represents that he/she is fully authorized by Apple to enter into, and to execute, this Settlement Agreement on behalf of Apple. Class Counsel represent that they are fully authorized to conduct settlement negotiations with Apple's counsel on behalf of Plaintiffs, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). Plaintiffs enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

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

13.4 No Assignment: Class Counsel and the Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action or any related action, and they further represent and warrant that they know of no such assignments or transfers on the part of any member of the Settlement Class.

13.5 No Primary Drafter of Settlement Agreement: The Parties, together with Class Counsel and Defense Counsel, have jointly participated in the drafting of this Settlement



Agreement. No Party hereto shall be considered the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

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

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

13.8 Disputes and Governing Law: Any and all disputes arising from or related to this Settlement Agreement must be brought by the Parties, Class Counsel, Defense Counsel, and/or members of the Settlement Class exclusively to the Court. The Parties, Class Counsel, Defense Counsel, and members of the Settlement Class irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement. All terms of this Settlement Agreement and any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to choice of law or conflicts of laws principles; however, nothing in this Settlement Agreement shall operate as a waiver of any Party’s position regarding the applicable law governing the underlying claims at issue in the Action.

13.9 Reasonable Extensions: Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

13.10 Stay of Proceedings: All motions, discovery, and other proceedings in the Action shall be stayed until the Court enters the Final Approval Order and Final Judgment, or this Settlement Agreement is otherwise terminated. Upon entry of the Preliminary Approval Order, all Settlement Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Parties.

13.11 Effect on Court Orders: Nothing in this Settlement Agreement shall alter or abrogate any prior Court orders entered in the Action, except to the extent necessary to give effect to a stay pursuant to Section 13.10.

13.12 Execution by Counterparts: This Settlement Agreement may be executed in counterparts. Facsimile or PDF signatures shall be considered valid as of the date they bear. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

13.13 Best efforts: The Parties, together with Class Counsel and Defense Counsel, agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.

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

13.15 Variance In Terms: In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

13.16 Tax Consequences: No opinion concerning the tax consequences of this Settlement Agreement to any Settlement Class Member is given or will be given by Apple, Apple's counsel, or Class Counsel, nor is any Party or his/her/its counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement, if any.

*[Signatures on following page]*



**Dated:** May 3, 2022

  
\_\_\_\_\_  
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*Counsel for Plaintiffs and the Class*

Dated: May 3, 2022

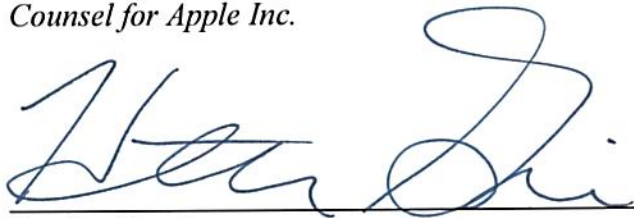


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*Counsel for Apple Inc.*



Dated: May 2, 2022

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Heather Grenier  
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